

Commit to Lasting Change



Nate McCoy

Hello NAMC Members and Partners,

I hope this message finds you well as our country continues to go through very turbulent times. All of us at NAMC-Oregon and across our 24 chapters in the U.S. are angered and deeply saddened by the police murder of George Floyd, Ahmaud Arbery, Breonna Taylor and the countless other deaths in the Black community - incidents rooted in a long history of anti-Blackness in our nation over 400 years. I can't even begin to describe the generational trauma that comes with this legacy of racism, which affects us all arguably more than this current COVID pandemic.

This is a horrible moment for

our nation - and a moment that challenges each of us to commit to lasting change. Together we should all stand in solidarity with the Black community - our employees, customers, partners and friends in this fight against the inequitable and brutal treatment of Black people in our community and all over the country. THIS MUST STOP.

NAMC was founded in Oakland, Calif., during the civil rights movement in 1969 by Black and Brown communities to fight injustice in the construction arena and has expanded across the nation as the oldest minority business organization in the U.S. with annual gross receipts of over \$1 billion nationally. Locally we equate to roughly \$200 million. Through our network of local chapters, and collaboration with strategic and industry partnerships, NAMC continues to be a "change agent" assisting members and partners to build capacity by providing access to opportunities, advocacy, and contractor development through our technical assis-

tance trainings.

The racism that led to these tragic and unnecessary deaths has also created tragic economic disparities between Black and White people in the United States, a reality that the pandemic has magnified and laid bare. We need to be stronger partners in ownership, development, building and operating, and as employers of the local community workforce in a process where public and private companies continue to build successful, quality projects while allowing intentional inclusion and restorative justice to be an integral part of the planning and execution of that success.

NAMC is concerned that we are losing a generation of minority youth because of neglect and indifference. We can no longer ignore the obvious: African-American males 18-35 have the highest unemployment rate and are most affected by COVID-19 in America. Other minority groups have also experienced these disparities, but not at the same levels given national statistics. Exposing and every-

one truly understanding the root causes of the systemic racism, inequities, and injustice in America is a necessary precondition for developing, advocating for and, ultimately, implementing policy solutions adequate to the scale and scope of these problems.

In closing, we need to be the change we want to see and stand together to demand economic, education, health and judicial system changes by VOTING and SPEAKING out against all injustices in unity. I want to personally thank the NAMC members, partners, families and friends who have reached out to me in solidarity from the Black, Indigenous, Latinx and White communities to say, "This is not okay and we stand with you in this fight against racism and discriminatory behavior." I call for us all to take action and make statements, as the world will remember who stepped up and who stayed on the sidelines.

With full sincerity,
Nate McCoy, Executive Director



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Getting Relief for the Little Guy

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Partner Spotlight: Community Development Partners

Getting relief for the little guy

NAMC-Oregon, coalition members work to help firms through COVID-19 crisis

BY MELODY FINNEMORE

Helping small businesses through difficult times is nothing new for Nate McCoy.

As executive director of the National Association of Minority Contractors Oregon chapter (NAMC-Oregon), McCoy has helped minority contractors and other small business members navigate economic recessions, government bureaucracy, and regulatory and administrative hurdles that can make it difficult to operate.

That has ramped up significantly with COVID-19, and the organization was quick to reach out to its members when the pandemic reached the Pacific Northwest and Gov. Kate Brown issued the stay-at-home order.

“We started getting some calls and we took the lead in checking in on all of our 50-plus members to identify what some of their top priorities are,” McCoy said.

Financial relief was at the top of list and NAMC-Oregon provided technical assistance to help members submit applications, including showing that they met requirements to receive it, and sending email updates about other opportunities when the first round of funding quickly ran out.

NAMC-Oregon also organized a phone conference with the Small Business Administration’s local office in late March to provide information to members about new regulatory products, and scheduled a follow-up meeting with the Portland Small Business Development Center, which provides small business advising and training.

McCoy noted that, once a small business owner has submitted their application for federal relief, the process is pretty streamlined so that the business owner can track it. The issue is ensuring that the funding actually goes to small businesses instead of large companies.

“They rushed to get the money out the door and there weren’t the procedures in place,” he said, adding larger companies have a greater capacity to position themselves to receive funding. “Minorities don’t always tend to have those high-level relationships and they had to just get in line with everybody else.”



COVID-19 put a stop to in-person classes NAMC-Oregon was offering, but the association is continuing to help members in other ways. (Photo courtesy John Jackley, Advanced Technology Communications.)

When the second round of federal relief began in late April, NAMC-Oregon sent a notice encouraging members who had not yet submitted their applications to do so early and helped those who had already

submitted one to navigate how to monitor their status.

The organization recently crafted a letter to Mayor Ted Wheeler and other elected officials that pointed out that the Great Reces-



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sion impacted minority-owned small businesses disproportionately and they were last to receive financial support then.

“As we’ve all seen, the pandemic is supposed to be as bad, if not worse, for small businesses of color and we don’t want to see a repeat of that,” McCoy said. “We think it’s now time to galvanize people of color and white counterparts who care about these social issues and support communities of color.”

NAMC-Oregon partnered with several organizations to host a mayoral debate May 7 as a Zoom Town Hall Meeting to ask the leading four candidates how, if they are elected, they plan to close the gap in economic inequality and access to recovery resources and pursue economic and racial justice in all of the city’s policies, processes and projects. Questions also centered on how the candidate who is elected will be held accountable for closing that gap. The debate was followed by an “after party” in which candidates’ campaign teams answered additional questions via Zoom.

The organizations involved in the May



In-person classes currently aren’t available, but NAMC-Oregon is continuing to communicate and assist members via email, Zoom sessions and phone. (Photo courtesy John Jackley, Advanced Technology Communications.)

7 debate were each represented by a panel member who questioned the candidates. McCoy served as moderator and the panelists represented the Oregon Native American Chamber, the Coalition of Communities of Color, LatinoBuilt, Portland Opportunities Industrialization Center and the Coalition of Black Men.

Prior to the debate, Rosa Martinez, board president of LatinoBuilt and president of PMG Abatement Contractors, stated that Latinos make up a large percentage of the contractor workforce and play a crucial role across many trades associated with the construction industry.

“This debate is essential to the progress of

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our Latino contractors as well as the entire contractor community at large,” she said, adding her organization was interested to learn about the candidates’ plans around equity, workforce training and hiring policies, and how they would empower and support Latinos’ voices.

McCoy said NAMC-Oregon also has partnered with the Associated General Contractors Oregon-Columbia chapter to inform its members who are still working on jobsites about safety and health guidelines from the state’s Oregon Safety and Health Administration, the Oregon Department of Transportation and other agencies.

“There is a lot of anxiety from workers, and some of our members as well, who aren’t sure about a company’s protocols and are wondering, ‘Will I get COVID-19 even if I do the safety procedures?’ We’re just trying to ease everyone’s anxiety and assure them that we can get through this.”

Another priority for NAMC-Oregon is to continue to inform members about bidding opportunities as they arise so that Portland’s construction pipeline can remain as



A priority for NAMC-Oregon is informing members about bidding opportunities. (Photo courtesy John Jackley, Advanced Technology Communications.)

on-track as possible. It also is hosting Zoom meetings for members to share forecasting of project pipelines and network.

“Nothing replaces in-person relationship building, but we consider this a good way to get people together through these communication platforms,” McCoy said, adding long-term advocacy is on the priority list as well. “We know, and other groups agree,

that the focus is on survival right now, but we also need to be focused on companies operating once this is over. Business is not going to be the same and I don’t think policies and programs can be the same either. This is an opportunity for building bridges.”

This article originally appeared in the Business Tribune (biztrib.com), a publication of Pamplin Media Group.

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MEMBER SPOTLIGHT: VICTOR E DESIGN BUILD LANDSCAPE, LLC



Victor Esuk

Victor Esuk earned a degree in landscape architecture while attending the University of Oklahoma on an athletic scholarship. He has since gained more than 30 years of experience in creating award-winning landscape designs, first for two companies in

Portland before starting his own company about 12 years ago.

“I’ve always wanted to start my own business, and I think I took the best from the people I worked for and I worked for a lot of great people,” he said. “I always thought, ‘When I open my company, I’ll do this.’”

With a team of three full-time designers and project managers and five crew leaders, Esuk employs anywhere from 12 to 25 workers, depending on seasonal demand. About 90 percent of his business is high-end residential projects which include patios, walkways and retaining walls; water features; sprinkler systems; landscape lighting; wood work; and lawn and plant installation.

“I enjoy the whole process. The design starts out as lines on a paper and then we watch it become this incredible space people love. It’s about bringing the design to life and managing a project,” he said.

The industry appreciates his work as well. Victor E Design Build Landscape won an Excellence in Landscape Award from the Oregon Landscape Contractors Association in 2016 and again in 2018.

As the company’s owner and lead designer, Esuk said it’s challenging to own a seasonal business when demand for his services goes down during the winter. When demand is high, it is sometimes difficult to find enough skilled workers to carry out projects.

Esuk said his membership in NAMC-Oregon is helping him expand into more commercial and public works projects so he can meet his goal of a 30 percent commercial and 70 percent residential project ratio.

“NAMC-Oregon is a great advocate for me as a minority business owner to get a foot in the door and get more commercial and public work, and it’s been great working



The Sackett Zen Garden project will be submitted for an Oregon Landscape Contractors Association award this fall. (Photo by Kelly Ellis, Victor E Design Build Landscape, LLC)

with Nate to open those doors,” he said.

Esuk noted that when it comes to making a business succeed, it’s often a fine line between taking on too broad of a variety of work versus specializing in specific projects.

“I would say that, in my experience, the

more targeted I became the more successful we became. When I tried to do everything for everyone, the more we struggled and the more stressed out we were. So, I would say find what you’re the best at and focus on that,” he said.

Thanks to the Portland minority business community for 30 years of successful partnerships. We look forward to more opportunities in the future!

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MEMBER SPOTLIGHT: OVERNIGHT PRESSURE WASHING SERVICES



Edward Stevens Sr. worked for seven years as a rigger at Portland's Swan Island Shipyard and held a few other jobs before going to work as a pressure washer. It was a move that would change his life.

"I felt it was time for me to do something that I would get satisfaction from and that was pressure washing," he said.

After working for a company that is now a competitor for about four years, Stevens started his own company - Over Night Pressure Washing Services - last November. In addition to wanting to work for himself,

Stevens said he wanted to be able to leave something special for his children. He said the most rewarding aspect of his profession is receiving compliments from people who appreciate his work.

"I like to see the smiles on people's faces when they get what they asked for and making them happy," Stevens said, adding he receives a lot of feedback on his company's Facebook page.

One of his favorite projects so far happened in mid-May: "I went to do one job and I ended up getting three jobs out of one, so that was great."

Semi-trucks and construction equipment are his primary markets and he operates his mobile service from 9 a.m. to 1 a.m. Like many other businesses, Over Night Pressure Washing Services has been impacted by COVID-19 and Stevens is doing odd jobs while trying to get the word out about his services. He said NAMC-Oregon has been a

lifeline.

"I rely on my mentors and they have encouraged me to keep my head up and helped me with the papers I need to file, and hopefully we'll get to the point where I can get in touch with the right people to successfully grow my business in the construction field. I'm quite sure NAMC-Oregon will be able to help me do that," Stevens said.

He advised other small business owners to keep working hard and try not to be discouraged, especially during this difficult time.

"Just keep your eye on the end of the tunnel because there is a light down there. Write a list of your goals and once you get that goal, knock it off and go to the next one so you can see progress from Day One to where you are now," Stevens said.

The 2020 NAMC-Oregon Newsletter was produced by:



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PARTNER SPOTLIGHT: COMMUNITY DEVELOPMENT PARTNERS

Eric and Kyle Paine, the brothers who co-founded Community Development Partners (CDP), wanted to do more than just develop housing. Their goal was to harness diverse resources and partners to share and realize big dreams and turn risks into rewards.

Since CDP was founded in 2011, it has successfully built a portfolio of 24 communities housing more than 2,000 units and \$485 million in total development costs. CDP's mixed-use and affordable housing projects span the Portland metro area, Salem, Albany, Corvallis and several rural communities. It currently has a project under way in Gresham and soon will develop others in Tigard, La Grande and St. Helens.

"One of the unique aspects of CDP is that we've historically taken a wholehearted approach to our local partnerships and, in addition to the fundamental goal of developing high-quality affordable housing, we are focused on long-term community engagement as a tool to enhance quality of life for our residents," said Eric Paine, CDP's chief executive officer. "In communities in our backyards and beyond we make extensive efforts to become ingrained in the local fabric and to identify mission-aligned partners who have deep roots serving a particular population where we can provide our development and operational expertise."

As an example of its commitment to integrating long-term social and cultural programming as part of its innovative, sustainable developments, CDP partnered with the Native American Youth and Family Center to develop Nesika Illahee. The \$17.4 million project provides 59 affordable apartments in Portland's Cully neighborhood. Nesika Illahee, which translates to "our place" in the Chinook language, also included the Confederated Tribes of Siletz Indians and the Native American Rehabilitation Association as partners.

Jessica Woodruff, CDP's development director, said the organization's partnerships, which also include Hacienda Community Development Corp. and Self Enhancement Inc. (SEI), have shown positive results throughout the state.

"I've been working in Oregon in affordable housing for a long time and most of



the partnerships with minority organizations are more for services and outreach, so the ability to offer ownership opportunities and long-term partnership commitment - and we're already part of that with the native community - has much better outcomes," she said.

CDP recently worked to acquire and preserve the Alberta Abbey building on Northeast Alberta Street as both an historical structure and a community-based arts hub providing below-market rate office and studio space for arts organizations as well as performance venue spaces. This was the first phase of the Alberta Alive concept. CDP is currently working on the second phase with Colas Construction, Access Architecture and SEI. This phase includes the construction of two new affordable housing buildings along Alberta Street. This is the first of several projects CDP plans to do with this trio of partners.

"This is an historically Black community and it's important to us to ensure that our project teams reflect the diversity of the neighborhood where we're working," Paine said.



CDP partnered with the Native American Youth and Family Center to develop Nesika Illahee, a \$17.4 million project providing 59 affordable apartments in Portland's Cully neighborhood. (Submitted photos)

Woodruff said CDP wanted to partner with NAMC-Oregon to broaden its efforts to reach minority contractors and increase diversity on its projects. She noted that while the city of Portland has diversity requirements and programs, NAMC-Oregon fills a gap in support that minority business owners need.

"The city can help them get hired but not really help them build their business over time or weather storms or staff up during demanding times," she said. "The city doesn't provide technical assistance and one-on-one support like NAMC-Oregon does. It was the right time for us to support them since they do provide that technical assistance."



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Addressing the Impact of COVID-19 on Current and Future Projects



Jacob A. Zahniser

BY JACOB A. ZAHNISER

The ongoing COVID-19 pandemic represents unprecedented challenges to the construction industry, not just the immediate impact on labor, material shortages, and adapting to social distancing guidelines, but also the

long-term impact on productivity and supply chain disruption. The following proactive steps may be taken to minimize and mitigate the impacts caused by COVID-19.

1. Review current contracts.

Downstream, upstream, and financing agreements potentially contain provisions that address the risk of this unprecedented challenge. While legal doctrines may fill in the gaps, contract provisions allocating risk will typically control.

For example, the agreements likely contain a “force majeure” clause that excuses non-performance caused by unforeseen events beyond the control of either party that makes performance impracticable or impossible. For instance, AIA A201-2017 §8.3.1 provides as follows:

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor’s control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

Similarly, ConsensusDocs 200 2017, § 6.3.1 provides as follows:

§ 6.3.1 If the Constructor is delayed at any time in the commencement or progress of the Work by any cause beyond the control of the Constructor, the Constructor shall be entitled to an equitable extension of the Contract Time. Examples of causes beyond the control of the

*Constructor include, but are not limited to, the following: *** (j) epidemics; (k) adverse government actions ***.*

Unless modified, these clauses allow for an extension of time in light of the COVID-19 pandemic.

“Consider a ‘Pandemic Rider’ for current contracts and draft a ‘Pandemic Clause’ into future contracts.”

Other equally relevant clauses are change-in-law provisions, delays/change order provisions, suspension and termination provisions. All of these provisions may address and provide remedies for delay and increased cost of construction. This is certainly not an ex-

haustive list of potentially relevant contract terms; every contract is different. The point remains: the first step to address the impact of COVID-19 is to identify the relevant contract provisions to determine what contractual protections are available.

2. Keep detailed records.

It is critical to keep accurate contemporaneous documentation on the impacts of COVID-19 for multiple reasons. First, the contract likely requires documentation and notice contemporaneous with the event giving rise to the claim. Second, in the event of a dispute, contemporaneous documents have much more credibility with a fact finder than after-the-fact recreations based on memory and assumptions. Third, contemporaneous documentation shows the cause and effect relationship between the event and the impact supporting entitlement to added time or compensation. It is insufficient to simply cite COVID-19 and expect an extension of time or

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added compensation. Rather, to be entitled to relief there must be a showing of the actual impact caused by the pandemic and the efforts to mitigate that impact.

3. Confirm compliance with social distancing and OSHA regulations.

Workforce safety has been a mantra in construction for decades. This pandemic presents a novel overlay to workforce safety. Designate in writing the person on site at each project who is authorized to implement and enforce mandated social distancing policies.

Further, after this pandemic passes we can reasonably anticipate new OSHA guidelines that will affect work sites and employment practices moving forward. A written infectious disease response plan along with staggered shifts and breaks, employee temperature checks, and top-to-bottom disinfections of jobsites, tools and machinery may be the new normal in workplace safety.

Relatedly, confirm whether your communications and technology platforms are adequately supporting your personnel during remote work mandates. COVID-19 has compelled people to figure out how to work remotely. Until a vaccine is found, some form of remote work will likely be required for the next 12 to 18 months. While people are adaptable, investing in new technology to make remote working easier will likely pay dividends in the future as remote working becomes the new normal for many in the construction industry, including engineers, architects, technologists, and project management personnel.

4. Reassess projects.

Re-evaluate your construction budget and schedule in light of the current impact on workforce availability, productivity due to safety mandates, material cost, and supply chain impacts. To do this, engage in a dialogue with the project team, the owner, the design professionals, the lenders, the general contractor, the subcontractors, and the key material suppliers regarding the impact of COVID-19 on the budget and schedule and the team’s efforts to mitigate the impact on the project. Verify in writing the team’s ability to perform and pass the verification, or lack thereof, upstream. No one will be alone or unaffected by the virus. A proactive dialogue upfront may go a long way to avoiding expensive disputes down the road.

5. Review your insurance policies.

Insurance on large projects is highly customized and could include coverage for “soft

costs” including “time-element” or delay. Coverage, however, is typically triggered by physical damage to the project itself. Nevertheless, it is possible that “soft costs” coverage could be written in such a manner that it could be triggered by a “civil authority” directive to shut down the project untethered to specific physical damage. Moreover, for projects in the pipeline, talk with your insurance professional about available insurance products for your future projects. Review your insurance portfolios (or hire experienced coverage counsel to do so) to determine if there is coverage that can mitigate the impact of a construction delay or COVID-19-related shutdown of your project. Then, talk with your insurance professional about available products for future projects to see if there are insurance products available that make sense for the contractor and/or the future project.

6. Look to the future when negotiating contracts for future projects.

Safety mandates will add time to complete current and future projects. While proper scheduling and sequencing are important productivity factors, moving forward, scheduling and sequencing will take on a workplace safety component because there will

not be allowed a lot of people in the same space at the same time. Scheduling, sequencing, and time constraints must be kept in mind when bidding new projects. Future projects will simply take longer, which should be taken into consideration when bidding.

Further, consider a “Pandemic Rider” for current contracts and draft a “Pandemic Clause” into future contracts that address the rights and remedies of the parties in the event this type of situation occurs again. An ounce of prevention is worth a pound of cure. Consult with your legal counsel to make sure the “Pandemic Rider” or “Pandemic Clause” addresses your needs on current and future projects.

No one can predict what the post-COVID-19 world will look like. However, taking steps now will position you and your project to succeed in a post-COVID-19 world.

Jacob Zahniser, a partner of Miller Nash Graham & Dunn, focuses on construction and real estate litigation, as well as insurance coverage disputes arising from construction defects. He represents clients including contractors, suppliers, and insurance policyholders and assignees to commercial property owners, landlords and homeowners associations. Contact him at 503-205-2352 or jacob.zahniser@millernash.com.



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VISION 2020

Goal 1 - Advocacy & Accountability

Objective 1: Set the Advocacy Agenda

- Prioritize legislative agenda (local, state, federal)
- Build lobbying capacity

Objective 2: Mobilize Community Support

- Convene a coalition of minority supporters
- Cultivate relationships with key decision makers

Objective 3: Issue Report Cards

- Produce and promote NAMC-OR Report Card on DBE incentive set aside programs
- Produce and promote NAMC-OR Report Card for project opportunities and outcomes

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Goal 2 - Build Member Capacity

Objective 1: Provide Technical Assistance and Support Services

- Provide full suite of contractor services (financial, marketing, technological, suppliers, etc.)

Objective 2: Contracting Opportunities

- Create ongoing project pipeline report
- Utilize partner organizations to conduct technical assistance trainings and workshops, aligned with MCIP

Objective 3: Member Visibility

- Member profiles on NAMC-OR website
- Highlight keystone projects that profile membership



Goal 3 - Grow and Sustain NAMC-OR

Objective 1: Grow Members & Partners

- Establish NAMC-OR Guiding Principles
- Increase NAMC-OR membership by 50% emphasizing existing trade gaps
- Increase NAMC-OR partnerships by 33%

Objective 2: Strengthen Leadership

- Convene and maintain NAMC-OR committees (legislative, finance, etc.)
- Build a strong, diverse Board to provide NAMC leadership

Objective 3: Diversify Revenue

- Annual NAMC-OR Fundraiser Luncheon
- Expand contracts and fee for service activity
- Annual Tradeshow with MCIP

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