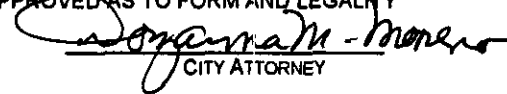


INTRODUCED BY COUNCILMEMBER _____

APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY

ORDINANCE NO. 12050 C.M.S.

Oakland Living Wage Ordinance

Whereas, the City of Oakland awards many contracts to private firms to provide services to the public and to City Government; and

Whereas, the City of Oakland provides financial assistance and funding to others for the purpose of economic development or job growth; and

Whereas, the City of Oakland has a limited amount of taxpayer resources to expend; and

Whereas, even in promising economic times, far too many working Oakland residents and their families live below or near the poverty line; and

Whereas, the use of taxpayer dollars to promote sustenance and creation of living wage jobs will increase consumer income, decrease levels of poverty, invigorate neighborhood businesses and reduce the need for taxpayer-funded social programs in other areas; and

Whereas, the City of Oakland's payment of prevailing wage rates for public works projects has been tremendously beneficial for working people in Oakland and their families, Oakland neighborhoods, and the area economy; and

Whereas, the experience in the City of Oakland indicates that the procurement by contract of services has

all too often resulted in the payment by service contractors to their employees of wages at or slightly above the minimum required by federal and state minimum wage laws. Such minimal compensation tends to inhibit the quantity and quality of services rendered by such employees, to the City and to the public. Underpaying employees in this way fosters high turnover, absenteeism, and lackluster performance. Conversely, adequate compensation mitigates these undesirable conditions and promotes increased productivity, efficiency and workplace stability; and

Whereas, the inadequate compensation typically paid today also fails to provide service employees with resources sufficient to afford life in the City of Oakland. It is unacceptable that contracting decisions involving the expenditure of City funds should foster conditions placing a burden on limited social services. The City, , has an interest in promoting an employment environment that protects such limited resources; and

Whereas, financial assistance recipients of the City are engaged in manufacturing or some other line of business that is an integral part of the City of Oakland economy and such entities often pay wages at or slightly above the minimum required by federal and state minimum wage laws. The City as a provider of subsidies to these entities has the same interest in requiring the payment of a higher minimum level of compensation to employees of financial assistance recipients as it does of service contractors; and

Whereas, when the City uses contractors or subsidizes businesses which do not provide health insurance to their employees, this often imposes the costs of their medical care on the County, State and Federal governments. The City has an interest in avoiding such impacts, which the City finds can only be done if the employer provides health insurance in a reasonable form. The City finds that an

employer contribution for health benefits of at least \$1.25 per hour on average is necessary to provide employee health care sufficient to avoid imposing the public costs described above. The City also has an interest in ensuring that persons delivering City services are healthy, as lack of health care can affect performance and absenteeism. The City finds that employees are far likelier to be healthy if their employer provides reasonable health insurance to them and their dependents. In addition, one of the City's reasons for providing financial assistance is to promote the public health, an interest served by having employers receiving such assistance spend a reasonable portion of this money for health purposes.

Whereas, in requiring the payment of a higher minimum level of compensation, this chapter benefits these interests;

BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF OAKLAND:

The Municipal Code of Oakland is hereby amended by inserting a new Chapter __, as follows:

Section 1. Title and Purpose

(a) Oakland Living Wage Ordinance

This Ordinance shall be known as the "Oakland Living Wage Ordinance." The purpose of this ordinance is to require that nothing less than a prescribed minimum level of compensation (a living wage) be paid to employees of service contractors of the City and employees of CFARs

Section 2. Definitions

The following definitions shall apply throughout this ordinance:

(a) "Agency" means that subordinate or component entity or person of the City (such as a department, office, or agency) that is responsible for solicitation of proposals or bids and responsible for the administration of service contracts or financial assistance agreements.

(b) "City" means the City of Oakland and all City agencies, departments and offices.

(c) "City financial assistance recipient" (CFAR) means any person who receives from the City financial assistance as contrasted with generalized financial assistance such as through tax legislation, in an amount of \$100,000 or more in a 12 month period.

Categories of such assistance include, but are not limited to, grants, rent subsidies, bond financing, financial planning, tax increment financing, land writedowns, and tax credits. City staff assistance shall not be regarded as

financial assistance for purposes of this article. The forgiveness of a loan shall be regarded as financial assistance, and a loan provided at below market interest rate shall be regarded as financial assistance to the extent of any differential between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan by the applicable federal rate as used in 26 U.S.C. §§ 1274(d), 7872(f).

A tenant or leaseholder of a CFAR who occupies property or uses equipment or property that is improved or developed as a result of the assistance awarded to the CFAR and who will employ at least twenty employees for each working day in each of twenty or more calendar weeks in the twelve months after occupying or using said property, shall be considered a "City financial assistance recipient" for the purposes of this Ordinance and shall be covered for the same period as the CFAR of which they are a tenant or leaseholder.

(d) "Contractor" means any person that enters into a service contract with the City in an amount equal to or greater than \$25,000.

(e) "Employee" means any person who is employed (1) as a service employee of a contractor or subcontractor under the authority of one or more service contracts and who expends any of his or her time thereon, including but not limited to: hotel employees, restaurant, food service or banquet employees; janitorial employees; security guards; parking attendants; health care employees; gardeners; waste management employees; and clerical employees; or (2) by a CFAR and who expends at least half of his or her time on the funded project/program or property which is the subject of city financial assistance, or (3) by a service contractor of a CFAR and who expends at least half of his or her time on the premises of the CFAR and is directly involved with the funded project/program or property

which is the subject of city financial assistance. Any person who is a managerial, supervisory or confidential employee is not an employee for purposes of this definition.

(f) "Employer" means any person who is a City financial assistance recipient, contractor, or subcontractor .

(g) "Person" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts.

(h) "Service contract" means (1) a contract let to a contractor by the City for the furnishing of services, to or for the City, except contracts where services are incidental to the delivery of products, equipment or commodities, and that involves an expenditure equal to or greater than twenty-five thousand dollars (\$25,000). or (2) a lease or license under which services contracts are let by the lessee or licensee. A contract for the purchase or lease of goods, products, equipment, supplies or other property is not a "service contract" for the purposes of this definition.

(i) "Subcontractor" means any person who enters into a contract with (1) a contractor to assist the contractor in performing a service contract or (2) a CFAR to assist the recipient in performing the work for which the assistance is being given or to perform services on the property which is the subject of city financial assistance. Service contractors, of CFARs shall not be regarded as subcontractors except to the extent provided in subsection (3).

(j) "Trainee" means a person enrolled in a job training program which meets the City of Oakland job training standards.

Section 3. Payment of Minimum Compensation to Employees

(a) Wages

Employers shall pay employees a wage to each employee of no less than the hourly rates set under the authority of this Ordinance. The initial rate shall be eight dollars (\$8.00) per hour worked with health benefits, as described in this Ordinance, or otherwise nine dollars and twenty five cents (\$9.25) per hour. Such rate shall be upwardly adjusted annually, no later than April 1 in proportion to the increase immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor, applied to \$9.25. The City shall publish a bulletin by April 1 of each year announcing the adjusted rates, which shall take effect upon such publication. Said bulletin will be distributed to all City agencies, departments and offices, City contractors and CFAR's upon publication. The contractor shall provide written notification of the rate adjustments to each of its employees and to its subcontractors, who shall provide written notices to each of their employees, if any, and make the necessary payroll adjustments by July 1.

(b) Compensated Days Off

Employers shall provide at least twelve (12) days off per year for sick leave, vacation, or personal necessity at the employee's request. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off.

Employers shall also permit employees to take at least an additional ten (10) days a year of uncompensated time to be used for sick leave for the illness of the employee or a member of his or her immediate family where the employee has exhausted his or her compensated days off for that year. This Ordinance does not mandate the accrual from year to year of uncompensated days off.

(c) Health Benefits

Health benefits required by this Ordinance shall consist of the payment of at least one dollar and twenty five cents (\$1.25) per hour towards the provision of health care benefits for employees and their dependents. Proof of the provision of such benefits must be submitted to the agency not later than 30 days after execution of the contract to qualify for the wage rate in Section 3 for employees with health benefits.

Section 4. Duration of Requirements

For CFAR's, assistance given in an amount equal to or greater than one hundred thousand dollars (\$100,000) in any twelve-month period shall require compliance with this Ordinance for the life of the contract in the case of assistance given to fund a program or five years in the case of assistance given to purchase real property, tangible property or construct facilities, including but not limited to materials, equipment, fixtures, merchandise, machinery or the like.

A Service Contractor and subcontractor shall be required to comply with this Ordinance for the term of the contract.

Section 5. Notifying Employees of their Potential Right to the Federal Earned Income Credit

sought, including wages and benefits to be paid all employees, as well as an itemization of the wage and benefits paid to the five highest paid individuals employed by the CFAR. The CFAR must also demonstrate that the waiver will further the interests of the City in creating training positions which will enable employees to advance into permanent living wage jobs or better and will not be used to replace or displace existing positions or employees or to lower the wages of current employees.

(b) The City Council will grant a waiver only upon a finding and determination that the CFAR has demonstrated economic hardship and that waiver will further the interests of the City in providing training positions which will enable employees to advance into permanent living wage jobs or better. However, no waiver will be granted if the effect of the waiver is to replace or displace existing positions or employees or to lower the wages of current employees.

(c) Waivers from the Ordinance are disfavored, and will be granted only where the balance of competing interests weighs clearly in favor of granting the waiver. If waivers are to be granted, partial waivers are favored over blanket waivers. Moreover, any waiver shall be granted for no more than one year. At the end of the year the CFAR may reapply for a new waiver which may be granted subject to the same criteria for granting the initial waiver.

(d) The City Council reserves the right to waive the requirements of this ordinance upon a finding and determination of the City Council that waiver is in the best interests of the City, e.g. when the City has declared an emergency due to natural disasters and needs immediate services.

Section 9. Exemptions

(1) Regarding the appeal process, it shall be available to every bidder/proposer who has been deemed noncompliant with this Ordinance, or who disputes the determination of applicability of this Ordinance to its business operation which will be involved in the proposed contract. A contract shall not be executed until there is resolution of the relevant appeal.

(2) Appeals shall be filed with the City Manager within seven calendar days of the date of the notice of the City's written determination of noncompliance and reasons therefor, or written determination of the applicability of this Ordinance.

(3) The City Manager shall maintain records pertaining to all complaints, hearings, determinations and findings, and shall submit a regular report on compliance with this Ordinance no less than annually to the City Council. Special reports and recommendations on significant issues of interest to the Council will be submitted as deemed appropriate.

Section 7. Noncompliance Review and Appeal

Contractors, subcontractors and CFAR's who fail to submit documents, declarations or information required to demonstrate compliance with this Ordinance shall be deemed nonresponsive and subject to disqualification.

Section 8. Waivers

(a) A CFAR who contends it is unable to pay all or part of the living wage must provide a detailed explanation in writing to the City Manager who may recommend a waiver to the City Council. The explanation must set forth the reasons for its inability to comply with the provisions of this ordinance, including a complete cost accounting for the proposed work to be performed with the financial assistance

Employers shall inform employees making less than twelve dollars (\$12.00) per hour of their possible right to the federal Earned Income Credit ("EIC") under §32 of the Internal Revenue Code of 1954, 26 U.S.C. §32, and shall make available to employees forms informing them about the EIC and forms required to secure advance EIC payments from the employer. These forms shall be provided to the eligible employees in English, Spanish and other languages spoken by a significant number of the employees within 30 days of employment under the terms of this Ordinance and as required by the Internal Revenue Code.

Section 6. Contract Review Process and City Reporting and Record Keeping

(a) The City Manager shall promulgate rules and regulations for the preparation of bid specifications, contracts and preparation for contract negotiations.

(b) The City Manager shall submit periodic reports to the City Council which shall include the following information at minimum:

(1) A listing and the status of all RFP's and RFQ's, service contracts and lease agreements executed and financial assistance awarded, to which this Ordinance applies including the term, dollar amount and the service performed or assistance provided;

(2) A description of every instance where an exemption or waiver was granted by action of the City Council

(c) The City Manager shall develop an administrative procedure and appeal process for determining compliance with this Ordinance.

(a) A recipient shall be exempted from application of this article if (1) it employs fewer than five employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, or (2) it obtains a waiver as provided herein.

(b) An employee who is a trainee in a job training program which meets the City of Oakland job training standards shall be exempt for the period of training as specified under the City approved training standards; or,

(c) An employee who is under 21 years of age, employed by a non-profit corporation for after school or summer employment or as a trainee for a period not longer than 90 days, shall be exempt.

Section 10. RFP, Contract and Financial Assistance Agreement Language

All RFP's, City contracts and financial assistance agreements subject to this Ordinance shall contain the following two paragraphs or substantially equivalent language:

(a) This contract is subject to the Living Wage Ordinance, of the Oakland Municipal Code. The Ordinance requires that, unless specific exemptions apply or a waiver is granted, all employers (as defined) under service contracts and recipients of City financial assistance, (as defined) shall provide payment of a minimum wage to employees (as defined) of \$8.00 per hour with health benefits of at least \$1.25 per hour or otherwise \$9.25 per hour. Such rate shall be adjusted annually pursuant to the terms of the Oakland Living Wage Ordinance, of the Oakland Municipal Code.

(b) Under the provisions of the Living Wage Ordinance, the City shall have the authority, under appropriate circumstances, to terminate this contract and to seek other remedies as set forth therein, for violations of the Ordinance.

Section 11. Obligations of Contractors and Financial Assistance Recipients

(a) All proposed contractors and CFAR's subject to the provisions of this Ordinance shall submit a completed Declaration of Compliance form, signed by an authorized representative, along with each proposal. The completed Declaration of Compliance form shall be made a part of the executed contract.

(b) Contractors and CFAR's shall require their subcontractors and tenants/leaseholders to comply with the provisions of this Ordinance. Language indicating the subcontractor's or tenants/leaseholders agreement to comply shall be included in the contract between the contractor and subcontractor or any agreement between a CFAR and tenants/leaseholders. A copy of such subcontracts or other such agreements shall be submitted to the City.

(c) Contractors, subcontractors and CFAR's shall maintain a listing of the name, address, date of hire, occupation classification, rate of pay and benefits paid for each of its employees, if any, and submit a copy of the list to the City by March 31, June 30, September 30, and December 31 of each year the contract is in effect. Failure to provide this list within five days of the due date will result in a penalty of \$500 per day. Contractors, subcontractors and CFAR's shall maintain payrolls for all employees and basic records relating thereto and shall preserve them for a period of three years after termination of their contracts.

(d) Contractors, subcontractors and CFAR's shall give written notification to each current and new employee, at time of hire, of his or her rights to receive the benefits under the provisions of this Ordinance. The notification shall be provided in English, Spanish and other languages spoken by a significant number of the employees, and shall be posted prominently in communal areas at the work site. A copy of said notification shall be forwarded to the City which must include the following:

(1) Minimum compensation - The initial rates of \$8.00 with health benefits or \$9.25 without health benefits will be adjusted annually to correspond to adjustments, if any. The Living Wage shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor, applied to \$9.25.

(2) Health benefits - Proof of the provision of such benefits shall be submitted to the City not later than 30 days after execution of the contract to qualify for the wage rate in Section 3. Health benefits shall be provided to part-time employees as well as full-time employees.

(3) Twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave which shall be made available to all covered employees as provided in this Ordinance. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established

employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year. This Ordinance does not mandate the accrual from year to year of uncompensated days off.

(4) Federal Earned Income Credit (EIC) - Forms to inform employees earning less than \$12 per hour of their possible right to EIC and forms to secure advance EIC payments from the employer shall be provided to the eligible employees in English, Spanish and other languages spoken by a significant number of the employees within 30 days of employment under the subject agreement.

(5) Notice that the employers are required to file a Declaration of Compliance form as part of the contract with the City and that the City will make said declarations available for public inspection and copying during its regular business hours.

(e) Contractors, CFAR's and subcontractors shall permit access to work sites and relevant payroll records for authorized City representatives for the purpose of monitoring compliance with this Ordinance, investigating employee complaints of non-compliance and evaluating the operation and effects of this Ordinance, including the production for inspection and copying of its payroll records for any or all of its employees for the term of the contract or for five years whichever period of compliance is applicable.

Section 12. Retaliation and Discrimination Barred

Contractors, subcontractors and CFAR's shall not discharge, reduce the compensation of or otherwise discriminate against any employee for making a complaint

to the City, participating in any of its proceedings, using any civil remedies to enforce his or her rights, or otherwise asserting his or her rights under this Ordinance. Contractors, subcontractors and CFAR's shall also be in compliance with federal law proscribing retaliation for union organizing.

Section 13. Monitoring, Investigation and Compliance

The provisions of this Ordinance will augment the City's' normal and customary procedure for administering its contracts. The City shall administer the requirements of this Ordinance as follows:

(a) The City Manager shall develop rules and regulations to review contract documents to insure that relevant language and information are included in City RFP's, agreements and other relevant documents.

(b) The City Manager shall develop rules and regulations for the monitoring of the operations of the contractors, subcontractors and financial assistance recipients to insure compliance including the review, investigation and resolution of specific concerns or complaints about the employment practices of a contractor, subcontractor or CFAR relative to this Ordinance. In such cases, the City will attempt to resolve the problem within 30 days.

(c) Where a violation of any provision of this Ordinance has been determined, the contractor will be given a written notice by the City per the rules and regulations promulgated by the City Manager. Should the violation continue and/or no resolution is imminent, the City, shall pursue all available legal remedies, including but not limited to any or all of the following penalties and relief:

(1) Suspension and/or termination of the contract, subcontract or financial assistance agreement for cause;

(2) Payback of any or all of the contract or financial assistance awarded by the City of Oakland;

(3) Deem the contractor or CFAR ineligible for future City contracts and/or financial assistance until all penalties and restitution have been paid in full;

(4) A fine payable to the City of Oakland in the sum of \$500 for each week for each employee found not to have been paid in accordance with this Ordinance;

(5) Wage restitution for each affected employee.

(e) The City Attorney shall promulgate procedures for legal enforcement of the requirements of this Ordinance.

Section 14. Employee Complaint Process

An employee who alleges violation of any provision of this Ordinance may report such acts to the City and, at the employee's discretion, exhaust available employer internal remedies. The complaint to the City shall be handled as follows:

(1) The employee shall submit to the City a completed complaint form and copies of all documents supporting the allegation. The City shall provide the complaint forms in English and Spanish.

(2) The City shall notify the agency and the employer of the complaint and seek resolution within five days from receipt of the complaint form. If resolution is not accomplished, the City shall initiate an investigation and seek legal remedies, if appropriate.

(3) An employee claiming retaliation (such as, termination, reduction in wages or benefits or adverse changes in working conditions) for alleging non-compliance with this Ordinance may report the alleged retaliation in the same manner as the initial complaint.

(4) The complainant's or witness' identity will not be divulged to the employer without the individual employee's written consent.

Section 15. Private Right of Action

(a) An employee claiming violation of this article may bring an action in the Municipal Court or Superior Court of the State of California, as appropriate, against an employer and may be awarded:

(1) For failure to pay the living wage, back pay for each day during which the violation continued.

(2) For any violation of this Ordinance, including retaliation for exercising rights provided hereunder, the Court may award any appropriate remedy at law or equity, including but not limited to reinstatement, compensatory damages and punitive damages.

(b) The Court shall award reasonable attorney's fees and costs to an employee who prevails in any such enforcement action.

(c) Notwithstanding any provision of this Code or any other ordinance to the contrary, no criminal penalties shall attach for any violation of this article.

(d) No remedy set forth in this Ordinance is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law.

This Ordinance shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

Section 16. Collective Bargaining Agreement Supersession

All of the provisions of this Ordinance, or any part hereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms.

Section 17. Expenditures Covered By This Article

This Ordinance shall apply to the expenditure whether through aid to financial assistance recipients, service contracts let by its financial assistance recipients of funds entirely within the City's control and to other funds, such as federal or state grant funds, where the application of this Ordinance is consonant with the laws authorizing the City to expend such other funds.

Section 18. Ordinance Applicable to New Contracts and City Financial Assistance

The provisions of this Ordinance shall apply to (a) a contract entered into and financial assistance provided after the effective date of this Ordinance; (b) a contract amendment consummated after the effective date of this Ordinance which itself meets the financial threshold requirement of this Ordinance and (c) supplemental financial assistance provided for after the effective date of this Ordinance which itself meets the requirements of this Ordinance.

Section 19. Implementing Regulations

All implementing rules, regulations, and procedures promulgated by the City Manager or his designee shall be presented to the City Council for approval within sixty (60) days of adoption of this Ordinance.

Section 20. Severability

In the event any provision of this ordinance shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

Section 21. Effective Date

The law shall be effective from the date of July 1, 1998.

CITY OF OAKLAND

DECLARATION OF COMPLIANCE Living Wage Ordinance

The Oakland Municipal Code Chapter XX provides that all employers (except where specifically exempted) under contracts for the furnishing of services to or for the City and that involve an expenditure equal to or greater than \$25,000 and certain recipients of City financial assistance that involve receipt of financial assistance equal to or greater than \$100,000 shall comply with all provisions of this Ordinance.

The contractor or CFAR further agrees:

(a) To pay employees a wage no less than the minimum initial compensation of \$8.00 per hour with health benefits, as described, or otherwise \$9.25 per hour, and to provide for the annual increase pursuant to Section 3;

(b) To provide at least twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and at least ten additional days per year of uncompensated time off pursuant to Section 3;

(c) To inform employees making less than \$12 per hour of their possible right to the federal Earned Income Credit (EIC) and make available the forms required to secure advance EIC payments from the employer pursuant to Section 5;

(d) To permit access to work sites for authorized City representatives to review the operation, payroll and

related documents, and to provide certified copies of the relevant records upon request by the City; and,

(e) Not to retaliate against any employee claiming non-compliance with the provisions of this Ordinance and to comply with federal law prohibiting retaliation for union organizing.

The undersigned authorized representative hereby obligates the proposer to the above stated conditions under penalty of perjury.

Company Name	Signature of Officer or Authorized Representative	
Company Address and Phone Number	Type or Print Name and Title	
Date	Bid Number	Type of Service

FOR CITY USE ONLY		
Determination: Bidder is Not Exempt	Bidder is Exempt	Date
Department	Representative	

Introduced = 3-24-98
IN COUNCIL, OAKLAND, CALIFORNIA, APR - 7 1998, 19

PASSED BY THE FOLLOWING VOTE:

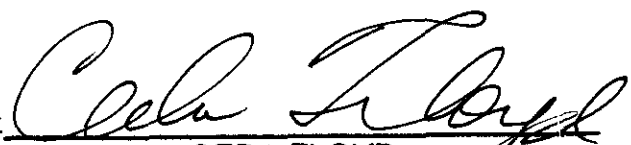
AYES- BRUNNER, CHANG, DE LA FUENTE, MILEY, NADEL, REID, RUSSO, SPEES, AND
PRESIDENT HARRIS - 9

NOES- None

ABSENT- None

ABSTENTION- None

ATTEST:



CEDA FLOYD

City Clerk and Clerk of the Council
of the City of Oakland, California

NOTICE AND DIGEST

This Ordinance establishes a living wage policy for city contractors, subcontractors, city financial assistance recipients, tenants and leaseholders to require employers to pay their employees a minimum of eight dollars (\$8.00) per hour worked with health benefits or nine dollars and twenty-five cents (\$9.25) without benefits.

ORDINANCE NO. 12050 C.M.S.Oakland Living Wage Ordinance

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Whereas, the City of Oakland provides financial assistance and funding to others for the purpose of economic development or job growth; and

Whereas, the City of Oakland has a limited amount of taxpayer resources to expend; and

Whereas, even in promising economic times, far too many working Oakland residents and their families live below or near the poverty line; and

Whereas, the use of taxpayer dollars to promote sustenance and creation of living wage jobs will increase consumer income, decrease levels of poverty, invigorate neighborhood businesses and reduce the need for taxpayer-funded social programs in other areas; and

Whereas, the City of Oakland's payment of prevailing wage rates for public works projects has been tremendously beneficial for working people in Oakland and their families, Oakland neighborhoods, and the area economy; and

Whereas, the experience in the City of Oakland indicates that the procurement by contract of services has

all too often resulted in the payment by service contractors to their employees of wages at or slightly above the minimum required by federal and state minimum wage laws. Such minimal compensation tends to inhibit the quantity and quality of services rendered by such employees, to the City and to the public. Underpaying employees in this way fosters high turnover, absenteeism, and lackluster performance. Conversely, adequate compensation mitigates these undesirable conditions and promotes increased productivity, efficiency and workplace stability; and

Whereas, the inadequate compensation typically paid today also fails to provide service employees with resources sufficient to afford life in the City of Oakland. It is unacceptable that contracting decisions involving the expenditure of City funds should foster conditions placing a burden on limited social services. The City, , has an interest in promoting an employment environment that protects such limited resources; and

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Categories of such assistance include, but are not limited to, grants, rent subsidies, bond financing, financial planning, tax increment financing, land writedowns, and tax credits. City staff assistance shall not be regarded as

financial assistance for purposes of this article. The forgiveness of a loan shall be regarded as financial assistance, and a loan provided at below market interest rate shall be regarded as financial assistance to the extent of any differential between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan by the applicable federal rate as used in 26 U.S.C. §§ 1274(d), 7872(f).

A tenant or leaseholder of a CFAR who occupies property or uses equipment or property that is improved or developed as a result of the assistance awarded to the CFAR and who will employ at least twenty employees for each working day in each of twenty or more calendar weeks in the twelve months after occupying or using said property, shall be considered a "City financial assistance recipient" for the purposes of this Ordinance and shall be covered for the same period as the CFAR of which they are a tenant or leaseholder.

(d) "Contractor" means any person that enters into a service contract with the City in an amount equal to or greater than \$25,000.

(e) "Employee" means any person who is employed (1) as a service employee of a contractor or subcontractor under the authority of one or more service contracts and who expends any of his or her time thereon, including but not limited to: hotel employees, restaurant, food service or banquet employees; janitorial employees; security guards; parking attendants; health care employees; gardeners; waste management employees; and clerical employees; or (2) by a CFAR and who expends at least half of his or her time on the funded project/program or property which is the subject of city financial assistance, or (3) by a service contractor of a CFAR and who expends at least half of his or her time on the premises of the CFAR and is directly involved with the funded project/program or property

which is the subject of city financial assistance. Any person who is a managerial, supervisory or confidential employee is not an employee for purposes of this definition.

(f) "Employer" means any person who is a City financial assistance recipient, contractor, or subcontractor .

(g) "Person" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts.

(h) "Service contract" means (1) a contract let to a contractor by the City for the furnishing of services, to or for the City, except contracts where services are incidental to the delivery of products, equipment or commodities, and that involves an expenditure equal to or greater than twenty-five thousand dollars (\$25,000). or (2) a lease or license under which services contracts are let by the lessee or licensee. A contract for the purchase or lease of goods, products, equipment, supplies or other property is not a "service contract" for the purposes of this definition.

(i) "Subcontractor" means any person who enters into a contract with (1) a contractor to assist the contractor in performing a service contract or (2) a CFAR to assist the recipient in performing the work for which the assistance is being given or to perform services on the property which is the subject of city financial assistance. Service contractors, of CFARs shall not be regarded as subcontractors except to the extent provided in subsection (3).

(j) "Trainee" means a person enrolled in a job training program which meets the City of Oakland job training standards.

Section 3. Payment of Minimum Compensation to Employees

(a) Wages

Employers shall pay employees a wage to each employee of no less than the hourly rates set under the authority of this Ordinance. The initial rate shall be eight dollars (\$8.00) per hour worked with health benefits, as described in this Ordinance, or otherwise nine dollars and twenty five cents (\$9.25) per hour. Such rate shall be upwardly adjusted annually, no later than April 1 in proportion to the increase immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor, applied to \$9.25. The City shall publish a bulletin by April 1 of each year announcing the adjusted rates, which shall take effect upon such publication. Said bulletin will be distributed to all City agencies, departments and offices, City contractors and CFAR's upon publication. The contractor shall provide written notification of the rate adjustments to each of its employees and to its subcontractors, who shall provide written notices to each of their employees, if any, and make the necessary payroll adjustments by July 1.

(b) Compensated Days Off

Employers shall provide at least twelve (12) days off per year for sick leave, vacation, or personal necessity at the employee's request. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off.

Employers shall also permit employees to take at least an additional ten (10) days a year of uncompensated time to be used for sick leave for the illness of the employee or a member of his or her immediate family where the employee has exhausted his or her compensated days off for that year. This Ordinance does not mandate the accrual from year to year of uncompensated days off.

(c) Health Benefits

Health benefits required by this Ordinance shall consist of the payment of at least one dollar and twenty five cents (\$1.25) per hour towards the provision of health care benefits for employees and their dependents. Proof of the provision of such benefits must be submitted to the agency not later than 30 days after execution of the contract to qualify for the wage rate in Section 3 for employees with health benefits.

Section 4. Duration of Requirements

For CFAR's, assistance given in an amount equal to or greater than one hundred thousand dollars (\$100,000) in any twelve-month period shall require compliance with this Ordinance for the life of the contract in the case of assistance given to fund a program or five years in the case of assistance given to purchase real property, tangible property or construct facilities, including but not limited to materials, equipment, fixtures, merchandise, machinery or the like.

A Service Contractor and subcontractor shall be required to comply with this Ordinance for the term of the contract.

Section 5. Notifying Employees of their Potential Right to the Federal Earned Income Credit

Employers shall inform employees making less than twelve dollars (\$12.00) per hour of their possible right to the federal Earned Income Credit ("EIC") under §32 of the Internal Revenue Code of 1954, 26 U.S.C. §32, and shall make available to employees forms informing them about the EIC and forms required to secure advance EIC payments from the employer. These forms shall be provided to the eligible employees in English, Spanish and other languages spoken by a significant number of the employees within 30 days of employment under the terms of this Ordinance and as required by the Internal Revenue Code.

Section 6. Contract Review Process and City Reporting and Record Keeping

(a) The City Manager shall promulgate rules and regulations for the preparation of bid specifications, contracts and preparation for contract negotiations.

(b) The City Manager shall submit periodic reports to the City Council which shall include the following information at minimum:

(1) A listing and the status of all RFP's and RFQ's, service contracts and lease agreements executed and financial assistance awarded, to which this Ordinance applies including the term, dollar amount and the service performed or assistance provided;

(2) A description of every instance where an exemption or waiver was granted by action of the City Council

(c) The City Manager shall develop an administrative procedure and appeal process for determining compliance with this Ordinance.

(1) Regarding the appeal process, it shall be available to every bidder/proposer who has been deemed noncompliant with this Ordinance, or who disputes the determination of applicability of this Ordinance to its business operation which will be involved in the proposed contract. A contract shall not be executed until there is resolution of the relevant appeal.

(2) Appeals shall be filed with the City Manager within seven calendar days of the date of the notice of the City's written determination of noncompliance and reasons therefor, or written determination of the applicability of this Ordinance.

(3) The City Manager shall maintain records pertaining to all complaints, hearings, determinations and findings, and shall submit a regular report on compliance with this Ordinance no less than annually to the City Council. Special reports and recommendations on significant issues of interest to the Council will be submitted as deemed appropriate.

Section 7. Noncompliance Review and Appeal

Contractors, subcontractors and CFAR's who fail to submit documents, declarations or information required to demonstrate compliance with this Ordinance shall be deemed nonresponsive and subject to disqualification.

Section 8. Waivers

(a) A CFAR who contends it is unable to pay all or part of the living wage must provide a detailed explanation in writing to the City Manager who may recommend a waiver to the City Council. The explanation must set forth the reasons for its inability to comply with the provisions of this ordinance, including a complete cost accounting for the proposed work to be performed with the financial assistance

sought, including wages and benefits to be paid all employees, as well as an itemization of the wage and benefits paid to the five highest paid individuals employed by the CFAR. The CFAR must also demonstrate that the waiver will further the interests of the City in creating training positions which will enable employees to advance into permanent living wage jobs or better and will not be used to replace or displace existing positions or employees or to lower the wages of current employees.

(b) The City Council will grant a waiver only upon a finding and determination that the CFAR has demonstrated economic hardship and that waiver will further the interests of the City in providing training positions which will enable employees to advance into permanent living wage jobs or better. However, no waiver will be granted if the effect of the waiver is to replace or displace existing positions or employees or to lower the wages of current employees.

(c) Waivers from the Ordinance are disfavored, and will be granted only where the balance of competing interests weighs clearly in favor of granting the waiver. If waivers are to be granted, partial waivers are favored over blanket waivers. Moreover, any waiver shall be granted for no more than one year. At the end of the year the CFAR may reapply for a new waiver which may be granted subject to the same criteria for granting the initial waiver.

(d) The City Council reserves the right to waive the requirements of this ordinance upon a finding and determination of the City Council that waiver is in the best interests of the City, e.g. when the City has declared an emergency due to natural disasters and needs immediate services.

Section 9. Exemptions

(a) A recipient shall be exempted from application of this article if (1) it employs fewer than five employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, or (2) it obtains a waiver as provided herein.

(b) An employee who is a trainee in a job training program which meets the City of Oakland job training standards shall be exempt for the period of training as specified under the City approved training standards; or,

(c) An employee who is under 21 years of age, employed by a non-profit corporation for after school or summer employment or as a trainee for a period not longer than 90 days, shall be exempt.

Section 10. RFP, Contract and Financial Assistance Agreement Language

All RFP's, City contracts and financial assistance agreements subject to this Ordinance shall contain the following two paragraphs or substantially equivalent language:

(a) This contract is subject to the Living Wage Ordinance, of the Oakland Municipal Code. The Ordinance requires that, unless specific exemptions apply or a waiver is granted, all employers (as defined) under service contracts and recipients of City financial assistance, (as defined) shall provide payment of a minimum wage to employees (as defined) of \$8.00 per hour with health benefits of at least \$1.25 per hour or otherwise \$9.25 per hour. Such rate shall be adjusted annually pursuant to the terms of the Oakland Living Wage Ordinance, of the Oakland Municipal Code.

(b) Under the provisions of the Living Wage Ordinance, the City shall have the authority, under appropriate circumstances, to terminate this contract and to seek other remedies as set forth therein, for violations of the Ordinance.

Section 11. Obligations of Contractors and Financial Assistance Recipients

(a) All proposed contractors and CFAR's subject to the provisions of this Ordinance shall submit a completed Declaration of Compliance form, signed by an authorized representative, along with each proposal. The completed Declaration of Compliance form shall be made a part of the executed contract.

(b) Contractors and CFAR's shall require their subcontractors and tenants/leaseholders to comply with the provisions of this Ordinance. Language indicating the subcontractor's or tenants/leaseholders agreement to comply shall be included in the contract between the contractor and subcontractor or any agreement between a CFAR and tenants/leaseholders. A copy of such subcontracts or other such agreements shall be submitted to the City.

(c) Contractors, subcontractors and CFAR's shall maintain a listing of the name, address, date of hire, occupation classification, rate of pay and benefits paid for each of its employees, if any, and submit a copy of the list to the City by March 31, June 30, September 30, and December 31 of each year the contract is in effect. Failure to provide this list within five days of the due date will result in a penalty of \$500 per day. Contractors, subcontractors and CFAR's shall maintain payrolls for all employees and basic records relating thereto and shall preserve them for a period of three years after termination of their contracts.

(d) Contractors, subcontractors and CFAR's shall give written notification to each current and new employee, at time of hire, of his or her rights to receive the benefits under the provisions of this Ordinance. The notification shall be provided in English, Spanish and other languages spoken by a significant number of the employees, and shall be posted prominently in communal areas at the work site. A copy of said notification shall be forwarded to the City which must include the following:

(1) Minimum compensation - The initial rates of \$8.00 with health benefits or \$9.25 without health benefits will be adjusted annually to correspond to adjustments, if any. The Living Wage shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor, applied to \$9.25.

(2) Health benefits - Proof of the provision of such benefits shall be submitted to the City not later than 30 days after execution of the contract to qualify for the wage rate in Section 3. Health benefits shall be provided to part-time employees as well as full-time employees.

(3) Twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave which shall be made available to all covered employees as provided in this Ordinance. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established

employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year. This Ordinance does not mandate the accrual from year to year of uncompensated days off.

(4) Federal Earned Income Credit (EIC) - Forms to inform employees earning less than \$12 per hour of their possible right to EIC and forms to secure advance EIC payments from the employer shall be provided to the eligible employees in English, Spanish and other languages spoken by a significant number of the employees within 30 days of employment under the subject agreement.

(5) Notice that the employers are required to file a Declaration of Compliance form as part of the contract with the City and that the City will make said declarations available for public inspection and copying during its regular business hours.

(e) Contractors, CFAR's and subcontractors shall permit access to work sites and relevant payroll records for authorized City representatives for the purpose of monitoring compliance with this Ordinance, investigating employee complaints of non-compliance and evaluating the operation and effects of this Ordinance, including the production for inspection and copying of its payroll records for any or all of its employees for the term of the contract or for five years whichever period of compliance is applicable.

Section 12. Retaliation and Discrimination Barred

Contractors, subcontractors and CFAR's shall not discharge, reduce the compensation of or otherwise discriminate against any employee for making a complaint

to the City, participating in any of its proceedings, using any civil remedies to enforce his or her rights, or otherwise asserting his or her rights under this Ordinance. Contractors, subcontractors and CFAR's shall also be in compliance with federal law proscribing retaliation for union organizing.

Section 13. Monitoring, Investigation and Compliance

The provisions of this Ordinance will augment the City's' normal and customary procedure for administering its contracts. The City shall administer the requirements of this Ordinance as follows:

(a) The City Manager shall develop rules and regulations to review contract documents to insure that relevant language and information are included in City RFP's, agreements and other relevant documents.

(b) The City Manager shall develop rules and regulations for the monitoring of the operations of the contractors, subcontractors and financial assistance recipients to insure compliance including the review, investigation and resolution of specific concerns or complaints about the employment practices of a contractor, subcontractor or CFAR relative to this Ordinance. In such cases, the City will attempt to resolve the problem within 30 days.

(c) Where a violation of any provision of this Ordinance has been determined, the contractor will be given a written notice by the City per the rules and regulations promulgated by the City Manager. Should the violation continue and/or no resolution is imminent, the City, shall pursue all available legal remedies, including but not limited to any or all of the following penalties and relief:

(1) Suspension and/or termination of the contract, subcontract or financial assistance agreement for cause;

(2) Payback of any or all of the contract or financial assistance awarded by the City of Oakland;

(3) Deem the contractor or CFAR ineligible for future City contracts and/or financial assistance until all penalties and restitution have been paid in full;

(4) A fine payable to the City of Oakland in the sum of \$500 for each week for each employee found not to have been paid in accordance with this Ordinance;

(5) Wage restitution for each affected employee.

(e) The City Attorney shall promulgate procedures for legal enforcement of the requirements of this Ordinance.

Section 14. Employee Complaint Process

An employee who alleges violation of any provision of this Ordinance may report such acts to the City and, at the employee's discretion, exhaust available employer internal remedies. The complaint to the City shall be handled as follows:

(1) The employee shall submit to the City a completed complaint form and copies of all documents supporting the allegation. The City shall provide the complaint forms in English and Spanish.

(2) The City shall notify the agency and the employer of the complaint and seek resolution within five days from receipt of the complaint form. If resolution is not accomplished, the City shall initiate an investigation and seek legal remedies, if appropriate.

(3) An employee claiming retaliation (such as, termination, reduction in wages or benefits or adverse changes in working conditions) for alleging non-compliance with this Ordinance may report the alleged retaliation in the same manner as the initial complaint.

(4) The complainant's or witness' identity will not be divulged to the employer without the individual employee's written consent.

Section 15. Private Right of Action

(a) An employee claiming violation of this article may bring an action in the Municipal Court or Superior Court of the State of California, as appropriate, against an employer and may be awarded:

(1) For failure to pay the living wage, back pay for each day during which the violation continued.

(2) For any violation of this Ordinance, including retaliation for exercising rights provided hereunder, the Court may award any appropriate remedy at law or equity, including but not limited to reinstatement, compensatory damages and punitive damages.

(b) The Court shall award reasonable attorney's fees and costs to an employee who prevails in any such enforcement action.

(c) Notwithstanding any provision of this Code or any other ordinance to the contrary, no criminal penalties shall attach for any violation of this article.

(d) No remedy set forth in this Ordinance is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law.

This Ordinance shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

Section 16. Collective Bargaining Agreement Supersession

All of the provisions of this Ordinance, or any part hereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms.

Section 17. Expenditures Covered By This Article

This Ordinance shall apply to the expenditure whether through aid to financial assistance recipients, service contracts let by its financial assistance recipients of funds entirely within the City's control and to other funds, such as federal or state grant funds, where the application of this Ordinance is consonant with the laws authorizing the City to expend such other funds.

Section 18. Ordinance Applicable to New Contracts and City Financial Assistance

The provisions of this Ordinance shall apply to (a) a contract entered into and financial assistance provided after the effective date of this Ordinance; (b) a contract amendment consummated after the effective date of this Ordinance which itself meets the financial threshold requirement of this Ordinance and (c) supplemental financial assistance provided for after the effective date of this Ordinance which itself meets the requirements of this Ordinance.

Section 19. Implementing Regulations

All implementing rules, regulations, and procedures promulgated by the City Manager or his designee shall be presented to the City Council for approval within sixty (60) days of adoption of this Ordinance.

Section 20. Severability

In the event any provision of this ordinance shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

Section 21. Effective Date

The law shall be effective from the date of July 1, 1998.

CITY OF OAKLAND

DECLARATION OF COMPLIANCE Living Wage Ordinance

The Oakland Municipal Code Chapter XX provides that all employers (except where specifically exempted) under contracts for the furnishing of services to or for the City and that involve an expenditure equal to or greater than \$25,000 and certain recipients of City financial assistance that involve receipt of financial assistance equal to or greater than \$100,000 shall comply with all provisions of this Ordinance.

The contractor or CFAR further agrees:

(a) To pay employees a wage no less than the minimum initial compensation of \$8.00 per hour with health benefits, as described, or otherwise \$9.25 per hour, and to provide for the annual increase pursuant to Section 3;

(b) To provide at least twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and at least ten additional days per year of uncompensated time off pursuant to Section 3;

(c) To inform employees making less than \$12 per hour of their possible right to the federal Earned Income Credit (EIC) and make available the forms required to secure advance EIC payments from the employer pursuant to Section 5;

(d) To permit access to work sites for authorized City representatives to review the operation, payroll and

related documents, and to provide certified copies of the relevant records upon request by the City; and,

(e) Not to retaliate against any employee claiming non-compliance with the provisions of this Ordinance and to comply with federal law prohibiting retaliation for union organizing.

The undersigned authorized representative hereby obligates the proposer to the above stated conditions under penalty of perjury.

Company Name	Signature of Officer or Authorized Representative	
Company Address and Phone Number	Type or Print Name and Title	
Date	Bid Number	Type of Service

FOR CITY USE ONLY		
Determination: Bidder is Not Exempt_____	Bidder is Exempt_____	Date_____
Department_____	Representative_____	

Introduced = 3-24-98

IN COUNCIL, OAKLAND, CALIFORNIA, APR - 7 1998, 19____

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, CHANG, DE LA FUENTE, MILEY, NADEL, REID, RUSSO, SPEEDS, AND
PRESIDENT HARRIS — *9*

NCES- *None*

ABSENT- *None*

ABSTENTION- *None*

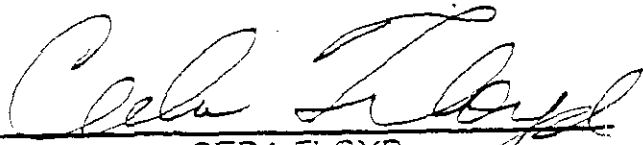
ATTEST: 
CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

EXHIBIT N

Living Wage Ordinance

CITY OF OAKLAND
AND
REDEVELOPMENT AGENCY
RULES & REGULATIONS FOR IMPLEMENTATION
OF THE
LIVING WAGE ORDINANCE

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**RULES AND REGULATIONS
FOR IMPLEMENTATION OF THE
LIVING WAGE ORDINANCE
FOR THE CITY OF OAKLAND AND
THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND**

The Oakland Living Wage Ordinance (the "Ordinance"), codified as Oakland Municipal Code provides that certain employers under contracts for the furnishing of services to or for the City that involve an expenditure equal to or greater than \$25,000 and certain recipients of City financial assistance that involve receipt of financial assistance equal to or greater than \$100,000 shall pay a prescribed minimum level of compensation to their employees for the time their employees work on City of Oakland contracts. The Redevelopment Agency of the City of Oakland adopted the City's Living Wage policy as its own policy by Agency Resolution No. 98-13 C.M.S.

REGULATION #1: DECLARATION OF COMPLIANCE WITH THE LIVING WAGE ORDINANCE

The form and content of the Declaration of Compliance to be obtained from prospective contractors and CFARs pursuant to the Ordinance is attached hereto. The Declaration shall be included in all bid documents and contracts to which the Ordinance applies.

REGULATION #2: DEFINITIONS

The following definitions shall apply in these regulations:

- a) "Agency" means that subordinate or component entity or person of the City (such as a department, office, or agency) that is responsible for solicitation of proposals or bids and responsible for the administration of service contracts or financial assistance agreements.
- b) "City" means the City of Oakland and all City agencies, departments and offices. References to the "City" in these regulations shall also be deemed to apply to the Redevelopment Agency of the City of Oakland.
- c) "City financial assistance recipient" or "CFAR" means any person who receives from the City financial assistance in an amount of \$100,000 or more in a 12 month period.
 - 1) Financial assistance shall not include generalized financial assistance such as that provided through tax legislation. City staff assistance alone shall not be regarded as financial assistance.
 - 2) Categories of covered City financial assistance include, but are not limited to, grants, rent subsidies, bond financing, loans (subject to the criteria below), financial planning, tax increment financing, land writedowns, the provision of on-site improvements, and tax

credits and rebates. Assistance shall include contingent obligations taken on by the City, such as a guaranty.

- 3) A loan provided at below market interest rate and terms shall be regarded as financial assistance to the extent of any differential between the principal amount of the loan and the present value of the payments thereunder, discounted over the life of the loan by the applicable federal rate as set forth in 26 USC §§1274(d) and 7872(f). The forgiveness of a loan, to the extent of the amount forgiven, shall be regarded as financial assistance. Indirect loan related assistance and contingent funding commitments by the City such as loan guaranties, completion guaranties, credit enhancements, letters of credit, indemnity agreements, standby commitments, suretyship agreements, etc., shall also be regarded as financial assistance, to the extent of the value of the subsidy attached to such assistance as determined by the agency administering the assistance.
- 4) The sale of City real property for less than the property's fair market value shall be considered City financial assistance, to the extent of the difference between the actual sales price and the property's fair market value. An installment sale shall be treated as a seller financed loan for purposes of these regulations. A lease of City real property for less than the property's fair rental value shall be considered financial assistance, to the extent of the difference between the present value of the actual lease payments and the present value of the fair market rental payments during the lease term, as determined by agency administering the assistance.
- 5) The provision of off-site improvements by the City to a development project, such as street improvements or the installation of public facilities, utilities or other infrastructure not located on the project property, shall not be considered City assistance for purposes of these regulations.
- 6) The date a CFAR is deemed to receive the assistance shall be the date that the City enters into a legally binding agreement to provide the assistance.
- 7) A tenant, lessee, or licensee of a CFAR, or a subtenant or sublessee of such person, who occupies real property or uses equipment or real or personal property that is improved or developed as a result of the assistance awarded to the CFAR by the City, and who will employ at least twenty employees for each working day in each of twenty or more calendar weeks in the twelve months after occupying or using said property, shall be considered a "City financial assistance recipient" for purposes of these regulations, and shall be covered for the same period as the CFAR who is their landlord, lessor, or licensor.
- 8) For purposes of these regulations, "City financial assistance recipient" shall also include the assignees and successors in interest of the person directly receiving the assistance from the City, and in the case of City assistance to projects involving the improvement or development of real property, shall include any person who subsequently acquires fee title to any or all of the property developed with City assistance during the compliance period.

- 9) "Financial assistance" shall include assistance provided through the City from sources other than City funds, such as federal or state grants or loans, but only where the application of the Ordinance is consonant with the terms and conditions of the outside funding source.
- d) "Contractor" means any person that enters into a service contract with the City in an amount equal to or greater than \$25,000.
- e) "Contract Compliance" means the City's Office of Contract Compliance
- f) "Employee" means (1) any natural person who performs services related to a city service contract, including a person employed under the authority of a service contract by a contractor or subcontractor; or (2) any natural person who performs services for a CFAR and who expends at least half of his or her time on the funded program or business, or in the case of a development project, at least half of his or her time on the project site or on project related work, or (3) any natural person who performs services for a service contractor of a CFAR and who expends at least half of his or her time on the premises of the CFAR, or in the case of a development project, at least half of his or her time on the project site or on project related work, and is directly involved with the funded project/program or property which is the subject of City financial assistance. Any person who is a managerial, supervisory or confidential employee is not an employee for purposes of this definition. Persons who qualify as independent contractors under IRS standards and persons who provide uncompensated, volunteer services to an employer, are not employees for the purposes of this section.
- g) "Employer" means any person who is a contractor, subcontractor, or City financial assistance recipient (CFAR) and who employs persons in the course of a business operation.
- h) "Person" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, public agency, or other entity that may employ individuals or enter into contracts.
- i) "Service contract" means (1) a contract let to a contractor by the City or a CFAR that involves an expenditure equal to or greater than twenty-five thousand dollars (\$25,000), in a twelve (12) month period, for the furnishing of services, to or for the City or the CFAR, except contracts where services are incidental to the delivery of products, equipment or commodities or (2) a lease or license under which services contracts are let by the lessee or licensee. A contract for the purchase or lease of goods, products, equipment, supplies or other property is not a "service contract" for the purposes of this definition. Services provided under a construction contract for which the payment of prevailing wages is required shall not constitute the "furnishing of services" as used in this section. Said construction services shall be paid at the rate required by the City pursuant to Resolution No. 57103 C.M.S. or Redevelopment Agency Resolution No. 87-4 C.M.S.
- j) "Subcontractor" means any person who enters into a contract with (1) a contractor to assist the contractor in performing a service contract or (2) a CFAR to assist the CFAR in performing the work for which the assistance is being given or to perform services on the

property which is the subject of city financial assistance. Service contractors of CFARs shall not be regarded as subcontractors except to the extent provided in subsection C.

- k) "Trainee" means a person enrolled in a job training program which meets the City of Oakland job training standards.

REGULATION #3: PAYMENT OF MINIMUM COMPENSATION TO EMPLOYEES

Employers subject to these regulations are required to provide the compensation, health benefits compensated days off and uncompensated days off set forth below to their employees, as defined herein,:

- 1) Minimum compensation – Employees shall be paid an initial hourly wage rate of \$8.00 with health benefits or \$9.25 without health benefits. These initial rates will be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor.
- 2) Health benefits - Full-time and part-time employees paid at the lower living wage rate shall be provided health benefits as defined herein. Employers shall provide proof that health benefits are in effect for those employees no later than 30 days after execution of the contract or receipt of City financial assistance
- 3) Compensated days off. – Employees are entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.

REGULATION #4: COMPLIANCE PERIOD

- (a) Service contractors. For covered service contractors and subcontractors, the period for compliance with the Living Wage requirements shall be for the term of the contract.
- (b) City financial assistance recipients. For covered CFARs, the period for compliance with the Living Wage requirements shall be as follows:
 - (1) Real estate development project assistance, i.e., City assistance with the purchase of real property and the construction or rehabilitation of real property facilities:

five years from the date construction of the project commences, as such date is determined by the agency administering the project.

- (2) Business development assistance, i.e., City assistance to a for profit business recipient to purchase tangible personal property, such as materials, equipment, fixtures, merchandise, inventory, machinery, and the like, to purchase a facility, and/or to pay for the operational costs of such recipients, including assistance with working capital: five years from the first disbursement of City assistance to the recipient. For City assistance in the form of contingent commitments, compliance shall begin on the date the City enters into the commitment.
- (3) Program assistance, i.e., City assistance to fund the ongoing program operations of a recipient who is a nonprofit service provider: the term of the agreement under which the assistance is given.
- (4) For forms of City assistance that do not fit into any of the above categories, the agency which administers the assistance shall determine the appropriate commencement date for the compliance period.
- (5) To the extent that City assistance falls into multiple categories, the compliance period shall start at the earliest of the dates specified above.
- (6) For City assistance used to acquire or develop real property, the Living Wage requirements shall be imposed in the form of a recorded encumbrance on the property binding any transferees or successors in interest to the property as a covenant running with the land for the entire compliance period.

REGULATION #5: CONTRACT REVIEW PROCESS

Each contract under which Living Wage requirements may apply will be subject to the following:

- a) Administering agencies shall impose the requirements of this Ordinance to all service contracts and CFARs UNLESS a determination is made by Contract Compliance that the Ordinance is not applicable. When an administering agency believes the Ordinance is not applicable or is uncertain as to its applicability to a particular service contract or CFAR, it shall submit a request for determination to Contract Compliance.
- b) Contract Compliance shall provide to City agencies standard notices or language which set forth the requirements of this Ordinance and the Declaration of Compliance for inclusion in the solicitation of proposals, bids or applications for City financial assistance. The administering agency shall include said notices in its RFPs, RFQs, specifications, application materials, notices of funding availability, notices inviting bids or any other solicitations for contracts or notices for applications or other processes related to the application for City financial assistance.

- c) In the case of an RFP or an RFQ Contract Compliance will schedule and convene a pre-proposal meeting of responsible agency team members at least 3 weeks prior to the proposal due date.
- d) The day following proposal submittal, the administering agency will send copies of the proposals to Contract Compliance for review to determine compliance with Living Wage requirements or eligibility for any of the exemption provisions of the Ordinance.
- e) Contract Compliance will conduct a post award meeting with the contractor and subcontractors to review Living Wage compliance including data requirements, format and deadlines.
- f) An employer who wishes to contest a determination that this Ordinance is applicable to its business operation may file an appeal within seven calendar days of the date of the City's written determination.

The matter will be heard by a Hearing Officer designated by the City Manager. Decisions of the Hearing Officer shall be rendered in writing to the administering agency and employer, and shall be final.

REGULATION #6: EXEMPTIONS

The following entities or persons are exempt from these regulations:

- a) An employer that employs or employed fewer than five employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.
- b) An employee who is a trainee, as defined herein, for the period of training as specified under the City approved training standards.
- c) An employee who is under 21 years of age, employed by a nonprofit corporation for after school or summer employment for a period not longer than 90 days.
- d) Persons who provide volunteer services that are uncompensated, except for the reimbursement of expenses such as meals, parking or transportation.
- e) Individuals who qualify under IRS standards as independent contractors.

Prior to executing the assistance contract, the awarding agency must obtain from each proposed contractor or CFAR seeking exemption under this ordinance, documentation sufficient to certify the specific exemption.

Parties otherwise subject to Living Wage requirements by a bona fide collective bargaining agreement, waive the Living Wage requirements, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms. If a collective bargaining exemption is claimed, the employer shall provide a copy of the pertinent agreement to the administering agency for review.

REGULATION #7: WAIVERS

The City Council may grant a waiver under the following conditions:

- 1) To a CFAR upon a finding and determination of economic hardship and that the waiver will further the interests of the City in creating training positions which enable employees to advance into jobs paid at a living wage or better when recommended by the City Manager, provided:
 - the CFAR has submitted a detailed, written explanation of its economic hardship;
 - that said explanation states the reasons for the CFAR's inability to pay a living wage and includes a complete cost accounting of the work to be performed with the assistance sought, stating wages and benefits to be provided to all employees, and itemizing wages and benefits paid to the five highest paid employees.
 - That the CFAR will create training positions which will enable employees to advance into permanent jobs, paid at living wage rates or better rates;
 - that existing positions or employees will not be replaced or displaced and that wages of existing employees will not be lowered by said training positions
- 2) Where the balance of competing interests weighs clearly in favor of granting the waiver. Partial waivers are favored over blanket waivers.
- 3) Waivers shall be limited to one year, but are subject to renewal thereafter upon yearly applications and determinations, which shall be based on the same criteria as the original waiver.
- 4) Upon a finding and determination of the City Council that waiver is in the best interests of the City, e.g. when the City has declared an emergency due to natural disasters and needs immediate services.

REGULATION #8: EMPLOYER NOTICE AND DOCUMENTATION REQUIREMENTS

- a) All proposed contractors and CFAR's subject to the provisions of these regulations shall submit a completed Declaration of Compliance form, signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance form shall be made a part of the executed contract, and will be made available for public inspection and copying by the City during its regular business hours.

- b) Contractors and CFAR's shall require their subcontractors and tenants/leaseholders who are covered by these requirements to comply with the provisions of these regulations. Contractors and CFARs shall be responsible for including language committing the subcontractor's or tenants/leaseholder's agreement to comply in their contract with their subcontractor or tenants/leaseholders. Contractors and CFARs shall submit a copy of such subcontracts or other such agreements to Contract Compliance.
- c) Employers shall maintain a listing of the name, address, date of hire, occupation classification, rate of pay and benefits paid for each of its employees and submit a copy of the list to Contract Compliance by March 31, June 30, September 30, and December 31 of each year during the applicable compliance period. Failure to provide this list within five days of the due date will result in a penalty of \$500 per day. Covered contractors, subcontractors and CFARs shall maintain payrolls for all employees and basic records relating thereto and shall preserve them for a period of at least four years after the expiration of the compliance period.
- d) Employers shall give written notification to each current and new employee, at time of hire, of his or her rights to receive the benefits under the provisions of these regulations. The notification shall be provided in English, Spanish and other languages spoken by a significant number of the employees, and shall be posted prominently in communal areas at the work site. A copy of said notification shall be forwarded to Contract Compliance. The notification must include the following information

Minimum compensation - Employees are entitled to an initial hourly wage rate of \$8.00 with health benefits or \$9.25 without health benefits for time worked on City of Oakland contracts or projects. The initial rates will be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor.

Health benefits. Full-time and part-time employees paid at the lower living wage rate shall be provided health benefits. Employers shall provide proof that health benefits are in effect for those employees no later than 30 days after execution of the contract, "Health benefits" means such medical, dental or other health benefits provided by employer.

Compensated days off. - Employees are entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.

Federal Earned Income Credit (EIC) - Employers must inform employees earning less than \$12 per hour of their possible right to EIC and provide them forms to apply for advance EIC payments to the eligible employees in English, Spanish and other languages spoken by a

significant number of their employees within 30 days of employment under the subject agreement.

- e) Employers shall permit authorized City representatives access to work sites and, with employee consent, relevant payroll records for the purpose of monitoring compliance with these regulations, investigating employee complaints of non-compliance and evaluating the operation and effects of these regulations, including the production for inspection and copying of its payroll records for any or all of its employees for the applicable compliance period.
- f) Employers who fail to submit documents, declarations or information required to demonstrate compliance with these regulations shall be deemed noncompliant or nonresponsive and subject to the remedies set forth herein.

REGULATION #9: REPORTING AND RECORD KEEPING BY THE CITY

- a) The City Manager shall submit periodic reports to the City Council which shall include the following information at minimum:
 - 1) A listing and the status of all RFP's and RFQ's, service contracts and lease agreements executed and financial assistance awarded, to which these regulations apply including the term, dollar amount and the service performed or assistance provided;
 - 2) A description of every instance where an exemption or waiver was granted by action of the City Manager or the City Council.
- b) The City Manager shall maintain records pertaining to all complaints, hearings, determinations and findings, and shall submit a regular report on compliance with these regulations no less than annually to the City Council. Special reports and recommendations on significant issues of interest to the Council will be submitted as deemed appropriate.

REGULATION #10: PENALTIES FOR NONCOMPLIANCE

Non-compliance may result in the assessment of a penalty of \$500 for each week of non-compliance, or debarment from bidding on or participating in future City contracts or projects for a period of one (1) year.

REGULATION #11: MONITORING AND INVESTIGATION

The provisions of these regulations will augment the City's' normal and customary procedure for administering its contracts. The City will take the following steps to determine compliance with these regulations for contracts under which the City makes periodic payments:

- a) The administering agency shall submit payment requisitions to Contract Compliance along with certified payroll reports (if applicable) fringe benefit statements (if applicable), and time cards.
- b) Contract Compliance will review payroll reports, fringe benefit statements, and time cards and determine compliance within five (5) working days.
- c) If compliance is determined, Contract Compliance will sign off on the payment requisition.
- d) If non-compliance is determined, Contract Compliance will notify the administering agency and the employer, by written notice, that a violation of these regulations has occurred. Said notice shall include a summary analysis of what was paid, what should have been paid and what is owed to the affected employee(s), the basis for the determination of noncompliance, and notice that the employer is entitled to an administrative hearing prior to withholding.
- e) If the employer fails to request a hearing within 10 days of the notice of noncompliance, it shall be deemed to have waived the right to hearing, and Contract Compliance shall issue a notice to withhold compensation owed and penalties to the administering agency, and thereafter direct payment to the employee or employees determined to have been underpaid.

REGULATION #12: EMPLOYEE COMPLAINT PROCESS

An employee who alleges violation of any provision of these regulations may report such acts to the City and, at the employee's discretion, exhaust available employer internal remedies. The complaint to the City shall be handled as follows:

To file a complaint, an employee must complete complaint questionnaire and submit it along with copies of check stubs. Contract Compliance shall provide the complaint forms in English , Spanish and/or any other language spoken by a predominance of the employees.

- (a) Contract Compliance shall notify the agency and the employer of the complaint and seek resolution within five days from receipt of the complaint form. If resolution is not accomplished, Contract Compliance shall investigate the complaint, conducting employee interviews performing site visits if necessary, and make a determination regarding the alleged violation.
- (b) If Contract Compliance determines that there has not been a violation of these requirements, the employee and administrating agency will be notified in writing of its determination and the investigation will be concluded.
- (c) If a violation is found and corrected, Contract Compliance will promptly issue a written notice.
- (d) If a violation is found and not corrected, Contract Compliance will issue a written notice of noncompliance which sets forth the basis for its decision, the amount owed the employee and notice that the employer is entitled to an administrative hearing as provided for under Section 11 above.

- (e) The complainant's or witness' identity will not be divulged to the employer without the individual employee's written consent. Complainant employees shall be advised, however, that such confidentiality may hinder the City's ability to successfully enforce their claims.
- (f) Employers shall not discharge, reduce the compensation of, or otherwise discriminate against any employee for making a complaint to the City, participating in any of its proceedings, using any civil remedy to enforce his or her rights, or otherwise asserting his or her rights under these regulations.
- (g) An employee claiming retaliation (such as, termination, reduction in wages or benefits or adverse changes in working conditions) for alleging non-compliance with these regulations may report the alleged retaliation in the same manner as the initial complaint.

REGULATION #13: ENFORCEMENT

Where a violation of any provision of these regulations has been determined, the City will give the employer a written notice. Should the violation continue and/or no resolution is imminent, the City may pursue all available legal remedies, including but not limited to any or all of the following penalties and relief:

- 1) Suspend and/or terminate the contract, subcontract or financial assistance agreement for cause;
- 2) Require the employer to pay back of any or all of the contract amount or financial assistance disbursed by the City;
- 3) Deem the employer ineligible for future City contracts and/or financial assistance until all penalties and restitution have been paid in full;
- 4) Impose a fine or liquidated damages payable to the City in the sum of \$500 for each week for each employee found not to have been paid in accordance with these regulations;
- 5) Order wage restitution for each affected employee.

REGULATION #14: SAMPLE RFP AND CONTRACT LANGUAGE

This Agreement is subject to the Living Wage Ordinance of the Oakland Municipal Code and its implementing regulations if it is for an amount of \$25,000 or more, or if it is amended to increase the contract amount by \$25,000 in any twelve month period thereafter. The Ordinance requires among other things, submission of the Declaration of Compliance attached and incorporated herein and made part of this agreement, unless specific exemptions apply or a waiver is granted, that Contractor provide the following to its employees who perform services under or related to this Agreement:

1. Minimum compensation - said employees shall be paid an initial hourly wage rate of \$8.00 with health benefits or \$9.25 without health benefits. These initial rates shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor.
2. Health benefits - said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least \$1.25 per hour. Contractor shall provide proof that health benefits are in effect for those employees no later than 30 days after execution of the contract or receipt of City financial assistance.
3. Compensated days off - said employees shall be entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.
4. Federal Earned Income Credit (EIC) - Contractor shall inform said employees who earn less than \$12.00 per hour that he or she may be eligible for EIC and shall provide forms to apply for advance EIC payments to eligible employees.
5. Contractor shall provide to all employees and to the Office of Contract Compliance, written notice of its obligation to eligible employees under the City's Living Wage requirements. Said notice shall be posted prominently in communal areas of the work site(s) and shall include information set forth in sections 1 through 4 above.
6. Contractor shall provide all written notices and forms required above in English, Spanish or other languages spoken by a significant number of employees within 30 days of employment under this Agreement.
7. Reporting - Contractor shall maintain a listing of the name, address, date of hire, occupation classification, rate of pay and benefits paid for each of its employees and submit a copy of the list to Contract Compliance by March 31, June 30, September 30, and December 31 of each year during the applicable compliance period. Failure to provide this list within five days of the due date will result in liquidated damages of five hundred dollars (\$500.00) for each day that the list remains outstanding. Covered contractors, subcontractors and CFARs shall maintain payrolls for all employees and basic records relating thereto and shall preserve them for a period of at least four (4) after expiration of the compliance period.
8. Contractor shall require subcontractors that provide services under or related to this Agreement to comply with the above Living Wage provisions. Contractor shall include the

same or similar provisions as those set forth in sections 1 through 7 above in its subcontracts. Copies of said subcontracts shall be submitted to the Office of Contract Compliance.

Furthermore, contractor shall include the above requirements in its subcontracts for services related to this Agreement.

Request for Proposals

This contract is subject to the Living Wage Ordinance of the Oakland Municipal Code and its implementing regulations. The Ordinance requires that, unless specific exemptions apply or a waiver is granted, all service contractors who receive contracts for \$25,000 or more in any twelve month period, and recipients of City financial assistance of \$100,000 in any twelve month period or more shall provide payment of a minimum level of compensation to employees who perform services under or related to the contract, project or program of \$8.00 per hour if health benefits of at least \$1.25 per hour are offered, or \$9.25 per hour if no health benefits are offered. Such rate shall be adjusted annually pursuant to the terms of the Ordinance.

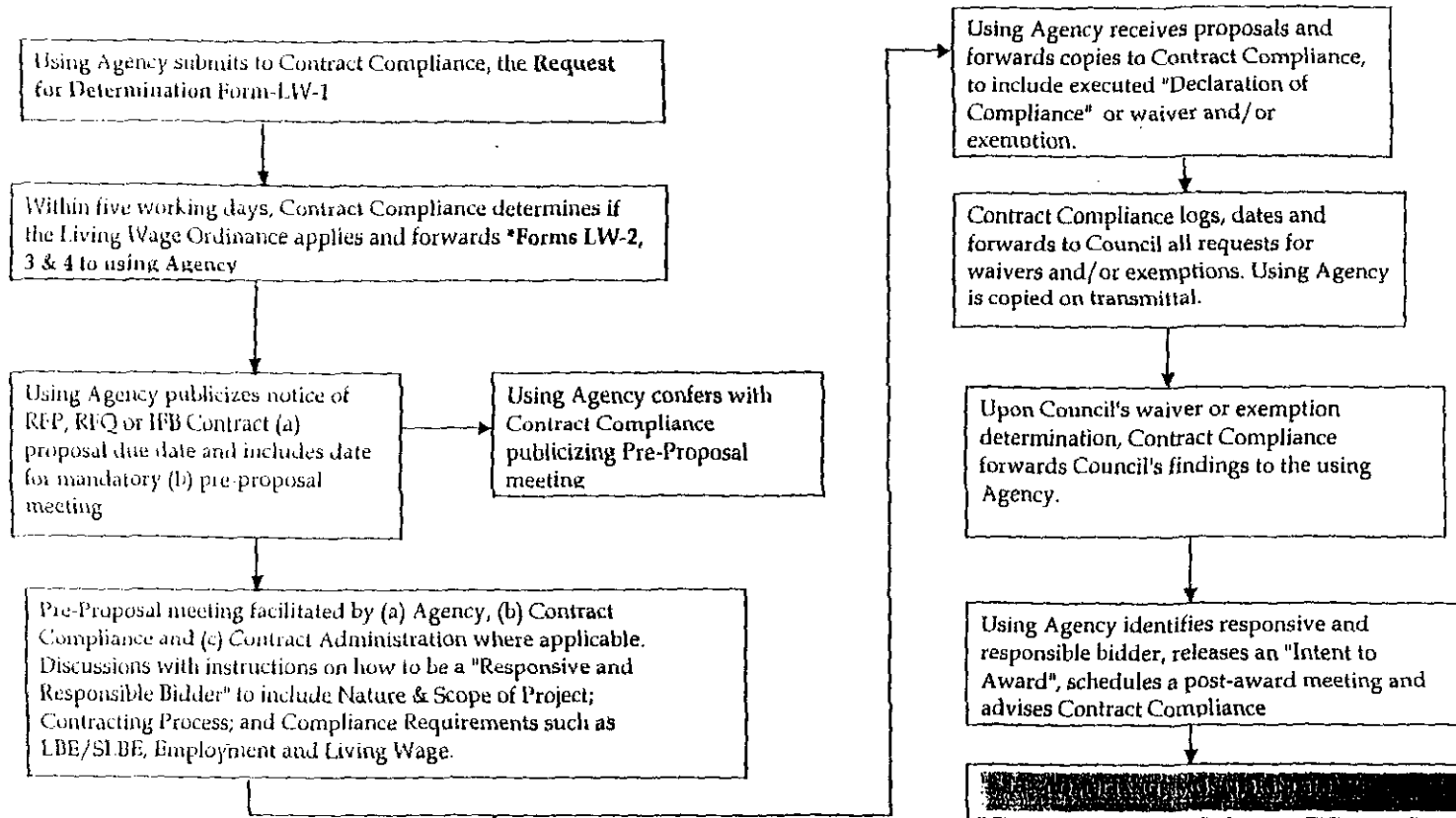
Under the provisions of the Living Wage Ordinance, the City shall have the authority, under appropriate circumstances, to terminate this contract and seek other remedies as set forth therein for violations of the Ordinance.

REGULATION # 15: AMENDMENTS

These regulations may be modified or amended by the City Manager or his or her designee as he or she deems appropriate, consistent with the terms of the Ordinance.



CONTRACT REVIEW AND PROCESS FOR LIVING WAGE REGULATIONS



FORMS LEDGER:

a) LW1- Request for Determination
d) LW4 - Declaration of Compliance

b) LW2 - Contract Award Documents
e) LW5 - Exemption and Waiver Checklist

c) LW3- Universal Contract Language
d) LW6 - Post Award Checklist



REQUEST FOR DETERMINATION
(Department Application for Living Wage Ordinance Review)

Date Forwarded: _____

To: Contract Compliance - Office of the City Manager
Attn: Vivian Inman, Contract Compliance Officer, Living Wage

From: Dept. Name _____ Dept. Phone _____
Dept. Location _____ Dept. Fax _____
Dept. Contact _____

RE: _____
Project Name Project Number

Please consider the information below to determine applicability of the Living Wage.

Contract and or Grant Amount _____

Please check the following type of contract or agreement:

- A) ☐ "Service Contract" means (1) a contract let to a contractor by the City that involves an expenditure equal to or greater than twenty-five thousand dollars (\$25,000) for the furnishing of services, to or for the City, except contracts where services are incidental to the delivery of products, equipment or commodities or (2) a lease or license under which services contracts are let by the lessee or licensee. A contract for the purchase or lease of goods, products, equipment, supplies or other property is not a "service contract" for the purposes of this definition.

If this is a Service Contract, please indicate type of service:
And describe:

- B) ☐ "City Financial Assistance Recipient" (CFAR) means any person who receives from the City financial assistance in an amount of \$100,000 or more in a 12 month period as contrasted with generalized financial assistance such as through tax legislation. Categories of such assistance include, but are not limited to, grants, rent subsidies, bond financing, financial planning, tax increment financing, land writedowns, and tax credits, rebates and loans. City staff assistance shall not be regarded as financial assistance for purposes of this article. The forgiveness of a loan shall be regarded as financial assistance, and a loan provided at below market interest rate shall be regarded as financial assistance to the extent of any differential between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan by the applicable federal rate as used in 26 U.S.C. §§ 1274(d), 7872(f). A tenant or leaseholder of a CFAR who occupies property or uses equipment or property that is improved or developed as a result of the assistance awarded to the CFAR and who will employ at least twenty employees for each working day in each of twenty or more calendar weeks in the twelve months after occupying or using said property, shall be considered a "City financial assistance recipient" for the purposes of this Ordinance and shall be covered for the same period as the CFAR of which they are a tenant or leaseholder.



REQUEST FOR DETERMINATION
Continued

If a CFAR please indicate type:

<input type="checkbox"/>	Grant	<input type="checkbox"/>	Tax Increment Financing
<input type="checkbox"/>	Rents Subsidies	<input type="checkbox"/>	Tax Credit
<input type="checkbox"/>	Bond Financing	<input type="checkbox"/>	Loan
<input type="checkbox"/>	Financial Planning	<input type="checkbox"/>	Other

If this is a City Financial Assistance Recipient (CFAR) contract, please describe:

The Division of Contract Compliance received your request for a determination on _____. The following represents our determination based on your submittal:

<input type="checkbox"/>	The criteria set forth in the Living Wage Ordinance applies to the referenced project.
<input type="checkbox"/>	The criteria set forth in the Living Wage Ordinance does not apply to the referenced project Justification: _____
<input type="checkbox"/>	A determination cannot be made based on the information submitted. Please forward the following additional information to the Contract Compliance Office on or before in order to facilitate a determination

Additional Information Request

_____ Contract Compliance Officer	_____ Date Returned
--------------------------------------	------------------------

Contract Compliance, CMO, 250 Frank Ogawa Plaza, Suite 3341, Oakland, CA 94612 510-238-3970

A pre-proposal meeting is to be scheduled at least 3 weeks before proposal due date.



CONTRACT AWARD DOCUMENTS
LIVING WAGE ORDINANCE

TO: Agency Name _____ Agency Contact _____

FROM: Vivian Inman
Living Wage Contract Compliance Officer

DATE: _____

RE: Project Name _____ Project Number _____

Your department or agency is responsible for collecting the information from the service contractor or CFAR being let a contract.

- ☐ If your firm qualifies for an exemption or a waiver as described in the Rules & Regulations, (numbers 6 or 7) please provide appropriate justification.
- ☐ For firms that do not meet any of the above criteria please provide the following information: within 10 working days after the post award meeting.
1. Number of employees employed by the service contractor or CFAR
 2. Number of employees working on the project
 3. Anticipated workforce hours per employee
 4. Names, titles and rate of pay for persons working on the project
 5. If your firm pays the \$9.13 wage rate please provide proof of health benefits paid within 30 days after award of the contract.

Other _____



Office Of The City Manager - Contract Compliance and Employment Services

This Agreement is subject to the Living Wage Ordinance of the Oakland Municipal Code and its implementing regulations if it is for an amount of \$25,000 or more, or if it is amended to increase the contract amount by \$25,000 in any twelve month period thereafter. The Ordinance requires among other things, submission of the Declaration of Compliance attached and incorporated herein and made part of this agreement, unless specific exemptions apply or a waiver is granted, that Contractor provide the following to its employees who perform services under or related to this Agreement:

1. Minimum compensation - said employees shall be paid an initial hourly wage rate of \$9.13 with health benefits or \$10.50 without health benefits. These initial rates shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor.
2. Health benefits - said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least \$1.25 per hour. Contractor shall provide proof that health benefits are in effect for those employees no later than 30 days after execution of the contract or receipt of City financial assistance.
3. Compensated days off - said employees shall be entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.
4. Federal Earned Income Credit (EIC) - Contractor shall inform said employees who earn less than \$12.00 per hour that he or she may be eligible for EIC and shall provide forms to apply for advance EIC payments to eligible employees.
5. Contractor shall provide to all employees and to the Office of Contract Compliance, written notice of its obligation to eligible employees under the City's Living Wage requirements. Said notice shall be posted prominently in communal areas of the work site(s) and shall include information set forth in sections 1 through 4 above.
6. Contractor shall provide all written notices and forms required above in English, Spanish or other languages spoken by a significant number of employees within 30 days of employment under this Agreement.

Reporting - Contractor shall maintain a listing of the name, address, date of hire, occupation classification, rate of pay and benefits paid for each of its employees and submit a copy of the list to Contract Compliance by March 31, June 30, September 30, and December 31 of each year during the applicable compliance period. Failure to provide this list within five days of the due date will result in liquidated damages of five hundred dollar (\$500.00) for each day that the list remains outstanding. Covered contractors, subcontractors and CFARs shall maintain payrolls for all employees and basic records relating thereto and shall preserve them for a period of at least four (4) after expiration of the compliance period.

8. Contractor shall require subcontractors that provide services under or related to this Agreement to comply with the above Living Wage provisions. Contractor shall include the same or similar provisions as those set forth in sections 1 through 7 above in its subcontracts. Copies of said subcontracts shall be submitted to the Office of Contract Compliance.

Furthermore, contractor shall include the above requirements in its subcontracts for services related to this Agreement.

Request for Proposals

This contract is subject to the Living Wage Ordinance of the Oakland Municipal Code and its implementing regulations. The Ordinance requires that, unless specific exemptions apply or a waiver is granted, all service contractors who receive contracts for \$25,000 or more in any twelve month period, and recipients of City financial assistance of \$100,000 in any twelve month period or more shall provide payment of a minimum level of compensation to employees who perform services under or related to the contract, project or program of \$8.65 per hour if health benefits of at least \$1.25 per hour are offered, or \$9.95 per hour if no health benefits are offered. Such rate shall be adjusted annually pursuant to the terms of the Ordinance. (Effective July 1, 2001 the rates will be \$9.13 per hour with health benefits and \$10.50 per hour without health)

Under the provisions of the Living Wage Ordinance, the City shall have the authority, under appropriate circumstances, to terminate this contract and seek other remedies as set forth therein for violations of the Ordinance.


Office of The City Manager - Contract Compliance and Employment Services
DECLARATION OF COMPLIANCE - LIVING WAGE ORDINANCE

The Oakland Living Wage Ordinance (the "Ordinance"). Codified as Oakland Municipal Code provides that certain employers under contracts for the furnishing of services to or for the City that involve an expenditure equal to or greater than \$25,000 and certain recipients of City financial assistance that involve receipt of financial assistance equal to or greater than \$100,000 shall pay a prescribed minimum level of compensation to their employees for the time their employees work on City of Oakland contracts. The Redevelopment Agency of the City of Oakland adopted the City's Living Wage policy as its own policy Agency Resolution No. 98-13 C.M.S.

The contractor or city financial assistance recipient (CFAR) further agrees:

- (a) To pay employees a wage no less than the minimum initial compensation of \$9.13 per hour with health benefits, as described in Section 3-C "Health Benefits" of the Ordinance, or otherwise \$10.50 per hour, and to provide for the annual increase pursuant to Section 3-A "Wages" of the Ordinance.
- (b) To provide at least twelve compensated days off per year for sick leave, vacation or personal necessity at the employees request, and, at least ten additional days per year of uncompensated time off pursuant to Section 3- B "Compensated Days Off" of the Ordinance.
- (c) To inform employees making less than \$12 per hour of their possible right to the federal Earned Income Credit (EIC) and make available the forms required to secure advance EIC payments from the employer pursuant to Section 5 "Notifying Employees of their Potential Right to the Federal Earned Income Credit" of the Ordinance.
- (d) To permit access to work sites for authorized City representatives to review the operation, payroll and related documents, and to provide certified copies of the relevant records upon request by the City; and
- (e) Not to retaliate against any employee claiming non-compliance with the provisions of this Ordinance and to comply with federal law prohibiting retaliation for union organizing.

The undersigned authorized representative hereby obligates the proposer to the above stated conditions under penalty of perjury.

Company Name

Signature of Authorized Representative

Address

Type or Print Name

Area Code

Phone

Date

Type or Print Title



LIVING WAGE ORDINANCE WAIVER/EXEMPTION REQUEST

EXEMPTIONS

If your firm qualifies for an exemption or a waiver as described in the Rules & Regulations (numbers 6 or 7) please complete the following and provide appropriate justification.

CHECK ALL OF THE FOLLOWING CRITERIA THAT APPLY:

- ☐ The employer employs or employed fewer than five employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year
- ☐ The employer employs or employed employees who are trainees, as defined herein, for the period of training as specified under the City-approved training standards.
- ☐ The employees who are under 21 years of age, are employed by a nonprofit corporation for after school or summer employment for a period not longer than 90 days
- ☐ The employees are persons who provide volunteer services that are uncompensated, except for the reimbursement of expenses such as meals, parking or transportation.
- ☐ Individuals who qualify under IRS standards as independent contractors.

Parties otherwise subject to Living Wage requirements by a bona fide collective bargaining agreement, waive the Living Wage requirements, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms. If a collective bargaining exemption is claimed, the employer shall provide a copy of the pertinent agreement to the administering agency for review

WAIVERS

**THE FOLLOWING CONDITIONS MUST BE MET IN ORDER TO QUALIFY FOR A WAIVER.
ATTACH DOCUMENTATION TO VERIFY THE REQUEST FOR A WAIVER:**

For CFARs - upon a finding and determination of economic hardship and that the waiver will further the interests of the City in creating training positions which enable employees to advance into jobs paid at a living wage or better when recommended by the City Manager, provided:

- 1) the CFAR has submitted a detailed, written explanation of its economic hardship;
- 2) that said explanation states the reasons for the CFAR's inability to pay a living wage and includes a complete cost accounting of the work to be performed with the assistance sought, stating wages and benefits to be provided to all employees, and itemizing wages and benefits paid to the five highest paid employees.



LIVING WAGE ORDINANCE WAIVER/EXEMPTION REQUEST

Continued

- 3) that the CFAR will create training positions which will enable employees to advance into permanent jobs, paid living wage rates or better rates;
- 4) that existing positions or employees will not be replaced or displaced and that wages of existing employees will not be lowered by said training positions;

Where the balance of competing interests weighs clearly in favor of granting the waiver. Partial waivers are favored over blanket waivers.

Waivers shall be limited to one year, but are subject to renewal thereafter upon yearly applications and determinations, which shall be based on the same criteria as the original waiver.

Upon a finding and determination of the City Council that a waiver is in the best interests of the City, e.g. when the City has declared an emergency due to natural disasters and needs immediate services.



LIVING WAGE ORDINANCE POST AWARD CHECKLIST

THE EMPLOYER UNDERSTANDS AND WILL COMPLY WITH THE FOLLOWING REQUIREMENTS:

All proposed contractors/subcontractors and CFAR's subject to the provisions of these regulations shall submit a **completed Declaration of Compliance form**, signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance form shall be made a part of the executed contract, and will be made available for public inspection and copying by the City during its regular business hours.

Service contractors and CFARs shall require their subcontractors and tenants/leaseholders who are covered by these requirements to comply with the provisions of these regulations. **Service contractors and CFARs shall be responsible for including language committing the subcontractor's or tenants/leaseholder's agreement to comply in their contract with their subcontractor or tenants/leaseholders.** Service contractors and CFARs shall submit a copy of such subcontracts or other such agreements to Contract Compliance.

Employers shall maintain a listing of the name, address, date of hire, occupation classification, rate of pay and benefits paid for each of its employees and submit a summary and/or statement of compliance to Contract Compliance by March 31, June 30, September 30, and December 31 of each year during the applicable compliance period. Failure to provide this list within five days of the due date will result in a penalty \$500 per day. Covered contractors, subcontractors and CFARs shall maintain payrolls for all employees and basic records relating thereto and shall preserve them for a period of at least four years after the close of the compliance period.

Employers shall give written notification to each current and new employee, at time of hire, of his or her rights to receive the benefits under the provisions of these regulations. The notification shall be provided in English, Spanish and other languages spoken by a significant number of the employees, and shall be posted prominently in communal areas at the work site. A copy of said notification shall be forwarded to Contract Compliance. The notification must include the following information

Minimum compensation: Employees are entitled to an initial hourly wage rate of \$9.13 with health benefits or \$10.50 without health benefits for time worked on City of Oakland contracts or projects. The initial rates will be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor. (Effective July 1, 2001 the rates will be \$9.13 per hour with health benefits and \$10.50 per hour without health)

Health benefits: Full-time and part-time employees paid at the lower living wage rate shall be provided health benefits. Employers shall provide proof that health benefits are in effect for those employees no later than 30 days after execution of the contract- "Health benefits" means such medical, dental or other health benefits provided by employer.



LIVING WAGE ORDINANCE POST AWARD CHECKLIST

Continued

Compensated days off: Employees are entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.

Federal Earned Income Credit (EIC) : Employers must inform employees earning less than \$12 per hour of their possible right to EIC and provide them forms to apply for advance EIC payments to the eligible employees in English, Spanish and other languages spoken by a significant number of their employees within 30 days of employment under the subject agreement.

Employers shall permit authorized City representatives access to work sites and, with employee consent, relevant payroll records for the purpose of monitoring compliance with these regulations, investigating employee complaints of non-compliance and evaluating the operation and effects of these regulations, including the production for inspection and copying of its payroll records for any or all of its employees for the applicable compliance period.

Employers who fail to submit documents, declarations or information required to demonstrate compliance with these regulations shall be deemed noncompliant or nonresponsive and subject to the remedies set forth herein.

FIRST SOURCE AGREEMENT

This First Source Agreement ("Agreement"), dated as of April _____, 2002, is made by and between the CITY OF OAKLAND, a municipal corporation ("City") and OAKLAND MOTOR CARS, INC., a California corporation ("Dealer").

RECITALS

This Agreement is entered into based on the following facts and understandings of the parties:

A. B. E. Fitzpatrick Development, Inc. is purchasing real property from the Redevelopment Agency of the City of Oakland for construction thereon of improvements suitable for use as a full service dealership for new Lexus brand vehicles ("Dealership"), with an approximately 26,000 square foot, single-story building with mezzanine to serve as a showroom, offices, and an auto motor vehicle service and repair center space, along with approximately 339 spaces for surface parking, and space for storage and showing primarily new, and secondarily, used, vehicle inventory and related purposes, and project signage space for a general advertising sign, incidental sale of used motor vehicles, and ancillary repair and service of motor vehicles.

B. Dealer will lease the real property and the improvements and own and operate the Dealership

C. As a condition of closing the sale of the real property to B.E. Fitzpatrick Development, Inc., the Redevelopment Agency is requiring that Dealer enter into an agreement regarding use of the City's First Source Employment Referral Program ("Referral Service") for the recruitment of employees for the Dealership.

NOW, THEREFORE, in consideration of the foregoing recitals (which are hereby incorporated into this Agreement) and the mutual covenants and conditions herein, and in reliance on the representations and warranties set forth herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Dealer hereby agree as follows:

1. The City agrees to:

- Recruit Oakland applicants through the Business Services division of Oakland's One Stop Career Center system ("One Stop Center") to be referred for possible employment to Dealer.
- Assist in assessing all applicants prior to being referred to Dealer to ensure that applicants meet the minimum qualifications of the job specifications.
- Pre-screen applications to ensure completeness.
- Provide facility accommodations to Dealer for recruitment and interviewing.
- Provide the foregoing services without charge to Dealer.

2. Dealer agrees to:

- Use the City's One Stop Center when making jobs at the Dealership available to the general public.
- Provide the City's One Stop Center with Dealer's applications and forms necessary for application for employment by Dealer at the Dealership.
- Provide the job specifications for all openings at the Dealership to the City's One Stop Center.
- As necessary, meet with the City's One Stop Center to explain the various job descriptions and the employment needs of Dealer at the Dealership.
- Provide placement information, comments and evaluation of the services provided by City's One Stop Center.

3. Dealer's obligations under this Agreement:

- Do not prohibit Dealer from utilizing other sources of attracting applicants or recruiting concurrently for any positions.
- Do not apply to positions filled by immediate family members of Benjamin Edward Fitzpatrick or Bertha A. Fitzpatrick.
- Terminate when the term of the of the Business Incentive Agreement between the City, Dealer and B.E. Fitzpatrick Development, Inc. of even date herewith expires.

4. The City Agrees:

- This Agreement is the agreement required by the Redevelopment Agency that is referred to in Recital C.
- This Agreement sets forth the rights and obligations of the parties as required under Section 6.4 of that Business Incentive Agreement of even date herewith between City, Dealer and B.E. Fitzpatrick Development, Inc.

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EXHIBIT P

INSURANCE REQUIREMENTS

a. General Liability, Automobile, Worker's Compensation and Professional Liability

Contractor shall procure, prior to commencement of service, and keep in force for the term of this contract, at Contractor's own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to The City. If requested, Contractor shall provide the City with copies of all insurance policies. The insurance shall at a minimum include:

- i. Commercial General Liability insurance, including but not limited to, Bodily Injury, Broad Form Property Damage, Contractual Liability, Operations, Products and Completed Operations, Pollution Liability, Owners and Contractors Protective Liability, and/or XCU coverage, when applicable. The policy shall contain a severability of interest clause or cross liability clause or the equivalent thereof.
 - A. Coverage afforded on behalf of the City shall be primary insurance and any other insurance/self-insurance available to the City under any other policies shall be excess insurance (over the insurance required by this Agreement).
 - B. Limits of liability, on an occurrence, basis shall include the following:

Bodily/Personal Injury - \$1,000,000
Property Damage - \$1,000,000
Or, Combined Single Limit (C.S.L) for Bodily Injury and Property Damage - \$2,000,000
- ii. Automobile Liability insurance, including all owned, leased, hired or borrowed by or on behalf of the Contractor or its agents in the performance of this Agreement shall have the following minimum limits for Bodily Injury and Property Damage - \$1,000,000 Combined Single Limit.
- iii. Worker's Compensation insurance as required by the laws of the State of California. Statutory coverage may include Employers Liability coverage with limits not less than \$1,000,000. The Contractor certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The Contractor shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.
- iv. Professional Liability/errors and omissions insurance in the amount of \$2,000,000.

- v. Builders' Risk/Course of Construction Insurance covering all risks of loss in an amount equal to the completed value of the project with no coinsurance penalty provisions. The City shall be named as loss payee under this policy. The insurer shall waive all rights of subrogation against the City.

b. Terms Conditions and Endorsements

The aforementioned insurance shall be endorsed and have all the following conditions:

- i. Additional Insured: Contractor shall name the City of Oakland, its Councilmembers, directors, officers, agents, employees and volunteers as additional insureds in its Comprehensive Commercial General Liability and Automobile Liability policies. If Contractor submits the ACORD Insurance Certificate, the additional insured endorsement must be set forth on a CG20 10 11 85 form and/or CA 20 48 - Designated Insured Form (for business auto insurance). A STATEMENT OF ADDITIONAL INSURED ENDORSEMENT ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF THE ADDITIONAL INSURED REQUIREMENT; and
- ii. Cancellation Notice: 30-day prior written notice of cancellation, termination or material change in coverage; and
- iii. Certificate holder is to be the same person and address as indicated in the "Notices" section of this Agreement; and
- iv. Insurer shall carry a Best Rating of B+ or greater.

c. Deductibles and Self-Insured Retentions

Any deductible or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductible or self-insured retentions as respects the City, its Councilmembers, directors, officers, agents, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

d. Replacement of Coverage

In the case of the breach of any of the insurance provisions of this Agreement, the City may, at the City's option, take out and maintain at the expense of Contractor, such insurance in the name of Contractor as is required pursuant to this Agreement, and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Contractor under this Agreement.

e. Insurance Interpretation

All endorsements, certificates, forms, coverage and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Office as of the date of this Agreement.

f. Proof of Insurance

Contractor will be required to provide proof of all insurance required for the work prior to execution of the contract, including copies of Contractor's insurance policies if and when requested. Failure to provide the insurance proof requested or failure to do so in a timely manner shall constitute ground for rescission of the contract award.

g. Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all the requirements stated herein.