REQUEST FOR QUALIFICATIONS

FOR

OAKLAND MUNICIPAL IDENTIFICATION STORED VALUE CARD

OFFICE OF THE CITY CLERK
JANUARY 2010

CITY OF OAKLAND

DALZIEL BUILDING ▪ 250 FRANK H. OGAWA PLAZA , SUITE 4314 ▪ OAKLAND ▪ CALIFORNIA ▪ 94612

Department of Contracting and Purchasing
Social Equity Division
Local Employment

TEL: (510) 238-3970
FAX: (510) 238-3363
TDD: (510) 238-2007

Date: January 17, 2010

To: ID cards technology and system providers, Stored value or prepaid card system providers, or Bank/Financial institutions

Re: Request for Qualifications for Oakland Municipal Identification card / stored value card

The City of Oakland is soliciting RFQ from firms interested in providing professional consulting services Oakland Municipal Identification card / stored value card. The report will be conducted under the direction of the City of Oakland, City Clerk's office. The prime consultant in response to this Request for Qualifications (RFQ) shall be either an identification cards technology and system providers, stored value or prepaid card system providers, or bank/financial institutions. **RFQ are due at the Department of Contracting and Purchasing, Contract Administration Division, no later than 2:00 p.m., Wednesday, March 17, 2010.** RFQ should be addressed and delivered to the attention of **Ms. LaTonda Simmons, City Clerk**, c/o Contract Administration, 250 Frank H. Ogawa Plaza, Suite 3341, Oakland, California 94612.

The project titled "Oakland Municipal Identification card / stored value card" consists of one or more of the following service RFQ requests:

Vendors or service providers must submit a total price quote with required operating system components and/or a professional services RFQ that provides details and quotes on <u>one or more</u> of the following <u>service RFQ requests</u>:

1. A detailed quote for an in-house system to be purchased and or leased by the City of Oakland to perform intake, processing, identity verification and distribution of a secured municipal identification card with defined system components and service capacity as specified in the Scope of Services section *(In House System RFQ)*;

2. A detailed service RFQ to perform intake, processing, verification and distribution of a secured municipal identification card with defined service capacity as specified in the Scope of Services section with or without a financial services (stored value card) component *(offsite Production & Stored value card RFQ)*;

3. A detailed RFQ from financial services institutions and/or financial services providers for a stored value card component that provides additional functionality to the Municipal ID card as specified in the Scope of Services section *(Stored value card RFQ)*

Through the Request for Qualifications (RFQ) process, the proposing consulting team shall describe how it intends to provide all the professional services necessary to complete Oakland Municipal Identification card / stored value card. The team shall include either an identification cards technology and system providers, stored value or prepaid card system providers, or bank/financial institutions.

It is the intent of the City to utilize prime and sub-consulting firms located in the City of Oakland to the fullest extent practical/possible. Accordingly, firms proposing as the prime consultant which are located outside Oakland, are encouraged to establish either joint ventures or other consulting arrangements with Oakland based firms.

Please note that **City of Oakland offices will be closed** on the following days and will reopen the next business day. Friday, January 15, 2010 for a Mandatory Business Shutdown, Monday, January 18, 2010 in observance of Dr. Martin Luther King Jr's Birthday, Friday, February 12, 2010 in observance of Lincoln's Birthday and Monday, February 15, 2010 in observance of President's Day.

If you are an interested consultant and wish to obtain copies of the RFQ, they are available for **$10.00** if picked up at the Department of Contracting and Purchasing, Contract Administration Office, 250 Frank H. Ogawa Plaza, Suite 3341, Oakland, CA 94612, (510) 238-3621 and **$19.05** if mailed. A pre-submittal conference is scheduled for Monday, February 8, 2010, at 10:00 a.m. in Hearing Room 2, at City Hall, One Frank H. Ogawa Plaza, Oakland, CA 94612.

Technical questions regarding this RFQ must be submitted in writing, and are due no later than ten days prior to the RFQ opening date. Written responses will be available approximately seven days before the RFQ due date. These questions should be addressed to:

Fendy Guan
Management Assistant
City of Oakland
Office of the City Clerk
One Frank H. Ogawa Plaza, Suite 201
Oakland, California 94612
Fax number: 510-238-6699
Email address: **fguan@oaklandnet.com**

General questions regarding this RFQ should be directed to Ms. Fendy Guan, at (510) 238-7979. The City is looking forward to an enthusiastic response to this request for proposal.

Sincerely,

Fendy Guan
Management Assistant
Office of the City Clerk

REQUEST FOR QUALIFICATIONS (RFQ)
OAKLAND MUNICIPAL IDENTIFICATION/STORED VALUE CARD

TABLE OF CONTENTS

I. INTRODUCTION 1

II. PROJECT DESCRIPTION 2

III. SCOPE OF SERVICES 2

IV. THE RFQ 8

- A. General information 8
- B. Submittal Requirements 17
- C. Required RFQ Elements and Format 18
- D. Rejection of RFQ Elements 20

V. EVALUATION PROCESS 21

- A. Evaluation of RFQ 21
- B. Interview of Short-listed Firms 22

VI. SELECTION PROCESS 22

- A. Contract Negotiations 23
- B. Contract Award 23

VII. ATTACHMENTS

Attachment A	City and Other Agencies Systems List
Attachment B	Living Wage Ordinance
Attachment C	City of Oakland Professional Service Agreement
Attachment D	Insurance Requirements
Attachment F	Equal Benefits Ordinance
Attachment G	Prompt Payment Ordinance

VIII. EXHIBITS

Combined Form (C-1, P, U and V):

Schedule C-1	Declaration of Compliance with Americans with Disabilities Act
Schedule P	Nuclear Free Zone Disclosure
Schedule U	Compliance Commitment Agreement
Schedule V	Affidavit of Non-Disciplinary or Investigatory Action
Schedule D	Ownership, Ethnicity and Gender of Prime and Employees
Schedule E	Project Consultant Team
Schedule F	Local and Small Local Business Enterprise Exit Report and Affidavit
Schedule L-1	Contractor Performance Evaluation Schedule L-1
Schedule M	Independent Consultant Questionnaire – Part A
Schedule N	Declaration of Compliance Living Wage Ordinance
Schedule N-1	Equal Benefits Declaration of Non-Discrimination
Schedule O	Campaign Contribution Limits

I. INTRODUCTION

The City of Oakland (the "City") is soliciting Request for qualifications (RFQ) from qualified vendors and service providers who are able to provide or utilize their own systems to produce and distribute customized and secured Oakland Municipal Identification Cards with the capacity to facilitate certain payment functions and possibly interface with some of the existing City of Oakland systems.

Vendors or service providers must submit a total price quote with required operating system components and/or a request for qualifications that provides details and quotes on one or more of the following service requests:

1. A detailed quote for an in-house system to be purchased and/or leased by the City of Oakland to perform intake, processing, identity verification and distribution of a secured municipal identification card with defined system components and service capacity as specified in the Scope of Services section *(In House System RFQ)*;

2. A detailed service RFQ to perform intake, processing, verification and distribution of a secured municipal identification card with defined service capacity as specified in the Scope of Services section with or without a financial services (stored value card) component *(offsite Production & Financial Service RFQ)*;

3. A detailed RFQ from financial services institutions and/or financial services providers for a stored value card component that provides additional functionality to the Municipal ID card as specified in the Scope of Services section *(Financial Services Component RFQ)*

Services, including legal documentation, customer disclosures and customer support, must be made available in at least the following five languages: English, Spanish, Cantonese, Mandarin, and Tagalog. In addition, to these five languages, respondents should address any other language capabilities they may be able to offer.

The City encourages respondents to submit the most comprehensive possible (for one or more of the three proposed service components described above), offering the highest quality of service and card and system security to initiate the City Council approved Oakland Municipal ID Card program. While the intention is to be a cost covered program, it is the City's desire to maximize the Municipal ID card security features to discourage forgery, counterfeiting and other fraud related to the misuse of the Oakland Municipal ID card; of equal consideration is a service-oriented and responsive relationship with the selected contractor(s) and/or financial institution(s).

We encourage you to be creative and educational in your responses. While your format must be consistent with the requirements of this RFQ, if you believe that alternative solutions would be beneficial to the City, we invite you to offer them.

The City reserves the right to reject any and all RFQ, cancel all or part of this RFQ, waive any minor irregularities and request additional information from proposing contractor(s) and or financial institution(s). By requesting RFQ, the City is in no way obligated to award a contract or pay expenses of the proposing contractor(s) and or financial institution(s) in connection with the preparation or submission of a RFQ.

The City's decision to award a contract(s) will be based on many factors, including but not limited to, service, cost, security, financial strength and innovation. No single factor, such as cost, will determine the final decision to award. The City may award a single or multiple contracts to one or more parties. The City may determine to contract for the proposed services to be performed on a completely outsourced basis, or offer or perform all or part of the services itself with the service providers' help. The City reserves the right to modify the City's objectives and requirements at any point, including, but not limited to, during the period prior to submittal deadlines (by RFQ Addendum) and during the period of negotiation, without liability, obligation, or commitment to any party, firm or organization for costs incurred in responding to this RFQ, RFQ Addendums or subsequent modifications of the City's objectives and requirements prior to execution of a contract.

II. PROJECT DESCRIPTION

The City seeks a range of bids and RFQ in order to secure the best system and desired financial services for the City of Oakland Municipal Identification program and Muni ID card holders.

III. SCOPE OF SERVICES

The Oakland Municipal ID card must be unique to the City of Oakland and be produced with the highest integrated security measures to protect against counterfeit reproduction.

The contractor(s) and/or financial institution(s) team's scope of services must include, but is not limited to the following:

A. <u>In House System RFQ</u>

1. Required System Components:

   a. A closed-loop applicant intake system (software) which meets The City of Oakland's Network security requirement which include and is not limited to functionality within the confines of our secure network behind perimeter firewalls, meets our encryption policies, and, maintained wholly by the City of Oakland and is autonomous, with a secure non-proprietary customized database structure for limited data preservation in accordance with Municipal ID ordinance requirements as defined by City of Oakland

   b. Foreign document authentication system component in compliance with Department Of Justice identity verification standards

c. Biometric (facial) identification capture and verification system;

d. Laser engraving printer with direct data print capacity

e. Stock of 5,000 laser engraved cards in accordance with the Municipal ID card specifications

f. System design must be able to accommodate and integrate with the City of Oakland's current POS system.

2. Card System Capacity/Operating Requirements:

a. Biometric photo must be linked to applicant identifier information

b. Authentication module must be linked to applicant identifier information

c. Oakland Municipal ID card must preserve all of the above information *except* the applicant's residential address

3. Card Validation/Verification Requirements:

a. Service must include processes and technologies for verifying the validity of the issued cards on a 24/7 basis under secure conditions; service provider must be able to work with City departments and authorized personnel to establish a workable validation process, which may require access to a secure database for card verification purposes and/or the development of interfaces between the service provider and City systems; respondents should describe how their proposed validation/verification services would work and support City needs

b. Oakland Municipal ID card database must be available on a 24/7 basis to Oakland Police Department Dispatch Facilities for identity verification

B. Both In House System and Offsite Service Provider RFQ

1. Municipal ID card Specifications:

a. Security Specifications – Per Department of Justice standard, security features shall include, but may not be limited to the following:

- Card stock inventory serialized by laser engraving
- Embedded watermark
- Fine line pattern
- Invisible Ink
- Microtext
- Foil City seal
- Holographic lamination at point of issuance

- Rainbow printing
- Optical character Reader-Type B
- Changeable Laser imaging
- Laser Etching
- Ability to view image through Ultra Violet lighting
- biometrics features
- CLI image changes

b. Identification Card Specifications - card must be issued by a laser engraving printer bearing the following information:

- Full legal name
- Date of birth
- Eye Color
- Hair Color
- Weight
- Height
- Residential address
- Registration Number
- Issuance date
- Expiration date
- Application signature
- Photo (Biometric for In-House system RFQ)
- Optional information, i.e., allergies, emergency contact

c. The Operational specifications:

- Oakland Municipal ID card must possess a recordable and readable magnetic stripe and/or embedded chips that can facilitate select financial transactions for card holder
- Please explain your system's capacity to interface with POS (Point of Sales) systems. Please explain your system's interface capacity and specify any development work required for the POS interfaces including specific quotes for such development work.
- Oakland Municipal ID card may include capacity to interface with some of the existing Oakland systems listed on *Attachment A-1*. Please explain your system's interface capacity and specify any development work required for such interfaces including specific quotes for such development work.
- Oakland Municipal ID card may include capacity to interface with some of the existing public agencies within the City of Oakland listed on *Attachment A-2*. Please explain your system's interface capacity and specify any development work required for such interfaces including specific quotes for such development work.

C. Financial Services RFQ / Stored Value Card Services

1. Reloadable / Account-based Stored Value Card Services:

   a. Describe your institution's experience and capabilities in providing reloadable / account-based stored value card services. Can your company or institution integrate reloadable/account-based stored value card features onto the Municipal ID Card? What technology and system processes would need to be deployed? What type of stored value or pre-paid cards does your company or institution currently offer?

   b. Please explain your system's capacity to interface with POS (Point of Sales) systems. Please explain your system's interface capacity and specify any development work required for the POS interfaces including specific quotes for such development work.

   c. Oakland Municipal ID card may include capacity to interface with some of the existing Oakland systems listed on *Attachment A-1*. Please explain your system's interface capacity and specify any development work required for such interfaces including specific quotes for such development work.

   d. Oakland Municipal ID card may include capacity to interface with some of the existing public agencies within the City of Oakland listed on *Attachment A-2*. Please explain your system's interface capacity and specify any development work required for such interfaces including specific quotes for such development work.

   e. What are the key features and terms associated with your reloadable / account-based stored value card (i.e., card acceptance, limitations, and restrictions, customer support, liability for card use, PayPass, etc.)?

   f. Describe any rewards, rebate or incentive programs for the cardholder (i.e., ThankYou points, mileage rewards, etc.)?

   g. Please provide the costs to the cardholders including, but not limited to, the following features and services:

- Enrollment / activation
- Monthly account maintenance and/or other service charges
- Monthly inactivity fee
- Transaction fees
- Minimum balance
- Redemption rights
- Additional cards/replacement of cards
- PIN purchase

- Processes and payment mechanisms for reloading card online, at ATMs, kiosks and merchant sites; ability to reload with cash, check, or Direct Deposit
- Availability of printable electronic statement and receipts
- Balance inquires (online, email, phone, etc.)
- Internet account access: how established and accessed

2. Reloadable / Account-based Stored Value Card Components:

   a. Describe in detail the technology and systems components of your stored value cards; what requirements and/or limitations or restrictions would be associated with integrating stored value card features onto the Municipal ID Card?

   b. If the Municipal Identification component was provided by a different service provider, describe the extent to which your company or institution would be able to work with the other service provider to provide the stored value components.

   c. What options are available to the cardholder to load funds onto their card? Describe the online and offline reloadability options; provide a list of all offsite locations where a cardholder can reload and any plans for expanding the available sites; identify the payment mechanisms accepted for reloading value.

   d. Identify your company's or institution's management and their qualifications and experience with respect to stored value products. Describe your company's institution's management oversight and risk management process. Provide information about the internal compliance function at your company or institution; identify responsible personnel and the reporting structure.

   e. Describe the privacy protections and security measures for a reloadable/account-based stored value card program. Enclose a copy of your proposed Privacy Policy for the stored value accounts. Provide a copy of your information security plan. Include copies of information security and operational audits (independent or internal?) of your existing stored value card operations for the last three years.

   f. Describe the roles of any intended sub-contractors, where they are located and where their services would be performed. Describe the due diligence and review process used to select sub-contractors.

   g. Provide a copy of your disaster recovery and business continuity plan.

   h. What anti-fraud and red flags for identity theft measures are deployed?

i. Describe how Office of Foreign Assets Control ("OFAC") checks are conducted on cardholders and cardholder activity.

j. Describe measures taken to comply with applicable anti-money laundering laws and/or anti-money laundering concerns.

k. Describe all licenses required for provision of the stored value card products. Are you chartered as a bank, state licensed to provide money service businesses, registered with FinCEN, etc.? If no licenses are required, please explain why.

l. Describe how your company or institution complies with applicable state escheat requirements.

m. Describe cardholder services and benefits.

n. Describe customer support services; describe the distribution channels for customer support (what mechanisms – toll-free phone, website and local in-person services); describe when customer support will be available (hours each day of the week per distribution channel).

o. The City may require that its service providers maintain a local office (in Oakland and/or the greater San Francisco Bay area) to provide customer support. Describe your company's or institution's ability to establish or maintain a local office.

p. The City may determine that customers need initial training on the use of the stored value card; describe your company's or institution's ability to offer on-site training for new card customers and/or work with local community groups in providing such training.

q. Describe customer complaint and dispute mechanisms; provide specifics about the customer complaint investigation and resolution process.

r. What is the liability protection for a cardholder, please describe in detail. How does your company or institution comply with Regulation E of the Federal Reserve Board?

s. Provide copies of proposed consumer disclosures (online, at point of sale, and provided with and on the card itself.)

t. What languages can you offer the services in, including for all legal terms and disclosures and customer support services?

u. Describe any government investigation and enforcement actions taken with respect to your card services operations and any cited regulatory violations in the last five years. Summarize any material litigation pending or threatened; estimate the related financial exposure.

v. In what ways do you expect the current technology and systems to change? Describe anticipated maintenance and upgrade requirements. How often do you anticipate that you will need to replace the cards, upgrade the card technology, and upgrade related systems? The City requires that the cards issued must have card lives of at least two years before needing to be replaced.

w. In what ways may the current functionality offered through your stored value card products be expanded in the future? Would you anticipate offering an initial level of functionality and service which could be expanded or enhanced in future years and if so, under what conditions?

x. In addition to stored value card capabilities, the City is interested in obtaining other financial services and financial products for Municipal ID Card holders. What other financial services and financial products can you offer? Please describe in detail these products and services, related terms and restrictions and proposed pricing.

y. Can you assist the City in achieving a self-supporting Municipal ID Card program through revenue-sharing and other means? Please provide a proposed fee structure to cover all operating costs of the City's Municipal ID Card program (i.e., proposed revenue sharing/revenue split with City). Provide one or more fee structure alternatives; describe the benefits and drawbacks of the different fee and revenue arrangements.

z. The City is concerned that cardholders not pay high service costs. How could direct costs to the cardholders for the stored value card services be avoided or mitigated (e.g., through network fees on participating merchants, etc.)?

IV. THE RFQ

A. GENERAL INFORMATION

1. To facilitate clear communication and to achieve equitable dissemination of information, a pre-submittal conference will be held on Monday, February 8, 2010, at the following time and location:

Time:	10:00 am – 12 Noon
Location:	City Of Oakland, City Hall One Frank H. Ogawa Plaza Hearing Room 2 Oakland, CA 94612

2. The pre-Submittal conference will cover the following agenda items:
   a. Project information.
   b. Local and Small Local Business Enterprise (L/SLBE) Program
   c. The Living Wage Ordinance.
   d. The Equal Benefits Ordinance
   e. Prevailing Wage requirement, if applicable
   f. Prompt Payment Ordinance and Forms
   g. RFQ submittal requirements.
   h. Questions by attendees.

3. The successful proposer selected for this project shall provide proof of a current City of Oakland Business License.

4. The City Council reserves the right to reject any and all bids.

5. <u>The City's Local and Small Local Business Enterprise Program</u>

   The City of Oakland's Local and Small Local Business Enterprise Program (L/SLBE) is waived on this project. The City's database of certified firms does not contain at least three firms listing Foreign document authentication system, Biometric (facial) identification capture and verification system, and reloadable stored value card services. Therefore, the L/SLBE program is hereby waived. However, successful proposers may be asked to become certified under the City's L/SLBE program within a specified time period after contracts are executed.

   For tracking purposes, the proposers are asked to show the percentage and dollar amount of Minority Business Enterprise (MBE) /Women's Business Enterprise (WBE) participation on all sub-contractor listings. Proposers are asked to provide data regarding the racial, ethnic, and gender make up of listed sub-contractors and sub Contractors and be prepared to provide documentation that demonstrates the methodology used to select all sub-contractors.

   Furthermore, the Department of Contracting and Purchasing will track the City's MBE/WBE utilization to ensure the absence of unlawful discrimination on the basis of racial, ethnicity or gender, and will make periodic reports to the City Council concerning such utilization. The City will report any discrimination in City contracts to the appropriate Federal and State agencies, and will take action against contractors that are found to be engaging in discriminatory acts or practices up to and including termination or debarment.

6. <u>The City's Living Wage Ordinance - **Attachment B**</u>

   Any agreement awarded hereunder for the provision of services directly to the City of Oakland that are in excess of $25,000.00, including but not limited to equipment or

Ordinance, Oakland Municipal Code, Title 2, Chapter 2.28. The Living Wage Ordinance requires that nothing less than a prescribed minimum level of compensation (a living wage) be paid to employees of service Contractors (contractors) of the City and employees of CFARs (Ord. 12050 § 1, 1998). The Ordinance also requires submission of the Declaration of Compliance attached and incorporated herein as **Schedule N** and made part of this Agreement, and, unless specific exemptions apply or a waiver is granted, the contractor must provide the following to its employees who perform services under or related to this Agreement:

a. Minimum compensation – Said employees shall be paid an initial hourly wage rate of $10.83 with health benefits or $12.45 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. **Effective July 1st of each year, Contractor shall pay adjusted wage rates.**

b. Health benefits – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least $1.62 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.

c. 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.

d. To inform employees that he or she may be eligible for Earned Income Credit (EIC) and shall provide forms to apply for advance EIC payments to eligible employees. There are several websites and other sources available to assist you. Web sites include but are not limited to: (1) http: www.irs.gov. for current guidelines as prescribed by the Internal Revenue Service and (2) the 2008 Earned Income Tax Outreach Kit http://www.cbpp.org/eic2008

e. 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 the above-referenced information.

f. 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.

g. Reporting – Contractor shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. Contractor shall provide a copy of said list to the Office of Contract Compliance, on a quarterly basis, by March 31, June 30, September 30 and December 31 for the applicable compliance period. Failure to provide said 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. Contractor shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.

h. Contractor shall require sub Contractors that provide services under or related to this Agreement to comply with the above Living Wage provisions. Contractor shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to the Office of the City Administrator, Contract Compliance & Employment Services Division.

7. Professional Service Agreement - **Attachment C**

This Agreement is subject to the attached Professional Service Agreement. Please note that the City will not consider changes to its standard agreement.

8. Insurance Requirements - **"Attachment D"**

The Contractor will be required to provide proof of all insurance required for the work prior to execution of the contract, including copies of the 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 grounds for rescission of the contract award.

The Contractor shall name the City of Oakland, its Council members, directors, officers, agents, employees and volunteers as additional insured 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 is insufficient and will be rejected as proof of the additional insured requirement.**

Unless a written waiver is obtained from the City's Risk manager, Contractors must provide the insurance listed in **Schedule Q**. **Schedule Q** is attached and incorporated herein by reference as Attachment D. Liability insurance shall be required in accordance with Schedule Q.

When providing the insurance, include the Project Name and Project Number on the ACORD form in the section marked Description of Operations/Locations.

When providing the insurance, the Certificate Holder should be listed as: City of Oakland, DCP-Contract Administration, 250 Frank H. Ogawa Plaza, Suite 3341, Oakland, CA 94612

9. City Contractor Performance Evaluation – **Attachment E:**

At the end of the project, the Project Manager will evaluate the Contractor's Performance in accordance with the City Contractor Performance Evaluation program. Schedule L Consultant Performance Evaluation Schedule is provided.

10. Equal Benefits Ordinance **"Attachment F"**

This Agreement may be subject to the Equal Benefits Ordinance of Chapter 2.232.010 of the Oakland Municipal Code and its implementing regulations. The purpose of this Ordinance is to protect and further the public, health, safety, convenience, comfort, property and general welfare by requiring that public funds be expended in a manner so as to prohibit discrimination in the provision of employee benefits by City Contractors (contractors) between employees with spouses and employees with domestic partners, and/or between domestic partners and spouses of such employees. (Ord. 12394 (part), 2001)

The following contractors are subject to the Equal Benefits Ordinance: Entities which enter into a "contract" with the City for an amount of twenty-five thousand dollars ($25,000.00) or more for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided at the expense of the City or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of or collected by the city; and Entities which enter into a "property contract" pursuant to Section 2.32.020(D) with the City in an amount of twenty-five thousand dollars ($25,000.00) or more for the exclusive use of or occupancy (1) of real property owned or controlled by the city or (2) of real property owned by others for the city's use or occupancy, for a term exceeding twenty-nine (29) days in any calendar year.

The Ordinance shall only apply to those portions of a Contractor's operations that occur (1) within the city; (2) on real property outside the city if the property is owned by the city or if the city has a right to occupy the property, and if the contract's presence at that location is connected to a contract with the city; and (3) elsewhere in

the United States where work related to a city contract is being performed. The requirements of this chapter shall not apply to subcontracts or sub Contractors.

The Equal Benefits Ordinance requires among other things, submission of the attached and incorporated herein as **Schedule N-1** – Equal Benefits-Declaration of Nondiscrimination.

11. Prompt Payment Ordinance **"Attachment G"**

Any agreement awarded hereunder for the provision of goods and/or services directly to the City of Oakland, of any amount, are subject to the Prompt Payment Ordinance, Oakland Municipal Code, Title 2, Chapter 2.06. Contractors and their subcontractors are required to pay undisputed invoices of their subcontractors for goods and/or services within twenty (20) business days of submission of invoices, unless the Contractor / subcontractors notify the Liaison in writing within five (5) business days that there is a bona fide dispute between the Contractor / subcontractor and claimant, in which case the Contractor / subcontractor may withhold the disputed amount but is required to pay the undisputed amount.

Disputed payments are subject to investigation by the City of Oakland Liaison upon the filing of a compliant. Contractors / subcontractors opposing payment shall provide security in the form of cash, certified check or bond to cover the disputed amount and penalty during the investigation. If Contractor / subcontractor fails or refuses to deposit security, the City will withhold an amount sufficient to cover the claim from the next Contractor progress payment. The City, upon a determination that an undisputed invoice or payment is late, will release security deposits or withholds directly to claimants for valid claims.

Contractors and their subcontractors shall not be allowed to retain monies from subcontractor payments for goods as project retention, and are required to release subcontractor project retention in proportion to the subcontractor services rendered, for which payment is due and undisputed, within five (5) business days of payment. Contractors and their subcontractors are required to pass on to and pay subcontractors mobilization fees within five (5) business days of being paid such fees by the City. For the purpose of posting on the City's website, Contractors and their subcontractors are required to file notice with the City of release of retention and payment of mobilization fees, within five (5) business days of such payment or release; and, Contractors are required to file an affidavit, under penalty of perjury, that he or she has paid all subcontractors, within five (5) business days following receipt of payment from the City. The affidavit shall provide the names and address of all subcontractors and the amount paid to each.

Contractors and their subcontractors are required to include the same or similar provisions as those set forth above in this section in any contract with a contractor or subcontractor that delivers goods and/or services pursuant to or in connection with a City of Oakland purchase contract.

Contractors will be required to prepare and submit the following documents (attached) during the course of the contract:

- Prompt Payment Invoice Transmittal
- Affidavit Reporting Subcontractor Payments and

Contractors will be required to contest payments on the following form (attached):

- Prompt Payment Complaint & Investigation Form.

For more information regarding the Prompt Payment policy please contact the Prompt Payment Liaison, Vivian Inman at 510-238-6261.

12. Non-Discrimination/Equal Employment Practices

The City of Oakland prohibits contractors from discriminating or permitting discrimination against any person or group of persons in any manner prohibited by federal, state or local laws. During the performance of this Agreement, Contractors will be required to agree as follows:

a. Contractor and Contractor's sub Contractors, if any, shall not discriminate against any employee or applicant for employment because of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability. This nondiscrimination policy shall include, but not be limited to, the following: employment, upgrading, failure to promote, demotion or transfer, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

b. Contractor and Contractor's Sub-contractors shall state in all solicitations or advertisements for employees placed by or on behalf of Contractor that all qualified applicants will receive consideration for employment without regard to age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.

c. Contractor shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act by executing **Schedule C-1** ("Declaration of Compliance with the Americans with Disabilities Act,") attached hereto and incorporated herein.

d. If applicable, Contractor will send to each labor union or representative of workers with whom Contractor has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of Contractor's commitments under this nondiscrimination

clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

e. Contractor shall submit information concerning the ownership and workforce composition of Contractor's firm as well as its sub Contractors and suppliers, by completing **Schedule D** ("Ownership, Ethnicity and Gender Questionnaire"), **Schedule E** ("Project Contractor Team) attached and incorporated herein and made a part of this Agreement, and **Schedule F,** Exit Report and Affidavit, attached and incorporated herein and made a part of this Agreement.

f. All affirmative action efforts of Contractors are subject to tracking by the City. This information or data shall be used for statistical purposes only. All Contractors are required to provide data regarding the make-up of their sub Contractors and agents who will perform City contracts, including the race and gender of each employee and/or Contractor and his or her job title or function and the methodology used by Contractor to hire and/or contract with the individual or entity in question.

g. In the recruitment of sub Contractors, the City of Oakland requires all Contractors to undertake nondiscriminatory and equal outreach efforts, which include outreach to minorities and women-owned businesses as well as other segments of Oakland's business community. The City Administrator will track the City's MBE/WBE utilization to ensure the absence of unlawful discrimination on the basis of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability

h. In the use of such recruitment, hiring and retention of employees or sub Contractors, the City of Oakland requires all Contractors to undertake nondiscriminatory and equal outreach efforts which include outreach to minorities and women as well as other segments of Oakland's business community.

At the request of City Council, the Contract Compliance and Employment Services Division of the City Administrator's Office will monitor contracting activity for unlawful discrimination based on race, ethnicity or gender, and make periodic reports to the City Council. Furthermore, the City will immediately report evidence or instances of apparent discrimination in City or Agency contracts to the appropriate State and Federal agencies, and will take action against Contractors who are found to be engaging in discriminatory acts or practices by an appropriate State or Federal agency or court of law, up to and including termination or debarment.

13. Proposer's Qualifications

Proposer represents that it has the qualifications and skills necessary to perform the services described in this RFQ in a competent and professional manner without the advice or direction of the City. Proposer will perform services in accordance with the generally accepted principles and practices applicable to Proposer's trade or profession. The Proposer warrants that it will provide properly licensed, registered, and/or certified employees, subcontractors and agents as may be required under any applicable federal, state and local laws, statutes, ordinances, rules and regulations relating to Proposer's performance of the services described in this RFQ. Proposer will have complete and sole discretion for the manner in which the work described in this RFQ is performed. Prior to execution of this agreement, Proposers shall submit **Schedule M,** Independent Contractor Questionnaire, Part A, attached hereto.

14. City of Oakland Campaign Contribution Limits

Any agreement awarded in connection with this RFQ is subject to the City of Oakland Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code and its implementing regulations. The City of Oakland Campaign Reform Act prohibits Contractors that are doing business or seeking to do business with the City of Oakland from making campaign contributions to Oakland candidates for elected office between commencement of negotiations and either180 days after completion of, or termination of, contract negotiations.

Proposers must sign, date and submit an Acknowledgment of Campaign Contribution Limits Form attached hereto and incorporated herein as Schedule O, with the Bid Response / Response to RFQ/Qualification.

15. Nuclear Free Zone Disclosure

Proposers represents, pursuant to **Schedule P** ("Nuclear Free Zone Disclosure Form") that it is in compliance with the City of Oakland's restrictions on doing business with service providers considered nuclear weapons makers. Prior to execution of this agreement, the successful bidder / proposer will be required to complete **Schedule P**, attached hereto.

16. The following City staff are available to answer questions regarding this RFQ:

RFQ and Project Related issues:	Fendy Guan, Management Assistant Office of the City Clerk (510) 238-7979
	LaTonda Simmons, City Clerk Office of the City Clerk (510) 238-7370

LBE/SLBE	Vivian Inman, Contract Compliance Officer Department of Contracting and Purchasing (510) 238-6261
License, insurance, etc.:	Gwen McCormick, Contract Administration Department of Contracting and Purchasing (510) 238-6185

17. All responses to the RFQ become the property of the City.

18. The RFQ does not commit the City to award a contract or to pay any cost incurred in the preparation of the RFQ.

19. The City reserves the sole right to evaluate each RFQ and to accept or reject any or all RFQ received as a result of the RFQ process.

20. The City reserves the unqualified right to modify, suspend, or terminate at its sole discretion any and all aspects of the RFQ and/or RFQ process, to obtain further information from any and all proposers and to waive any defects as to form or content of the RFQ or any responses by any proposer.

21. The City may require a service provider to participate in negotiations and submit technical information or other revisions to the service provider's qualifications as may result from negotiations.

22. Once a final award is made, all RFQ responses and all attachments, exhibits and addendums, etc., except confidential financial and proprietary information, become a matter of public record and shall be regarded by the City as public records. The City shall not in any way be liable or responsible for the disclosure of any such records or portions thereof if the disclosure is made pursuant to a request under the Public Records Act or the City of Oakland Sunshine Ordinance.

23. The Fair Political Practices Act and/or California Government Code Section 1090, among other statutes and regulations may prohibit the City from contracting with a service provider if the service provider or an employee, officer or director of the service providers' firm, or any immediate family of the preceding, or any sub Contractor or contractor of the service provider, is serving as a public official, elected official, employee, board or commission member of the City who will award or influence the awarding of the contract or otherwise participate in the making of the contract. The making of a contract includes actions that are preliminary or preparatory to the selection of a Contractor such as, but not limited to, involvement in the reasoning, planning and/or drafting of solicitations for bids and RFQs, feasibility studies, master plans or preliminary discussions or negotiations.

B. SUBMITTAL REQUIREMENTS

Seven (7) copies of the RFQ are due at the Office of the City Clerk **no later than Wednesday, March 17, 2010 at 2:00pm.** Your RFQ may be sent via overnight mail or hand delivered to:

Ms. LaTonda Simmons, City Clerk
City of Oakland, City Hall
One Frank H. Ogawa Plaza
2nd Floor, Suite 201
Oakland, CA 94612,

All RFQ submitted via US Mail or Common Carrier must be delivered in a sealed package and the package must reference the project name, submittal date, time and location of the RFQ on the outside of the package or the documents **may not be** accepted.

C. REQUIRED RFQ ELEMENTS AND FORMAT

1. Transmittal Letter

   a. Addressed to **Ms. LaTonda Simmons**, Signed by an officer of the proposer. In case of joint venture or other joint-prime relationship, an officer of each venture partner shall sign.

2. Proposer

   a. In response to this RFQ, the proposer shall be a(n):

      - ID cards technology and system provider
      - Stored value or prepaid card system provider
      - Bank/ Financial institution

   b. Sub Contractors: list addresses, telephone numbers and areas of expertise of each. Briefly describe the project responsibility of each team member. Identify which contractors are MBE, WBE, Local Business Enterprises (LBE) and Small Local Business Enterprise (SLBE). Additionally, for LBEs/SLBEs, submit a copy of current business license and date established in Oakland.

3. Project Personnel

   a. Prime(s): Provide a detailed resume of the proposed principal-in-charge, lead Artist, and the project manager(s). The Project Manager(s) shall be a full-time employee of the prime(s). Clearly identify experience. The Proposer

shall be a professional currently licensed in the State of California. DO NOT SUBMIT OTHER RESUMES.

b. Sub-Contractors: Provide a detailed resume of the proposed project manager, who shall be a full-time employee of each sub-contractor for this project. Clearly identify relevant experience. He/she shall be a professional currently licensed in the State of California, if applicable. DO NOT SUBMIT OTHER RESUMES.

4. Relevant Experience

Please address the items below with examples if applicable. If the proposer has worked together collaboratively, please include a description of this work.

a. Describe experience in providing the necessary services and project management of at least three (3) projects similar in size and scope to this project.

b. Describe experience and qualifications for proposed services include, but are not limited to the following:

- Providing an in-house system to be used by City of Oakland to perform intake, processing, verification, and distribution of a secured municipal identification card with required identified system components and service capacity as listed in the Scope of Services section

- Providing a service for perform intake processing, verification, and distribution of a secured municipal identification card with required service capacity as listed in the Scope of Services section with or without the stored value/prepaid card component

- Providing the stored value/prepaid card component to the Municipal ID card holders as listed in the Scope of Services section

c. Describe experience and ability to work effectively with City staff, community groups, and other stakeholders, and addressing the various interests in developing a successful project.

5. Project Approach and Organization

a. Present your concept of the approach and organization required for this project. Indicate your understanding of the critical project elements, and what special approaches your team will feature to control these elements.

b. Describe how you intend to interface with City staff and the community.

6. References

a. Primes(s): Three business related references, giving name, company, address, telephone number and business relationship.

b. Proposed Project Manager(s): Two business related references, giving name, company, address, telephone number and business relationship to project manager.

7. Hourly Billing Rates

a. Provide a complete list of all staff hourly rates by category, i.e., Principal, Project Manager, Project Professional, Technician, Clerical, etc. Hourly rates shall be all-inclusive, i.e., base salary, fringe benefits, overhead, profit, etc.

8. Required Exhibits - Please see listing of required documents under Section VIII of the Table of Contents. Submit all of the required documents with your RFQ.

A. Declaration of Compliance with ADA (Schedule C-1)
B. Ownership, Ethnicity, Gender Questionnaire (Schedule D): To be completed by prime contractor and all sub-consultants.
C. Project Consultant Team (Schedule E): To be completed by prime consultant only.
D. Independent Consultant Questionnaire – Part A (Schedule M)
E. Declaration of Compliance/Living Wage Ordinance. (Schedule N)
F. Equal Benefits – Declaration of Nondiscrimination (Schedule N-1)
G. Campaign Contribution Limitations and Reporting (Schedule O)
H. Nuclear Free Zone Disclosure (Schedule P)
I. Insurance Requirements - Professional and Specialized Services (Schedule Q)
J. Compliance Commitment Agreement (Schedule U)
K. Affidavit of Non-Disciplinary or Investigatory Action (Schedule V)

D. REJECTION OF RFQ ELEMENTS

The City reserves the right to reject any or all RFQ, whether or not minimum qualifications are met, and to at any point modify RFQ and project requirements, and to postpone, or cancel the RFQ without liability, obligation, or commitment to any party, firm, or organization. In addition, the City reserves the right to request and obtain additional information from any candidate submitting a RFQ. **Furthermore, there is a RISK OF RFQ BEING REJECTED for any of the following reasons:**

1. RFQ received after designated time and date.

2. RFQ not in compliance with the City of Oakland Local/Small Local Business Enterprise Program.

3. RFQ not containing the required elements, exhibits, nor organized in the required format.

4. RFQ considered not fully responsive to this RFQ.

5. RFQ contains excess or extraneous material not called for in the RFQ.

V. EVALUATION PROCESS (Suggested format only)

A. EVALUATION OF RFQ

The City has allocated approximately ten (10) working days for review of the RFQ. The following specific criteria and the points for each criterion, for a total of 100 points, will be used in evaluating and rating the RFQ:

1. RELEVANT EXPERIENCE (25 points)
   a. Past, recently completed, or on-going projects that will substantiate experience.

   b. Experience on at least three (3) projects providing services similar to those described in this RFQ.

   c. Prior experience and ability to work with City staff, community groups, and other stakeholders, and addressing the various interests in developing a successful project.

   d. Respondents must provide sufficient information for City to conduct due diligence/background checks on the proposed provider.

2. QUALIFICATIONS (5 points)

   a. Professional background and qualifications of team members and firms comprising the team.

3. ORGANIZATION (20 points)

   a. Current workload.

   b. Available staff.

   c. Resources.

   d. Capacity and flexibility to meet schedules, including any unexpected work.

e. Ability to perform on short notice and under time constraints.

f. Cost control procedures in design and construction.

g. Ability to perform numerous projects at the same time.

4. APPROACH (20 points)

a. Understanding of the nature and extent of the services required.

b. A specific outline of how the work will be performed.

c. Awareness of potential problems and providing possible solutions.

d. Special resources the team offers that are relevant to the successful completion of the project.

5. Local and Small Local Certified Business Participation (2-5 Points)

6. OTHER FACTORS (10 points)

a. Presentation, completeness, clarity, organization, and responsiveness of RFQ.

B. INTERVIEW OF SHORT-LISTED PROPOSER

1. It is anticipated that approximately three proposers will be invited to interview. The selected proposer will be notified in writing, and will be required to submit a detailed work scope, work schedule, and labor distribution spreadsheet (estimated hours by task by staff) the day before the interview. It is presently anticipated that the interviews will be conducted within five (5) working days of notification.

2. The interviews will last approximately 60 minutes, with the time allocated equally between the team's presentation and a question-and-answer period. The proposer should be prepared to discuss at the interview their specific experience providing services similar to those described in the RFQ, project approach, estimated work effort, available resources, and other pertinent areas that would distinguish them. Interviews will be held at a City of Oakland office (exact location to be determined).

3. Overall Rating Criteria: The following specific criteria and the points for each criterion, for a total of 100 points, will be used in evaluating and rating the short-listed firms:

a. Presentation: 40 points

Scoring criteria is similar to that of the RFQ criteria.

- Relevant Experience
- Qualifications.
- Organization.
- Approach.
- Other Factors

b. Request for RFQ Submittal: 25 points

Total points from the initial review of the RFQ will be allocated proportionally based on a maximum allowance of 20 points.

c. Interview / Questions: 35 points

VI. SELECTION PROCESS

A. CONTRACT NEGOTIATIONS

1. The completion of the interview process will result in the proposers being numerically ranked. The team ranked first will be invited to participate in contract negotiations. Should the City and the first ranked team not be able to reach an agreement as to contract terms within a reasonable timeframe, the City may terminate the negotiations and begin negotiations with the team that is next in line, and proceed down the list as necessary until an agreement is reached or the list is exhausted.

2. The contract amount (including reimbursables) shall be a not-to-exceed amount, to be established based upon a mutually agreeable Scope of Services and fee Schedule.

3. The City will withhold the final 10% of contract amount pending successful completion of work.

B. CONTRACT AWARD

1. Upon successful completion of the negotiations, a request by City staff to the City Council will be made to authorize the award of the contract to the selected team.

2. A City of Oakland professional services agreement is included in this RFQ as **Attachment "C".** The selected team will be required to enter into a contract with the same terms and conditions. The City will not make any modifications to its standard agreement terms and provisions.

3. Upon authorization to award the contract by the City Council and execution of the contract and completion and submission of required schedules and other documents, the City will issue a Notice to Proceed.

4. The selected team and its other members will be required to maintain auditable records, documents, and papers for inspection by authorized local, state and federal

representatives. Therefore, the team and its other members may be required to undergo an evaluation to demonstrate that the team uses recognized accounting and financial procedures.

END OF RFQ

City and Other Agencies Systems List

Attachment A

1) Existing Oakland Systems:

Site	Card Type	System Used
Children's Fairyland	Membership	Microsoft Retail Management System is the software used to scan membership cards and input them into Blackbaud Raiser's Edge, which contains barcodes, which are then input into the POS scanner provided by East Bay POS
Library	Library Card	Millennium
Museum	Membership	Manually logged presently, but in the future they will use the Vista system provided by Ticketmaster
Oakland Zoo	Membership	No tracking system is used currently, just ID verification but in the future, they will use Gateway Galaxy

2) Other Agencies within the City of Oakland:

- Oakland Unified School District (OUSD)
- AC Transit
- Peralta College

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 ~~o~~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.

PROFESSIONAL OR SPECIALIZED SERVICE AGREEMENT
BETWEEN THE CITY OF OAKLAND
AND
SAMPLE

Whereas, the City Council has authorized the City Administrator to enter into contracts for professional or specialized services if the mandates of Oakland City Charter Section 902(e) have been met.

Now therefore the parties to this Agreement covenant as follows:

1. Parties and Effective Date

This Agreement is made and entered into as of_____, 2009 between the City of Oakland, a municipal corporation, ("City"), One Frank H. Ogawa Plaza, Oakland, California 94612, and _____("Contractor")

2. Scope of Services

Contractor agrees to perform the services specified in **Schedule A,** Scope of Services attached to this Agreement and incorporated herein by reference. Contractor shall designate an individual who shall be responsible for communications with the City for the duration of this Agreement. **Schedule A** includes the manner of payment. The Project Manager for the City shall be «PM_Name»

3. Time of Performance

Contractor's services shall begin on *(month) (day), (year),* and shall be completed by *(month) (day), (year).*

4. Compensation and Method of Payment

Contractor will be paid for performance of the scope of services an amount that will be based upon actual costs but that will be "Capped" so as not to exceed $«Amount_of_Agreement», based upon the scope of services in **Schedule A** and the budget by deliverable task and billing rates in **Schedule A and or B.** The maximum that will be charged for the entire scope of work will not exceed the Capped amount, even if the Contractor's actual costs exceed the Capped amount. Invoices shall state a description of the **deliverable** completed and the amount due. Payment will be due upon completion and acceptance of the deliverables as specified in the Scope of Services.

OR

Contractor will be paid for performance of the entire scope of work set forth in **Schedule A** an amount not to exceed $«Amount_of_Agreement» Payment(s) of the **fee(s) or lump sum(s)** stated in **Schedule A** for each of the **deliverables,** shall be due upon completion and acceptance of each of the **deliverables,** at which time Contractor shall submit an invoice. Invoices shall state a description of the **deliverable** completed and the amount due.

OR

Contractor will be paid for performance of the entire scope of work set forth in **Schedule A** an amount not to exceed $«Amount_of_Agreement». Payment at the **rates** stated in **Schedule A**, shall be due upon completion and acceptance of the **services**, at which time Contractor shall submit an invoice. Invoices shall state a description of the **services** completed and the amount due.

In the aggregate, progress payments will not exceed ninety percent (90%) of the total amount of the contract, with the balance to be paid upon satisfactory completion of the contract. Progress, or other payments, will be based on at least equivalent services rendered, and will not be made in advance of services rendered.

In computing the amount of any progress payment (this includes any partial payment of the contract price during the progress of the work, even though the work is broken down into clearly identifiable stages, or separate tasks), the City will determine the amount that the contractor has earned during the period for which payment is being made, on the basis of the contract terms. The City will retain out of such earnings an amount at least equal to ten percent (10%), pending satisfactory completion of the entire contract.

5. Independent Contractor

a. Rights and Responsibilities

It is expressly agreed that in the performance of the services necessary to carry out this Agreement, Contractor shall be, and is, an independent contractor, and is not an employee of the City. Contractor has and shall retain the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting Contractor in the performance of Contractor's services hereunder. Contractor shall be solely responsible for all matters relating to the payment of his/her employees, including compliance with social security, withholding and all other regulations governing such matters, and shall be solely responsible for Contractor's own acts and those of Contractor's subordinates and employees. Contractor will determine the method, details and means of performing the services described in **Schedule A**.

b. Contractor's Qualifications

Contractor represents that Contractor has the qualifications and skills necessary to perform the services under this Agreement in a competent and professional manner without the advice or direction of The City. The Contractor warrants that the Contractor, and the Contractor's employees and sub-consultants are properly licensed, registered, and/or certified as may be required under any applicable federal, state and local laws, statutes, ordinances, rules and regulations relating to Contractor's performance of the Services. All Services provided pursuant to this

Agreement shall comply with all applicable laws and regulations. Contractor will promptly advise City of any change in the applicable laws, regulations, or other conditions that may affect City's program. This means Contractor is able to fulfill the requirements of this Agreement. Failure to perform all of the services required under this Agreement will constitute a material breach of the Agreement and may be cause for termination of the Agreement. Contractor has complete and sole discretion for the manner in which the work under this Agreement is performed. Prior to execution of this agreement, Contractor shall complete **Schedule M,** Independent Contractor Questionnaire, attached hereto.

c. Payment of Income Taxes

Contractor is responsible for paying, when due, all income taxes, including estimated taxes, incurred as a result of the compensation paid by the City to Contractor for services under this Agreement. On request, Contractor will provide the City with proof of timely payment. Contractor agrees to indemnify the City for any claims, costs, losses, fees, penalties, interest or damages suffered by the City resulting from Contractor's failure to comply with this provision.

d. Non-Exclusive Relationship

Contractor may perform services for, and contract with, as many additional clients, persons or companies as Contractor, in his or her sole discretion, sees fit.

e. Tools, Materials and Equipment

Contractor will supply all tools, materials and equipment required to perform the services under this Agreement.

f. Cooperation of the City

The City agrees to comply with all reasonable requests of Contractor necessary to the performance of Contractor's duties under this Agreement.

g. Extra Work

Contractor will do no extra work under this Agreement without first receiving prior written authorization from the City.

6. Proprietary of Confidential Information of the City

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by the City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the City. Contractor agrees that all information disclosed by the City to

Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

7. Ownership of Results

Any interest of Contractor or its Subcontractors, in specifications, studies, reports, memoranda, computation documents prepared by Contractor or its Subcontractors in drawings, plans, sheets or other connection with services to be performed under this Agreement shall be assigned and transmitted to the City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

8. Copyright

Contractor shall execute appropriate documents to assign to the City the copyright to works created pursuant to this Agreement.

9. Audit

Contractor shall maintain (a) a full set of accounting records in accordance with generally accepted accounting principles and procedures for all funds received under this Agreement; and (b) full and complete documentation of performance related matters such as benchmarks and deliverables associated with this Agreement.

Contractor shall (a) permit the City to have access to those records for the purpose of making an audit, examination or review of financial and performance data pertaining to this Agreement; and (b) maintain such records for a period of four years following the last fiscal year during which the City paid an invoice to Contractor under this Agreement.

In addition to the above, Contractor agrees to comply with all audit, inspection, recordkeeping and fiscal reporting requirements incorporated by reference.

10. Agents/Brokers

Contractor warrants that Contractor has not employed or retained any subcontractor, agent, company or person other than bona fide, full-time employees of Contractor working solely for Contractor, to solicit or secure this Agreement, and that Contractor has not paid or agreed to pay any subcontractor, agent, company or persons other than bona fide employees any fee, commission, percentage, gifts or any other consideration, contingent upon or resulting from the award of this Agreement. For breach or violation of this warranty, the City shall have the right to rescind this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage or gift.

11. Assignment

Contractor shall not assign or otherwise transfer any rights, duties, obligations or interest in this Agreement or arising hereunder to any person, persons, entity or entities whatsoever without the prior written consent of the City and any attempt to assign or transfer without such prior written consent shall be void. Consent to any single assignment or transfer shall not constitute consent to any further assignment or transfer.

12. Publicity

Any publicity generated by Contractor for the project funded pursuant to this Agreement, during the term of this Agreement or for one year thereafter, will make reference to the contribution of the City of Oakland in making the project possible. The words "City of Oakland" will be explicitly stated in all pieces of publicity, including but not limited to flyers, press releases, posters, brochures, public service announcements, interviews and newspaper articles.

City staff will be available whenever possible at the request of Contractor to assist Contractor in generating publicity for the project funded pursuant to this Agreement. Contractor further agrees to cooperate with authorized City officials and staff in any City-generated publicity or promotional activities undertaken with respect to this project.

13. Title of Property

Title to all property, real and personal, acquired by the Contractor from City funds shall vest in the name of the City of Oakland and shall be accounted for by means of a formal set of property records. Contractor acknowledges it is responsible for the protection, maintenance and preservation of all such property held in custody for the City during the term of the Agreement. The Contractor shall, upon expiration of termination of this Agreement, deliver to the City all of said property and documents evidencing title to same. In the case of lost or stolen items or equipment, the Contractor shall immediately notify the Police Department, obtain a written police report and notify the City in accordance with "Notice" section of this Agreement.

Contractor shall provide to the City Auditor all property-related audit and other reports required under this Agreement. In the case of lost or stolen items or equipment, the Contractor shall immediately notify the Police Department, obtain a written police report and notify the City in accordance with the "Notice" section of this Agreement.

Prior to the disposition or sale of any real or personal property acquired with City funds, Contractor shall obtain approval by the City Council and City Administrator in accord with the requirements for disposal or sale of real or personal surplus property set forth in the Oakland City Charter and/or Oakland Municipal Code Title 2.04, Chapter 2.04.120. Surplus supplies and equipment – Disposal or Destruction.

14. Insurance

Unless a written waiver is obtained from the City's Risk Manager, Contractor must provide the insurance listed in **Schedule Q,** Insurance Requirements. **Schedule Q** is attached and incorporated herein by reference.

15. Indemnification

a. Notwithstanding any other provision of this Agreement, Contractor shall indemnify and hold harmless (and at City's request, defend) City, and each of their respective Councilmembers, officers, partners, agents, and employees (each of which persons and organizations are referred to collectively herein as "Indemnitees" or individually as "Indemnitee") from and against any and all liabilities, claims, lawsuits, losses, damages, demands, debts, liens, costs, judgments, obligations, administrative or regulatory fines or penalties, actions or causes of action, and expenses (including reasonable attorneys' fees) caused by or arising out of any:

(i) Breach of Contractor's obligations, representations or warranties under this Agreement;

(ii) Act or failure to act in the course of performance by Contractor under this Agreement;

(iii) Negligent or willful acts or omissions in the course of performance by Contractor under this Agreement;

(iii) Claim for personal injury (including death) or property damage to the extent based on the strict liability or caused by any negligent act, error or omission of Contractor;

(v) Unauthorized use or disclosure by Contractor of Confidential Information as provided in Section 6 above; and

(vi) Claim of infringement or alleged violation of any United States patent right or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights of any third party.

b. For purposes of the preceding Subsections (i) through (vi), the term "Contractor" includes Contractor, its officers, directors, employees, representatives, agents, servants, sub-consultants and subcontractors.

c. City shall give Contractor prompt written notice of any such claim of loss or damage and shall cooperate with Contractor, in the defense and all related settlement negotiations to the extent that cooperation does not conflict with City's interests.

d. Notwithstanding the foregoing, City shall have the right if Contractor fails or refuses to defend City with Counsel acceptable to City to engage its own counsel for the purposes of participating in the defense. In addition, City shall have the right to withhold any

payments due Contractor in the amount of anticipated defense costs plus additional reasonable amounts as security for Contractor's obligations under this Section 15. In no event shall Contractor agree to the settlement of any claim described herein without the prior written consent of City.

e. Contractor acknowledges and agrees that it has an immediate and independent obligation to indemnify and defend Indemnitees from any action or claim which potentially falls within this indemnification provision, which obligation shall arise at the time any action or claim is tendered to Contractor by City and continues at all times thereafter, without regard to any alleged or actual contributory negligence of any Indemnitee. Notwithstanding anything to the contrary contained herein, Contractor's liability under this Agreement shall not apply to any action or claim arising from the sole negligence, active negligence or willful misconduct of an Indemnitee.

f. All of Contractor's obligations under this Section 15 are intended to apply to the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782) and shall survive the expiration or sooner termination of this Agreement.

g. The indemnity set forth in this Section 15 shall not be limited by the City's insurance requirements contained in Schedule C hereof, or by any other provision of this Agreement. City's liability under this Agreement shall be limited to payment of Contractor in accord to the terms and conditions under this Agreement and shall exclude any liability whatsoever for consequential or indirect damages even if such damages are foreseeable.

16. Right to Offset Claims for Money

All claims for money due or to become due from City shall be subject to deduction or offset by City from any monies due Contractor by reason of any claim or counterclaim arising out of: i) this Agreement, or ii) any purchase order, or iii) any other transaction with Contractor.

17. Prompt Payment Ordinance

This contract is subject to the Prompt Payment Ordinance of Oakland Municipal Code, Title 2, Chapter 2.06 (Ordinance 12857 C.M.S, passed January 15, 2008 and effective February 1, 2008). The Ordinance requires that, unless specific exemptions apply, the Contractor and its subcontractors shall pay undisputed invoices of their subcontractors for goods and/or services within twenty (20) business days of submission of invoices unless the Contractor or its subcontractors notify the Liaison in writing within five (5) business days that there is a bona fide dispute between the Contractor or its subcontractor and claimant, in which case the Contractor or its subcontractor may withhold the disputed amount but shall pay the undisputed amount.

Disputed late payments are subject to investigation by the City of Oakland Liaison, Office of Contract Compliance, upon the filing of a complaint. Contractor or its subcontractors opposing payment shall provide security in the form of cash, certified check or bond to cover the disputed amount and penalty during the investigation. If Contractor or its subcontractor

fails or refuses to deposit security, the City will withhold an amount sufficient to cover the claim from the next Contractor progress payment. The City, upon a determination that an undisputed invoice or payment is late, will release security deposits or withholds directly to claimants for valid claims.

Contractor and its subcontractors shall not be allowed to retain monies from subcontractor payments for goods as project retention, and are required to release subcontractor project retention in proportion to the subcontractor services rendered, for which payment is due and undisputed, within five (5) business days of payment. Contractor and its subcontractors shall be required to pass on to and pay subcontractors mobilization fees within five (5) business days of being paid such fees by the City. For the purpose of posting on the City's website, Contractor and its subcontractors, are required to file notice with the City of release of retention and payment of mobilization fees, within five (5) business days of such payment or release; and, Contractor is required to file an affidavit, under penalty of perjury, that he or she has paid all subcontractors, within five (5) business days following receipt of payment from the City. The affidavit shall provide the names and address of all subcontractors and the amount paid to each.

If any amount due by a prime contractor or subcontractor to any claimant for goods and/or services rendered in connection with a purchase contract is not timely paid in accordance the Prompt Payment ordinance, the prime Contractor or subcontractor shall owe and pay to the claimant interest penalty in the amount of ten percent (10%) of the improperly withheld amount per year for every month that payment is not made, provided the claimant agrees to release the prime contractor or subcontractor from any and all further interest penalty that may be claimed or collected on the amount paid. Claimants that receive interest payments for late payment Prompt Payment ordinance may not seek further interest penalties on the same late payment in law or equity.

Contractor and its subcontractors shall include the same or similar provisions as those set forth above in this section in any contract with another contractor or subcontractor that delivers goods and/or services pursuant to or in connection with this City of Oakland purchase contract.

Prompt Payment invoice and claim forms are available at the following City of Oakland website: http://cces.oaklandnet.com/cceshome/ by clicking on the rightmost upper tab labeled Prompt Payment Ordinance. Invoice and claim inquiries should be directed to Vivian Inman, City of Oakland Liaison, 510-238-6261, Office of Contract Compliance, 250 Frank H. Ogawa Plaza, Suite 3341, Oakland, CA 94612.

18. Termination on Notice

The City may terminate this Agreement immediately for cause or without cause upon giving (30) calendar days' written notice to Contractor. Unless otherwise terminated as provided in this Agreement, this Agreement will terminate on «Termination_Date».

19. Conflict of Interest

a. Contractor

The following protections against conflict of interest will be upheld:

i. Contractor certifies that no member of, or delegate to the Congress of the United States shall be permitted to share or take part in this Agreement or in any benefit arising therefrom.

ii. Contractor certifies that no member, officer, or employee of the City or its designees or agents, and no other public official of the City who exercises any functions or responsibilities with respect to the programs or projects covered by this Agreement, shall have any interest, direct or indirect in this Agreement, or in its proceeds during his/her tenure or for one year thereafter.

iii. Contractor shall immediately notify the City of any real or possible conflict of interest between work performed for the City and for other clients served by Contractor.

iv. Contractor warrants and represents, to the best of its present knowledge, that no public official or employee of City who has been involved in the making of this Agreement, or who is a member of a City board or commission which has been involved in the making of this Agreement whether in an advisory or decision-making capacity, has or will receive a direct or indirect financial interest in this Agreement in violation of the rules contained in California Government Code Section 1090 et seq., pertaining to conflicts of interest in public contracting. Contractor shall exercise due diligence to ensure that no such official will receive such an interest.

v. Contractor further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matters already made by Contractor to City, that (1) no public official of City who has participated in decision-making concerning this Agreement or has used his or her official position to influence decisions regarding this Agreement, has an economic interest in Contractor or this Agreement, and (2) this Agreement will not have a direct or indirect financial effect on said official, the official's spouse or dependent children, or any of the official's economic interests. For purposes of this paragraph, an official is deemed to have an "economic interest" in any (a) for-profit business entity in which the official has a direct or indirect investment worth $2,000 or more, (b) any real property in which the official has a direct or indirect interest worth $2,000 or more, (c) any for-profit business entity in which the official is a director, officer, partner, trustee, employee or manager, or (d) any source of income or donors of gifts to the official (including nonprofit entities) if the income or value of the gift totaled more than $500 the previous year. Contractor agrees to promptly

disclose to City in writing any information it may receive concerning any such potential conflict of interest. Contractor's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 et seq.) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 et seq.).

vi. Contractor understands that in some cases Contractor or persons associated with Contractor may be deemed a "city officer" or "public official" for purposes of the conflict of interest provisions of Government Code Section 1090 and/or the Political Reform Act. Contractor further understands that, as a public officer or official, Contractor or persons associated with Contractor may be disqualified from future City contracts to the extent that Contractor is involved in any aspect of the making of that future contract (including preparing plans and specifications or performing design work or feasibility studies for that contract) through its work under this Agreement.

vii. Contractor shall incorporate or cause to be incorporated into all subcontracts for work to be performed under this Agreement a provision governing conflict of interest in substantially the same form set forth herein.

b. No Waiver

Nothing herein is intended to waive any applicable federal, state or local conflict of interest law or regulation

c. Remedies and Sanctions

In addition to the rights and remedies otherwise available to the City under this Agreement and under federal, state and local law, Contractor understands and agrees that, if the City reasonably determines that Contractor has failed to make a good faith effort to avoid an improper conflict of interest situation or is responsible for the conflict situation, the City may (1) suspend payments under this Agreement, (2) terminate this Agreement, (3) require reimbursement by Contractor to the City of any amounts disbursed under this Agreement. In addition, the City may suspend payments or terminate this Agreement whether or not Contractor is responsible for the conflict of interest situation.

20. Non-Discrimination/Equal Employment Practices

Contractor shall not discriminate or permit discrimination against any person or group of persons in any manner prohibited by federal, state or local laws. During the performance of this Agreement, Contractor agrees as follows:

a. Contractor and Contractor's subcontractors, if any, shall not discriminate against any employee or applicant for employment because of age, marital status, religion, gender,

sexual orientation, gender identity, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability. This nondiscrimination policy shall include, but not be limited to, the following: employment, upgrading, failure to promote, demotion or transfer, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

b. Contractor and Contractor's Subcontractors shall state in all solicitations or advertisements for employees placed by or on behalf of Contractor that all qualified applicants will receive consideration for employment without regard to age, marital status, religion, gender, sexual orientation, gender identity, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.

c. Contractor shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act by executing **Schedule C-1,** Declaration of Compliance with the Americans with Disabilities Act, attached hereto and incorporated herein.

d. If applicable, Contractor will send to each labor union or representative of workers with whom Contractor has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of Contractor's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

21. Local and Small Local Business Enterprise Program (L/SLBE)

a. *Requirement* - There is a twenty percent (20%) minimum participation requirement for all professional services contracts $50,000 or more. Contractors shall comply with the twenty percent (20%) local business participation requirement at a rate of ten percent (10%) local and 10% small local business participation. The requirement may be satisfied by a certified prime consultant and/or sub-consultant(s) or a small local certified firm may meet the twenty percent requirement. A business must be certified by the City of Oakland in order to earn credit toward meeting the twenty percent requirement.

b. Good Faith Effort - In light of the twenty percent requirement, good faith effort documentation is not necessary.

c. Incentives – Upon satisfying the twenty percent requirement, a consultant will earn two (2) preference points. Three additional preference points may be earned at a rate of one point for every additional ten percent participation up to fifty percent participation of the total contract dollars attributable to local certified firms.

d. Banking – The City will allow banking of credits for L/SLBE participation that exceeds fifty percent (50%) on a City funded project and will allow consultants to accumulate credits for hiring certified local businesses and certified small local businesses on non-

city funded projects within a year of the City funded project. Banked credits will count toward achieving a bid discount or preference points (up to 2%) on a City contract. The ability of firms to bank credits or hours on non-City projects will not be retroactive. Consultants will have one year to apply credits. A certificate validating banked credits must be issued by the City prior to the submittal or bid date.

e. The Exit Report and Affidavit (ERA) – This report declares the level of participation achieved and will be used to calculate banked credits. The prime consultant must complete the **Schedule F**, Exit Report and Affidavit for, and have it executed by, each L/SLBE sub consultant and submitted to the City Administrator's Office of Contract Compliance & Employment Services along with a *copy* of the final progress payment application.

f. Joint Venture and Mentor Protégé Agreements. If a prime contractor or prime consultant is able to develop a Joint Venture or "Mentor-Protégé" relationship with a certified LBE or SLBE, the mentor or Joint Venture partners will enjoy the benefit of credits against the participation requirement. In order to earn credit for Joint Venture or Mentor-Protégé relationships, the Agreement must be submitted for approval to Contract Compliance and Employment Services prior to the project bid date for construction, and by proposal due date for professional services contracts. Joint Venture Applications and elements of City approved Mentor Protégé relation are available upon request.

g. Contractor shall submit information concerning the ownership and workforce composition of Contractor's firm as well as its subcontractors and suppliers, by completing **Schedule D,** Ownership, Ethnicity, and Gender Questionnaire, and **Schedule E,** Project Consultant Team, attached and incorporated herein and made a part of this Agreement.

h. All affirmative action efforts of Contractor are subject to tracking by the City. This information or data shall be used for statistical purposes only. All contractors are required to provide data regarding the make-up of their subcontractors and agents who will perform City contracts, including the race and gender of each employee and/or contractor and his or her job title or function and the methodology used by Contractor to hire and/or contract with the individual or entity in question.

i. In the recruitment of subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts, which include outreach to minorities and women-owned businesses as well as other segments of Oakland's business community. The City Administrator will track the City's MBE/WBE utilization to ensure the absence of unlawful discrimination on the basis of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.

j. In the use of such recruitment, hiring and retention of employees or subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts which include outreach to minorities and women as well as other segments of Oakland's business community.

22. Living Wage Ordinance

If the contract amount of this Agreement is equal to or greater than $25,000 annually, then Contractor must comply with the Oakland Living Wage Ordinance. The Living Wage Ordinance requires that nothing less than a prescribed minimum level of compensation (a living wage) be paid to employees of service contractors (consultants) of the City and employees of CFARs (Ord. 12050 § 1, 1998). The Ordinance also requires submission of the Declaration of Compliance attached and incorporated herein as **Schedule N** and made part of this Agreement, and, unless specific exemptions apply or a waiver is granted, the consultant must provide the following to its employees who perform services under or related to this Agreement:

a. Minimum compensation – Said employees shall be paid an initial **hourly wage rate of $10.83 with health benefits or $12.45 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. **Effective July 1st of each year, Contractor shall pay adjusted wage rates.**

b. Health benefits – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least $1.62 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.

c. 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.

d. To inform employees that he or she may be eligible for Earned Income Credit (EIC) and shall provide forms to apply for advance EIC payments to eligible employees. There are several websites and other sources available to assist you. Web sites include but are not limited to: (1) http://www.irs.gov. for current guidelines as prescribed by the Internal Revenue Service and (2) the 2005 Earned Income Tax Outreach Kit http://www.cbpp.org/eic2008/

e. 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 the above-referenced information.

f. 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.

g. Reporting – Contractor shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. Contractor shall provide a copy of said list to the Office of Contract Compliance, on a quarterly basis, by March 31, June 30, September 30 and December 31 for the applicable compliance period. Failure to provide said 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. Contractor shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.

h. 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 above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to the Office of the City Administrator, Contract Compliance & Employment Services Division.

23. Equal Benefits Ordinance

This Agreement is subject to the Equal Benefits Ordinance of Chapter 2.232.010 of the Oakland Municipal Code and its implementing regulations. The purpose of this Ordinance is to protect and further the public, health, safety, convenience, comfort, property and general welfare by requiring that public funds be expended in a manner so as to prohibit discrimination in the provision of employee benefits by City contractors(consultants) between employees with spouses and employees with domestic partners, and/or between domestic partners and spouses of such employees. (Ord. 12394 (part), 2001)

The following contractors are subject to the Equal Benefits Ordinance: Entities which enter into a "contract" with the City for an amount of twenty-five thousand dollars ($25,000.00) or more for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided at the expense of the City or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of or collected by the city; and Entities which enter into a "property contract" pursuant to Section 2.32.020(D) with the City in an amount of twenty-five thousand dollars ($25,000.00) or more for the exclusive use of or occupancy (1) of real property owned or controlled by the city or (2) of real property owned by others for the city's use or occupancy, for a term exceeding twenty-nine (29) days in any calendar year.

The Ordinance shall only apply to those portions of a contractor's operations that occur (1) within the city; (2) on real property outside the city if the property is owned by the city or if the city has a right to occupy the property, and if the contract's presence at that location is connected to a contract with the city; and (3) elsewhere in the United States where work related to a city contract is being performed. The requirements of this chapter shall not apply to subcontracts or subcontractors of any contract or contractor

The Equal Benefits Ordinance requires among other things, submission of the attached and incorporated herein as **Schedule N-1,** Equal Benefits-Declaration of Nondiscrimination.

24. City of Oakland Campaign Contribution Limits

This Agreement is subject to the City of Oakland Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code and its implementing regulations if it requires Council approval. The City of Oakland Campaign Reform Act prohibits contractors that are doing business or seeking to do business with the City of Oakland from making campaign contributions to Oakland candidates between commencement of negotiations and either 180 days after completion of, or termination of, contract negotiations.

If this Agreement requires Council approval, Contractor must sign and date an Acknowledgment of Campaign Contribution Limits Form attached hereto and incorporated herein as **Schedule O**.

25. Nuclear Free Zone Disclosure

Contractor represents, pursuant to **Schedule P**, Nuclear Free Zone Disclosure Form, that Contractor is in compliance with the City of Oakland's restrictions on doing business with service providers considered nuclear weapons makers. Prior to execution of this agreement, Contractor shall complete **Schedule P**, attached hereto.

26. Political Prohibition

Subject to applicable State and Federal laws, moneys paid pursuant to this Agreement shall not be used for political purposes, sponsoring or conducting candidate's meetings, engaging in voter registration activity, nor for publicity or propaganda purposes designed to support or defeat legislation pending before federal, state or local government.

27. Religious Prohibition

There shall be no religious worship, instruction, or proselytization as part of, or in connection with the performance of the Agreement.

28. Business Tax Certificate

Contractor shall obtain and provide proof of a valid City business tax certificate. Said certificate must remain valid during the duration of this Agreement.

29. Abandonment of Project

The City may abandon or indefinitely postpone the project or the services for any or all of the project at any time. In such event, the City shall give thirty (30) days written notice of such abandonment. In the event of abandonment prior to completion of the final drawings, if applicable, and cost estimates, Contractor shall have the right to expend a reasonable amount of additional time to assemble work in progress for the purpose of proper filing and closing the job. Prior to expending said time, Contractor shall present to the City a complete report of said proposed job closure and its costs, and the City may approve all or any part of said expense. Such additional time shall not exceed ten percent (10%) of the total time expended to the date of notice of termination. All charges thus incurred and approved by the City, together with any other charges outstanding at the time of termination, shall be payable by the City within thirty (30) days following submission of a final statement by Contractor.

Should the project or any portion thereof be abandoned, the City shall pay the Contractor for all services performed thereto in accordance with the terms of this Agreement.

30. Validity of Contracts

This Agreement shall not be binding or of any force or effect until it is: i) approved by resolution of the City Council as required by the Oakland City Charter, Oakland Municipal Code Title 2.04 and Oakland City Council Rules of Procedure, ii) approved for form and legality by the Office of the City Attorney, and iii) signed by the City Administrator or his or her designee.

31. Governing Law

This Agreement shall be governed by the laws of the State of California.

32. Notice

If either party shall desire or be required to give notice to the other, such notice shall be given in writing, via facsimile and concurrently by prepaid U.S. certified or registered postage, addressed to recipient as follows:

(City of Oakland)
«PM_Name»
City of Oakland
_____
_____
Oakland, CA 94612-2033
Attn: _____

(Name of Contractor)
Address
City, State, Zip«Phone_Number»
Attn: Project Manager

Any party to this Agreement may change the name or address of representatives for purpose of this Notice paragraph by providing written notice to all other parties ten (10) business days before the change is effective.

33. Entire Agreement of the Parties

This Agreement supersedes any and all agreements, either oral or written, between the parties with respect to the rendering of services by Contractor for the City and contains all of the representations, covenants and agreements between the parties with respect to the rendering of those services. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not contained in this Agreement, and that no other agreement, statement or promise not contained in this Agreement will be valid or binding.

34. Modification

Any modification of this Agreement will be effective only if it is in a writing signed by all parties to this Agreement.

35. Severability/Partial Invalidity

If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, shall be finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Agreement or the application of this Agreement to other situation shall remain in full force and effect.

Notwithstanding the foregoing, if any material term or provision of this Agreement or the application of such material term or condition to a particular situation is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then the Parties hereto agree to work in good faith and fully cooperate with each other to amend this Agreement to carry out its intent.

36. Time of the Essence

Time is of the essence in the performance of this Agreement.

37. Commencement, Completion and Close out

It shall be the responsibility of the Contractor to coordinate and schedule the work to be performed so that commencement and completion take place in accordance with the provisions of this Agreement.

Any time extension granted to Contractor to enable Contractor to complete the work must be in writing and shall not constitute a waiver of rights the City may have under this Agreement.

Should the Contractor not complete the work by the scheduled date or by an extended date, the City shall be released from all of its obligations under this Agreement.

Within thirty (30) days of completion of the performance under this Agreement, the Contractor shall make a determination of any and all final costs due under this Agreement and shall submit a requisition for such final and complete payment (including without limitations any and all claims relating to or arising from this Agreement) to the City. Failure of the Contractor to timely submit a complete and accurate requisition for final payment shall relieve the City of any further obligations under this Agreement, including without limitation any obligation for payment of work performed or payment of claims by Contractor.

38. Approval

If the terms of this Agreement are acceptable to Contractor and the City, sign and date below.

39. Inconsistency

If there is any inconsistency between the main agreement and the attachments/exhibits, the text of the main agreement shall prevail.

City of Oakland,
a municipal corporation

(City Administrator's Office) (Date)

(Agency Director's Signature) (Date)

«Company_Name_»
Insert Name of Contractor

(Signature) (Date)

«Business_Tax_Lic»
Business Tax Certificate No.

Date of Expiration

Approved as to form and legality:

_____
Resolution Number

_____
(City Attorney's Office Signature) (Date)

_____
Accounting Number

ATTACHMENT D

Schedule Q
PROFESSIONAL OR SPECIALIZED SERVICES
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**, shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, Bodily Injury, Broad Form Property Damage, and liability assumed under an insured contract [(including the tort liability of another assumed in a business contract)]. If such CGL insurance contains a general aggregate limit, it shall apply separately to this agreement.

A. Coverage afforded on behalf of the City shall be primary insurance and any other insurance available to the City under any other policies shall be excess insurance (over the insurance required by this Agreement).

B. Limits of liability: Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than $2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this location [project].

C. If the policy is a "claim made" type policy, the following should be included as endorsements:

1) The retroactive date shall be the effective date of this Agreement or a prior date.
2) The extended reporting or discovery period shall not be less than thirty-six (36) months.

ii. **Automobile Liability Insurance.** Contractor shall maintain automobile liability insurance with a limit of not less than $1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). Coverage shall be written on ISO

form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01. In the event the Contractor does not own vehicles, but utilized non-owned and hired vehicles, evidence of such coverage is acceptable with a signed statement from Contractor stating that only non-owned and hired vehicles are used in the course of the contract.

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 **$1,000,000.00**.

b. Terms Conditions and Endorsements

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

i. Insured Status (Additional Insured): Contractor shall provide insured status using ISO endorsement CG 20 10 or its equivalent naming the City of Oakland, its Councilmembers, directors, officers, agents and employees as insureds in its Comprehensive Commercial General Liability policy. If Contractor submits the ACORD Insurance Certificate, the insured status endorsement must be set forth on a CG 20 10 (or equivalent). A STATEMENT OF ADDITIONAL INSURED STATUS ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF MEETING THIS REQUIREMENT; and

ii. Cancellation Notice: 30-day prior written notice of termination or material change in coverage and 10-day prior written notice of cancellation for non-payment;

iii. Cross-liability coverage as provided under standard ISO forms' separation of insureds clause; and

iv. Certificate holder is to be the same person and address as indicated in the "Notices" section of this Agreement; and

v. Insurer shall carry a insurance from an admitted company with a Best Rating of A VII or better.

c. 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.

d. 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.

e. 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.

f. Subcontractors

Should the Contractor subcontract out the work required under this agreement, they shall include all subcontractors as insureds under its policies or shall maintain separate certificates and endorsements for each subcontractor. As an alternative, the Contractor may require all subcontractors to provide at their own expense evidence of all the required coverages listed in this Schedule. If this option is exercised, both the City of Oakland and the Contractor shall be named as additional insured under the subcontractor's General Liability policy. All coverages for subcontractors shall be subject to all the requirements stated herein. The City reserves the right to perform an insurance audit during the course of the project to verify compliance with requirements.

g. 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.

h. Waiver of Subrogation

Contractor waives all rights against the City of Oakland and its Councilmembers, officers, directors and employees for recovery of damages to the extent these damages are covered by the forms of insurance coverage required above.

i. Evaluation of Adequacy of Coverage

The City of Oakland maintains the right to modify, delete, alter or change these requirements, with reasonable notice, upon not less than ninety (90) days prior written notice.

INTRODUCED BY COUNCILMEMBER
DANNY WAN

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY

OAKLAND CITY COUNCIL

REVISED
12-11-01

ORDINANCE NO. 12394 C.M.S.

AN ORDINANCE creating a new Oakland Municipal Code Chapter 2.32 "Equal Benefits Ordinance" requiring contractors on City contracts to provide employee benefits to their employees with domestic partners equivalent to those provided to their employees with spouses.

WHEREAS, employee benefits routinely comprise between 30 and 40 percent of total employee compensation; and

WHEREAS, discrimination in the provision of employee benefits between employees with domestic partners and employees with spouses results in unequal pay for equal work; and

WHEREAS, Oakland law prohibits discrimination based on marital status and/or sexual orientation; and

WHEREAS, contractors with the City of Oakland are required to comply with the City's nondiscrimination laws; and

WHEREAS, it is the City's intent, through the contracting practices outlined herein, to equalize the total compensation between similarly situated employees with spouses and employees with domestic partners, and

WHEREAS, the City Council finds and determines that the public safety, health, convenience, comfort, property and general welfare will be furthered by requiring that public funds be expended in a manner so as to prohibit discrimination in the provision of employee benefits by City contractors between employees with spouses and employees with domestic partners, and or between domestic partners and spouses of such employees, now therefore

THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 2.32 "Equal Benefits Ordinance" is added to the Oakland Municipal Code to read as follows:

CHAPTER 2.32

EQUAL BENEFITS ORDINANCE

Sec 2.32.010	Title and Purpose
Sec 2.32.020	Definitions
Sec 2.32.030	Contractors subject to requirements

Sec 2.32.040	Non-discrimination in the provision of benefits
Sec 2.32.050	Required contract provisions
Sec 2.32.060	Waivers and exemptions
Sec 2.32.070	Retaliation and discrimination prohibited
Sec 2.32.080	Employee complaints to City
Sec 2.32.090	Enforcement
Sec 2.32.100	Severability
Sec 2.32.120	Effective date

SEC. 2.32.010 Title and Purpose. This chapter shall be known as the "Equal Benefits Ordinance." The purpose of this chapter is to protect and further the public, health, safety, convenience, comfort, property and general welfare by requiring that public funds be expended in a manner so as to prohibit discrimination in the provision of employee benefits by City contractors between employees with spouses and employees with domestic partners, and or between domestic partners and spouses of such employees.

SEC. 2.32.020 Definitions. For the purposes of this chapter,

A. "Contract" shall mean an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out of moneys deposited in the treasury or out of trust money under the control or collected by the City and does not include property contracts or contracts for an aggregate amount less than $25,000 per vendor in each fiscal year.

B. "Contractor" means any person or persons, firm, partnership, corporation, or combination thereof, who enters into a contract or property contract with the City.

C. "Domestic partner" shall mean any person who has a currently registered domestic partnership with a governmental body pursuant to state or local law authorizing such registration.

D. "Property contract" shall mean a written agreement for the exclusive use or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements. For the purposes of this Chapter, "exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner. "Property contract" shall not include a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit, except that "property contract" shall include such permits granted to a private entity for the use of City property for the purpose of a for-profit activity. "Property contract" shall also not include street excavation, street construction or street use permits, agreements for the use of City right-of-way where a contracting utility has the power of eminent domain, or agreements governing the use of City property which constitutes a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally recognized as protected by the First Amendment to the U.S. Constitution, or which are primarily recreational in nature.

E. "Employee benefits" means the provision of bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefits given to employees.

Sec. 2.32.030 Contractors subject to requirements.

A. The following contractors are subject to this chapter:

(1) Entities which enter into a "contract" with the city for an amount of $25,000 or more for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided at the expense of the city or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of or collected by the City; and

(2) Entities which enter into a "property contract" pursuant to Section 2.32.020 (D) with the City in an amount of $25,000 or more for the exclusive use of or occupancy (i) of real property owned or controlled by the city or (ii) of real property owned by others for the city's use or occupancy, for a term exceeding 29 days in any calendar year.

B. The requirements of the chapter shall only apply to those portions of a contractor's operations that occur (i) within the City; (ii) on real property outside the City if the property is owned by the City or if the City has a right to occupy the property, and if the contract's presence at that location is connected to a contract with the City; and (iii) elsewhere in the United States where work related to a City contract is being performed. The requirements of this chapter shall not apply to subcontracts or subcontractors of any contract or contractor.

Sec. 2.32.040 Non-discrimination in the provision of benefits.

A. The City Manager shall not execute or amend any contract or property contract with any contractor that discriminates in the provision of bereavement leave, disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefits given to employees between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to State or local law authorizing such registration, subject to the following conditions:

(1) In the event the actual cost of providing a certain benefit for the domestic partner of an employee exceeds that of providing it for the spouse of an employee, or the contractor's actual cost of providing a certain benefit for the spouse of an employee exceeds that of providing it for the domestic partner of an employee, the contractor shall not be deemed to discriminate in the provision of benefits if the contractor conditions providing such benefit upon the employee agreeing to pay the excess costs;

(2) In the event a contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, the contractor shall not be deemed to discriminate in the provision of benefits if the contractor provides the employee with a cash equivalent.

(3) The contractor shall not be deemed to be engaging in discrimination in the provision of employee benefits if the contractor provides benefits neither to employees' spouses nor to employees' domestic partners.

B. A contractor will not be deemed to be engaging in discrimination in the provision of benefits when the implementation of policies ending discrimination in benefits is delayed following the first award of a City contract to a contractor after the effective date of this chapter:

(1) Until the first effective date after the first open enrollment process following the date the contract with the City is executed, provided that the contractor submits evidence that it is making reasonable efforts to end discrimination in benefits. This delay may not exceed two (2) years from the date the contract with the City is executed and only applies to benefits for which an open enrollment process is applicable.

(2) Until administrative steps can be taken to incorporate nondiscrimination in benefits in the contractor's infrastructure. The time allotted for these administrative steps shall apply only to those benefits for which administrative steps are necessary and may not exceed three (3) months. An extension of this time may be granted at the discretion of the City Manager upon the written request of a contractor, setting forth the reasons that additional time is required.

(3) Until the expiration of a contractor's current collective bargaining agreement(s) where all of the following conditions have been met:

(a) The provision of benefits is governed by one or more collective bargaining agreement(s); and
(b) The contractor takes all reasonable measures to end discrimination in benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for the contractor to take whatever steps are necessary to end discrimination in benefits or by ending discrimination in benefits without reopening the collective bargaining agreement(s); and
(c) In the event that the contractor cannot end discrimination in benefits despite taking all reasonable measures to do so, the contractor provides a cash equivalent to eligible employees for whom benefits are not available. Unless otherwise authorized, in writing by the City Manager, this cash equivalent payment must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened, or in any case no longer than three (3) months from the date the contract with the City was executed. This cash equivalent payment shall not be required where it is prohibited by federal labor law.

C. Employers subject to this chapter pursuant to Section 2.32.030 shall give written notification to each current and new employee of his or her potential rights under this chapter in a form specified by the City. Such notice shall also be posted prominently in areas where it may be seen by all employees.

D. Contractors shall treat as confidential to the maximum extent allowed by law or the requirements of contractor's insurance provider any request by an employee for

domestic partner or spousal benefits or any documentation of eligibility for domestic partner or spousal benefits submitted by an employee.

Sec. 2.32.050 Required contract provisions.

Every contract subject to this chapter shall contain provisions requiring it to comply with the provisions of this chapter as they exist on the date when the contractor entered the contract with the city or when such contract is amended. Such contract provisions may include but need not be limited to the contractor's duty to promptly provide to the City documents and information verifying its compliance with the requirements of this chapter and sanctions for non-compliance.

Sec. 2.32.060 Waivers and exemptions.

A. The City Manager may waive the requirements of this Chapter under the following circumstances:

(1) There is only one prospective contractor willing to enter into a property contract with the City for use of City property on the terms and conditions established by the City, or the needed goods, services, construction services for a public work or improvement, or interest in or right to use real property are available only from a sole source and the prospective contractor is not currently disqualified from doing business with the City, or from doing business with any governmental agency based on any contract compliance requirements;

(2) The contract or property contract is necessary to respond to an imminent emergency which endangers the public health or safety.

(3) The contract involves specialized litigation such that it would be in the best interests of the City to waive the requirement of this Chapter;

B. This Chapter shall not apply where the prospective contractor is a public entity and the City Manager finds that goods, services, construction services for a public work or improvement or interest in or right to use real property of comparable quality or accessibility as are available under the proposed contract or property contract are not available from another source, or that the proposed contract or property contract is necessary to serve a substantial public interest.

C. This Chapter shall not apply where the requirements of this Chapter will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement;

D. After taking all reasonable measures to find an entity that complies with the law the City Manager may waive any or all of the requirements of this Chapter for any contract, property contract or bid package advertised and made available to the public, or any competitive or sealed bids received by the City as of the date of the enactment of this ordinance under the following circumstances

(1) Where there are no qualified responsive bidders or prospective contractors who could be certified as being in compliance with the requirements of this Chapter and the contract or property contract is for goods, a service or a project that is essential to the City or City residents; or

(2) Where the requirements of this Chapter would result in the City's entering into a contract with an entity that was set up, or is being used, for the purpose of evading the intent of this Chapter, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Chapter; or

(3) Where transactions entered into pursuant to bulk purchasing arrangements through federal, state or regional entities which actually reduce the City's purchasing costs would be in the best interest of the City.

E. This Chapter shall not apply to (i) the investment of trust moneys or agreements relating to the management of trust assets, (ii) City moneys invested in U.S. government securities or under pre-existing investment agreements, or (iii) the investment of City moneys where the Treasurer finds that:

(1) No person, entity or financial institution doing business in the City and County which is in compliance with this Chapter is capable of performing the desired transaction(s); or

(2) The City will incur a financial loss which, in the opinion of the Treasurer, would violate his or her fiduciary duties.

This subparagraph (D) shall be subject to the requirement that the City moneys shall be withdrawn or divested at the earliest possible maturity date if deposited or invested with a person, entity or financial institution other than the U.S. government which does not comply with this Chapter.

F. Nothing in this Section 2.32.060 shall limit the right of the City Council to waive the provisions of this Chapter.

G. The requirements of this chapter shall not be applicable to contracts executed or amended prior to the effective date of this chapter, or to bid packages advertised and made available to the public, or any competitive or sealed bids received by the City prior to the effective date of this chapter, unless and until such contracts are amended after the effective date of this chapter and would otherwise be subject to this chapter.

Sec. 2.32.070 Retaliation and discrimination prohibited.

A. No employer shall retaliate or discriminate against its employee in his or her terms and conditions of employment by reason of the person's status as an employee protected by the requirements of this Chapter.

B. No employer shall retaliate or discriminate against a person in his or her terms and conditions of employment by reason of the person reporting a violation of this chapter or for prosecuting an action for enforcement of this Chapter.

Sec. 2.32.080 Employee complaints to City.

A. An employee who alleges violation of any provision of the requirements of this chapter may report such acts to the City. The City Manager may establish a procedure for receiving and investigating such complaints and taking appropriate action.

B. The City shall have the power to examine a contractor's benefit programs covered by this chapter

C. Any complaints received shall be treated as confidential matters to the extent permitted by law. Any complaints received and all investigation documents related thereto shall be deemed exempt from disclosure pursuant to California Government Code Sections 6354 and 6255.

Sec. 2.32.090 Enforcement

A. The City Manager shall have the authority to adopt rules and regulations, in accordance with this Chapter and the Administrative Code of the City of Oakland, establishing standards and procedures for effectively carrying out this chapter.

B. Upon a finding by the City Manger that a contractor has violated the requirements of this Chapter, the City shall have the rights and remedies described in this section, in addition to any rights and remedies provided by law or in equity;

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

(2) Repayment of any or all of the contract amount or financial assistance disbursed by the City;

(3) The City Manager may deem the entity ineligible for future City contacts 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 $50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Chapter;

(5) Seek recovery of reasonable attorney's fees and costs necessary for enforcement of this Chapter.

C. An employee claiming violation of this chapter may bring an action in the appropriate division of the Superior Court of the State of California against an employer and obtain the following remedies;

(1) Reinstatement, injunctive relief, compensatory damages and punitive damages.

(2) Reasonable attorney's fees and costs.

D. Notwithstanding any provision of the chapter or any other Chapter to the contrary, no criminal penalties shall attach for any violation of this chapter.

E. No remedy set forth in this Chapter is intended to be exclusive or a prerequisite for asserting a cause of action to enforce any rights hereunder in a court of law. This chapter shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

F. Nothing in this Chapter shall be interpreted to authorize a right of action against the City.

Sec. 2.32.100 Severability

If any of the provisions of this Chapter or the application thereof to any person or circumstance is held invalid, the remainder of this Chapter, including the application of

such part or provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

Sec. 2.32.120 Effective date.
The provisions of this chapter shall apply to any contract awarded on or after July 1, 2002.

Introduced: DEC 11 2001

IN COUNCIL, OAKLAND, CALIFORNIA, DEC 18 2001

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, CHANG, MAYNE, NADEL, REID, WAN, SPEES, AND PRESIDENT DE LA FUENTE – 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST:

CEDA FLOYD
City Clerk and Clerk of the Council
Of the City of Oakland California

Revised Prior to Introduction 12/18/07

OFFICE OF THE CITY CLERK
FILED
08 JAN -3 PM 12:39

INTRODUCED BY COUNCILMEMBER DESLEY BROOKS

APPROVED AS TO FORM AND LEGALITY
CITY ATTORNEY

ORDINANCE NO. 12857 C.M.S.

ORDINANCE ESTABLISHING A PROMPT PAYMENT POLICY REQUIRING PAYMENT WITHIN ~~15~~20 BUSINESS DAYS AFTER RECEIPT OF AN INVOICE FOR PURCHASE OF GOODS AND/OR SERVICES APPLICABLE TO 1) THE CITY WITH RESPECT TO CONTRACTS LET DIRECTLY TO LOCAL BUSINESSES, 2) TO NON-PROFIT AND FOR-PROFIT ENTITIES CONTRACTED TO MANAGE OR OPERATE CITY FACILITIES OR PUBLIC PROGRAMS OR CONCESSIONS ON CITY-OWNED PROPERTY, AND 3) TO CITY CONTRACTORS WITH RESPECT TO THEIR SUBCONTRACTORS, AND IMPOSING INTEREST PENALTIES FOR VIOLATIONS, TO BE CODIFIED AT OAKLAND MUNICIPAL CODE TITLE 2, CHAPTER 2.06

Whereas, the City of Oakland is committed to supporting, maintaining and fostering and foster the development of a healthy businesses community in Oakland and has maintained a Local and Small Business Enterprise program since 1992 for this purpose; and

Whereas, businesses based in Oakland and subcontractors that participate in City of Oakland contracts for goods, construction and services experience payment related issues and delays by having to navigate through varying processes used by numerous city departments and, in many cases, by not knowing or communicating with the appropriate department contact(s); and

Whereas, Oakland contractors and subcontractors on such City contracts also experience payment delays and related issues that can result in cash flow problems affecting the viability of those businesses and result in delayed or poor performance; and

Whereas, Oakland contractors and subcontractors may experience the same or similar payment and cash flow problems in their contracts with non-profit and for-profit entities that are hired to manage and/or operated City facilities, programs, concessions or public programs on City of Oakland property; and

Whereas, market data indicates that it would better serve the interests of the City and the Oakland business community to establish a ~~fifteen~~twenty (~~15~~20) day payment cycle for local contractors and all subcontractors that participate in City and City management and operation contracts for goods, construction or services; and

Whereas, it would better serve the interests of the City and the Oakland business community to make project funds more available to local prime contractors and subcontractors by prohibiting the retention of contractor funds for goods and materials, by requiring expedited release of contractor retention in proportion to delivery of services, by requiring expedited pass-through of mobilization fees paid by the City to subcontractors; and

Whereas, it would better serve the interests of the City and the Oakland business community to post payment, retention release and mobilization fee payments on the City's website to allow contractors to monitor the status of their projects; and

Whereas, it would better serve the interests of the City and the Oakland business community to appoint a liaison as a single point of contact to address payment issues with City agencies, departments and manager and operators;

Now, therefore, the Council of the City of Oakland does ordain as follows:

Section 1. The Oakland Municipal Code is amended to add the Prompt Payment Ordinance at Title 2, Chapter 2.06 as follows:

Chapter 2.06 Prompt Payment

2.06.010. Definitions. The following definitions apply to this Chapter:

"City" as used in this Chapter shall mean the City of Oakland as a municipal organization, City Agencies or Departments or City officials authorized by the City Council or City Administrator to enter into purchase contracts on behalf of the City of Oakland when acting in his/her official capacity.

"Claim" as used in this Chapter shall mean a bill, invoice or written request for payment provided by the vendor. Written request includes "contract" as defined below.

"Claimant" as used in this Chapter means a prime local contractor or subcontractor that files a claim with the City for overdue payment and associated interest penalties.

"Disputed Invoice" as used in this Chapter means an improperly executed invoice or invoice that contains errors or requires additional evidence of its validity.

"Local Business" as used in this Chapter and in accord with the City of Oakland Local and Small Local Business Enterprise Program means a business: (a) with a substantial presence in the city of Oakland's geographic boundaries, (b) with a full operation conducting business for at least 12 consecutive months in the City of Oakland, (c) with a valid City of Oakland business tax certificate, and (d) that is an independent business headquartered in Oakland.

"Local Prime Contractor" as used in this chapter means a "local business" as defined above that is in direct or in privity of contract with the City of Oakland.

"Goods" as used in this chapter means products, goods, materials, equipment or other tangible items rendered pursuant to a purchase contract.

"Invoice" as used in this Chapter means a bill or claim that requests payment for goods and/or services rendered pursuant to a City purchase contract by a local prime contractor or by a subcontractor.

"Managers and Operators" as used in this Chapter shall mean a non-profit or for-profit business that is contracted by the City of Oakland to operate and/or manage City programs,

programs open to the public on City of Oakland property, City facilities or concession businesses on City of Oakland property.

"Purchase contract" as used in this chapter means any enforceable City of Oakland agreement executed expressly for the purchase, lease or rental of goods and/or services, including purchase orders, sub-purchase orders, delegated purchase orders, service agreements or subcontracts. Purchase contracts must be approved and executed in accordance with all purchasing requirements of the City of Oakland. Claimants shall not be entitled to relief, hereunder, for payment delays that occur prior to the proper execution of a purchase contract.

"Services" as used in this Chapter means any and all services rendered pursuant to a purchase contract including, but not limited to, professional, scientific or technical services.

"Subcontractor" as used in this chapter means a subcontractor, supplier, vendor or any business or organization, other than the prime contractor, that delivers goods and/or services in connection with a purchase contract.

"Undisputed Invoice" as used in this Chapter means an invoice executed by the claimant for goods and/or services rendered in connection with a purchase contract for which additional evidence is not required to determine its validity. Undisputed invoices include:

1. a once disputed invoice which has been corrected or for which additional evidence of its validity has been provided and received by the City, the prime contractor or subcontractor responsible for issuing payment.
2. an improper invoice whether goods and/or services have been received by the City, the prime contractor or subcontractor responsible for issuing payment, but the City, the prime contractor or subcontractor responsible for issuing payment fails to notify the claimant that the invoice is improper within 15 working days of receipt of the invoice.

2.06.020. Purpose. The purpose of this Prompt Payment Ordinance is to establish policies and procedures to assure that local contractors and all subcontractors working on City of Oakland purchase contracts receive prompt payment, and to enhance and increase local business contracting opportunities with the City of Oakland by establishing: 1) shortened payment requirements for City of Oakland businesses and all subcontractors, regardless of location, that provide goods and/or services in connection with a City of Oakland contract purchase contract, and 2) a City liaison to serve as a single point of contact to address payment delays and other issues relative to City of Oakland purchase contracts.

2.06.030. Local Business and Subcontractor Payment Liaison.

A. The City will appoint a single point of contact (Liaison) to address invoice payment or other issues raised by City of Oakland Local Prime Contractors or any subcontractor in connection with City of Oakland purchase contracts for goods and/or services, or invoice payment issues raised by a subcontractor in connection with a City of Oakland Manager/Operator contract. The Liaison position will be assigned to perform duties within the Office of Contract Compliance. The Liaison will be the City's central point of

contact for local prime contractors and subcontractors, and will be responsible for coordinating the actions required to resolve issues with City agencies and departments and Manager/Operators.

B. The Office of Contract Compliance will establish a City-wide procedural mechanism to identify local contractors, will inform such businesses of the program through electronic means as well as through existing and ongoing training programs and workshops, and will issue a statement of the requirements of this ordinance with bid notices and requests for proposals/qualifications.

2.06.040. Local Prime Contractors, Contractor Retention.

A. Local Prime Contractors. The City of Oakland shall pay all Local Prime Contractors for goods and/or services rendered pursuant to a purchase contract within ~~**fifteen**~~**twenty** (~~**15**~~**20**) **business days** after receipt of an undisputed invoice. In the event an invoice is disputed, the City shall notify the subcontractor and Liaison in writing within ~~**three**~~**five** (~~**3**~~**5**) business days of receiving the disputed invoice that there is a bona fide dispute, in which case the City may withhold the disputed amount but shall pay the undisputed amount.

B. Retention.

~~1.~~ City shall not withhold any monies as project retention associated with the rendering of goods.~~; and~~

~~2. City shall release retention held for services in proportion to the percentage of completed services rendered by a prime contractor for which payment is due and undisputed within **five (5) business days** of payment.~~

2.06.050. Subcontractor Payment, Retention, Mobilization Fees.

A. Prompt Payment. All Manager/Operators, City prime contractors and subcontractors shall pay their subcontractors for goods and/or services rendered in connection with a purchase contract within ~~**fifteen**~~**twenty** (~~**15**~~**20**) business days of receipt of the subcontractor's undisputed invoice. In the event an invoice is disputed, Manager/Operators, prime contractors and subcontractors shall notify the Liaison in writing within ~~**three**~~**five** (~~**3**~~**5**) **business** days of receiving the disputed invoice that there is a bona fide dispute, in which case the prime contractor or subcontractor may withhold the disputed amount but shall pay the undisputed amount.

B. If a subcontractor files a claim for all or a portion of a disputed invoice pursuant to Section 2.06.080 below, Manager/Operators or contractors shall be required to post with the City cash, a certified check, or a bond in an amount sufficient to cover the disputed amount and penalty. Upon the Liaison's determination that the invoice is valid the cash, certified check or bond shall be released to the claimant. If the Liaison finds in favor of the contractor the cash, certified check or bond shall be returned to the contractor. If the Manager/Operator or contractor fails or refuses to post security, the Liaison may withhold funds from the next progress payment sufficient to cover the claim.

C. Affidavit Reporting Subcontractor Payments. Contracts in which subcontracting is used shall require the prime contractor or subcontractor, within **five (5)** business days following receipt of a payment from the City, to file an affidavit, under penalty of perjury,

that he or she has paid all subcontractors. The affidavit shall provide the names and address of all subcontractors and the amount paid to each.

D. Retention.
   1. Manager/Operators, prime contractors and subcontractors shall not withhold any monies for project retention associated with the rendering of goods; and
   2. Manager/Operators, prime contractors and subcontractors shall release retention held for services in proportion to the percentage of subcontractor services for which payment is due and undisputed within **five (5) business days** of payment. Manager/Operators, prime contractors and subcontractors shall file notice with the City **within five (5) business days** of release of retention.

E. Mobilization Fee. Prime contractors and subcontractors shall pay subcontractors that will render goods and/or services their portion of mobilization fees within **Five (5) business days** of being paid such fees. Prime contractors and subcontractors shall file notice with the City **within five (5) business** days of payment of mobilization fees to a subcontractor.

F. Website Posting. Information regarding City's retention release and payment of mobilization fees shall be posted on the City's Website **within five (5) business days** of such payment or release. Information regarding Manager/operators, prime contractor and subcontractor retention release and payment of mobilization fees, and affidavits reporting subcontractor payments shall be posted on the website within **five (5) business days** of the filing of such notices and affidavits with the City.

2.06.070. Interest Penalty.

A. If any amount due by the City to a Local Prime Contractor for goods and/or services rendered pursuant to a purchase contract is not timely paid in accordance with this Chapter, the Local Prime Contractor is entitled to interest penalty in the amount of ten (10%) of the improperly withheld amount per year~~month~~ for every month that payment is not made, provided the Local Prime Contractor agrees to release the City from any and all further claims for interest penalties that may be claimed or collected on the amount due and paid. Local Prime Contractors that receive interest penalties for late payment pursuant to this Chapter may not seek further interest penalties on the same late payment in law or equity.

B. If any amount due by a Manager/Operator to a claimant for goods and/or services rendered pursuant to a Manager/Operator purchase contract is not timely paid in accordance with this Chapter, the claimant is entitled to interest penalty in the amount of ten (10%) of the improperly withheld amount per year~~month~~ for every month that payment is not made, provided the claimant agrees to release the Manager/Operator and City from any and all further claims for interest penalties that may be claimed or collected on the amount due and paid. Claimants that receive interest penalties for late payment pursuant to this Chapter may not seek further interest penalties on the same late payment in law or equity.

C. If any amount due by a prime contractor or subcontractor to any claimant for goods and/or services rendered in connection with a purchase contract is not timely paid in

accordance with this Chapter, the prime contractor or subcontractor shall owe and pay to the claimant interest penalty in the amount of ten (10%) of the improperly withheld amount per year~~month~~ for every month that payment is not made, provided the claimant agrees to release the prime contractor or subcontractor from any and all further interest penalty that may be claimed or collected on the amount paid. Claimants that receive interest penalties for late payment pursuant to this Chapter may not seek further interest penalties on the same late payment in law or equity.

2.06.070. Bid Solicitations, Request For Proposals/Qualifications, Contracts.

A. All notices inviting bids, requests for proposals/qualifications and city contracts for the purchase of goods and/or services, and requests for proposals/qualifications and contracts for Manager/Operators as defined in Section 2.06.010, above, shall contain the following or substantially equivalent language:

This contract is subject to the Prompt Payment Ordinance of Oakland Municipal Code, Title 2, Chapter 2.06. The Ordinance requires that, unless specific exemptions apply, Contractor and its subcontractors shall pay undisputed invoices of their subcontractors for goods and/or services within ~~fifteen~~twenty **(20~~15~~) business days** of submission of invoices unless the Contractor or its subcontractors notify the Liaison in writing within ~~three~~five **(35) business days** that there is a bona fide dispute between the Contractor or its subcontractor and claimant, in which case the Contractor or its subcontractor may withhold the disputed amount but shall pay the undisputed amount.

Disputed payments are subject to investigation by the City of Oakland Liaison and, and upon the filing of a compliant, Contractor or its subcontractors opposing payment shall provide security in the form of cash, certified check or bond to cover the disputed amount and penalty during the investigation. If Contractor or its subcontractor fails or refuses to deposit security, the City will withhold an amount sufficient to cover the claim from the next Contractor progress payment. The City, upon a determination that an undisputed invoice or payment is late, will release security deposits or withholds directly to claimants for valid claims.

Contractor and its subcontractors shall not be allowed to retain monies from subcontractor payments for goods as project retention, and are required to release subcontractor project retention in proportion to the subcontractor services rendered, for which payment is due and undisputed, within **five (5) business days** of payment. Contractor and its subcontractors shall be required to pass on to and pay subcontractors mobilization fees within **five (5) business days** of being paid such fees by the City.

For the purpose of posting on the City's website, Contractor and its subcontractors, are required to file notice with the City of release of retention and payment of mobilization fees, **within five (5) business days** of such payment or release; and, Contractor is required to file an affidavit, under penalty of perjury, that he or she has paid all subcontractors, within **five (5) business days** following receipt of payment

from the City, The affidavit shall provide the names and address of all subcontractors and the amount paid to each.

B. Any contractor or subcontractor that delivers goods and/or services pursuant to a purchase contract, shall include the same or similar provisions as those set forth in this Section 2.06.070 in their subcontracts.

2.06.080. Complaint and Investigation.

A. Any claims made pursuant to Sections 2.06.040 and 2.06.050 above are subject to investigation and notice of violation and demand for payment and interest penalties by the Liaison. A local prime contractor or subcontractor who alleges violation of any provision of this chapter may report such acts to the Liaison.

B. Complaints shall be handled as follows:

1. The complainant shall submit a completed complaint form and copies of invoices or billing documents that have been submitted to the City, to a City purchase contractor or to a Manager/Operator. To expedite investigation, complainant shall also submit any documents in their possession showing that his/her goods and/or services or other deliverables have been rendered to and inspected or reviewed and accepted by the City or Manager/Operator in connection with the claim.

2. The Liaison shall collect a security deposit in the form of cash, certified a check, or bond in an amount sufficient to cover the claim from the Manager/Operator or contractor that has disputed the invoice. If a Manager/Operator or contractor that is required to post security fails or refuses to do so, the Liaison may withhold funds from the next progress payment sufficient to cover the claim. Upon the Liaison's determination that the invoice is valid the cash, certified check or bond shall be released to the claimant. If the Liaison finds in favor of the Contractor the cash, certified check or bond shall be returned to the Contractor.

3. The Liaison shall contact the City agency, department, Manager/Operator or contractor responsible for payment within ~~three~~five (~~3~~5) businesses days of receipt of the complaint form to investigate the claim. The Liaison's determination of whether an invoice is valid shall be based on the following:

   i) Whether the invoice conformed to requirements defined in Section 2.06.020 of this Chapter, at the time of submission to the contractor,
   ii) Whether there is a discrepancy between the invoice or claimed amount and the provisions of the purchase contract,
   iii) Whether there is a discrepancy between the invoice or claimed amount and either the contractor's actual delivery of goods and/or services to the City, or the City's acceptance of such goods and/or services,
   iv) Whether the City Agency, Prime Contractors or subcontractor responsible for payment provided timely notice of the disputed invoice as required under 2.06.050.A, and

v) Whether additional evidence supporting the validity of the invoice or claimed amount must be provided by the claimant.

4. There shall be no appeal of the Liaison's determination in favor of the claimant. If, however, the Liaison determines that the claimant's invoice provides insufficient evidence for payment, the claimant shall be advised of the additional information required for payment and given an opportunity to provide the same.

5. When the Liaison determines that a violation of this Chapter has occurred, the Liaison shall assess interest penalties at the rate provided in Section 2.06.060 of this Chapter and issue a demand to the City employee responsible for administering the related purchase contract, the Manager/Operator, the prime contractor or the subcontractor responsible for the late payment. City shall issue a check for the amount of the undisputed claim and interest penalties assessed by the Liaison to the Local Prime Contractor **within ~~three~~five (5~~3~~) business days** of the date of the Liaison determination. The City may ~~not appeal~~seek review by the City Administrator of Liaison determinations for claims submitted by Local Prime Contractors within five (5) business days of the date of determination.

2.06.090. Administrative Procedures and Regulations. The City Administrator shall develop administrative procedures and regulations for determining City, Manager/Operator, prime contractor and subcontractor compliance with, and full implementation of, this Chapter including, but not limited to, establishment of an interest penalty scheme and investigation procedures.

2.06.100. Exemptions. City and Manager/Operator purchase contracts are exempt from this Chapter when:

A. Issued in response to a local disaster or emergency provided: i) the emergency or disaster is acknowledged by a public declaration of emergency or disaster of the United States, State of California, County of Alameda, Oakland City Council or City Administrator, ii) the purchase contract is issued without advertising or competitive bid pursuant to the City Administrator's emergency authority in Oakland Municipal Code Chapter 2, Sections 2.04.020.G or H, and iii) the purchase contract is completed within the declared period of emergency or disaster.

B. State or Federal laws preempt the local or other regulation of the purchase, in which case State or Federal mandates shall take precedence,

2.06.110. Applicable to New Contracts. Except for procurement or contruction contracts for which fixed, sealed bids were required on a date prior to the date of final adoption of this ordinance set forth below, ~~T~~the provisions of this Ordinance shall apply to any purchase contract or Manager/Operator contract, or amendment, extension, change order or modification of such contracts, ~~and to any Manager/Operator contract, amendment, extension or modification~~, entered into or consummated after the effective date of the ordinance codified in this chapter.

Section 2. The City shall implement an electronic billing and payment system for purchasing contracts by February 1, 2008.

Section ~~2~~3. Severability. If any article, section, subsection sentence, clause or phrase of this ordinance or exhibit is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions which shall remain in full force and effect.

Section ~~3~~4. Effective Date. This ordinance shall become effective on February 1, 2008~~immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption~~.

IN COUNCIL, OAKLAND, CALIFORNIA, (DATE), 20(YEAR) JAN 15 2008

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID AND ~~PRESIDENT DE LA FUENTE~~ – 7

NOES- 0

ABSENT- 0

ABSTENTION- 0

Excused- De La Fuente – 1

ATTEST:

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

Introduction Date: DEC 18 2007

426506

DECLARATION OF COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act (ADA) requires that private organizations serving the public make their goods, services and facilities accessible to people with disabilities. Furthermore, the City of Oakland requires that all of its Contractors comply with their ADA obligations and verify such compliance by signing this Declaration of Compliance.

The Contractor certifies that it will comply with the Americans with Disabilities Act by:

A. Adopting policies, practices and procedures that ensure non-discrimination and equal access to Contractor's goods, services and facilities for people with disabilities;

B. Providing goods, services and facilities to individuals with disabilities in an integrated setting, except when separate programs are required to ensure equal access;

C. Making reasonable modifications in programs, activities and services when necessary to ensure equal access to individuals with disabilities, unless fundamental alteration in the nature of the Contractor's program would result;

D. Removing architectural barriers in existing facilities or providing alternative means of delivering goods and services when removal of barriers is cost-prohibitive;

E. Furnishing auxiliary aids to ensure equally effective communication with persons with disabilities; and

F. If contractor provides transportation to the public, by providing equivalent accessible transportation to people with disabilities.

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

Company Name	Signature of Authorized Representative
Address	Type or Print Name
Phone Date	Type or Print Title

CITY OF OAKLAND

NUCLEAR FREE ZONE DISCLOSURE FORM – S

I, _____, the undersigned, a
(Name)

_____ of _____
(Title) (Business Entity)
(hereinafter referred to as Business Entity am duly authorized to attest on behalf of the business Entity)

I. Neither this Business Entity nor any of its subsidiaries, affiliates or agents engages in nuclear weapons work or anticipates entering into such work for the duration of its contract(s) with the City of Oakland.

II. The appropriate individuals of authority are cognizant of their responsibility to notify the Office of Finance of the City of Oakland if the Business Entity or any of its subsidiaries, affiliates or agents subsequently engages in nuclear weapons work.

I declare that the foregoing is true and correct to the best of my knowledge.

_____
(Date)

_____
(Signature and Name)

_____
(Name of Business Entity)

_____
(Street Address)

_____
(City, State and Zip Code)

_____
(Name of Parent Company)

Original form should be retained in the project file and a copy to be included with the contract documents submitted to the City Clerks office.

INSTRUCTIONS FOR NUCLEAR FREE DISCLOSURE FORM –S

On November 8, 1988, the citizens of Oakland adopted Measure T, which declared the City of Oakland to be a Nuclear Free Zone. On December 6, 1988, the City Council approved Ordinance No. 11062 CMS, designated as the Nuclear Free Zone Act. This ordinance mandates a policy for the City of Oakland concerning its relations with companies that knowingly engages in nuclear weapons work.

Under this ordinance, the City is restricted from doing business with professional and consulting service providers, which would be considered nuclear weapons makers. In order to implement this provision, the City is using Nuclear Free Zone Disclosure Form-S to determine whether a potential service provider to the City of Oakland is in compliance with Ordinance No. 11062. Once the Form is on file with the Office of Finance, the service provider will be eligible to enter into professional or consulting service contracts with the City of Oakland.

Please review the following definitions to determine whether you or your firm and/or any of its agents, subsidiaries or affiliates would be considered nuclear weapons makers under Oakland's Nuclear Free Zone Act.

> A "nuclear weapons maker" is any entity knowingly engaged in nuclear weapons work and any of its agents, subsidiaries or affiliates which are engaged in nuclear weapons work. If an entity is a nuclear weapons maker, then its controlling owner(s) would also be classified as a nuclear weapons maker(s). However, if an entity is owned by a nuclear weapons maker but is not itself engaged in nuclear weapons work, the entity would not be considered a nuclear weapons maker.
>
> "Nuclear weapons work" is any work that has as its purpose the development, testing, production, possession, maintenance or storage of nuclear weapons, the components of nuclear weapons, or any secret or classified research or evaluation of nuclear weapons.
>
> "Nuclear weapon" is any device, the intended explosion of which results from the energy released by reactions involving atomic nuclei, either fission or fusion or both. Nuclear weapon includes the means of transporting, guiding, propelling, triggering or detonating the weapon. Nuclear weapon also includes any component of a nuclear weapon, i.e., any device, radioactive or non-radioactive, the primary intended function of which is to contribute to the operation of a nuclear weapon or be a part of a nuclear weapon.

In the event a firm or individual is unable or unwilling to submit Nuclear Free Zone Disclosure Form –S, said firm or individual would be considered a nuclear weapon maker and therefore restricted from entering into a contract with the City of Oakland. Such firm or individual has the right to have this restriction reviewed. The review process will be initiated once the Office of Finance has been requested to do so by the restricted firm or individual.

The restriction against contracting with a nuclear weapons maker may be waived if the City Council determines, after public hearing, that a specific contract is essential to the proper functioning of the city government and that no reasonable alternative exists.

Original form should be retained in the project file and a copy to be included with the contract documents submitted to the City Clerks office.

COMPLIANCE COMMITMENT AGREEMENT

I_____, representing_____,
(Name) (Company)

certify that I have read the City of Oakland and Redevelopment Agency Local/Small Local Business Enterprise Construction Program and that for the pertinent project, I have achieved the goal of 20%, of which at minimum 10% has been allotted to Local Business Enterprises (LBE), and 10% has been allotted to Small Local Business Enterprises (SLBE); and that 20% of the total trucking dollars have been allotted to certified (Oakland) Local Truckers. In the event that these goals have not been achieved, I understand that my bid will be deemed non responsive.

_____ _____
(SIGNATURE) (TYPE NAME & TITLE)

OAKLAND

SCHEDULE V
AFFIDAVIT OF NON-DISCIPLINARY OR INVESTIGATORY ACTION

(For use by all City agencies and departments for professional services contracts)

To be completed by the prime consultant

I certify that the Equal Employment Opportunity Commission (EEOC), Department of Fair Employment & Housing (DFEH) or the Office of Federal Contract Compliance Programs (OFCCP) has not taken disciplinary or investigatory action against the Firm. If such action has been taken, attached hereto is a detailed explanation of the reason for such action, the party instituting such action and the status or outcome of such action.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

_____ _____

Signature Date

_____

(Title)

_____

(Name of Firm)

_____

(Street Address)

_____

(City, State and Zip Code)

CITY OF OAKLAND

DEPARTMENT OF CONTRACTING AND PURCHASING
Social Equity Division
Phone: 510-238-3970 Fax: 510-238-3363

SCHEDULE D
OWNERSHIP, ETHNICITY and GENDER QUESTIONNAIRE

Part I: OWNERSHIP& ETHNICITY of PRIME:

Firm or Individual Name_____ Phone (____)_____

Street Address _____City _____State _____ Zip _____ Federal ID #_____

City of Oakland Business License Number _____ Completed by: _____ Phone if different from above _____.

(Please check one and explain below)

☐ Self Employed, Name of Owner _____ ☐ Corporation, State of Incorporation _____

☐ Partnership, General or Limited _____ Names of Partners_____

☐ Joint Venture, Names of Participants _____ _____ _____

Ownership Interests
All owners must be listed in this information

Ethnicity	African American	American Indian/ Alaskan Native	Asian or Pacific Islander	Caucasian	Filipino	Hispanic	Other
Number of Owners							
% Of Total Ownership							
Women							
Joint Venture Ownership							

Part II: CERTIFICATIONS

Please attach a copy of the certification letter or provide the certification number and expiration date.

☐ Minority-owned Business Enterprise (MBE)? Cert #_____Expiration Date _____
☐ Woman-Owned Business Enterprise (WBE) Cert #_____Expiration Date _____
☐ Disadvantaged Business Enterprise (DBE) Cert #_____Expiration Date _____
☐ Oakland Certified Local Business Enterprise Cert #_____Expiration Date _____
☐ Other _____ Cert #_____Expiration Date _____

Part III: Ethnicity and Gender of Employees

			Male						Female					
Employment Category	Total Employees	Oakland Residents	African American	American Indian/Alaskan Native	Asian/ Pacific Islander	Caucasian	Hispanic	Other	African American	American Indian/ Alaskan Native	Asian/ Pacific Islander	Caucasian	Hispanic	Other
Project Management														
Professional														
Technical														
Clerical														
Trades														

AFFIRMATIVE ACTION INFORMATION I certify that I/we shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, sexual orientation, national origin, age, disability, Acquired Immune Deficiency Syndrome (AIDS) AIDS related complex, or any other arbitrary basis and shall insure compliance with all provisions of Executive Order No. 11246 (as amended by Executive Order No. 11375). I certify that I/we shall not discriminate against any employee or applicant for employment because they are disabled veteran of the Viet Nam era and shall insure compliance with all provisions of 41CFR60-250.4 where applicable.

I declare under penalty of perjury that the foregoing is true and correct. Signature _____

Print Name _____ **Title** _____ **Date** _____

Please be advised that the ethnicity and gender information contained in this Schedule D will be used for reporting and tracking purposes ONLY.

PROJECT CONSULTANT TEAM LISTING

To be completed by prime consultants only.

Note: The consultant herewith must list all subconsultants regardless of tier and their respective percentages of the project work. No other subconsultants, other than those listed below shall be used without prior written approval by the City of Oakland. Provide all information listed and check the appropriate boxes. Firms must be certified with he City of Oakland in order to receive Local/Small Local Business Enterprise credits.

Date _____

Company Name _____

Signed _____

Type of Work	Company Name	Address and City	Phone Number	% of Project Work	Dollar Amount	Subcontractor	Local (LBE)	Small Local (SLBE)	* Ethnicity	** Gender

Attach additional page(s) if necessary. Contractors are required to identify the ethnicity and gender of all listed firms majority owner. This information will be used for tracking purposes only.

*** (AA=African American) (AI=Asian Indian) (AP=Asian Pacific) (C=Caucasian) (H=Hispanic) (NA=Native American) (O=Other) (NL=Not Listed)**

**** (M = Male) (F = Female)**

(Revised as of 6/06)

1852 2002
OAKLAND
Growing for Over 150 Years

CITY OF OAKLAND
LOCAL AND SMALL LOCAL BUSINESS ENTERPRISE
EXIT REPORT AND AFFIDAVIT

The Prime Contractor/Consultant must complete this form for, and have it executed by, each LBE/SLBE subcontractor/Subconsultant (including lower tier LBE/SLBE subcontractors/subconsultants), suppliers and truckers. This form must be submitted to the Department of Contracting and Purchasing with the final progress payment application. Please complete an L/SLBE Exit Report for <u>each</u> listed L/SLBE subcontractor/Subconsultant.

To: Contract Compliance Officer, _____

From: Contractor, _____ Date Transmitted: _____

SECTION I.
Reporting Date: _____ Project Name: _____

Name of L/SLBE: Portion of Work (Trade): _____

Original L/SLBE Contract Amount: _____ Change Orders, Amendments, Modifications: _____

Final L/SLBE Contract Amount: _____ Amount of Progress Payments Paid to Date: _____

Amount Owing including all Change Orders, Amendments and Modifications: _____

Please include a detailed written explanation on Page 2 of this form if the final contract amount for this LBE/SLBE is less than the original contract amount.

Execution by LBE/SLBE: I agree with the information on this form.
Note: If LBE/SLBE is in disagreement, it should be not signed below but instead return this form with an explanation of, and reasons for, the disagreement in the space provided on Page 2 of this form:

_____
Signature of Owner/Authorized Representative of LBE/SLBE

_____ _____ _____
Name and Title Phone Date

SECTION II.
I/We declare, under penalty of perjury under the laws of the State of California, that the information on this form is complete, that the tabulated amounts paid to date are accurate and correct, and that the tabulated amounts owing will be paid within a reasonable time after the date of the City's final payment under the Contract.
Prime Contractor, including each joint venture partner, must sign this form (use additional sheets if necessary)

_____ _____
Owner/Authorized Representative (Signature) Owner/Authorized Representative (Signature)

_____ _____
Name Name

_____ _____ _____ _____
Title (please print/type) Date Title (please print/type) Date

_____ _____
Firm Name Firm Name

( ) _____ ( ) _____ ( ) _____ ( ) _____
Telephone Fax Telephone Fax

Explanation by contractor if the final contract amount for this L/SLBE is less than the original contract amount.

Explanation by L/SLBE if it is in disagreement with the above explanation, or with the information on the first page of this form:

Comments on the above by the awarding department:

SCHEDULE L

CITY OF OAKLAND

Office of the City Clerk

CONSULTANT PERFORMANCE EVALUATION FORM

Consultant Name & Address:_____

_____

Type of Services/Work Provided:_____

Project Complexity (Standard or Difficult):_____

Consultant Lead Project Manager: _____

Project Name:_____

City Project No:_____

Final Value of Consultant Contract:_____

Duration of Consultant Contract (Start & end dates):_____

Final Value of Construction Contract:_____

City Construction Resident Engineer (with phone #): _____

Date of Evaluation: _____

City Project Manager/Evaluator (with phone #):_____

Reviewed and Approved By (with phone #):_____

Ratings Guidelines:

- ***Poor - Work required extensive revisions, included numerous & significant errors; consultant was unable or unwilling to perform consistently, required an inordinate amount of supervision, and/or failed to meet professional standards/project objectives.***
- ***Needs to Improve – Performance was marginal; work required more review and included more errors than would normally be anticipated; level of service or expertise below average.***
- ***Average – Performance and work were satisfactory; services provided were at least of industry standard; no significant errors or problems; professional service objectives met.***
- ***Excellent – Performance was clearly above standard; expectations exceeded; objectives were met with an added level of service and/or with a higher level of professional expertise.***

Please rate the Consultant on the following topics by checking the appropriate box:

QUESTIONS	**Poor**	**Needs to Improve**	**Average**	**Excellent**	**Not Applicable**
1. Quality of Design/Work	☐	☐	☐	☐	☐
2. Ability to meet the Project Objectives	☐	☐	☐	☐	☐
3. Knowledge, Expertise, and State-of –the Art Technologies	☐	☐	☐	☐	☐
4. Innovation of Design/Work	☐	☐	☐	☐	☐
5. Thoroughness of Design/Work	☐	☐	☐	☐	☐
6. Quality Control of Work	☐	☐	☐	☐	☐
7. Ability to React and Respond to Problems/Issues	☐	☐	☐	☐	☐
8. Ability to Maintain to the Project Schedule and to Time Commitments	☐	☐	☐	☐	☐
9. Ability to Maintain to the Project Budget	☐	☐	☐	☐	☐
10. Accuracy of Cost Estimating	☐	☐	☐	☐	☐
11. Constructibility of the Design/Work	☐	☐	☐	☐	☐
12. Quality of Construction Support Services	☐	☐	☐	☐	☐
13. Accuracy and Timeliness of Billings and other Documents	☐	☐	☐	☐	☐
14. Sufficient and Appropriate Staffing of the Project by the Consultant	☐	☐	☐	☐	☐
15. Ability to Manage and Coordinate Sub-Consultants	☐	☐	☐	☐	☐

QUESTIONS	**Poor**	**Needs to Improve**	**Average**	**Excellent**	**Not Applicable**
16. Ability and Ease of Communicating with City Staff	☐	☐	☐	☐	☐
17. Ability to Communicate with the Community and to Make Presentations	☐	☐	☐	☐	☐
18. Willingness, Flexibility, and Attitude in Working with the City	☐	☐	☐	☐	☐
19. Ability to Follow City Directives (i.e. Architectural Design Concept, other Requirements, etc.)	☐	☐	☐	☐	☐
OVERALL RATING	☐	☐	☐	☐	☐

All Questions rated at "Poor" or "Needs to Improve" must be supplemented with comments.

Comments (attach additional information, as necessary):_____

_____

_____

_____

_____

_____

_____

_____

Note: The Project Coordinator/Manager shall complete this evaluation form for each primary consultant within 60 days upon the completion of an individual project or assignment. Interim evaluations shall also be prepared for projects of a long duration (i.e. over one year) or if the consultant's performance merits notification of any deficiencies.

Information is to be submitted to and kept on file by the PWA Contract Administration Division for five (5) years. A copy of the evaluation shall also be provided to the consultant. These forms may be used, in part, as a reference to evaluate the consultant for future City professional services contracts.

Consultants with an overall evaluation of "Poor" or "Needs to Improve" are given an opportunity to 1) appeal the evaluation to the Assistant Director of Public Works, or his designee, and/or 2) append the evaluation with a one-page statement that explains or refutes the City's finding.

To the extent permitted by law, the City shall treat the evaluations as confidential information.

Additional Comments: _____

(If necessary, attach additional sheets.)

FOR CITY USE ONLY
Based upon a review of this questionnaire and any other factors I have cited below, I have determined that this person (is) (is not) an independent contractor.

_____

_____

_____

Date_____ _____
City Attorney/Assistant City Attorney/
Deputy City Attorney

PART A: INDEPENDENT CONTRACTOR QUESTIONNAIRE TO BE COMPLETED BY PROPOSED CONTRACTOR

Name of Contractor _____
SSN or Corporate Taxpayer ID No. of Contractor _____

Please answer questions "yes" or "no" whenever possible. When a more extensive explanation is required and there is no space on this form, please attach a separate sheet.

The word contract refers to the agreement the City is contemplating entering into with you.

NOTE: IF YOU ARE A CORPORATION, YOU NEED NOT COMPLETE THE REMAINDER OF THIS QUESTIONNNAIRE IF YOU RETURN IT SHOWING, ABOVE, YOUR CORPORATE FEDERAL TAXPAYER NUMBER AND ATTACHING A COPY OF YOUR CERTIFICATE OF CORPORATE GOOD STANDING ISSUED BY THE STATE OF CALIFORNIA.

	Yes	No
1. Have you performed services for the City in any year(s) prior to 2008? If yes, please indicate which years.		
2. Have you received any training, guidance, or direction from the City as to how the City expects the job (for which your services are contemplated) to be done. If yes, please describe what you are expecting (or have received) in the way of training or direction. _____		
3. Will your services under the contract be performed on City property? If no, please describe where the services are to be performed. _____ _____		
4. Do you expect to devote any full days (6 or more hours) or full weeks (30 or more hours) towards performing the services under the contract? If yes, please indicate approximately how many full days and/or full weeks you expect to devote during the life of the contract _____		
5. Are there any set or fixed hours or days of the week during which the City is expecting you to perform services under the contract? If yes, please indicate the days and hours during which you will be performing services. _____		

	Yes	No
6. Please provide the date on which you expect to complete your services under the contract.		
7. In order to perform services under the contract, do you intend to provide your own supplies or equipment? If yes, briefly describe the equipment/supplies. _____		
8. If your response to No. 7 is yes, has the City promised to or will you be expecting the City to reimburse you in any way for the cost of the supplies or equipment?		
9. Other than the above-referenced supplies and equipment, do you anticipate incurring any unreimbursable out-of-pocket expenses in the performance of the contract with the City? If yes. please describe. _____		
10. Do you have federal and state employer identification numbers? If so, please provide these numbers. _____		
11. Within the past two years have you performed the same type services (as called for in the contract) for any client or customer other than the City? If yes, please identify the client or customer and briefly describe the services performed. _____		
12. Do you currently have clients or customers other than the City for whom you are or will perform services during the duration of the contract? If yes, please identify client or customer by name and briefly describe the nature of services performed. _____		
13. In the past two years have you notified any insurance company in conjunction with obtaining a business-related insurance policy that you are self-employed? If yes, please indicate the insurance company and the nature of the business-related policy. _____ _____		
14. Do you have your own employees to help you perform the services called for by your contract? (Do not refer to independent contractors you may use to assist you.) _____		
15. Within the past two years have you been the employee of any employer (received a W-2)? If yes, state the employer(s), the date(s) of employment, and the nature of the services performed. _____ _____		
16. Do you have an office or business address other than your own home address, a City of Oakland office or your employer's business address? If yes, please state the address. _____ _____		

	Yes	No
17. With regard to the following, please indicate whether you have:		
a. an existing business letterhead? (please attach)		
b. an existing business phone number other than your home number? (please indicate #)		
c. filed for a fictitious business name? If yes, please attach a certified copy of the County issued certificate and an affidavit of publication.		
d. done public advertising for your business? If yes, please attach the ad copy or briefly describe your advertising efforts.		
18. If you have answered parts or all of No. 17 with "Yes," are the services represented in your answers the same type of services you will be performing for the City?		
19. Do you have a license from any governmental agency to perform the services under the contract? If yes, please state the type of license and name of the licensing agency. _____		
20. Please describe the extent of any personal financial investment you have made in order to be self-employed. You may either choose to indicate the actual dollar amount of investment or, without disclosing any dollar amount, briefly describe any purchases, leases or other types of financial commitments made by you for self employment purposes. _____ _____ _____ _____		

I VERIFY THAT THE RESPONSES ABOVE ARE TRUE AND CORRECT.

_____ _____

Date Contractor

PLEASE INDICATE WHETHER YOU OBJECT IF THE CITY DECIDES TO TREAT YOU AS A SHORT-TIME CONTRACT EMPLOYEE RATHER THAN AN INDEPENDENT CONTRACTOR AND THE REASON FOR YOUR OBJECTION. _____

_____

_____

_____

_____

_____

_____

_____

_____

OAKLAND
1852 2002
Growing for Over 150 Years

DECLARATION OF COMPLIANCE – LIVING WAGE ORDINANCE

(For use by all city agencies and departments for procurement, and professional services contracts)
To be completed by the prime and subconsultants (including CFARs)

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:

To pay employees a wage no less than the minimum initial compensation of $10.83 per hour with health benefits, as described in Section 3-C "Health Benefits" of the Ordinance, or otherwise $12.45 per hour, and to provide for the annual increase pursuant to Section 3-A 'Wages" of the Ordinance.

(a) 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.

(b) Health benefits –Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least $1.62 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.

(b) To inform employees that he or she may be eligible for Earned Income Credit (EIC) and shall provide forms to apply for advance EIC payments to eligible employees. There are several websites and other sources available to assist you. Web sites include but are not limited to: (1) http://www.irs.gov. for current guidelines as prescribed by the Internal Revenue Service and (2) the 2008 Earned Income Tax Outreach Kit http://www.cbpp.org/eic2008/

(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

Employment Questionnaire

Please provide responses to the following questions:

Item No.	DESCRIPTION	RESPONSE	COMMENTS
1.	*How many permanent employees are employed with your company. (If less than 5 employees stop here)		
2.	How many of your permanent employees are paid above the Living Wage rate.		
	How many of your permanent employees are paid below the Living Wage rate.		
3.	Number of compensated days off per employee (Refer to item "a"" on the other side of the form for the correct number of compensated days off.		
4	Number of trainees in your company?		
5.	Number of employees who are under 21 years of age, employed by a nonprofit corporation for after school or summer employment for a period not longer than 90 days.		

1852 2002
OAKLAND
Growing for Over 150 Years

EQUAL BENEFITS DECLARATION OF NONDISCRIMINATION

For use by all city agencies and departments for procurement, professional services (including CFARs) and construction contracts. 1
To be completed by the prime contractor/consultant.

Section A. Vendor/Contractor/Consultant/*CFAR Information

1 Name of Company _____

2 Name of Company Contact _____

3 Phone Number _____ Fax Number _____

4 Vendor Number (If Known) _____ Federal ID or Social Security # _____

5 Approximate Number of Employees in the U.S. _____

6 Are any of your employees covered by a collective bargaining agreement or union trust fund ? Yes ☐ ☐

7 Union Name(s) _____

Section B Compliance Questions

1 Does your company provide or offer access to benefits for employees and their spouses.

Yes ☐ *or* No ☐ (please check one)

2 Does your company provide or offer access to benefits for employees and their domestic partners.

Yes ☐ *or* No ☐ (please check one)

Questions B1 & B2 should be answered YES, even if your employees must pay some or all of the cost of spousal or domestic partner benefits.

Section C Compliance Questions

3 Please check each benefit that applies to answers 1 & 2 above and list as "other" any additional benefits not listed below. Some benefits (i.e. bereavement leave) are provided to employees because they have a spouse or domestic partner. Other benefits (i.e. medical insurance) are provided directly to the spouse or domestic partner.

	Benefit	Yes, this benefit is offered to Employees only	Yes, this benefit is offered to Employees and their Spouses	Yes, this benefit is offered to Employees and their Domestic Partners	No this benefit is not offered at all	Yes, documents were submitted for this benefit.
a	Health	☐	☐	☐	☐	☐
b	Dental	☐	☐	☐	☐	☐
c	Vision	☐	☐	☐	☐	☐
d	Retirement (Pension, 401(k), etc)	☐	☐	☐	☐	☐
e	Bereavement	☐	☐	☐	☐	☐
f	Family Leave	☐	☐	☐	☐	☐
g	Parental Leave	☐	☐	☐	☐	☐
h	Employee Assistance Program	☐	☐	☐	☐	☐
I	Relocation & Travel	☐	☐	☐	☐	☐
j	Company Discount, Facilities & Events	☐	☐	☐	☐	☐
k	Credit Union	☐	☐	☐	☐	☐
l	Child Care	☐	☐	☐	☐	☐
m	Other	☐	☐	☐	☐	☐

* CFAR is a City Financial Assistance Recipient

** The term "Domestic Partner" is defined as same-or opposite-sex couples registered with a state or local government domestic partnership registry.

OAKLAND
1852 2002
Growing for Over 150 Years

EQUAL BENEFITS DECLARATION OF NONDISCRIMINATION

For use by all city agencies and departments for procurement, professional services (including CFARs) and construction contracts. T
To be completed by the prime contractor/consultant.

Section D. Submitting Documents to Support Compliance Determinations

Please remember: Copies of documents must be submitted to justify each benefit marked under Section B-3 above. Your company can not be certified as complying with the City's Equal benefits Ordinance without proper documentation. For example, to document medical insurance, submit a statement from your insurance provider or a copy of the eligibility section from your plan document. To document leave programs, submit a copy of your company's employee handbook. If documentation of a particular benefit does not exist, attach an explanation. For more information please call the designated agency contract administrator or project manager.

Section E. Winning Compliance Through Reasonable Measures

Business owner, please note: If you can not offer a benefit in a nondiscriminatory manner because of reasons outside your control, (e.g., there are no insurance providers in your area willing to offer domestic partner coverage) you may be eligible for Reasonable Measures compliance. To comply on this basis, you must agree to pay a cash equivalent, submit a completed Reasonable Measures Application Form with all necessary attachments, and have your application approved by the City. For more information, the contract administrator or project manager holds the appropriate Reasonable Measures Application Form.
***Effective January 1, 2002, Assembly Bill 25, Domestic Partner Coverage requires carriers to offer domestic partner (DP) coverage to employer groups under the same terms and conditions as coverage provided to dependents of the employee.**

Section F. Substantial Compliance

A temporary compliance status is available for contractors that have indicated a willingness to comply but have requested additional time within which to fulfill all compliance requirements. Under this scenario, the contractor may enter into contracts with the City before the compliance process is completed. Substantial compliance status may be awarded to a contractor at the discretion of the City staff, within certain parameters.

Section G. Declaration of Non-Discrimination

① **Declaration:**

I hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

② **Date & Address** _____ / _____ / _____
Month Date Year

_____
Address

_____ / _____
(City) (State)

③ **Signature** _____

④ **Name of Signatory (please print)** _____

Did you submit supporting documentation for each benefit offered? Yes ☐ No ☐ (please check one)

Revised 3/2/2009
Formerly Scheudle N-1
EBO 1

CITY OF OAKLAND

CONTRACTOR ACKNOWLEDGEMENT OF
CITY OF OAKLAND CAMPAIGN CONTRIBUTION LIMITS

To be completed by City Representative prior to distribution to Contractor

City Representative _____ Phone _____ Project Spec No. _____

Department _____ Contract/Proposal Name _____

This is an ___ Original ___ Revised form (check one). If Original, complete all that applies. If Revised, complete Contractor name and any changed data.

Contractor Name _____ Phone ____-____-_____

Street Address _____ City _____, State _____ Zip _____

Type of Submission (check one) ___ Bid ___Proposal ___ Qualification ___ Amendment

Majority Owner (if any). A majority owner is a person or entity who owns more than 50% of the contracting firm or entity.

Individual or Business Name _____ Phone ____-____-_____

Street Address _____ City _____, State _____ Zip _____

The undersigned Contractor's Representative acknowledges by his or her signature the following:

The Oakland Campaign Reform Act limits campaign contributions and prohibits contributions from contractors doing business with the City of Oakland and the Oakland Redevelopment Agency during specified time periods. Violators are subject to civil and criminal penalties.

I have read Oakland Municipal Code Chapter 3.12, including section 3.12.140, the contractor provisions of the Oakland Campaign Reform Act and certify that I/we have not knowingly, nor will I /we make contributions during the period specified in the Act.

I understand that the contribution restrictions also apply to entities/persons affiliated with the contractor as indicated in the Oakland Municipal Code Chapter 3.12.080.

If there are any changes to the information on this form during the contribution-restricted time period, I will file an amended form with the City of Oakland.

_____ ___/___/___
Signature Date

_____ _____
Print Name of Signer Position

To be Completed by City of Oakland after completion of the form

Date Received by City: ___/___/___ By _____

Date Entered on Contractor Database: ___/___/___ By _____