

July 15, 2009



**REQUEST FOR PROPOSALS
for**

Commercial Sector Solid Waste Reduction Audits and Technical Assistance

Thank you for considering the attached Request for Proposals (RFP). If you are interested in submitting a Proposal, please follow these instructions for submissions:

NO LATE PROPOSALS WILL BE ACCEPTED

Due Date and Time:

No Later Than August 17, 2009 at 4:00 pm

Proposal Number:

09-2466

This Proposal number must be clearly marked on the outside of the envelope containing the Proposal.

Submit Proposal to:

By mail:

City of Irvine
Purchasing Agent
P.O. Box 19575
Irvine, CA 92623-9575

Overnight or hand delivery:

City of Irvine
c/o Receptionist for Purchasing Agent
1 Civic Center Plaza
Irvine, CA 92606-5208

**ALL PROPOSALS MUST BE RECEIVED AT
THE CITY OFFICES NO LATER THAN 4:00
P.M. ON MONDAY, AUGUST 17, 2009. NO
LATE PROPOSALS WILL BE ACCEPTED.**

Any requests for clarification or other questions concerning this RFP must be submitted in writing and sent via email to Michael Byrne with a copy to Portia Mina (as shown below) no later than Wednesday, July 29, 2009 at 4:00 p.m.

MICHAEL BYRNE
SR. MANAGEMENT ANALYST
949-724-6357
mbyrne@ci.irvine.ca.us

PORTIA MINA
SENIOR BUYER
949-724-6184
pmina@ci.irvine.ca.us

The City of Irvine reserves the right to reject any or all Proposals, to waive any informality in any Proposal, and to select the Proposal that best meets the City's needs.

REQUEST FOR PROPOSALS
for
Commercial Sector Solid Waste Reduction Audits
and Technical Assistance

Dear Proposers:

The City of Irvine is requesting proposals to establish a contract for **Commercial Sector Waste Reduction and Recycling Program Technical Assistance** beginning October 1, 2009 through September 30, 2010, with options to renew for up to four (4) additional one (1) year terms, at the City of Irvine's discretion.

Proposals must be submitted to the Purchasing Agent, City of Irvine, no later than the date and time stated on this RFP cover sheet. Proposals shall be reviewed and rated on the basis of qualifications, specific experience, references, familiarity with the services and pricing. The City will then determine which proposal best meets the City's requirements.

If hand delivered to the Civic Center, proposals shall be submitted to the Receptionist for the Purchasing Agent at the Reception Desk located on the first floor. Proposals shall be submitted in sealed envelopes marked on the outside, **"Commercial Sector Waste Reduction and Recycling Program Technical Assistance RFP No. 09-2466."** (Please see cover sheet for additional submittal information.)

LATE PROPOSALS WILL NOT BE ACCEPTED

The City reserves the right to reject any or all proposals, to waive any informality in any proposal and to select the proposal that best meets the City's needs.

OVERVIEW AND SCOPE OF WORK

This Request for Proposals is for Reduction and Recycling Program Technical Assistance as set forth in Attachment I.

TERMS AND CONDITIONS

The City's standard Agreement for Contract Services is included as Attachment II. Upon the award of the Contract, it is expected that the successful proposer will accept the Agreement terms and conditions "as is" without modification.

At the discretion of the City, any or all parts of the respondent's proposal shall be made a binding part of the selected firm's contract and agreement. The City reserves the right to reject in whole or in part any of the proposals.

ORGANIZATION OF PROPOSAL

The proposal will be evaluated by the City and shall include, at a minimum, the following information:

- **PERSONNEL**

This section shall define the experience of the Project Manager, other key personnel and sub-consultants assigned to the services. The designated Project Manager shall be the primary contact with the City during the contract period.

- **REFERENCES**

Provide references for similar work that your firm has provided within the last three (3) years. Include a detailed description of the services, the agency or firm names, contact names and phone numbers, and dates of services performed.

- **COST SUMMARY**

This section shall define the fee schedule for the services.

- **SIGNATURE**

The proposal shall be signed by an official authorized to bind the firm, and shall contain a statement to the effect that the proposal is valid for ninety (90) days.

SELECTION PROCESS

The Contract award will be made after selection of one (1) respondent's proposal from among all respondents with implementation of services to follow. However, this RFP does not indicate a commitment by the City to award a contract to any successful respondent. An award of contract is estimated to occur within approximately sixty (60) calendar days after receipt of proposals. The City intends to evaluate the proposed services based upon the data presented in response to the RFP. The proposals will then be reviewed based on qualifications, specific experience, references, familiarity with the services and pricing, and then rated according to which company best meets the City's requirements. The City reserves the right to negotiate final pricing with the most qualified proposer.

Performance Measures:

The City will evaluate the selected Contractor's performance based on, but not limited to, the following: 1) the quantity of waste evaluations conducted for businesses during the contract period, 2) the rate of Contractor success in persuading businesses to

implement Contractor's waste reduction and recycling recommendations, 3) the ability of Contractor to complete work tasks and projects in accordance with designated timeframes and deadlines established by City and 4) cost.

Although the firm's proposal and proposed cost will be a factor used by the evaluation team to determine contract award, the contract will not necessarily be awarded to the respondent with the lowest proposed cost. It is understood that all pricing provided is firm for the period of ninety (90) days from the proposal date.

GENERAL INFORMATION

The City will make payments monthly on approved invoices, with payment terms of net 30 days upon receipt of invoice. Payment for additional work, if any, will be negotiated as required. Final payment will be made after approval and acceptance of the work.

Any cost incurred in the preparation of a proposal, presentation to the City, travel in conjunction with such presentations, or samples of items shall be the responsibility of the respondent. The City assumes no responsibility and no liability for costs incurred by respondents prior to issuance of an agreement or purchase order.

The proposer shall furnish the City with such additional information as the City may reasonably require. The City reserves the right to conduct pre-contract negotiations with any or all potential proposers.

Any questions or requests for clarification must be submitted in writing and sent via email to Michael Byrne at mbyrne@ci.irvine.ca.us with a copy to the Portia Mina at pmina@ci.irvine.ca.us No questions will be accepted later than Wednesday, July 29, 2009 at 4:00 p.m.

All data, documents and other products used or developed during the project will remain the property of the City upon completion of the project.

One (1) original and two (2) copies of the completed proposal must be enclosed in a sealed envelope and addressed as stated on the cover sheet. The original proposal must be unbound. Sealed envelopes must be marked with, "Waste Reduction and Recycling Program Technical Assistance RFP No. 09-2466."

Sincerely,

Tracy Hamilton, C.P.M., CPIM
Purchasing Agent

Attachments

ATTACHMENT I

SCOPE OF SERVICES

Purpose:

The purpose of the project will be to analyze the waste streams at selected Irvine businesses and identify cost-saving waste reduction and recycling opportunities for these participating businesses. As adjunct tasks, selected contractor may also be directed to assist in implementation of the City's construction and demolition recycling programs, and evaluate the performance of any City authorized waste hauler, including reviews of hauler compliance with recycling and other franchise requirements and accuracy of hauler recycling reports and franchise fee calculations. This project is part of the City of Irvine's efforts to comply with California's Integrated Waste Management Act (known as "AB 939"), which requires all jurisdictions to implement state-approved waste reduction and recycling plans to divert half of their generated waste from landfills on an ongoing basis.

City contacts:

Primary Contact:	Michael Byrne	(949) 724-6357
Secondary Contact:	Jan Noce	(949) 724-6356

Contractor qualifications:

The selected contractor for the project will have extensive understanding and demonstrate proven experience in waste auditing and/or waste characterization studies, solid waste hauler franchise agreements including financial provisions of such agreements, waste hauling best practices, and state-of-the-art recycling systems. The contractor must also have an ability to help develop and conduct effective public relations strategies to encourage business cooperation in waste reduction efforts.

Description of Current Services and Conditions:

The City of Irvine has an exclusive waste hauler serving its residential community and businesses located there (as defined by the exclusive franchise agreement) and multiple permitted waste haulers serving its commercial and industrial sectors under a separate nonexclusive franchise agreement.

Under the current exclusive franchise agreement, the waste hauler is required to make recycling services available to all their "village commercial" customers free of charge. The exclusive hauler is expected to implement the most cost-effective combination of programs to maximize waste diversion from landfills, and to meet its diversion and public education commitments required under its exclusive franchise agreement with the City.

The rest of the commercial and industrial businesses located in Irvine are provided waste collection service by other waste haulers operating under a nonexclusive franchise agreement. This nonexclusive agreement includes incentives that provide discounted franchise fee rates to haulers that deliver collected waste to material recovery facilities (MRFs) and recycling centers instead of landfills.

The City of Irvine seeks to implement a recycling technical assistance program to help monitor the delivery of essential recycling services throughout the community, especially to Irvine businesses through waste-stream audits, provide advice to businesses regarding best waste reduction and recycling practices, verify waste hauler compliance with franchise provisions, and assist with implementation and monitoring of construction and demolition recycling programs.

EXPECTATIONS OF CONTRACTOR:

WASTE AUDITS -- Purpose / Goal:

The purpose of the project will be to analyze the waste streams at selected Irvine businesses and identify cost-saving waste reduction and recycling opportunities for these participating businesses. This project is part of the City of Irvine's efforts to comply with California's Integrated Waste Management Act (known as "AB 939"), which requires all jurisdictions to implement state-approved waste reduction and recycling plans to divert half of their generated waste from landfills on an ongoing basis.

The primary goal of the project is to determine the existing and potential waste diversion for selected business sites located within areas subject to the City's nonexclusive waste service franchise agreement. Completing waste reduction/recycling audits and providing technical assistance to businesses are programs identified in Irvine's Source Reduction and Recycling Element (SRRE), which is the City's state-approved plan for meeting AB939 diversion and public education requirements. Documentation of the audits can be used to demonstrate "good faith" compliance with the requirements of AB 939. Within this task, the contractor may be called upon to assist with disposal or diversion calculations and documentation from various special events or venues, or to otherwise assist in compiling data and drafting reports to local or state agencies including Annual Reports to the California Integrated Waste Management Board (CIWMB).

Technical Approach:

Each year, the selected contractor will conduct on-site waste reduction and recycling technical assistance audits for a significant number of business properties located in the City of Irvine as directed by the City. The auditors will distribute California Integrated Waste Management Board (CIWMB) brochures and fact sheets, and assist the City in creating other information on waste reduction and recycling programs for each business audited as part of a commercial sector technical assistance and outreach effort.

The auditors will be assessing current diversion activities as well as making recommendations for additional diversion programs. The contractor will calculate an overall diversion rate for each of the participating business properties. Each business or property visited will be provided with a diversion program recommendation form completed by the auditor. This form will list the most effective waste reduction and recycling programs that the business should implement. The contractor will compile the field notes and the diversion calculations from each on-site visit. This documentation will be archived by the contractor. All company data acquired during the project will be treated as confidential. Waste auditors will utilize methods consistent with the CIWMB and US EPA business waste reduction audit training programs. Specifically, to the extent feasible, methods to be utilized by waste reduction and recycling auditors will be based on or be compatible with the CIWMB training program document titled, *"Establishing a Waste Reduction Program at Work"*. (A copy of the training program is available on the CIWMB Web site at <http://www.ciwmb.ca.gov/Publications/default.asp?pubid=776>). The contractor will assist City staff with the selection and solicitation of specific business properties to participate in the project.

Once the contractor has developed recommendations for each individual business site, the contractor will assist in the "start-up" implementation of source reduction and recycling programs for each business if requested. The contractor will also assist businesses in estimating the resource and cost savings of various waste reduction methods and recycling programs. The contractor will also be available to follow-up and consult with participating businesses following three months of implementation to monitor the progress of recommended waste reduction and diversion programs, and to provide further advice to participating businesses as appropriate.

WASTE HAULER EVALUATIONS -- Purpose / Goal:

The City relies in large part on its solid waste haulers to maximize waste diversion from landfills and to deliver high-quality waste collection services to the community at large through compliance with terms of the City's waste hauler franchise agreements. As directed by the City, the selected contractor will assist in evaluating the performance of City authorized waste haulers. This may include reviews of hauler compliance with recycling and other franchise requirements and accuracy of hauler recycling reports and quarterly franchise fee payments.

Technical Approach:

The City's authorized waste haulers submit recycling reports and franchise fee payments to the City on a quarterly basis in accordance with terms of their franchise agreements. The City may direct the contractor to review and evaluate the accuracy of hauler franchise fee payments and the waste and recycling tonnage reports upon which they are based. In such cases, the contractor may be assigned to perform additional data and document gathering from waste haulers or otherwise, as necessary, to perform such evaluations.

CONSTRUCTION AND DEMOLITION RECYCLING -- Purpose / Goal:

The City continues to implement a construction and demolition (C&D) recycling ordinance and to also encourage waste diversion from C&D activities not covered by the ordinance. The contractor will be expected to help with the continuing implementation and development of C&D recycling programs and monitoring of construction and demolition recycling activities throughout the City in order to maintain compliance with state mandates of AB939, *et al.*

Summary of Scope of Work:

Listed below is a summary of the tasks to be performed for the City of Irvine during the implementation of the Waste Reduction and Recycling Program Technical Assistance project:

Waste Audits and Recycling Assistance to Businesses:

1. Develop sampling plan.
2. Coordinate technical approach with CIWMB-approved methods.
3. Conduct on-site solid waste reduction and recycling audits.
4. Determine current diversion estimates for participating businesses.
5. Provide waste reduction and diversion recommendations to each business.
6. Compile information on confidential business audit forms / field notes.
7. Produce and present to the City a final summary report of findings and recommendations.

Waste Hauler Evaluations:

1. As directed, review hauler tonnage reports and related franchise fee calculations.
2. Obtain additional data as needed from haulers (e.g., weight tickets), disposal facilities, material recovery facilities, or recycling centers to determine accuracy of such reports.
3. Determine accuracy of submitted hauler reports and fees.

Construction and Demolition (C&D) Recycling:

1. As directed, review recycling plans and progress reports submitted by project applicants, developers, and contractors.
2. Obtain additional data as needed, such as weight tickets or other documentation necessary to determine adequacy or accuracy of submittals.
3. Advise City staff regarding the adequacy and accuracy of submitted C&D recycling plans and reports.
4. Conduct site visits to C&D projects to gather information as necessary and as directed by City to evaluate compliance with City codes and regulations.

Project Timeline:

The project shall commence on October 1, 2009 and continue through September 30, 2010.

Invoicing and Payments:

The contractor shall bill the City via monthly invoices for a total sum amount to be determined. Project invoices will be submitted to the City each month and itemized to include the date of invoice, the period billed for, the tasks performed by the contractor during the billing period including adequate detail to quantify work performed (e.g., number of business audits, number of C&D plans and reports reviewed, number of haulers evaluated), and the payment due the contractor by the City.

Contractor Pledge Regarding Confidentiality and Conflicts of Interest:

All business and company data collected from this project will be treated as confidential. The contractor shall commit to protecting the confidentiality of data collected from waste audits to the greatest extent possible, if requested to do so by a participating business. However, the contractor shall convey to prospective businesses that neither the City nor the contractor can guarantee such confidentiality. The contractor shall inform each prospective business of its requirement to provide such waste audit data and other relevant material to the City, and gain the approval of each prospective business with regard to this transfer of information, prior to selecting them for this project.

To protect the proprietary interests and concerns of haulers, the contractor will submit to the city only "scrubbed" summary data and findings to the City. Such information will not include lists which link specific waste haulers' with their customers' names, addresses, or telephone numbers in any reports or other documents they prepare for submittal to the City. However, such information may be reviewed in consultations by City staff with the waste audit consultants. With this procedure, such information will not become public record, thereby, protecting the confidentiality and proprietary nature of such information.

In addition, the City requires that all waste stream auditors agree to and abide by strict "conflict of interest" standards. Auditors will be strictly forbidden from recommending to Irvine businesses the services of any specific waste hauler over any other hauler authorized to operate in the City of Irvine. These standards will ensure that the legitimate right of any authorized hauler to conduct waste hauling business in the manner set forth in the nonexclusive franchise agreement is not impaired. The City will consider any violation of this "conflict of interest" provision as unauthorized performance by the consultant under this agreed upon scope of work, resulting in termination of the project.

Throughout the course of the project, the City reserves the right to discontinue this project at any time it deems appropriate. In addition, the City reserves the right to direct the contractor to make any changes in methods and procedures for any and all tasks for which the City is compensating the contractor.

ATTACHMENT II

AGREEMENT FOR CONTRACT SERVICES

THIS AGREEMENT FOR CONTRACT SERVICES (the "Agreement") is made and entered into as of _____ 2009, by and between the CITY OF IRVINE, a municipal corporation ("City"), and _____, a *(insert legal entity such as "a sole proprietorship" or "a California corporation")* ("Contractor"). (The term Contractor includes professionals performing in a consulting capacity.)

PART I

FUNDAMENTAL TERMS

A. Location of Project: The City of Irvine location(s) as set forth in PART IV, Scope of Services, included herein.

B. Description of Services/Goods to be Provided: *(Describe services)* in accordance with PART IV, Scope of Services, included herein.

C. Term: Unless terminated earlier as set forth in this Agreement, the services shall commence on October 1, 2009 ("Commencement Date") and shall continue through September 30, 2010. The City reserves the right to extend the contract for up to four (4) additional one (1) year periods.

D. Party Representatives:

D.1. The City designates the following person/officer to act on City's behalf:

D.2. The Contractor designates the following person to act on Contractor's behalf:

E. Notices: Contractor shall deliver all notices and other writings required to be delivered under this Agreement to City at the address set forth in Part II ("General Provisions"). The City shall deliver all notices and other writings required to be delivered to Contractor at the address set forth following Contractor's signature below.

F. Attachments: This Agreement incorporates by reference the following Attachments to this Agreement:

- | | | |
|------|-----------|--------------------|
| F.1. | Part I: | Fundamental Terms |
| F.2. | Part II: | General Provisions |
| F.3. | Part III: | Special Provisions |
| F.4. | Part IV: | Scope of Services |
| F.5. | Part V: | Budget |

G. Integration: This Agreement represents the entire understanding of City and Contractor as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with regard to those matters covered by this Agreement. This Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings, if any, between the parties, and none shall be used to interpret this Agreement.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first set forth above.

CITY OF IRVINE

By: _____
Sean Joyce
Its: City Manager

By: _____
Manuel Gomez
Its: Director of Public Works

Attest:

By: _____
Sharie Apodaca
City Clerk of the City Of Irvine

CONTRACTOR'S NAME

By: _____
Its: _____

By: _____
Its: _____

Contractor Information

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP

Address for Notices and Payments:

Philip D. Kohn

Attn:

Telephone Number:

FAX Number:

Email Address:

PART II

GENERAL PROVISIONS

SECTION ONE: SERVICES OF CONTRACTOR

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Contractor shall provide the goods and/or services shown on Part IV hereto ("Scope of Services"), which may be referred to herein as the "services" or the "work." If this Agreement is for the provision of goods, supplies, equipment or personal property, the terms "services" and "work" shall include the provision (and, if designated in the Scope of Services, the installation) of such goods, supplies, equipment or personal property.

1.2 Changes and Additions to Scope of Services. City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to, or deducting from said work. No such work shall be undertaken unless a written order is first given by City to Contractor, incorporating therein any adjustment in (i) the Budget, and/or (ii) the time to perform this Agreement, which adjustments are subject to the written approval of the Contractor. It is expressly understood by Contractor that the provisions of this Section 1.2 shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefore.

1.3 Standard of Performance. Contractor agrees that all services shall be performed in a competent, professional, and satisfactory manner in accordance with the standards prevalent in the industry, and that all goods, materials, equipment or personal property included within the services herein shall be of good quality, fit for the purpose intended.

1.4 Performance to Satisfaction of City. Contractor agrees to perform all work to the satisfaction of City within the time specified. If City reasonably determines that the work is not satisfactory, City shall have the right to take appropriate action, including but not limited to: (i) meeting with Contractor to review the quality of the work and resolve matters of concern; (ii) requiring Contractor to repeat unsatisfactory work at no additional charge until it is satisfactory; (iii) suspending the delivery of work to Contractor for an indefinite time; (iv) withholding payment; and (v) terminating this Agreement as hereinafter set forth.

1.5 Instructions from City. In the performance of this Agreement, Contractor shall report to and receive instructions from the City's Representative designated in Paragraph D.1 of Part I ("Fundamental Terms") of this Agreement. Tasks or services other than those specifically described in the Scope of Services shall not be performed without the prior written approval of the City's Representative.

1.6 Familiarity with Work. By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties, and restrictions attending performance of the services under the Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any conditions, including any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the City of such fact and shall not proceed except at Contractor's risk until written instructions are received from the City's Representative.

1.7 Prohibition Against Subcontracting or Assignment. Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of City. In addition, neither the Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. In the event of any unapproved transfer, including any bankruptcy proceeding, City may void the Agreement at City's option in its sole and absolute discretion. No approved transfer shall release any surety of Contractor of any liability hereunder without the express consent of City.

1.8 Compensation. Contractor shall be compensated in accordance with the terms of Part V hereto ("Budget"). Included in the Budget are all ordinary and overhead expenses incurred by Contractor and its agents and employees, including meetings with City representatives, and incidental costs incurred in performing under this Agreement.

SECTION TWO: INSURANCE AND INDEMNIFICATION

2.1 Insurance. Without limiting Contractor's indemnification obligations, Contractor shall procure and maintain, at its sole cost and for the duration of this Agreement, insurance coverage as provided below, against all claims for injuries against persons or damages to property which may arise from or in connection with the performance of the work hereunder by Contractor, its agents, representatives, employees, and/or subcontractors. In the event that Contractor subcontracts any portion of the work in compliance with Section 1.7 of this Agreement, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the contractor is required to maintain pursuant to this Section 2.1.

2.1.1 Insurance Coverage Required. The policies and amounts of insurance required hereunder shall be as follows:

(a) General Liability (including premises and operations, contractual liability, personal injury, independent contractors liability): One Million Dollars (\$1,000,000.00) single limit, per occurrence. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate shall apply separately to this

project, or the general aggregate limit shall be two times the occurrence limit.

(b) Automobile Liability (including owned, non-owned, leased, and hired autos): One Million Dollars (\$1,000,000.00), single limit, per occurrence for bodily injury and property damage.

(c) Workers Compensation and Employer's Liability: Workers Compensation Insurance (if Contractor is required to have) in an amount required by the laws of the State of California and Employer's Liability Insurance in the amount of One Million Dollars (\$1,000,000.00) per occurrence for injuries incurred in providing services under this Agreement.

(d) Professional Liability (covering errors and omissions): One Million Dollars (\$1,000,000.00) per claims made.

(e) Other Insurance: Such other policies of insurance as may be required in Part III hereto ("Special Provisions").

2.1.2 General Requirements. Contractor's insurance:

(a) Shall be issued by an insurance company which is an admitted carrier in the State of California and maintains a Secure Best's Ratings of "A" or higher; unless otherwise approved by City;

(b) General Liability, Automobile Liability and Employer's Liability shall name the City, and its officers, officials, employees, agents, representatives and volunteers (collectively hereinafter "City and City Personnel") as additional insureds and contain no special limitations on the scope of protection afforded to City and City Personnel. All insurance provided hereunder shall include the appropriate endorsements. General Liability coverage shall be provided in the form of an Additional Insured endorsement (CG 20 10 11 85 or equivalent) to the Contractor's insurance policy, or as a separate owner's policy.

(c) Shall be primary insurance and any insurance or self-insurance maintained by City or City Personnel shall be in excess of Contractor's insurance and shall not contribute with it;

(d) Shall be "occurrence" rather than "claims made" insurance, excluding Professional Liability;

(f) Shall be endorsed to state that the insurer shall waive all rights of subrogation against City and City Personnel, excluding Professional Liability;

(g) Shall be written by good and solvent insurer(s) admitted to do business in the State of California and approved in writing by City; and

(h) Coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits, non-renewed, or materially changed for any reason, without thirty (30) days prior written notice thereof given by the insurer to City by U.S. mail, or by personal delivery, except for nonpayment of premiums, in which case ten (10) days prior notice shall be provided.

2.1.3 Deductibles. Any deductibles or self-insured retention's must be declared to and approved by City prior to the execution of this Agreement by City.

2.1.4 Evidence of Coverage. Contractor shall furnish City with certificates of insurance demonstrating the coverage required by this Agreement which shall be received and approved by City not less than five (5) working days before work commences.

2.1.5 Workers Compensation Insurance. If Contractor is required to provide Workers' Compensation Insurance, Contractor shall file with City the following signed certification:

"I am aware of, and will comply with, Divisions 4 and 5 of the California Labor Code by securing, paying for, and maintaining in full force and effect for the duration of the contract, complete Workers' Compensation Insurance, and shall furnish a Certificate of Insurance to City before execution of the Agreement."

In the event Contractor has no employees requiring Contractor to provide Workers' Compensation Insurance, Contractor shall so certify to City in writing prior to City's execution of this Agreement. City and City Personnel shall not be responsible for

(e) Shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability;
any claims in law or equity occasioned by failure of the Contractor to comply with this section or with the provisions of law relating to Workers' Compensation.

2.2 Indemnification. Contractor shall indemnify, defend, and hold City and City Personnel harmless from and against any and all actions, suits, claims, demands, judgments, attorney's fees, costs, damages to persons or property, losses, penalties,

obligations, expenses or liabilities (herein "claims" or "liabilities") that may be asserted or claimed by any person or entity arising out of the willful or negligent acts, errors or omissions of Contractor, its employees, agents, representatives or subcontractors in the performance of any tasks or services for or on behalf of City, whether or not there is concurrent active or passive negligence on the part of City and/or City Personnel, but excluding such claims or liabilities arising from the sole active negligence or willful misconduct of City or City Personnel. In connection therewith:

2.2.1 Contractor shall defend any action or actions filed in connection with any such claims or liabilities, and shall pay all costs and expenses, including attorney's fees incurred in connection therewith.

2.2.2 Contractor shall promptly pay any judgment rendered against City or any City Personnel for any such claims or liabilities.

2.2.3 In the event City and/or any City Personnel is made a party to any action or proceeding filed or prosecuted for any such damages or other claims arising out of or in connection with the negligent performance or a failure to perform the work or activities of Contractor, Contractor shall pay to City any and all costs and expenses incurred by City or City Personnel in such action or proceeding, together with reasonable attorney's fees and expert witness fees.

SECTION THREE: LEGAL RELATIONS AND RESPONSIBILITIES

3.1 Compliance with Laws. Contractor shall keep itself fully informed of all existing and future state and federal laws and all county and city ordinances and regulations which in any manner affect those employed by it or in any way affect the performance of services pursuant to this Agreement. Contractor shall at all times observe and comply with all such laws, ordinances, and regulations and shall be responsible for the compliance of all work and services performed by or on behalf of Contractor. When applicable, Contractor shall not pay less than the prevailing wage, which rate is determined by the Director of Industrial Relations of the State of California.

3.2 Licenses, Permits, Fees and Assessments. Contractor shall obtain at its sole cost and expense all licenses, permits, and approvals that may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Contractor's performance of the services required by this Agreement, and shall indemnify, defend, and hold harmless City against any such fees, assessments, taxes, penalties, or interest levied, assessed, or imposed against City thereunder.

3.3 Covenant Against Discrimination. Contractor covenants for itself, its heirs, executors, assigns, and all persons claiming under or through it, that there shall be no discrimination against any person on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the performance of this Agreement. Contractor further covenants and agrees to comply with the terms of the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) as the same may be amended from time to time.

3.4 Independent Contractor. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise, or a joint venturer, or a member of any joint enterprise with Contractor. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. Neither Contractor nor any of Contractor's employees shall, at any time, or in any way, be entitled to any sick leave, vacation, retirement, or other fringe benefits from the City; and neither Contractor nor any of its employees shall be paid by City time and one-half for working in excess of forty (40) hours in any one week. City is under no obligation to withhold State and Federal tax deductions from Contractor's compensation. Neither Contractor nor any of Contractor's employees shall be included in the competitive service, have any property right to any position, or any of the rights an employee may have in the event of termination of this Agreement.

3.5 Use of Patented Materials. Contractor shall assume all costs arising from the use of patented or copyrighted materials, including but not limited to equipment, devices, processes, and software programs, used or incorporated in the services or work performed by Contractor under this Agreement. Contractor shall indemnify, defend, and save the City harmless from any and all suits, actions or proceedings of every nature for or on account of the use of any patented or copyrighted materials.

3.6 Proprietary Information. All proprietary information developed specifically for City by Contractor in connection with, or resulting from, this Agreement, including but not limited to inventions, discoveries, improvements, copyrights, patents, maps, reports, textual material, or software programs, but not including Contractor's underlying materials, software, or know-how, shall be the sole and exclusive property of City, and are confidential and shall not be made available to any person or entity without the prior written approval of City. Contractor agrees that the compensation to be paid pursuant to this Agreement includes adequate and sufficient compensation for any proprietary information developed in connection with or resulting from the performance of Contractor's services under this Agreement. Contractor further understands and agrees that full disclosure of all proprietary information developed in connection with, or resulting from, the performance of services by Contractor under this Agreement shall be made to City, and that Contractor shall do all things necessary and proper to perfect and maintain ownership of such proprietary information by City.

3.7 Retention of Funds. Contractor hereby authorizes City to deduct from any amount payable to Contractor (whether arising out of this Agreement or otherwise) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and all amounts for which City may be liable to third parties, by reason of Contractor's negligent acts, errors, or omissions, or willful misconduct, in performing or failing to perform Contractor's obligations under this Agreement. City in its sole and absolute discretion, may withhold from any payment due Contractor, without liability for interest, an amount sufficient to cover such claim or any resulting lien. The failure of City to exercise such right to deduct or withhold shall not act as a waiver of Contractor's obligation to pay City any sums Contractor owes City.

3.8 Termination By City. City reserves the right to terminate this Agreement at any time, with or without cause, upon written notice to Contractor. Upon receipt of any notice of termination from City, Contractor shall immediately cease all services hereunder except such as may be specifically approved in writing by City. Contractor shall be entitled to compensation for all services rendered prior to receipt of City's notice of termination and for any services authorized in writing by City thereafter. If termination is due to the failure of Contractor to fulfill its obligations under this Agreement, City may take over the work and prosecute the same to completion by contract or otherwise, and Contractor shall be liable to the extent that the total cost for completion of the services required hereunder, including costs incurred by City in retaining a replacement contractor and similar expenses, exceeds the Budget.

3.9 Right to Stop Work; Termination By Contractor. Contractor shall have the right to stop work only if City fails to timely make a payment required under the terms of the Budget. Contractor may terminate this Agreement only for cause, upon thirty (30) days' prior written notice to City. Contractor shall immediately cease all services hereunder as of the date Contractor's notice of termination is sent to City, except such services as may be specifically approved in writing by City. Contractor shall be entitled to compensation for all services rendered prior to the date notice of termination is sent to City and for any services authorized in writing by City thereafter. If Contractor terminates this Agreement because of an error, omission, or a fault of Contractor, or Contractor's willful misconduct, the terms of Section 3.8 relating to City's right to take over and finish the work and Contractor's liability therefor shall apply.

3.10 Waiver. No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing.

3.11 Legal Actions. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted and maintained in the Municipal and Superior Courts of the State of California in the County of Orange, or in any other appropriate court with jurisdiction in such County, and Contractor agrees to submit to the personal jurisdiction of such court.

3.12 Rights and Remedies are Cumulative. The rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

3.13 Attorneys' Fees. In any action between the parties hereto seeking enforcement of any of the terms or provisions of this Agreement or in connection with the performance of the work hereunder, the party prevailing in the final judgment in such action or proceeding, in addition to any other relief which may be granted, shall be entitled to have and recover from the other party its reasonable costs and expenses, including, but not limited to, reasonable attorney's fees, expert witness fees, and courts costs. If either party to this Agreement is required to initiate or defend litigation with a third party because

of the violation of any term or provision of this Agreement by the other party, then the party so litigating shall be entitled to its reasonable attorney's fees and costs from the other party to this Agreement.

3.14 Force Majeure. The time period specified in this Agreement for performance of services shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of City or Contractor, including, but not restricted to, acts of nature or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including City, if the delaying party shall within ten (10) days of the commencement of such delay notify the other party in writing of the causes of the delay. If Contractor is the delaying party, City shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of City such delay is justified. City's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against City for any delay in the performance of this Agreement, however caused. Contractor's sole remedy shall be extension of this Agreement pursuant to this Section 3.14.

3.15 Non-liability of City Officers and Employees. No officer, official, employee, agent, representative, or volunteer of City shall be personally liable to Contractor, or any successor in interest, in the event of any default or breach by City, or for any amount which may become due to Contractor or its successor, or for breach of any obligation of the terms of this Agreement.

3.16 Conflicts of Interest.

A. No officer, official, employee, agent, representative or volunteer of City shall have any financial interest, direct or indirect, in this Agreement, or participate in any decision relating to this Agreement that affects his or her financial interest or the financial interest of any corporation, partnership, association or other entity in which he or she is interested, in violation of any Federal, State or City statute, ordinance or regulation. Contractor shall not employ any such person while this Agreement is in effect.

B. Contractor represents, warrants and covenants that he, she or it presently has no interest, direct or indirect, that would interfere with or impair in any manner or degree the performance of Contractor's obligations and responsibilities under this Agreement. Contractor further agrees that while this Agreement is in effect, Contractor shall not acquire or otherwise obtain any interest, direct or indirect, that would interfere with or impair in any manner or degree the performance of Contractor's obligations and responsibilities under this Agreement.

C. Contractor acknowledges that pursuant to the provisions of the Political Reform Act (Government Code section 87100 *et seq.*), City may determine Contractor to be a "Consultant" as that term is defined by the Act. In the event City makes such a determination, Contractor agrees to complete and file a "Statement of Economic Interest" with the City Clerk to disclose such financial interests as required by City. In such event, Contractor further agrees to require any other person doing work under this

Agreement to complete and file a "Statement of Economic Interest" to disclose such other person's financial interests as required by City.

3.17 Compliance with California Unemployment Insurance Code Section 1088.8. If Contractor is a Sole Proprietor, then prior to signing the Agreement, Contractor shall provide to the City a completed and signed Form W-9, Request for Taxpayer Identification Number and Certification. Contractor understands that pursuant to California Unemployment Insurance Code Section 1088.8, the City will report the information from Form W-9 to the State of California Unemployment Development Department, and that the information may be used for the purposes of establishing, modifying, or enforcing child support obligations, including collections, or reported to the Franchise Tax Board for tax enforcement purposes.

SECTION FOUR: MISCELLANEOUS PROVISIONS

4.1 Records and Reports. The City Manager of the City of Irvine reserves the right to audit the Contractor's compliance with all of the terms and conditions of this Agreement at any time. Upon request by City, Contractor shall prepare and submit to City any reports concerning Contractor's performance of the services rendered under this Agreement. City shall have access, with 72 hours advance written notice delivered to Contractor, to the books and records of Contractor related to Contractor's performance of this Agreement in the event any audit is required. All drawings, documents, and other materials prepared by Contractor in the performance of this Agreement (i) shall be the property of City and shall be delivered at no cost to City upon request of City or upon the termination of this Agreement, and (ii) are confidential and shall not be made available to any individual or entity without prior written approval of City. Contractor shall keep and maintain all records and reports related to this Agreement for a period of three (3) years following termination of this Agreement, and City shall have access to such records in the event any audit is required.

4.2 Notices. Unless otherwise provided herein, all notices required to be delivered under this Agreement or under applicable law shall be personally delivered, or delivered by United States mail, prepaid, certified, return receipt requested, or by reputable document delivery service that provides a receipt showing date and time of delivery. Notices personally delivered or delivered by a document delivery service shall be effective upon receipt. Notices delivered by mail shall be effective at 5:00 p.m. on the second calendar day following dispatch. Notices to the City shall be delivered to the following address, to the attention of the City Representative set forth in Paragraph D.1 of the Fundamental Terms of this Agreement:

<u>To City:</u>	City of Irvine
	One Civic Center Plaza (92606) (Hand Deliveries)
	P. O. Box 19575
	Irvine, CA 92623-9575

Notices to Contractor shall be delivered to the address set forth below Contractor's signature on Part I of this Agreement, to the attention of Contractor's Representative set forth in Paragraph D.2 of the Fundamental Terms of this Agreement. Changes in the

address to be used for receipt of notices shall be effected in accordance with this Section 4.2.

4.3 Construction and Amendment. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The headings of sections and paragraphs of this Agreement are for convenience or reference only, and shall not be construed to limit or extend the meaning of the terms, covenants and conditions of this Agreement. This Agreement may only be amended by the mutual consent of the parties by an instrument in writing.

4.4 Severability. Each provision of this Agreement shall be severable from the whole. If any provision of this Agreement shall be found contrary to law, the remainder of this Agreement shall continue in full force.

4.5 Authority. The person(s) executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

4.6 Special Provisions. Any additional or supplementary provisions or modifications or alterations of these General Provisions shall be set forth in Part III of this Agreement ("Special Provisions").

4.7 Precedence. In the event of any discrepancy between Part I ("Fundamental Terms"), Part II ("General Provisions"), Part III ("Special Provisions"), Part IV ("Scope of Services"), and/or Part V ("Budget"), Part III shall take precedence and prevail over Parts I, II, IV and V; Part II shall take precedence and prevail over Parts I, IV and V; Part IV shall take precedence and prevail over Parts I and V; and Part V shall take precedence over Part I.

PART III

SPECIAL PROVISIONS

- 1) Contractors who provide on-site services for the City of Irvine shall obtain, within five (5) days of executing this Agreement, a City of Irvine business license and shall maintain a current business license throughout the term of this Agreement.
- 2) **Living Wage Ordinance.** The City of Irvine has adopted a Living Wage Ordinance (the “Ordinance”) that requires contractors who enter into a contract with the City to provide services with an estimated value of one hundred thousand dollars (\$100,000) or more for any consecutive twelve-month period to comply with the requirements of the Ordinance (reference Appendix A). Contractor shall notify the City in writing if the aggregate value of multiple contracts with the City, including amendments to this contract, total \$100,000 or more. Any subcontractor(s) performing work on the contract shall also be subject to the requirements of the Ordinance. The current living wage and benefit factor rates are posted on the City’s website at www.cityofirvine.org. To view the rates, along with other living wage information, click on the button labeled “Bids and RFPs / Purchasing” located on the lower, left-hand side of the page and then click on “Living Wage Information.”

Contractors are required to submit a completed Declaration of Compliance Form (reference Appendix B) with their bid or proposal; or with the contract documents where no formal solicitation was performed.

The following Living Wage Ordinance information documents are also included: Living Wage Guide (Appendix C); Living Wage Comparable Benefits Summary (Appendix D); the required Notice to Employees (Contractor Responsibility/Employee Rights) (Appendix E); and the required Earned Income Tax Credit (EITC) posting (Appendix F).

- 3) PART II GENERAL PROVISIONS, Section 2.1.1 (d) Professional Liability insurance requirements is deleted in its entirety.

PART IV
SCOPE OF SERVICES

Services shall be performed in accordance with ATTACHMENT I, Scope of Services.

PART V

BUDGET

Pricing shall be in accordance with ATTACHMENT II.

Payment for services will be made monthly on approved invoices, with payment terms of net 30 days upon receipt of invoice. Contractor shall submit invoices within fifteen (15) days from the end of each month in which services have been provided. Contractor shall provide invoices with sufficient detail to ensure compliance to pricing as set forth in this Agreement. The information required may include: date(s) of work, hours of work, hourly rate(s), and material costs.

Pricing shall remain firm for the entire one (1) year Agreement term. Thereafter, any proposed pricing adjustment for follow-on renewal periods shall be submitted to the City Representative in writing at least thirty (30) days prior to the new Agreement term. City and Contractor reserve the right to negotiate any pricing adjustment not to exceed the Bureau of Labor Statistics Consumer Price Index (CPI) data as follows: Los Angeles-Riverside-Orange County, CA; All Items; Not Seasonally Adjusted; annualized change comparing the most recent month's reported data to the same month of the prior year. (This information may be found on the U.S. Department of Labor's website at www.bls.gov.)

Appendix A

CITY COUNCIL ORDINANCE NO. 07-15

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRVINE, CALIFORNIA, ADDING DIVISION 6 TO TITLE 2 OF THE IRVINE MUNICIPAL CODE RELATING TO LIVING WAGE REQUIREMENTS

The City Council of the City of Irvine DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Division 6, entitled "Living Wage Requirements," is hereby added to Title 2 ("Administrative Services") of the Irvine Municipal Code to read in its entirety as follows:

Division 6. Living Wage Requirements

Section 2-6-101. Title and Purpose.

A. This division shall be known and may be cited as the "City of Irvine Living Wage Ordinance."

B. The purpose of this division is to improve the quality of services to beneficiaries of City-contracted services and to ensure that employees of City service contractors earn an hourly wage that is sufficient to live with dignity and to achieve economic self-sufficiency. The City contracts with many businesses and organizations to provide services to the public. Such public expenditures should in accordance with a community economic standard that permits workers to live above the poverty level.

C. This division is intended to protect the public health, safety and welfare. It advances this intent by requiring that public funds be expended in such a manner as to facilitate individual self-reliance by employees of City contractors.

Section 2-6-102. Findings.

A. As a charter city, the City has the power to set compensation and terms of employment for its employees as an exercise of its municipal powers.

B. The City awards contracts to private firms and other businesses to provide services to the public and to City government.

C. The use of City funds to create living wage jobs will decrease poverty, increase consumer income, invigorate community businesses and

reduce the need for taxpayer-funded social service programs.

D. When City funds are used to contract for services, such contracts should demonstrate an effort to promote an employment environment that enhances the general quality of life within the community and maximizes the productive effect of the City's limited resources.

E. The City's use of contractors that do not provide health insurance to their employees can result in imposing the costs of their medical care on the county, state and federal governments.

F. Employees are more likely to be healthy if their employers provide reasonable health insurance to them and their dependents.

G. The payment of a living wage as required by this division benefits the above-stated interests.

Section 2-6-103. Definitions.

For purposes of this division, the following definitions shall be applicable:

(a) "Benefit factor rate" means the rate established by the City to be the estimated cost of health benefits paid to a covered employee. If the Contractor does not provide comparable benefits equal to or exceeding this rate to the covered employee, the benefit factor rate must be added to the living wage rate to arrive at the total hourly rate that must be paid to the covered employee.

(b) "City" means the City of Irvine and all City agencies, departments and offices, including but not limited to the Irvine Redevelopment Agency and the Orange County Great Park Corporation.

(c) "Contractor" means any person or business that enters into a new service contract or any service contract with the City that is amended, renewed or extended after the effective date of this division except for those bids, RFP's and contracts that were in process at the time this division becomes effective. For the purposes of this division, the term "Contractor" shall include all subcontractors retained by a Contractor to perform any or all of the functions covered by the contract.

(d) "Covered employee" means (1) any employee whose services fulfill the Contractor's contractual obligations for contracts with the City that are subject to this division and (2) any other employee of the Contractor who performs a majority of his or her services within Orange County. Additionally, bona fide volunteers shall not be considered

"covered employees."

(e) "Health benefits" means medical and dental benefits offered by the Contractor to its employees in which the employer pays at least the current benefit factor rate on behalf of its covered employees.

Section 2-6-104. Application of this Division.

Every Contractor that enters into a contract with the City to provide services with an estimated value of one hundred thousand dollars (\$100,000) or more for any consecutive twelve-month period shall comply with the requirements of this division. As a condition of the contract, the Contractor shall notify the City in writing if the aggregate value of multiple contracts with the City is \$100,000 or more.

Section 2-6-105. Duties of the Purchasing Agent.

The Purchasing Agent shall be responsible for ensuring that the requirements of this division are incorporated in all contracts, bid documents, requests for proposals (RFP's) and requests for qualifications (RFQ's) that may be subject to this division to ensure proper implementation of all requirements. In addition, the Purchasing Agent shall be responsible for developing and implementing rules and regulations for the effective administration of all requirements set forth in this division.

Section 2-6-106. Compensation Required to be Paid to Contractor's Employees.

A. All Contractors subject to the requirements of this division shall pay its covered employees an hourly rate and comparable health benefits and paid time off (such as vacation, sick, holiday and jury duty) as set by the most current City Council Resolution establishing compensation policy for employees. The hourly rate shall be the minimum hourly rate of all salary classifications. An additional rate, defined as the benefit factor rate, shall be added to the hourly rate if comparable health benefits are not offered by the Contractor to the covered employee.

B. Beginning July 1, 2007, the City shall provide notice to all covered Contractors by posting current living wage and benefit factor rates on the City's web site in the Bids & RFP's Purchasing section. In general, rates are subject to change each July; however, Contractors are responsible for monitoring and updating payroll records to accommodate rate changes where applicable. In addition, Contractors are responsible for notifying and ensuring compliance with these requirements by

subcontractors retained by Contractor to perform any or all of the functions covered by the contract.

C. A Declaration of Compliance must be signed by an authorized agent of the Contractor and will serve as part of the terms of the contract and/or amendments.

D. In the event that collective bargaining agreements and/or prevailing wage requirements are higher than the current living wage rates as set forth in this division, collective bargaining and/or prevailing wage rates must be paid to covered employees.

Section 2-6-107. Exceptions.

A. The City Council, by majority vote, may grant a whole or partial exception to the requirements of this division to a Contractor at the time of award of the contract if the City Council determines that imposition of the requirements of this division would violate State or Federal laws. A Contractor that desires such a determination by the City Council shall, at the time it submits its bid or proposal to the City, provide the City with a written request that it desires exemption from the requirements of this division, and a reference to the specific State or Federal laws, if applicable, that would be violated if the City imposed the requirements of this division on the Contractor.

B. The City Council, by a four-fifths vote, may grant a whole or partial exception to the requirements of this division to a Contractor at the time of award of the contract if the City Council determines that the existence of an emergency or other extraordinary circumstances (such as the creation of training positions that will enable employees to advance into permanent living wage jobs or better) justifies an exemption from the requirements of this division. Exemptions pursuant to this subsection are disfavored and shall be granted only when a balancing of competing interests weighs clearly in favor of granting an exemption, in the sole and absolute discretion of the City Council. If an exemption is to be granted, a partial exemption is favored over a whole exemption, and limits on the duration of the exemption are favored as well.

Section 2-6-108. Duties of Director of Administrative Services.

A. The Director of Administrative Services, or his or her designee, shall have the authority to perform the following acts for purposes of accomplishing the intent of this division and as deemed necessary or appropriate in the Director's judgment:

- (1) Review, investigate and/or maintain records of

complaints alleging that the Contractor has violated the requirements of this division.

(2) Perform random audits of the Contractor's and/or the Contractor's subcontractor's records to verify compliance with this division.

B. Upon determining that a Contractor is operating in accordance with the requirements of this division, the Director of Administrative Services shall furnish the Contractor with a written recognition and acknowledgment of such compliance.

Section 2-6-109. Contractor Notice Posting Requirements.

A. A Contractor subject to the requirements of this division shall post in a conspicuous place, as required by State and Federal laws for other notices to employees, a copy of the notice referred to in this division, a sample of which is provided as part of the contract documents. The Contractor is responsible for notifying and requiring compliance from any subcontractors retained by Contractor, to perform any or all functions covered by the contract.

B. A Contractor subject to the requirements of this division shall post in a conspicuous place, as required by State and Federal laws for other notices to employees, a notice of potential Federal Earned Income Tax Credit (EITC) eligibility for covered employees.

Section 2-6-110. Retaliation and Discrimination Prohibited.

No Contractor shall discharge, reduce the compensation of or otherwise discriminate or retaliate against any of its employees for making a complaint to the City, asserting the employee's rights or assisting another employee in making a complaint or asserting his or her rights under this division.

Section 2-6-111. Complaint Process for Violations.

A. Any covered employee may lodge a written complaint with the Director of Administrative Services or his/her designee that a Contractor or subcontractor has violated the requirements of this division.

B. Upon receipt of such a complaint, the Director of Administrative Services, or his/her designee, shall review and investigate at his/her discretion, the complaint and determine if the Contractor should be issued a preliminary notice of violation, which shall also contain the corrective measures the Contractor is required to undertake and/or the

remedies that are being imposed. If the Contractor does not file a timely and sufficient appeal to the preliminary notice of violation, it shall become final and conclusive.

C. If a Contractor receives a notice of violation, the Contractor may request in writing an appeal hearing before the Director of Administrative Services, or his/her designee, to dispute the violation and/or corrective measures and/or remedies required. The request for an appeal hearing shall be filed with the City Clerk within fifteen (15) days of the date the Director of Administrative Services issued the preliminary notice of violation, and shall contain the reasons why the Contractor believes that a violation does not exist and/or that the corrective measures and or remedies are not appropriate. The Director of Administrative Services or his/her designee shall conduct the appeal hearing within forty-five (45) days of receipt of the appeal request. Within fifteen (15) days of the conclusion of the appeal hearing, the Director of Administrative Services shall issue his/her findings and final decision with respect to the appeal hearing

D. A Contractor may appeal the final decision of the Director of Administrative Services to the City Council by filing a written notice of appeal within fifteen (15) days of the date of the Director's final written decision. The City Council shall conduct a hearing on the appeal within forty-five (45) days of its receipt of the appeal request and either uphold, overturn or modify the Director's final decision.

Section 2-6-112. Remedies of City for Violations.

A. The City may impose any or all of the following corrective measures and/or remedies against a Contractor for violations of this division:

(1) Order the Contractor to comply with all regulations of this Section within sixty (60) days.

(2) Order payment to covered employees to compensate the employees up to the compensation level required by this division.

(3) Suspend payments for and/or suspend or cancel contracts between the City and the Contractor.

(4) Render the Contractor ineligible to enter into contracts with the City for a period of three (3) years or until all restitution to covered employees has been paid, whichever is longer.

B. In addition to the above corrective measures and/or

remedies, the City shall be entitled to seek any and all other equitable and legal rights it may have under Federal, State and local laws, including without limitation injunctive relief, for purposes of enforcing the remedies set forth above.

Section 2-6-113 . Remedies of Covered Employees for Violations.

A. A covered employee shall have the right to seek the following remedies against a Contractor violating the provisions of this division in a court of competent jurisdiction:

(1) Restitution to compensate the employee for all amounts that should have been paid to the employee pursuant to this division.

(2) Reasonable attorneys' fees and costs.

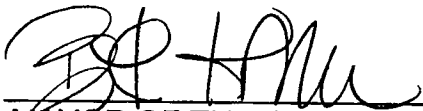
(3) Any and all other legal and equitable remedies available under Federal, State and local laws.

SECTION 2. If any portion of this Ordinance, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this Ordinance to the extent it can be given effect, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this Ordinance are severable.

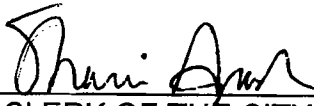
SECTION 3. The City Council determines that pursuant to Title 14, California Code of Regulations Section 15061, this project is exempt from the California Environmental Quality Act because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

SECTION 4. The City Clerk shall certify to the passage of this Ordinance and this Ordinance shall be published as required by law and shall take effect as provided by law.

PASSED AND ADOPTED by the City Council of the City of Irvine at a regular meeting held on the 12th day of June, 2007.


MAYOR OF THE CITY OF IRVINE

ATTEST:


CITY CLERK OF THE CITY OF IRVINE

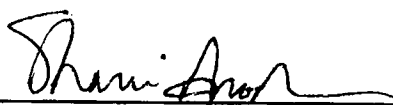
STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS
CITY OF IRVINE)

I, SHARIE APODACA, City Clerk of the City of Irvine, HEREBY DO CERTIFY that the foregoing Ordinance was introduced for first reading on May 22nd, 2007, and duly adopted at a regular meeting of the City Council of the City of Irvine held on the 12th day of June, 2007, by the following vote:

AYES: 3 COUNCILMEMBERS: Agran, Kang, and Krom

NOES: 2 COUNCILMEMBERS: Choi and Shea

ABSENT: 0 COUNCILMEMBERS: None


CITY CLERK OF THE CITY OF IRVINE

AFFIDAVIT OF POSTING

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF IRVINE)

I, SHARIE APODACA, City Clerk of the City of Irvine, HEREBY DO CERTIFY that on the 22nd day of June 2007, I caused to have posted the foregoing true and correct copy of Ordinance No. 07-15 of the City of Irvine in the following public places in the City:

- 1) Bulletin Board in Walnut Village Shopping Center, Culver and Walnut, Irvine.
- 2) Bulletin Board in University Park Shopping Center, Culver at Michelson, Irvine.
- 3) Bulletin Board in Northwood Shopping Center, Irvine Boulevard at Yale, Irvine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City Council of the City of Irvine, California, the 22nd day of June 2007.



CITY CLERK OF THE CITY OF IRVINE

Appendix B

DECLARATION OF COMPLIANCE Living Wage Ordinance

Name of Contractor _____

Type of Service _____

The above-named contractor hereby declares and agrees as follows:

1. I have read and understand the requirements set forth by the City's Living Wage Ordinance (the "Ordinance") that has been provided by the City of Irvine ("City") in connection with the City's request for proposals or other invitation or solicitation for the performance of services under a City contract.
2. As a condition of receiving the City contract, I agree to fully comply with all of the requirements specified in the Ordinance. As required by the Ordinance and while under any City contract subject to the Ordinance, I agree to pay no less than the minimum compensation, including the benefit factor rate as applicable, to all "covered employees" as that term is defined by the Ordinance.
3. If the amount of this City contract is less than one hundred thousand dollars (\$100,000), then as a condition of receiving this contract, I agree to notify the City in writing if the aggregate value of multiple City contracts covered by the Ordinance, including amendments to this contract, is one hundred thousand dollars (\$100,000) or more within any consecutive 12-month period.
4. I acknowledge and agree that the Ordinance, and this Declaration, shall constitute part of the City contract, and that these provisions shall govern in the event of any conflict with any other provisions of the contract.
5. I further acknowledge and agree that any violation of the Ordinance constitutes a material breach of City contract, and that if such a breach occurs, the City may avail itself of any or all of the remedies for violations that are provided by the Ordinance.
6. I acknowledge and understand that retaliation and/or discrimination against any employee making a complaint to the City, asserting his or her rights or assisting another employee in making a complaint, constitutes a violation of the Ordinance. In addition, I understand that violated employees may seek any or all of the remedies that are provided by the Ordinance.
7. If requested by the City, I agree to promptly submit certified payroll and/or benefits documents to the City for my firm and/or subcontractor(s) as requested by the City, and shall take any other steps as may be required by the City to ensure that my firm and my subcontractor(s) have complied with the Ordinance. The documents requested may include, but are not limited to, covered employee timesheets, gross pay calculations, pay registers, cancelled checks, medical and dental insurance invoices, paid time off policies, and other related payroll or benefit documents.
8. I agree to require all subcontractors who I retain to perform any or all of the work or services covered by this contract to comply with the requirements of the

Ordinance, and I shall include the requirements of the Ordinance in all subcontracts covered thereby.

9. I agree to post in a conspicuous place, as required by State and Federal laws for other notices to employees, a notice informing covered employees of their rights under the Ordinance and a notice of potential Federal Earned Income Tax Credit (EITC) eligibility for covered employees.
10. I have received the "Living Wage Guide" from the City, explaining the specific requirements of the Ordinance in detail.
11. I agree to defend, indemnify, and hold harmless the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorneys' fees) or other liabilities of any kind arising from any violation of the City's Living Wage Ordinance, by my firm or by any subcontractor retained by my firm to perform work or provide services under the City contract.

I 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 the Contractor to the provisions of this Declaration.

Signature of Authorized Representative

Date: (Month/Day/Year)

Print Name: _____

Title: _____

Appendix C



City of Irvine Living Wage Guide

Living Wage Description

What is the City of Irvine's Living Wage Ordinance?

The Living Wage Ordinance requires a Contractor entering into City contracts subject to the Ordinance to pay its covered employees an hourly rate, comparable health benefits and paid time off (such as vacation, sick, holiday, and jury duty) as set by the most current City Council Resolution (Resolution) establishing compensation policy for employees. These benefits are summarized in the Living Wage Comparable Benefits Summary included with this document.

Current Living Wage Ordinance information and rates are posted on the City of Irvine website at www.cityofirvine.org. Click on the "Bids & RFP's, Purchasing" button located on the lower left side of the screen, and then click on "Living Wage Information."

The purpose of the Ordinance is to ensure that employees of City services Contractors can earn an hourly wage that is sufficient to live with dignity and to achieve economic self-sufficiency. The use of City funds to create living wage jobs is intended to decrease poverty, increase consumer income, invigorate community businesses and reduce the need for taxpayer-funded social service programs.

Contractors and Contracts Subject to the Living Wage Ordinance

Which Contractors are subject to the Living Wage Ordinance?

"Contractor" means any person or business that enters into a new service contract or any service contract with the City (including the Orange County Great Park Corporation and the Irvine Redevelopment Agency and all other City agencies, departments and offices) that is amended, renewed or extended after July 12, 2007 except for those bids, RFP's and contracts that were in process on that date.

The term "Contractor" shall include all subcontractors retained by a Contractor to perform any or all of the functions covered by the contract.

Which contracts are subject to the Living Wage Ordinance?

All services contracts greater than \$100,000 over a 12-month period are subject to the Living Wage Ordinance. A contract shall be subject to the Living Wage Ordinance if the aggregate value of multiple contracts with the City, including amendments to contracts, is \$100,000 or more in a consecutive 12-month period.

Employees Covered Under the Living Wage Ordinance

Who is a “covered employee”?

“Covered employee” means (1) any employee whose services fulfill the Contractor’s contractual obligations for contracts with the City that are subject to this Ordinance and (2) any other employee of the Contractor who performs a majority of his or her services within Orange County. Volunteers are not considered “covered employees” under the Ordinance.

Are both part-time and full-time employees covered under the Living Wage Ordinance?

The City does not provide health benefits or paid time off for City employees working less than 30 hours per week on average. Accordingly, there is no current requirement for a Contractor to pay a “benefit factor rate” for its part-time employees who work less than 30 hours a week on average.

Compensation Required Under the Ordinance

What base hourly rate must I pay “covered employees”?

The current City Council Resolution sets the minimum hourly rate. This is the rate at which an employee must be paid if the Contractor also provides the employee with health benefits and paid time off that are equal to or exceeding those offered to City employees, as detailed in the current City Council Resolution. **Rates generally change in July of each year.** All rate changes will be posted on the City’s website and Contractors are responsible for monitoring all changes and for notifying their subcontractors of those changes.

What if my employees are under a collective bargaining agreement or if I am paying my employees prevailing wages?

In the event that collective bargaining agreements and/or prevailing wage requirements are higher than the current living wage rates as set forth in the Ordinance, collective bargaining and/or prevailing wage rates must be paid to covered employees.

What minimum health and paid time off benefits are offered to City employees?

The selection of benefits of all salary classifications is set forth by the most current City Council Resolution establishing compensation for City employees. Currently, minimum City health benefits include an option for employees to enroll in the City’s indemnity medical insurance plan or the Health Maintenance Organization (HMO), and the option to enroll in a dental plan. City benefits also include pro-rata paid time off such as sick, vacation, and holiday pay. A summarization of these benefits is included in the Living Wage Comparable Benefit Summary.

What if I don’t offer my employees comparable health and paid time off benefits?

An additional “benefit factor” must be added to the base hourly rate if employees are not offered health and paid time off benefits equal to or exceeding those offered to City employees, as detailed in the current City Council Resolution and summarized in the Living Wage Comparable Benefit Summary. The current benefit factor must be added to the base minimum rate to reach the total minimum rate for covered employees.

If the cost of health and paid time off benefits provided to your employees cost you less than the current benefit factor, the difference between what you pay and the benefit factor must be added to the base minimum rate to achieve the total hourly compensation that must be paid to the covered employees.

All rate changes will be posted on the City’s website. Contractors are responsible for monitoring all changes and for notifying their subcontractors of the changes.

How is the benefit factor calculated and how often is it updated?

The methodology for calculating the benefit factor is based on the actual cost to the City for providing those benefits to employees. **The rate would be updated as benefit costs change, generally in January of each year.** All rate changes will be posted on the City's website. Contractors are responsible for monitoring all changes and for notifying their subcontractors of the changes.

How do I calculate the benefit factor I am currently paying my employees?

Take the total cost you pay as the employer for the benefits you provide to your employees. Divide the cost by the number of employees who utilize these benefits. Because not all employees select all of the benefits it is helpful to calculate each benefit separately (for example some employees select to take medical but not dental benefits).

Where do I find the current rates?

Rates can be found on the City's website, or by calling the Purchasing Department at 949-724-6180.

Rates are subject to change and it is the Contractor's responsibility to monitor and update payroll records to accommodate rate changes when applicable. In addition, Contractors are responsible for notifying and ensuring compliance with these requirements by subcontractors retained by the Contractor to perform any or all functions covered by the contract.

Other Requirements Under the Ordinance**What other requirements must I meet under the Ordinance?**

You are required under the Ordinance to:

- Post in a conspicuous place, as required by State and Federal laws for other notices to employees, a copy of the notice referred to in the Ordinance that informs covered employees of their rights under the Ordinance. A copy will be provided to you with your contract documents and is also available on the City's website.
- Post in a conspicuous place, as required by State and Federal laws for other notices to employees, a copy of the notice referred to in the Ordinance that informs covered employees of their potential eligibility for Federal Earned Income Tax Credit (EITC). A copy will be provided to you with your contract documents and is also available on the City's website.
- Provide notification of all of the requirements of the Ordinance to any subcontractors retained by you to perform any or all of the functions covered by the contract; and ensure compliance to the Ordinance.
- You are required to monitor and update your payroll records to accommodate Living Wage minimum wage and benefit factor rates when applicable.
- **You are required to contact the City in writing if you are awarded additional contracts and the aggregate value of your contract(s) with the City, including amendments to your contract(s), is \$100,000 or more in a 12-month period. Such notification should be sent to: Purchasing Agent, City of Irvine, PO Box 19575, Irvine, CA 92623-9575**

You are **prohibited** under the Ordinance to discharge, reduce the compensation, discriminate or retaliate against any employee for making a complaint to the City, asserting his or her rights or assisting another employee in making a complaint or asserting his or her rights under the Ordinance.

Compliance and Violations

How is the Living Wage Ordinance enforced?

Any covered employee may lodge a written complaint and/or the Director of Administrative Services may at any time review, investigate and/or perform random audits of the Contractor's records to verify compliance with the Ordinance.

If I am audited what documents might I be asked to provide?

Specific documents that may be reviewed include, but are not limited to, covered employee time cards, gross pay calculations, pay registers, canceled checks, medical and dental insurance invoices, paid time off policies, required postings and other related payroll or benefit documents.

What happens if it is determined that I am not in compliance with the Ordinance?

The City may impose any or all of the following corrective measures for violations of the Ordinance:

- Order Contractor to comply within 60 days
- Order payment to covered employees to compensate the employee for amounts that should have been paid under the contract
- Suspend payments to the Contractor for the contract in violation
- Cancel the City contract in violation
- Render the Contractor ineligible to enter into contracts with the City for a period of three years or until all restitution to covered employees has been paid, which ever is longer
- Seek all other equitable and legal rights under Federal, State and local laws, including injunctive relief

Is there an appeal process?

If it is determined that the Contractor is not in compliance, the Contractor will be issued a preliminary notice of violation that contains the corrective measures required by the Contractor. The Contractor may request in writing an appeal hearing before the Director of Administrative Services to dispute the violation and/or the corrective measures. The request for appeal hearing must be filed with the City Clerk within fifteen (15) days of the date of the preliminary notice of violation and must contain the reasons the Contractor believes that a violation does not exist and/or that the corrective measures or remedies are not appropriate.

The Director of Administrative Services will conduct the appeal hearing within forty-five (45) days of receipt of the appeal request. Within fifteen (15) days of the conclusion of the appeal hearing, the Director of Administrative Services will issue his/her findings and final decision.

The final decision of the Director of Administrative Services may be appealed to the City Council by filing a written notice of appeal within fifteen (15) days of the date of the Director's final written decision. The City Council shall conduct a hearing on the appeal within forty-five (45) days of its receipt of the appeal request and either uphold, overturn or modify the Director's final decision.

How does a covered employee file a complaint if they believe that a Contractor or subcontractor is in violation of the Ordinance?

A Covered employee who believes a Contractor or subcontractor has violated the requirements of the Ordinance may file a written complaint with the Director of Administrative Services.

What remedies for violation do covered employees have under the Ordinance?

A covered employee may seek the following remedies against a Contractor violating the Ordinance:

- Restitution to compensate the employee for amounts that should have been paid under the contract
- Reasonable attorneys' fees and costs

- Any and all other legal and equitable remedies available under Federal, State and local laws

Exceptions

Are there any circumstances in which an exception to the Ordinance will be granted?

The City Council, by a majority vote, may grant a whole or partial exception at the time of award of the contract if it is determined that imposition of this Ordinance would violate State or Federal laws. A Contractor that desires an exception must, at the time of the bid proposal, provide the City with a written request with a reference to the specific State or Federal law that would be violated.

The City Council, by a four-fifths vote, may grant a whole or partial exception if it is determined that an emergency or extraordinary circumstance justifies an exemption. Partial exemptions and limits on the duration of the exemption are favored over whole exemption.

More Information

Where can I view more information about the Ordinance?

More information may be found concerning the Living Wage Ordinance, including current rates, on the City's website at www.cityofirvine.org. Click on the "Bids & RFP's, Purchasing" button located on the lower left side of the screen, and then click on "Living Wage Information."

Contact Information

To receive a copy of the Living Wage Guide, or to ask questions about the Living Wage Ordinance, please contact:

Purchasing Department
City of Irvine
PO Box 19575
Irvine, CA 92623-9575

Phone: (949) 724-6180
FAX: (949) 724-6187

Employees registering a complaint against an employer should contact:

Director of Administrative Services
City of Irvine
PO Box 19575
Irvine, CA 92623-9575

Phone: (949) 724-6255
FAX: (949) 724-6030

Appendix D

Living Wage Comparable Benefits Summary

The following benefits are offered to City of Irvine employees who work a minimum of 30 hours per week on average. Contractor employees must be offered benefits equal to or greater than the benefits detailed below or the Contractor is required to add a "benefit factor" to the minimum wage paid to the employee as defined in the Living Wage Ordinance.

Medical Insurance:

- a. Health Insurance:
The City provides the option to employees to enroll in an indemnity medical insurance plan or Health Maintenance Organization (HMO).
- b. The total cost to the City for medical insurance coverage for employee only shall not exceed 50% of the monthly premium. Employees are responsible for the cost of the remaining premium amount.
- c. The City provides the option to employees, who have enrolled in the HMO plan, to purchase HMO medical insurance for their dependents. The total cost of the additional premium is borne by the employee.
- d. The City provides the option to employees to enroll in a dental Health Maintenance Organization for employees only. The total cost is borne by the employee.

Vacation:

Vacation benefits accrue on a monthly basis as follows:

<u>Years of Service</u>	<u>Annual Vacation Credits</u>
1 through 3	60 hours
after 3 through 10	90 hours
after 10 years or more	120 hours

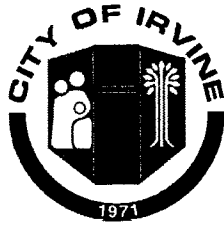
Personal Sick Leave:

Employees accrue personal sick leave credits at the rate of six (6) hours per month.

Holidays:

Employees are paid for the hours they are regularly scheduled to work on holidays observed by the City.

Appendix E



LIVING WAGE ORDINANCE

NOTICE TO EMPLOYEES

This employer has one or more contracts with the City of Irvine. Terms of the contract(s) subject the employer to the City of Irvine Living Wage Ordinance No. 07-15. Under the Ordinance **you must be paid a “living wage”** by the employer if a majority of your work is performed in Orange County.

THESE ARE YOUR RIGHTS

You must be paid a minimum of:

- **\$10.82** per hour

If you work an average of 30 hours per week or more, you must be paid a minimum of:

- **\$10.82** per hour
 - If health and paid time off benefits are offered to you
- OR**
- **\$13.05** per hour:
 - If no health or paid time off benefits are offered to you
 - If the cost of health and paid time off benefits provided to you cost your employer less than **\$2.23** per hour, the difference is added to the minimum hourly wage listed above
- Rates are generally adjusted annually. Current rates are effective as of **July 1, 2009**.
- Retaliation by your employer is **prohibited**
- Employers may not fire, reduce pay, or discriminate against a worker for filing a complaint

If your rights are violated you could receive:

- Restitution to compensate you for all amounts that should have been paid to you under the Ordinance
- Reasonable attorneys' fees and costs

FOR MORE INFORMATION

To obtain a confidential complaint form if you believe your rights are being violated, please contact:

CITY OF IRVINE
Director of Administrative Services
One Civic Center Plaza
Irvine, CA 92606
(949) 724-6255

For more information and to review the City Ordinance, Living Wage Guide (frequently asked questions) and updated rates visit the City's website and access the Purchasing Department, Living Wage page:

www.cityofirvine.org

Will you qualify for the EITC this year?

Take Credit

You may qualify for the Earned Income Tax Credit (EITC) on your 2007 tax return.

IF you earned under \$37,783 and have more than one qualifying child.

(\$39,783 if married filing jointly)

IF you earned under \$33,241 and have one qualifying child.

(\$35,241 if married filing jointly)

IF you earned under \$12,590 and have no qualifying child.

(\$14,590 if married filing jointly)

For more information on the EITC, check out the EITC Assistant, an interactive tool that shows you whether or not you qualify, and why. Available on www.irs.gov/eitc or call 1-800-TAX-1040.

IRS Department of the Treasury Pub. 3954 (ENG)SP (Rev. 4-2007)
Internal Revenue Service Catalog Number 33279N

at _____
Phone Number/Extension _____

2007

Check Your Withholding

YOU MAY NEED TO

Since you last filed Form W-4 with your employer did you...?

- ▶ Marry or divorce?
- ▶ Gain or lose a dependent?
- ▶ Change your name?

Were there major changes to...?

- ▶ Your nonwage income (interest, dividends, capital gains, etc.)?
- ▶ Your family wage income (lost or your spouse started or ended a job)?
- ▶ Your itemized deductions?
- ▶ Your tax credits?
- ▶ Your tax credits?

To any of these questions or you owed extra tax when you filed your last return, you may need to file a new Form W-4.

If you can answer "YES" to any of these questions or you owed extra tax when you filed your last return, you may need to file a new Form W-4 or call the IRS at 1-800-829-5816.

See your employer for a copy of Form W-4 or call the IRS at 1-800-829-5816 for more details, get Publication 919, "Extra Tax When You File Your Withholding," or use the Withholding Calculator at www.irs.gov/individuals.

Now is the time to check your withholding, or use the Withholding Calculator at www.irs.gov/individuals.

How Do I Adjust My Tax Withholding? on the IRS website.

www.irs.gov/individuals

Employer, please post this Bulletin Board notice in a conspicuous place where all employees will see it. Please indicate the date you posted this notice and the date you removed it. For more information on this subject, please see the instructions for Form W-4.



For tax forms and additional information, contact _____

Company Representative _____

Possible Federal Tax Refund Due to the Earned Income Credit (EIC)

What Is the EIC?

The EIC is a refundable tax credit for certain workers.

What's New

There are changes to the definition of a qualifying child. See *Who Is a Qualifying Child* below. Taxpayers affected by Hurricane Katrina may be able to figure the EIC using their 2006 earned income. See the 2007 instructions for Forms 1040, 1040A, or 1040EZ.

Who May Claim the EIC

You may be able to claim the EIC for 2007 if you worked and all three of the following conditions apply.

1. Your 2007 earned income and adjusted gross income are both under \$32,241 (\$35,241 if married filing jointly) if you have one qualifying child; under \$37,783 (\$39,783 if married filing jointly) if you have more than one qualifying child; under \$12,590 (\$14,590 if married filing jointly) if you do not have a qualifying child. For a definition of earned income, see the 2007 instructions for Forms 1040, 1040A, or 1040EZ.

2. Your filing status is any status except married filing a separate return.

3. You, and your spouse if filing a joint return, were not a qualifying child of another person. If you do not have a qualifying child, you must also meet these conditions.

a. You, or your spouse if filing a joint return, were at least age 25 but under age 65 at the end of 2007.

b. You, and your spouse if filing a joint return, cannot be claimed as a dependent on someone else's 2007 tax return.

c. Your home, and your spouse's if filing a joint return, was in the United States for over half of 2007.

Note. If you are in the military on extended active duty outside the United States, your home is considered to be in the United States during that duty period and you may be able to claim the EIC.

You cannot claim EIC if any of the following conditions apply.

1. Your 2007 investment income (such as interest and dividends) is over \$2,900.

See your 2007 income tax return instructions for more details.

2. You file either Form 2555 or Form 2555-EZ (relating to foreign earned income).

3. You are a nonresident alien for any part of 2007 unless you are married to a U.S. citizen or resident and elect to be taxed as a resident alien for the entire year. See Pub. 519, U.S. Tax Guide for Aliens, for more information.

Who Is a Qualifying Child

Any child who meets all three of the following conditions is a qualifying child.

1. The child is your:

Son, daughter, stepchild, foster child, brother, sister, stepbrother, stepsister, or a descendant of any of them (for example, your grandchild, niece, or nephew).

Note. An adopted child is always treated as your own child. An adopted child includes a child lawfully placed with you for legal adoption. A foster child is any child placed with you by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

2. At the end of 2007, the child was under age 19; or under age 24 and a student; or any age and permanently and totally disabled.

3. The child lived with you in the United States for over half of 2007. If the child did not live with you for the required time, there are exceptions if the child was born or died during the year, the child is presumed to have been kidnapped by a non-family member, or there was a temporary absence.

There are additional rules if a child is married or is the qualifying child of more than one person. For details, see the 2007 instructions for Forms 1040, 1040A, or 1040EZ.

How To Claim the EIC

If you are eligible, claim the EIC on your 2007 income tax return. If you have a qualifying child, you

must also fill in Schedule EIC and attach it to your Form 1040 or Form 1040A.

If eligible, you can claim the EIC to get a refund even if you have no tax withheld from your pay or owe no tax. For example, if you had no tax withheld in 2007 and owe no tax but are eligible for a credit of \$799, you must file a 2007 income tax return to get the \$799 refund.

EIC with your pay. If you expect to have a qualifying child and be eligible to claim the EIC for 2008, you may be able to get part of it in advance with your pay. For details, get Form W-5, Earned Income Credit Advance Payment Certificate, from your employer, from the IRS website at www.irs.gov, or by calling the IRS at 1-800-829-3676. If you get the EIC with your pay, you must file a 2007 Form 1040 or Form 1040A.

More Information

This notice provides the basic requirements to qualify for the EIC. Refer to the 2007 instructions for Forms 1040, 1040A, 1040EZ, Pub. 596, or www.irs.gov/eitc for details. You can get IRS forms and publications by accessing the IRS website at www.irs.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

Notice 797 (USA Rev. 1106)

REQUIREMENTS FOR A QUALIFYING CHILD FOR EITC

A child must meet certain requirements to be a qualifying child for the EITC. The following chart outlines the three requirements that must be met: relationship, age, and residency.

RELATIONSHIP

Son, daughter, stepchild, foster child, brother, sister, stepbrother, stepsister or a descendant of any of them AND...

AGE

Under age 19 at the end of the tax year OR

Under age 24 at the end of the tax year and a full-time student OR

Any age and permanently and totally disabled at any time during the year AND...

RESIDENCY

Lived with the taxpayer in the United States for more than half of the tax year.

TIE-BREAKER RULES

Sometimes a child meets the rules to be a qualifying child of more than one person. If the child is the qualifying child of more than one person, only one person can claim the child as a qualifying child for all of the following tax benefits: EITC, child tax credit, dependency exemption, head of household filing status, and the credit for child and dependent care expenses.

The other person(s) cannot take any of the five tax benefits listed above unless he or she has a different qualifying child. If they cannot agree who will claim the child as a qualifying child, and more than one person actually claims tax benefits using the same child, the tie-breaker rule (explained in the next paragraph) applies. If the other person is a spouse and they file a joint return, this rule does not apply.

Under the tie-breaker rule, the child is treated as a qualifying child only by:

1. The parents, if they file a joint return,
2. The parent, if only one of the persons is the child's parent,
3. The parent with whom the child lived the longest during the tax year, if two of the persons are the child's parent and they do not file a joint return together,
4. The parent with the highest AGI if the child lived with each parent for the same amount of time during the tax year, and they do not file a joint return together, or
5. The person with the highest AGI, if none of the persons is the child's parent.

From Publication # 3524

ADVANCE EARNED INCOME TAX CREDIT

This is a special tax benefit for lower income workers. Not all who qualify for the EITC (Earned Income Tax Credit) will qualify for the Advance EITC.

Advance EITC offers extra help year-round in meeting day-to-day expenses. A qualified worker can get payments in advance—each payday—rather than waiting until tax time to claim the credit.



Department of the Treasury
Internal Revenue Service

Publication 1844 (Rev. 10-06)
Catalog Number 12590L

Working to put service first

If you have further questions about Advance EITC, call the IRS at 1-800-829-1040.

As an employer, you can help us inform your employees of this opportunity.

HOW? ADVANCE EITC CAN ADD TO EMPLOYEES' TAKE-HOME PAY YEAR-ROUND

AETC

Who qualifies for Advance EITC?

Wage earners who earn less than a stated amount, and who have at least one child living with them, may qualify. For complete qualifications, see Form W-5, *Earned Income Credit Advance Payment Certificate*.

The qualified employee simply completes Form W-5 and gives it to you.

Do not use your own funds to make Advance EITC payments

Refer to the Form W-5 and the tables shown in Pub 15, *Employer's Tax Guide (Circular E)*, to compute the correct addition to the employee's take-home pay for the payroll periods. Pub 15 will specify the maximum limit each year.

Remember to reduce your required federal employment tax deposit by the amount of any Advance EITC payments you make to eligible employees.

What's the difference between EITC and Advance EITC?

- » **Earned Income Credit (EITC):** EITC is a credit against the federal income tax when he or she files his or her tax return. If he or she can't wait for the refund—his tax or even credit goes to zero!
- » **Advance Earned Income Tax Credit (Advance EITC):** is the portion of the EITC that qualified workers can receive in advance payments added to their pay throughout the year. They may be able to stop being paid EITC when they file their tax return.

Assistance from the IRS

Your local IRS EITC coordinator may be able to provide speakers to talk to your employees about the Advance EITC and help them fill out Form W-5. Look in your local telephone directory for the IRS office nearest you.

Free informative material on Advance EITC

To tell your employees about Advance EITC, order these IRS publications, available in English and Spanish (SP). Phone the IRS at 1-800-829-3676.

» Pub 1235 a self mailer in English and Spanish which includes Form W-5, *Advance EITC Employee Brochure*.

» Pub 1759 (ENG/SP), *Advance EITC Poster* 8.5" x 11".

» Pub 1762 (ENG/SP), *Advance EITC Stuffer*, to include in mailouts or with paychecks.

Assistance from the IRS

» Call the IRS at 1-800-829-3676 to order free forms and publications, or visit your local IRS office.

» Form W-5, *Earned Income Credit Advance Payment Certificate*.

» Pub 15, *Employer's Tax Guide (Circular E)*.

» Pub 596, *Earned Income Credit*.

» Pub 910, *Guide to Free Tax Services*.

» Internet: IRS forms with instructions, tax publications, and other tax materials may be downloaded at our Web site: www.irs.gov.

» TeleTax service: call 1-800-829-4477 for recorded tax information.



If you have further questions, call the IRS at 1-800-829-1040.