

November 24, 2009



**REQUEST FOR PROPOSALS**  
**For**

**Web-based Tracking and Reporting System**

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

Only RFP Documents downloaded from the City's website ([www.cityofirvine.org](http://www.cityofirvine.org)) shall be considered official, as the City needs to track RFP holders in case an addendum is issued.

**No Late Proposals Will Be Accepted.**

**Due Date and Time:**

**No Later Than January 11, 2010 at 4:00:00pm**

**RFP Number:**

**09-2484**

This RFP number must be referenced in the proposal document, which must be submitted electronically via the City's website.

**Proposals must be submitted electronically by visiting the City's website at [www.cityofirvine.org/purchasing](http://www.cityofirvine.org/purchasing). Click on "Bid Online Now" and then follow instructions. Please limit file size to 10mb.**

**The City will not accept hard copy submittals.**

**ALL PROPOSALS MUST BE SUBMITTED ON THE WEBSITE NO LATER THAN 4:00 P.M. ON JANUARY 11, 2010. 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 Chandra Krout with a copy to Brian Brown (as shown below) no later than December 8, 2009 at 4:00 p.m.**

Chandra Krout, Environmental Programs  
949-724-7447  
[ckrout@ci.irvine.ca.us](mailto:ckrout@ci.irvine.ca.us)

Brian D. Brown, Buyer  
949-724-6474  
[bbrown@ci.irvine.ca.us](mailto:bbrown@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**  
**WEB-BASED TRACKING AND REPORTING SYSTEM**

Dear Proposers:

The City of Irvine (hereinafter referred to as the "City") is requesting proposals to develop and deploy a Web-based Tracking and Reporting System, with work to commence on or about March 1, 2010 and be completed June 30, 2011. The City reserves the right to extend the actual contract for up to two (2) additional one (1) year periods.

Proposals must be submitted electronically 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.

**LATE PROPOSALSS WILL NOT BE ACCEPTED**

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

**OVERVIEW AND SCOPE OF WORK**

This Request for Proposals is for a Web-based Tracking and Reporting System 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 qualification shall be made a binding part of the selected firm's Contract. The City reserves the right to reject in whole or in part any of the qualifications.

**ORGANIZATION OF PROPOSAL**

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

- **PERSONNEL**

This section shall highlight the experience and training relevant to this project for 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.

- **PROPOSED METHODOLOGY AND DELIVERABLES**

This section should provide an explanation of the proposers understanding of the project, the proposed methodology for deployment, recommended deliverables tailored to each “phase” of the scope, and proposed timeline by task tied to costs.

- **COST SUMMARY**

This section shall define the fee schedule for the services.

Pricing shall remain firm for the entire 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. Any proposed price increase shall not 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](http://www.bls.gov).)

- **SIGNATURE**

The qualification shall be signed by an official authorized to bind the firm, and shall contain a statement to the effect that the qualification 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 qualifications. 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.

## **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 costs incurred in the preparation of a qualification, 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 a Contract 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 [ckrout@ci.irvine.ca.us](mailto:ckrout@ci.irvine.ca.us) with a copy to the Buyer at [bbrown@ci.irvine.ca.us](mailto:bbrown@ci.irvine.ca.us). No questions will be accepted later than December 8, 2009 at 4:00 p.m.

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

Sincerely,

Brian D. Brown,  
Purchasing Agent

Attachments

# **ATTACHMENT I**

## **SCOPE OF SERVICES**

Consultant shall develop and deploy a web-based data management system to track the City's energy use and greenhouse gas (GHG) emissions for its facilities and the activities under the Energy Efficiency and Conservation Block Grant (EECBG) and the City's Climate Action Plan. The system should be designed to easily report indicators required for the EECBG and link with existing data to eliminate duplicate data entry. The ability to display trends over time and links with forecasting and scenario planning functions to illustrate the potential impact of EECBG energy and water efficiency programs, capital projects, building retirements and constructions, and transportation programs is required. An executive summary of the City of Irvine Climate Action Plan is included as EXHIBIT I

### **WEB-BASED TRACKING AND REPORTING SYSTEM REQUIRED PROGRAM ELEMENTS:**

- Leverage existing systems and reduce duplication of effort for tracking and reporting (evaluate potential for direct interaction with Southern California Edison and Southern California Gas Company for data either directly or through U.S. Environmental Protection Agency's (EPA) Portfolio Manager).
- Integrate multiple city-wide management systems, programs, and contractors to support on-going operations tracking and reporting.
- Produce standardized reports that include key performance metrics for EECBG funding (on both a per project and total program basis), including: jobs created and retained, energy saved, renewable energy produced, GHG emissions reduced, cost-sharing, and lifecycle financial performance.
- Have the ability to track emissions and changes in emissions across multiple sectors of activity, as noted in the Climate Action Plan. The main emission sectors for emissions include transportation, residential buildings, commercial buildings, and municipal activities. A key component of the proposed program is the identification of methods by which emissions from all activities can be tracked and monitored, including both public and private activities.
- Coordinate with community funding program to track energy savings
- Coordinate with City website to allow public access to information required under EECBG to be updated on a quarterly basis.
- Be easily managed by the City and require minimal maintenance.

The system, once developed, should meet the requirements of the federal government for public information on American Recovery and Reinvestment Act funds, gather the information needed to report on ARRA funds and allow integration of multiple systems for reporting and tracking within the City's estimated budget of \$170,000.

**Compliance with EECBG Requirements:**

Bidders responding to this solicitation should be familiar with Federal and State laws, regulations, and guidelines that apply to the California Energy Commission's State Energy Program Formula Grants, including but not limited to the following:

**Federal:**

1. The American Recovery and Reinvestment Act of 2009  
<http://www.energy.ca.gov/recovery/documents/HR1.pdf>.
2. Department of Energy Funding Opportunity Announcement DE FOA-0000013  
<https://www.fedconnect.net/FedConnect>.
3. Davis-Bacon Act (40 U.S.C. 3141, et. seq.)
4. National Environmental Policy Act (42 U.S.C. 4321, et. seq.)
5. National Historic Preservation Act of 1966 (16 U.S.C. 470f)
6. Office of Management and Budget reporting requirements  
[http://www.whitehouse.gov/omb/assets/memoranda\\_fy2009/m09-21.pdf](http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-21.pdf)  
[http://www.whitehouse.gov/omb/assets/memoranda\\_fy2009/m09-21-suppl.pdf](http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-21-suppl.pdf)  
[http://www.whitehouse.gov/omb/assets/memoranda\\_fy2009/m09-21-suppl2.pdf](http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-21-suppl2.pdf)
7. Council of Economic Advisers' Estimates of Job Creation from the American Recovery and Reinvestment Act of 2009, May 2009  
[http://www.whitehouse.gov/assets/documents/Estimate\\_of\\_Job\\_Creation.pdf](http://www.whitehouse.gov/assets/documents/Estimate_of_Job_Creation.pdf).
8. Special Terms and Conditions of Irvine's EECBG Award. See EXHIBIT II.

**State:**

California Home Energy Rating System Program regulations  
<http://www.energy.ca.gov/2008publications/CEC-400-2008-011/CEC-400-2008-011-CMF.PDF>.

**Reporting Requirements for Vendors and Contractors:**

In order to qualify for any award of contract under this effort, the City of Irvine is requiring vendors and contractors to demonstrate the following:

1. Register with a voluntary registry or organization for reporting greenhouse gas emissions;
2. Within six months of contract award, the vendor and/or contractor must develop and make available its organization's greenhouse gas inventory and description of efforts to mitigate greenhouse gas emissions;
3. Within six months of contract award, the vendor and/or contractor must demonstrate its organization's internal purchasing preferences or other incentives for products manufactured using processes that minimize greenhouse gas emissions and the utilization of other options for encouraging sustainable practices and reducing greenhouse gas emissions.

**Partnership Structure and Capabilities Weighting:**

The City is encouraging qualifications that achieve collaboration and partnership between organizations and firms. The extent of involvement from a broad range of entities/organizations is highly recommended. Therefore, the qualification indicating shared skill-sets and resources will garner greater weight in the evaluation process. Furthermore, the extent to which roles and responsibilities of each partner/team member have been identified and are reasonably matched to their ability to successfully manage and implement the proposed project will be viewed favorably. Lastly, by having a local representative to represent the partnerships interests will be highly favored.

**Relationship between Irvine EECBG Programs and Climate Action Plan:**

Developing the Irvine Climate Action Plan (CAP) has been an ambitious endeavor. The EECBG RFPs clearly illustrate that the city is committed to executing the CAP policies and taking meaningful actions. The CAP is part of a larger climate planning program. Therefore, the EECBG RFPs should be viewed holistically as part of this program.

Refer to EXHIBIT III for a diagram that illustrates the CAP's relationship to the proposed programs described in the RFPs. The diagram can be broken down into three parts: Implementation, Infrastructure, and Outreach.

**Implementation**

These programs move the CAP's (and Energy Plan's) policies and strategies into action. These include the Sustainable Facilities Program, EPA Portfolio Manager System Training, and Residential Retrofit Program. The result of these projects will be quantifiable GHG emissions reductions, delivered through a variety of vehicles -- better operations and maintenance of city facilities, installations of energy efficient and renewable energy technologies in Irvine homes, and training for non-residential building owners. As per the EECBG requirements, the data generated by these projects/programs (e.g., GHG emissions reduced, kWh saved, increased renewable energy capacity, jobs created, etc.) will need to be tracked and reported. To do this, the city will need a tailored infrastructure system.

**Infrastructure**

These are the foundational tools -- the CEQA document and the web-based monitoring/reporting system -- that support the CAP's implementation. First, the city has determined that an environmental compliance document be prepared, and it should be fashioned in a way to provide the most value to city's decision makers, staff, and the development community. Second, the web-based monitoring tool will be a critical device to ensure that the city's climate planning efforts are effective and produce measurable results. Also, this tool can be used by a variety of audiences -- city staff, the development community, outside agencies, the general public -- to learn what the city is doing, how it is progressing, and what steps will occur in the future. It will be valuable for guiding city operations and enhancing communication.

**Outreach**

In order for the marketing campaign to be successful, it must have a product or service to promote first. The marketing plan is a short-term project will commence some time after the implementation projects are underway. Targeted, mini-campaigns that are part of a broader, citywide promotional strategy will be the City's proposed approach.

## **EXHIBIT I**

### **EXECUTIVE SUMMARY OF IRVINE CLIMATE ACTION PLAN**

The City of Irvine, in its commitment to protecting the environment and meeting the obligations of AB32 which calls for reducing greenhouse gas emissions statewide to the 1990 levels by the year 2020, is developing its very own Climate Action Plan that will decrease carbon emissions within its municipal boundaries.

Prior to the implementation of the Climate Action Plan, the City of Irvine has seen consistent progress towards its goal in reducing global warming. In June of 2008, the City of Irvine had implemented its Energy Plan that has provided a guiding framework for which the city can start developing energy standards and policies. Developed at the request of the Planning Commission to the City Council to implement the policies as outlined in the Energy Element of Irvine's General Plan, the Energy Plan serves as a jump off point for which the city defines and presents the current energy situation. Furthermore, the Energy Plan presents a few strategies and policies on how the city can address various energy issues in the context of moderating greenhouse gas emissions. Through the implementation of the Energy Plan, the City of Irvine has established a strong jump-off platform for which it can begin crafting its ensuing Climate Action Plan.

As effective as the Energy Plan has been for the City in creating an initial framework for which the city can promote energy efficiency, the City of Irvine still has unfinished business in developing a more comprehensive framework that addresses the complex nature of reducing carbon emissions. The purpose behind the Climate Action Plan will be to provide the city with a policy and strategically oriented platform that will deliver the quickest carbon emissions reductions in Irvine as well as provide a viable long-term strategy that will help meet the goals of AB32 and SB375. The Climate Action Plan will not only quantify baseline estimates of greenhouse gas emissions but it will also assess future estimates through its ICLEI GHG Inventory. GHG targets will be identified and strategies for reducing these emissions will be developed with an emphasis on improving transportation regulations, providing energy efficiency standards, increasing our renewable energy portfolio, and incorporating adaptation strategies.

The goal and expected result behind these efforts will not only be a significant reduction in the city's carbon emissions, but it will also deliver quick financial benefits through a variety of energy related savings to homeowners, businesses, and the city government. The Climate Action Plan will not only be the city's blueprint in achieving greenhouse gas reductions but will also serve as a model of climate change sustainability planning for years to come.

# EXHIBIT II

DE-EE0000865/000  
City of Irvine, CA

## SPECIAL TERMS AND CONDITIONS

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## **1. STATEMENT OF FEDERAL STEWARDSHIP**

DOE will exercise normal Federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

## **2. SITE VISITS**

DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. You must provide, and must require your subawardees to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

## **3. REPORTING REQUIREMENTS**

- a. Requirements. The reporting requirements for this award are identified on the Federal Assistance Reporting Checklist, DOE F 4600.2, attached to this award. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies.
- b. Additional Recovery Act Reporting Requirements are found in the Provision below labeled: "REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT."

## **4. PUBLICATIONS**

- a. You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.
- b. An acknowledgment of DOE support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

*Acknowledgment:* “This material is based upon work supported by the Department of Energy [National Nuclear Security Administration] [add name(s) of other agencies, if applicable] under Award Number(s) [enter the award number(s)].”

*Disclaimer:* “This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.”

## **5. FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS**

You must obtain any required permits and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

## **6. LOBBYING RESTRICTIONS**

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

## **7. SUBGRANT APPROVALS**

- a. In addition to the information in paragraph b. above, for each sub-grant that has an estimated cost greater than 25% of the Total Allocation or \$1,000,000, whichever is less, the recipient must submit a statement of work, SF424A Budget Information – Nonconstruction Programs, and PMC 123.1 Cost Reasonableness Determination for Financial Assistance (<http://www.eere-pmc.energy.gov/Forms.aspx>), or equivalent.

## **8. ADVANCE UNDERSTANDING CONCERNING PUBLICLY FINANCED ENERGY IMPROVEMENT PROGRAMS**

The parties recognize that the Recipient may use funds under this award for Property-Assessed Clean Energy (PACE) loans, Sustainable Energy Municipal Financing, Clean Energy Assessment Districts, Energy Loan Tax Assessment Programs (ELTAPS), or any other form or derivation of Special Taxing District whereby taxing entities collect payments through increased tax assessments for energy efficiency and renewable energy building improvements made by their constituents. The Department of Energy intends to publish

"Best Practices" or other guidelines pertaining to the use of funds made available to the Recipient under this award pertaining to the programs identified herein. By accepting this award, the Recipient agrees to incorporate, to the maximum extent practicable, those Best Practices and other guidelines into any such program(s) within a reasonable time after notification by DOE that the Best Practices or guidelines have been made available. The Recipient also agrees, by its acceptance of this award, to require its sub-recipients to incorporate to the maximum extent practicable the best practices and other guideline into any such program used by the sub-recipient.

## **9. SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (May 2009)**

### **Preamble**

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act) was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipients shall use grant funds in a manner that maximizes job creation and economic benefit.

The Recipient shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in Act itself and as discussed below.

Recipients should begin planning activities for their first tier subrecipients, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related guidance. For projects funded by sources other than the Recovery Act, Contractors must keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning specific procedural requirements for the new reporting requirements. The Recipient will be provided these details as they become available. The Recipient must comply with all requirements of the Act. If the recipient believes there is any inconsistency between ARRA requirements and current award terms and conditions, the issues will be referred to the Contracting Officer for reconciliation.

### **Definitions**

For purposes of this clause, Covered Funds means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the grant, cooperative agreement or TIA and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to covered funds -- the contractor, subcontractor, grantee, or recipient, as the case may be, if the contractor, subcontractor, grantee, or recipient is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving covered funds; or with respect to covered funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

Recipient means any entity that receives Recovery Act funds directly from the Federal government (including Recovery Act funds received through grant, loan, or contract) other than an individual and includes a State that receives Recovery Act Funds.

#### Special Provisions

##### A. Flow Down Requirement

Recipients must include these special terms and conditions in any subaward.

##### B. Segregation of Costs

Recipients must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects.

##### C. Prohibition on Use of Funds

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

##### D. Access to Records

With respect to each financial assistance agreement awarded utilizing at least some of the

funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized --

(1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to, and involve transactions that relate to, the subcontract, subcontract, grant, or subgrant; and

(2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

#### E. Publication

An application may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the applicant does not want disclosed to the public or used by the Government for any purpose other than the application. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies:

##### Notice of Restriction on Disclosure and Use of Data

The data contained in pages ---- of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant.

Information about this agreement will be published on the Internet and linked to the website [www.recovery.gov](http://www.recovery.gov), maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

#### F. Protecting State and Local Government and Contractor Whistleblowers.

The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to:

**Prohibition on Reprisals:** An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with

supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grant jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross management of an agency contract or grant relating to covered funds;
- a gross waste of covered funds;
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Nonenforceability of Certain Provisions Waiving Rights and remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, [www.Recovery.gov](http://www.Recovery.gov), for specific requirements of this section and prescribed language for the notices.).

G. Reserved

H. False Claims Act

Recipient and sub-recipients shall promptly refer to the DOE or other appropriate Inspector

General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

I. Information in Support of Recovery Act Reporting

Recipient may be required to submit backup documentation for expenditures of funds under the Recovery Act including such items as timecards and invoices. Recipient shall provide copies of backup documentation at the request of the Contracting Officer or designee.

J. Availability of Funds

Funds obligated to this award are available for reimbursement of costs until 36 months after the award date.

K. Additional Funding Distribution and Assurance of Appropriate Use of Funds

Certification by Governor – For funds provided to any State or agency thereof by the American Reinvestment and Recovery Act of 2009, Pub. L. 111-5, the Governor of the State shall certify that: 1) the state will request and use funds provided by the Act; and 2) the funds will be used to create jobs and promote economic growth.

Acceptance by State Legislature -- If funds provided to any State in any division of the Act are not accepted for use by the Governor, then acceptance by the State legislature, by means of the adoption of a concurrent resolution, shall be sufficient to provide funding to such State.

Distribution -- After adoption of a State legislature's concurrent resolution, funding to the State will be for distribution to local governments, councils of government, public entities, and public-private entities within the State either by formula or at the State's discretion.

L. Certifications

With respect to funds made available to State or local governments for infrastructure investments under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, the Governor, mayor, or other chief executive, as appropriate, certified by acceptance of this award that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Recipient shall provide an additional certification that includes a description of the investment, the estimated total cost, and the amount of covered funds to be used for posting on the Internet. A State or local agency may not receive infrastructure investment funding from funds made available by the Act unless this certification is made and posted.

**10. WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY**

## **ACT**

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

## **11. DAVIS-BACON ACT REQUIREMENTS**

Note: Where necessary to make the context of these articles applicable to this award, the term "Contractor" shall mean "Recipient" and the term "Subcontractor" shall mean "Subrecipient or Subcontractor" per the following definitions.

Recipient means the organization, individual, or other entity that receives an award from DOE and is financially accountable for the use of any DOE funds or property provided for the performance of the project, and is legally responsible for carrying out the terms and conditions of the award.

Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations).

Davis-Bacon Act

(a) Definition.--"Site of the work"--

(1) Means--

(i) The primary site of the work. The physical place or places where the construction called

for in the award will remain when work on it is completed; and

(ii) The secondary site of the work, if any. Any other site where a significant portion of the building or work is constructed, provided that such site is--

(A) Located in the United States; and

(B) Established specifically for the performance of the award or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided--

(i) They are dedicated exclusively, or nearly so, to performance of the award or project; and

(ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraph (a)(1)(i), or the "secondary site of the work" as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal award or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a award.

(b) (1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the award was performed at that site and shall be incorporated without any adjustment in award price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered

wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this article; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the article entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this article) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(c) (1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the award shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division  
Employment Standards Administration  
U.S. Department of Labor  
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (c)(2) and (c)(3) of this article shall be paid to all workers performing work in the classification under this award from the first day on which work is performed in the classification.

(d) Whenever the minimum wage rate prescribed in the award for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

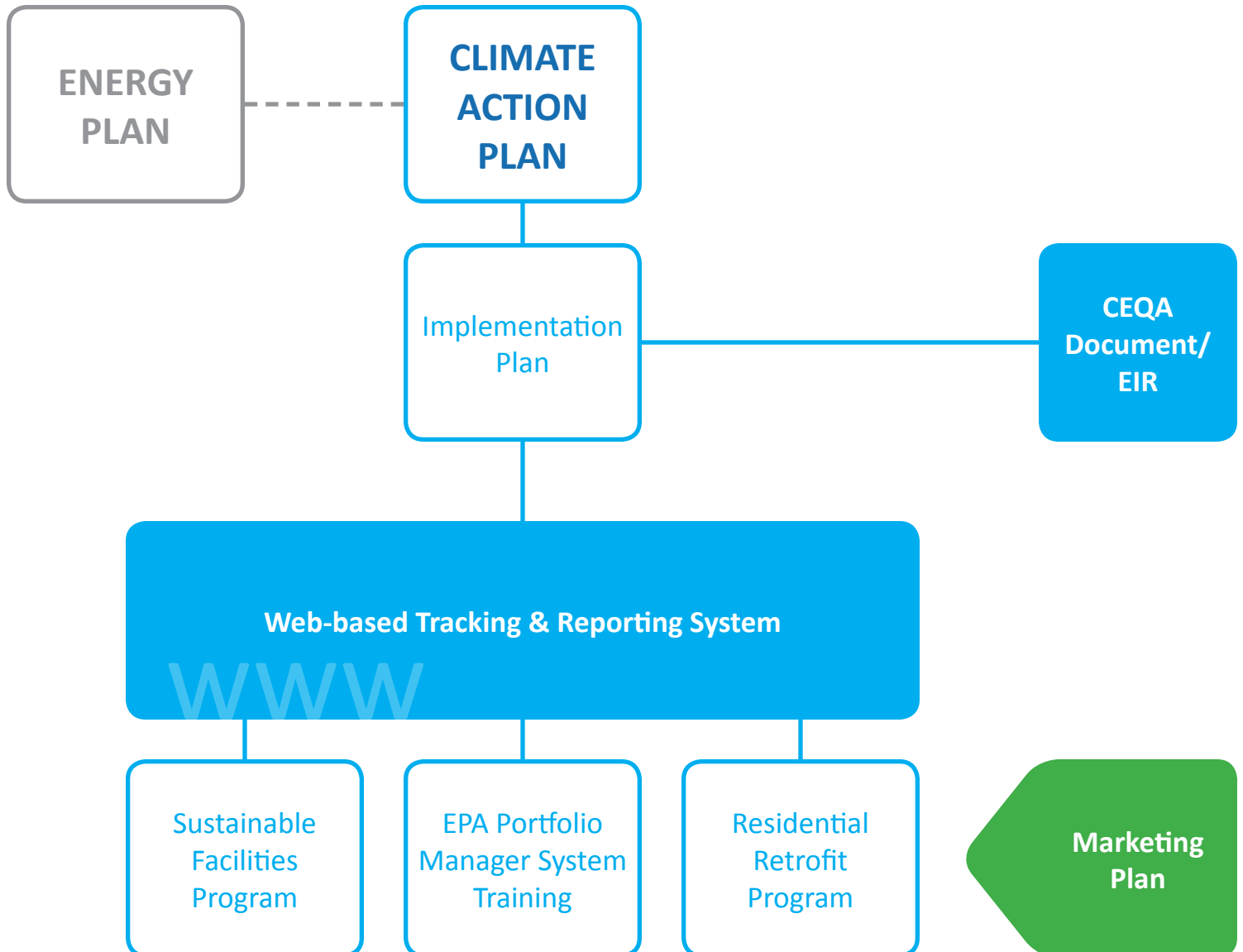
#### Rates of Wages - Prior Approval for Proceeding with Davis-Bacon Construction Activities

If the Recipient determines at any time that any construction, alteration, or repair activity as defined by 29 CFR 5.2(j) (<http://cfr.vlex.com/vid/5-2-definitions-19681309>) will be performed during the course of the project, the Recipient shall request approval from the Contracting Officer prior to commencing such work. If the Contracting Officer concurs with the Recipient's determination, the Recipient must receive Contracting Officer approval to proceed with such activity, and must comply with all applicable Davis-Bacon requirements, prior to commencing such work. A modification to the award which incorporates the appropriate Davis-Bacon wage rate determination(s) will constitute the Contracting Officer's approval to proceed. If the Contracting Officer does not concur with the Recipient's determination, the Contracting Officer will so notify the Recipient in writing.



# EXHIBIT III

## Relationship Between City Plans and EECBG Projects & Programs



Infrastructure

Implementation Actions

Outreach (short-term)

## ATTACHMENT II

### AGREEMENT FOR CONTRACT SERVICES

THIS AGREEMENT FOR CONTRACT SERVICES (the "Agreement") is made and entered into as of \_\_\_\_\_ 2010, 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:** Web-Based Tracking and Reporting System in accordance with PART IV, Scope of Services, included herein (Reference RFP 09-2484).

**C. Term:** Unless terminated earlier as set forth in this Agreement, the services shall commence on \_\_\_\_\_ ("Commencement Date") and shall continue through \_\_\_\_\_. The City reserves the right to extend the contract for up to one (2) additional one (1) year periods.

**D. Party Representatives:**

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

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**

**(CONTRACTOR'S NAME)**

By: \_\_\_\_\_  
Douglas Williford  
Its: Director of Community Development  
\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Sean Joyce  
Its: City Manager  
\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_  
Its: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Sharie Apodaca  
City Clerk of the City Of Irvine

**Contractor Information**

APPROVED AS TO FORM:  
RUTAN & TUCKER, LLP

**Address for Notices and Payments:**

\_\_\_\_\_  
Philip D. Kohn

**Attn:**

**Telephone Number:**  
**FAX Number:**  
**E-mail:**

## **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 thereafter.

**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 insured 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 are 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 thereafter shall apply.

**3.10 Waiver.** No delay or omission in the exercise of any right or remedy by a non defaulting 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) **Business License Requirement.** Contractors who provide services for the City of Irvine within the city limits 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/purchasing](http://www.cityofirvine.org/purchasing). To view the rates, along with other living wage information, click on the “Living Wage Information” link.

Contractors are required to submit a completed Declaration of Compliance Form (reference Appendix B) with their bid or qualification; 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 are deleted in its entirety.

## **PART IV**

### **SCOPE OF SERVICES**

Services shall be performed in accordance with ATTACHMENT I, Scope of Services (to be inserted after contract award).

## PART V

### BUDGET

Pricing shall be in accordance with ATTACHMENT II (to be inserted after contract award).

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.

Contractors submitting expense reimbursement requests to the City shall include on their invoices detailed information including description, date of the expense, business purpose and amount. Contractor shall attach supporting documents substantiating the expense such as itemized receipts, paid invoices or paid credit card statements (if description has sufficient detail). Any request for travel-related expense reimbursement must be pre-approved by the City.

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](http://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.

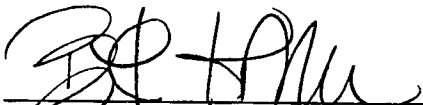
(3) Any and all other legal and equitable remedies available under Federal, State and local laws.

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 12<sup>th</sup> day of June, 2007.

  
MAYOR OF THE CITY OF IRVINE

ATTEST:

  
CITY CLERK OF THE CITY OF IRVINE

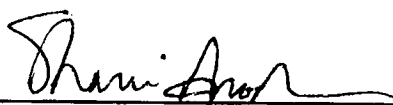
STATE OF CALIFORNIA    )  
COUNTY OF ORANGE    )    SS  
CITY OF IRVINE         )

I, SHARIE APODACA, City Clerk of the City of Irvine, HEREBY DO CERTIFY that the foregoing Ordinance was introduced for first reading on May 22<sup>nd</sup>, 2007, and duly adopted at a regular meeting of the City Council of the City of Irvine held on the 12<sup>th</sup> 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 22<sup>nd</sup> 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 22<sup>nd</sup> 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](http://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](http://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                      |

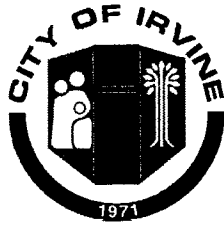
### **Personal Sick Leave:**

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](http://www.cityofirvine.org)**

## Appendix F

### 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](http://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?

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.

See your employer for a copy of Form W-4 or call the IRS at 1-800-829-5876. For more details, get Publication 919.

Now is the time to check your withholding, or use the Withholding Calculator at [www.irs.gov/individuals](http://www.irs.gov/individuals) on the IRS website.

How Do I Adjust My Tax Withholding? Employer, please post this notice in a public place. For more information on this subject, please visit [www.irs.gov/individuals](http://www.irs.gov/individuals) or call 1-800-829-5876.



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](http://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](http://www.irs.gov/eitc) for details. You can get IRS forms and publications by accessing the IRS website at [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

Notice 97 (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

1040-1040EZ-0507 1040-1040EZ-0507

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

ADVANCE EITC

www.irs.gov/eitc

## 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 employer's federal income tax liability. It is the federal income tax credit that the employee can use to reduce his or her federal income tax liability. It is a refundable credit, which means that the employee can receive a refund of the credit if the credit is more than the tax liability.
- » **Advance Earned Income Tax Credit (Advance EITC):** Advance EITC is the portion of the EITC that qualified employees can receive in advance of the year for which they are eligible. It is a refundable credit, which means that the employee can receive a refund of the credit if the credit is more than the tax liability.

## 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](http://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.