

**CITY OF OAKLAND**  
**AGENDA REPORT**

2010 OCT 14 PM 6:34  
TO: Office of the City Administrator  
ATTN: Dan Lindheim  
FROM: Arturo M. Sanchez  
DATE: October 26, 2010

**RE: 2<sup>nd</sup> Addendum to Action on a report regarding proposed Request For Permit Applications (RFPA) to operate a Medical Cannabis Cultivation Facility Pursuant to Oakland Municipal Code Chapter 5.81**

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**Summary**

On October 5, 2010 The Oakland City Council directed staff to revise the draft Request for Permit Applications (RFPA) to reflect changes to the proposed RFPA to address both process and scoring concerns.

The changes as directed by Council are as follows:

- 1) Move the consideration of bonus points from Phase 1 to Phase 2.  
  
Phase 1 will result in a determination of the top 10 applicants who will then move on to Phase 2. Phase 2 will allocate bonus points to those 10 applicants based on criteria developed by Council.  
  
This will ensure that under qualified applicants who score well in the bonus point section are not awarded a permit. Only the most qualified applicants will receive the benefit of bonus point consideration.
- 2) Include Union hiring halls in the local hire language
- 3) The RFP should clearly indicate that "No Cultivation shall operate for Profit".
- 4) Each applicant must submit their Articles of Incorporation and Bylaws which have been previously filed with the Secretary of State.
- 5) No Collective/Cultivator established prior to the approval of the cultivation ordinance shall be grandfathered in. In the alternative we should at minimum require operators who have previously cultivated in contravention to our ordinances to pay a sizable penalty prior to receiving a cultivation permit.
- 6) Incomplete applications will not be considered.
- 7) Applications will be immediately determined "null and void" if they do not comply with location requirements (i.e. they are located outside light industrial areas or areas specifically authorized in the RFP)

- 8) We should re-circulate dollars in our own community. To that end, we should increase local purchases to 50%. We should also increase points awarded for environmental controls.
- 9) All applications should have a statement by the managing partner stating under penalty of perjury that they have personal knowledge of the information contained in the application and it is true and correct and submitted under their supervision.
- 10) Community Benefits should be a part of the overall substantive point process not as bonus points. This should receive a high point value.
- 11) The security plan should be awarded a higher point value.
- 12) On page 10 of 39 #1 after "panel" insert which may include: leave the balance of the sentence.
- 13) Equity Participation/Local ownership: 70% local and reflective of the diversity of the City of Oakland.
- 14) More than 6 applicants should move from Phase I to Phase II.
- 15) That Staff develop a system of assessing penalties for permittees not abiding by a timetable or schedule with significant movement towards cultivation.
- 16) That staff include the affirmative and strong language contained in Labor & Employment bonus point category F so that all bonus points for which an applicant receives credit will be clearly identified as a future condition of their permit should they be a successful applicant.
- 17) That staff considers the possibility of charging the permit fee upon issuance, or in quarterly installments, or at the end of the first year of operation In addition to the changes noted above the committee members all agreed that applicants should not receive bonus points for complying with the law e.g.. ADA Compliance should not result in a bonus point.

## Discussion

Staff has made the changes as directed by the council and attached to this report is a 2<sup>nd</sup> revision draft of the RFPA which incorporates, to the best of our ability, the changes as directed. Of these changes at least two involve the assessment of penalties against an applicant for prior bad acts and against awardees for violations of an implementation timeline of their permit should they be awarded a permit. Staff has incorporated the assessment of a penalty into the RFPA document, however it is unclear as to whether these assessments may be made and if so pursuant to what authority. Although staff

has included them in this version of the document the assessments of penalties may not be possible. Staff will work with the City Attorney's Office to make sure that only penalties authorized by law will be made. If any of the penalty items be stricken staff recommends moving forward without that penalty language in the RFPA.

There are two changes that Council requested for which staff has developed a series of options for council to consider. The first involved a discussion amongst the Council members regarding the ability of any unlawful operator currently operating to apply for a cultivation permit. Based on the discussion by Council it appeared that a majority favored some language relating to either penalizing or prohibiting a current cultivator from applying for a cultivation permit. Staff was unclear as to whether there was a clear consensus either way. We have prepared three options from which Council may choose based on what they believe best fits with their intended policy. The options are as follows:

*Option A*

*No Collective/Cultivator established prior to the approval of the cultivation ordinance shall be grandfathered in or allowed to compete for a permit.*

*Option B*

*No Collective/Cultivator established prior to the approval of the cultivation ordinance shall be grandfathered in. A pre-existing Cultivator may compete for a permit, but only if Applicants agree to pay a penalty in the amount of \$\_\_\_\_\_ for each month in which they have operated prior to the issuance of a Cultivation Permit.*

*Option C*

*No Collective/Cultivator established prior to the approval of the cultivation ordinance shall be grandfathered in. A pre-existing Cultivator may compete for a permit, except that upon inspection by City staff any and all violations of building, fire, or any other applicable City or State regulation documented at their proposed facility site will result in a reduction of 20 points from their overall score for each violation documented.*

A fourth option not listed above would be for Council to allow current unpermitted cultivator's to apply with no prohibition. Staff seeks direction from the Council as to which of these options it deems appropriate to take.

The second change involved a question posed by Councilmember Brooks regarding how we intend to assess the permit fee on the eventual permit awardees. As discussed by staff, the practice on all special business permits has been to charge the Permit Fee before issuing a finalized permit.

The issue presented to Staff and the Council is whether we should consider the fact that we are already asking the eventual Permittees to invest a lot of time and money into

developing a business and its infrastructure without taking into account the fact that the businesses will not likely see any income for several months. The question was posed as to whether or not it would be best to charge the permit fee at the conclusion of the first year when the Cultivators may be solvent. Staff has also prepared three choices for Council to consider with regards to this question. The choices are as follows:

*Option A*

*The Annual Permit Fee in the amount of \$211,000 will be due before a finalized permit may be issued. Failure to pay the annual renewal fee within five (5) calendar days of the due date, as set forth in the permit, will be a basis for immediate revocation of the permit.*

*Option B*

*The Annual Permit Fee in the amount of \$211,000 will be due in four quarterly installments of \$52,750 due upon issuance of the permit and every four months immediately thereafter. Failure to pay a fee installment within five (5) calendar days of the due date, as set forth in the permit, will be a basis for immediate revocation of the permit.*

*Option C*

*The Annual Permit Fee in the amount of \$211,000 will be due 12 months after issuance of the permit to the permit holder. Failure to pay the annual renewal fee within five (5) calendar days of the due date, as set forth in the permit, will be a basis for immediate revocation of the permit.*

A third change that Council recommended that staff wishes to highlight is the inclusion of language relating to the assessments of penalties for failing to abide by deadlines for building and using the permit. The change reads as follows:

*All Permit Awardees will be required, as a condition of their permit, to abide by a timeline of deliverables as proscribed by Permit Staff. Failure to comply with the timeline and or meet a deliverable may result in the assessment of a monetary penalty in the amount of \$ \_\_\_\_\_ for breach of a permit condition or immediate revocation of permit for repeated failure to abide by deliverables timeline.*

### **Scoring Considerations**

Staff has made several changes identified by Council at the meeting to the method and manner in which scoring will occur. The largest shift is that bonus points will now be allocated in Phase II of the RFPA and will only be given to those Applicants that rank as the 10 highest scoring applicants in Phase I. Phase II will now consist of the bonus points and the examination. Further Council recommended increasing the number of Applicants that move on to Phase II from six (6) to ten (10).

The second largest shift is that the Community Benefits portion of the bonus points has been moved into a central category to be scored in Phase I. This has re-allocated more points into Phase I. The total now for Phase I scoring is now 1300 available points. Staff would like to reiterate a concern expressed at the Council meeting, and that is that the current structure still does not afford the business plan and capitalization proof the weight that they should be given in light of staff's perspective that these two items represent the two most important aspects of the Applicant's application that will establish their 1) ability and wherewithal to operate a safe and lawful business; 2) have a vision that conforms to the intent and policy adopted by the Council, and 3) have the financial ability to implement this vision.

In light of this concern staff recommends increasing the scores for capitalization and the business plan by at least 100 points. This would value the business plan at 600 points, the capitalization plan at 300 points, and overall Phase I scoring at 1500 points. Staff feels that even this minimal increase will sufficiently re-balance the point allocation in such a way that the best Applicants will move from Phase I to Phase II.

### ***Practical Considerations***

As discussed at the Council meeting and as have been previously discussed by the Office of the City Attorney the proposed RFPA merely invites applicants to apply for a special business permit and as such the City does not have the proprietary interest necessary to require the items enumerated in the attached Oakland City Council policies and Procedures. This proprietary interest affords the City a level of control over items such as labor practices and third party contracts. The matter before the council does not involve such a proprietary interest.

Council directed Staff back to Public Safety Committee for October 26. This puts us on a schedule to appear before the full Council on Tuesday November 16, 2010. This is due to the fact that the regular Council meeting scheduled for Tuesday November 2, 2010 has been canceled due to this being the state wide election date. At this juncture the changes requested and the re-scheduling of this item has resulted in the following changes to Staff's expected timeline (this assumes no further need to return to committee and council):

Informational letter to all interested individuals:	Friday November 12, 2010
Publish and Release RFPA:	Monday November 22, 2010
Mandatory Meeting for Applicants:	Monday November 22, 2010 4 p.m. @ City Hall.
Applications and Required documents due:	Wednesday December 22, 2010 by 4pm
1st round Scoring and Ranking of Applicants:	Friday January 14, 2011
Top 10 Applicants notified:	Monday January 17, 2011
Examination:	Thursday January 19, 2011
Permit Awardees Notified:	Thursday January 26, 2011

Public Hearings scheduled:  
Permits issued:

February 17 & 18, 2011  
Exact day TBD February, 2011

All changes made to the RFPA are underscored for the ease of review.

Respectfully submitted,

  
\_\_\_\_\_  
Arturo M. Sanchez  
Assistant to the City Administrator

FORWARDED TO THE  
PUBLIC SAFETY COMMITTEE:

  
\_\_\_\_\_  
Office of the City Administrator

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2010 OCT 14 PM 6:35



**CITY OF  
OAKLAND**

# **THE CITY OF OAKLAND**

**SPECIAL BUSINESS PERMITS DIVISION  
OFFICE OF THE CITY ADMINISTRATOR**

**MEDICAL CANNABIS INDUSTRIAL  
CULTIVATION AND PROCESSING FACILITY  
PERMIT**

**REQUEST FOR PERMIT APPLICATIONS**

**Mandatory Pre-meeting:  
Submittal Due Date:**

## **INTRODUCTION**

This Request for Permit Applications (RFPA) is issued by the City of Oakland to identify qualified firms or individuals (Permittees), and solicit applications from such, to engage in Medical Cannabis Industrial Cultivation And Processing in order to provide safe and adequate access to patients, patient care givers, and dispensaries of medical Cannabis. Applicants will compete for one (1) of four (4) available Permits to conduct large scale cultivation of Cannabis in the City of Oakland. Selected Permittees will be required to comply with operating standards, regulations, and reporting requirements as identified by the City Administrator or her/his designee.

## **BACKGROUND**

### The Statewide Cannabis Movement

On Nov. 6, 1996 Proposition 215, the California Compassionate Use Act, was enacted by the voters (California Health & Safety Code 11362.5). The law makes it legal for patients and their designated primary caregivers to possess and cultivate cannabis for their personal medical use given the recommendation or approval of a licensed physician. This was expanded through SB 420 on January 1, 2004 to (i) allow patients to form medical cultivation “collectives” or “cooperatives”; (ii) establish a voluntary state ID card system run through county health departments; and (iii) establish guidelines or safe harbors as to quantities patients can possess and cultivate, protecting legal patients who stay within the guidelines from arrest.

The Regulate, Control and Tax Cannabis Act, on the California ballot this November, would legalize adult recreational cannabis in California, but give localities discretion to allow, regulate and tax production and distribution.

### Medical Cannabis in Oakland

On February 17, 2004, the City of Oakland adopted Ordinance No. 12585 C.M.S., permitting distribution of medical cannabis to authorized patients through four licensed dispensaries. The City process for administering these Permits and monitoring the dispensaries is considered successful, and has become a role model for the nation. In June 2009, Measure F, which taxed Oakland's medical cannabis dispensaries, passed in a special election by 80% with no formal opposition, indicating recognition of the dispensaries' role in providing a legitimate service to the community.

While Oakland, and for that matter the State, has created a method for dispensing medical cannabis, there is no established structure for its production, growth and cultivation. This, combined with the City of Oakland's low priority enforcement policy, has made it difficult for OPD to regulate production within the structure of dispensary collectives.



On July 27, 2010 the Oakland City Council Adopted Ordinance No.13033 C.M.S. creating a regulation and permit process to designate four large-scale Medical Cannabis Industrial Cultivation and Processing Facilities. The purpose was to provide a framework for the regulation of large-scale medical cannabis cultivation that would address the public health, safety, and economic impacts currently not accounted for within the city's medical cannabis system.

#### Number of Permits

To balance the objectives of sufficient scale and ease of implementation, the City Council approved four (4) Medical Cannabis Industrial Cultivation And Processing Facility Permits in the interim phase of the program. Following the first year of implementation, the City Administrator is to return to Council with a review of the performance and impact of cultivation, production, and manufacturing under the ordinance. Council would then have the option of developing a permanent ordinance and issuing additional Permits based on a determination of whether market demand for medical cannabis is sufficient to absorb further production, and whether the issuance of additional Permits would serve the interests of the City.

### DEFINITIONS

The following words or phrases, whenever used in this RFPA and attached regulations, shall be given the following definitions:

- A. "Aeroponics" is the process of growing plants in an air or mist environment without the use of soil or an aggregate medium (known as geponics). The word "aeroponic" is derived from the Greek meanings of "aero" (air) and "ponos" (labour). Aeroponic culture differs from both conventional hydroponics and in-vitro (plant tissue culture) growing. Unlike hydroponics, which uses water as growing medium and essential minerals to sustain plant growth, aeroponics is conducted without a growing medium.
- B. "Applicant" as used only in this Chapter shall be any individual, firm, cooperative, association, collective, or corporations that applies for a Medical Cannabis Industrial Cultivation And Processing Facility permit via the RFPA process described herein.
- C. "Batch" as used only in this Chapter shall be defined by City Administrator to mean a discrete quantity of dried cannabis or less, produced and sold together.
- D. "Cannabis" or "Marijuana" as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 8.46.020.
- E. "Cannabis Dispensary" as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010 and is also referred to herein as "dispensary".

F. "Carbon neutrality" having a net zero carbon footprint, refers to achieving net zero carbon emissions by balancing a measured amount of carbon released with an equivalent amount sequestered or offset, or buying enough carbon credits to make up the difference.

G. "Carbon Sequestration" is defined as "The process of removing carbon from the atmosphere and depositing it in a reservoir. It may also be a geoengineering technique for long-term storage of carbon dioxide or other forms of carbon to mitigate global warming. It has been proposed as a way to mitigate accumulation of greenhouse gases in the atmosphere, which are released by burning fossil fuels.

H. "City Administrator" as used only in this Chapter shall mean the City Administrator for the City of Oakland.

I. "Collective" is any association, Medical Cannabis Association, cooperative, affiliation, or collective of persons where three or less "qualified patients" and/or "primary care givers", in possession of an identification card, or written recommendation, issued by the county of Alameda, or the state of California, or another agency recognized by the city of Oakland pursuant to California Health and Safety Code Section 11362.7 et seq, collectively or cooperatively join to provide education, referral, or network services, and facilitation or assistance in the lawful production, acquisition, and distribution of medical cannabis.

J. "Cultivation Area" as used only in this Chapter hereinafter shall mean the actual area in use for the entire cultivation process of cannabis plants (including seedling production, vegetation, and maturation), as well as reasonable walking space, such that, for example, two trays used for maturation, each measuring 10 square feet and stacked vertically on top of each other shall be counted as 20 square feet of cultivation area.

K. "Efficient Energy Use, sometimes simply called Energy Efficiency" using less energy to provide the same level of energy service. For example, insulating a home allows a building to use less heating and cooling energy to achieve and maintain a comfortable temperature. Efficient energy use is achieved primarily by means of a more efficient technology or processes rather than by changes in individual behavior.

L. "Excessive profits" means the receipt of consideration of a value substantially higher than the reasonable costs of operating the facility.

M. "Hydroponics (From the Greek words hydro, water and ponos, labor)" a method of growing plants using mineral nutrient solutions, in water, without soil. Terrestrial plants may be grown with their roots in the mineral nutrient solution only or in an inert medium, such as perlite, gravel, mineral wool, or coconut husk.

N. "HVAC" is an acronym that stands for the closely related functions of "Heating, Ventilating, and Air Conditioning"—the technology of indoor or automotive environmental comfort. HVAC is particularly important in the design of medium to large

industrial and office buildings such as skyscrapers and in marine environments such as aquariums, where safe and healthy building conditions are regulated with temperature and humidity, as well as "fresh air" from outdoors.

O. "Industrial Cannabis Cultivation, Processing, Manufacturing Facility" hereinafter "cultivation and manufacturing facility" as used only in this Chapter shall mean any facility used by any association, medical cannabis association, cooperative, affiliation, or collective, or other entity authorized under, in possession of identification cards, or written recommendations, issued by the county of Alameda, or the state of California, or another agency recognized by the City of Oakland pursuant to California Health and Safety Code Section 11362.7 et seq., and in conformance with California and local law, for the possessing, cultivating, growing, processing, and/or manufacturing of cannabis in an area greater than more than ninety six (96) square feet of cultivation area, and/or possessing more than forty-eight (48) ounces of dried processed, and/or packaged Cannabis, in One Parcel of Land, for subsequent transfer to a licensed medical cannabis dispensary that supplies to qualified patients or primary caregivers. Any establishment engaged in, permitted to be engaged in or carrying on any medical cannabis cultivation, processing, or manufacturing or other activity mentioned in this chapter shall be deemed an Industrial Cannabis Cultivation and Manufacturing Facility as described in section 5.81.040.

P. "Leadership in Energy & Environmental Design (LEED)" is an internationally recognized green building certification system, providing third-party verification that a building or community was designed and built using strategies intended to improve performance in metrics such as energy savings, water efficiency, CO2 emissions reduction, improved indoor environmental quality, and stewardship of resources and sensitivity to their impacts.

Q. "Light Manufacturing Industrial or their equivalent use" shall be defined to include areas where medical services, research services, crop raising, cultivation, and agricultural activities are permitted or conditionally permitted in the area where the Applicants property is located.

R. "Local" – means residing in the Oakland City limits.

S. "Medical cannabis collective, association, or cooperative" as used only in this Chapter shall be the same, and as may be amended, as is defined in OMC 5.80.010

T. "Primary caregiver" as used only in this Chapter shall be the same, and as may be amended, as is defined in OMC 5.80.010

U. "Qualified patient" as used only in this Chapter shall be the same, and as may be amended, as is defined in OMC 5.80.010

V. "Serious medical condition" shall have the same definition as California Health and Safety Code Section 11362.7 et seq, and as may be amended, including but not limited to:

1. Acquired immune deficiency syndrome (AIDS);
2. Anorexia;
3. Arthritis;
4. Cachexia;
5. Cancer;
6. Chronic pain;
7. Glaucoma;
8. Migraine;
9. Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis;
10. Seizures, including, but not limited to, seizures associated with epilepsy;
11. Severe nausea;
12. Any other chronic or persistent medical symptom that either:
  - a. Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336); or
  - b. If not alleviated, may cause serious harm to the patient's safety or physical or mental health.

W. "Written recommendation" as used only in this Chapter shall be the same, and as may be amended, as is defined in OMC 5.80.010

X. "Zero Waste" a philosophy that encourages the redesign of resource life cycles so that all products are reused. Any trash sent to landfills is minimal. The process recommended is one similar to the way that resources are reused in nature. In industry this process involves creating commodities out of traditional waste products, essentially making old outputs new inputs for similar or different industrial sectors.

## PURPOSE

The purpose of this Request for Permit Applications, hereinafter RFPA is to solicit applications for large scale Medical Cannabis Industrial Cultivation And Processing Facility Permits. Please be advised that no Cultivator, awarded a permit by the City, may operate for profit. The City of Oakland is seeking in particular submissions that identify the best "green" cultivation practices, while employing "sustainable" energy and waste solutions, and implement the "best practices" available in the agricultural and industrial cultivation arenas. The best submissions will be forward thinking and deploy solutions designed to reduce and address any actual or potential concern the City may have.

### Application

All Applicant groups will be required to submit an application form, with required attachments, and non refundable application fee of \$5,000. Attachments to application will include, but may not be limited to:

- 1) Address of proposed facility for mapping purposes (Staff will work with planning department to map proposed site). Facility must be located in an area zoned for Light Manufacturing Industrial or its equivalent uses as defined herein; and
- 2) Articles of Incorporation and Bylaws which have been previously filed with the State of California; and
- 3) Live scan submission for all business partners and managers operating the facility; and
- 4) Business Plan; and
- 5) Building and Construction Plan; and
- 6) Security Plan; and
- 7) Fire prevention plan; and
- 8) Environmental Plan; and
- 9) Proof of Capitalization; and
- 10) Proof of Insurance;

Complete applications submitted by the deadline will all be redacted, assigned a reference number, and submitted to a panel of subject matter experts in the fields of building/construction, business development, revenue, Fire, public safety, and environmental planning, with Special Business permit staff acting as a second reviewer of all applicants. Staff's review will be conducted in a blind manner with no reviewer knowing the identity of the applicants.

### Please Note:

- 1) Incomplete submissions will not be considered; and
- 2) Applications will be immediately determined "null and void" if they do not comply with location requirements (i.e. they are located outside light industrial areas or areas specifically authorized in RFPA).

3) Option A

No Collective/Cultivator established prior to the approval of the cultivation ordinance shall be grandfathered in or allowed to compete for a permit.

Option B

No Collective/Cultivator established prior to the approval of the cultivation ordinance shall be grandfathered in. A pre-existing Cultivator may compete for a permit, but only if Applicants agree to pay a penalty in the amount of \$ \_\_\_\_\_ for each month in which they have operated prior to the issuance of a Cultivation Permit.

Option C

No Collective/Cultivator established prior to the approval of the cultivation ordinance shall be grandfathered in. A pre-existing Cultivator may compete for a permit, except that upon inspection by City staff any and all violations of building, fire, or any other applicable City or State regulation documented at their proposed facility site will result in a reduction of 20 points from their overall score for each violation documented by staff.

**PHASE I**

**Business Plan Submission & Review**

In addition to the documents and minimum standard requirements required for the filing of the Application the RFPA will consider seven (7) key components and three (3) categories for bonus points. Staff will review all applicants, who have submitted all required documents in a timely manner, based on the seven (7) central categories during the PHASE I review process. The top ten (10), e.g. highest scoring applications, based on seven (7) main categories will move on to Phase 2 where the bonus points will be allocated. Scores will be based on an Applicants ability to present the following information:

1. Business Plan
2. Building Construction – Plans and Schedule
3. Security Plan
4. Fire Protection Plan
5. Environmental Plan
6. Capitalization
7. Community Benefits Plan

The top ten (10) highest scoring applications will proceed to Phase II.

## PHASE II

### Bonus Point Allocations

The top ten (10) Applicants will move on to Phase II scoring and examination. Each Applicant's submission will be reviewed to determine a score based on three (3) bonus point categories. An Applicants score for bonus points will be based on their ability to exceed and excel minimum requirements in the three (3) categories. The Applicants must provide information on how they plan to meet these bonus point categories. Such actions will become a mandatory condition of their permit. As a condition failure to meet or comply with such requirement will subject the Permittee to penalties and/or revocation proceedings. The three (3) bonus point categories are as follows:

1. Labor & Employment Practices
2. Environmental Mitigations
3. Product Safety

Concurrent with the assessment of bonus points on the 10 Applicants staff will schedule an examination which will be used as a component of Phase II scoring.

### Examination

All ten (10) finalists will be required to designate a member applicant to take a Cannabis Cultivation Facility exam. The member applicant should be a managing member of the Applicant's Collective. In instances where there will be sub lessees, the City reserves the right to require a managing member of any sub lessee to take the exam as well.

The exam will test the applicant's familiarity with Oakland and California law, as well as the Attorney General's guidelines on Medicinal Cannabis. Scores will be added to original score total, bonus points, and the four (4) Applicant awardees will be selected based on total number of points.

The four (4) awardees will then be required to go through a public hearing.

### Public Hearing

The four (4) awardees facilities will be subject to a public hearing noticed to the community where the proposed facility is located. Prior to public hearings, all proposed facility sites will be inspected by a building official to ascertain current condition of facility. The community will be allowed to present concerns and/or support and provide additional considerations for potential permit conditions that will be created by staff. The Public Hearings will not be used to determine who gets the permit but merely to inform staff of potential concerns for which a condition may be necessary to address. Hearing decisions, recommendations, and conditions will be based primarily on community input, site inspection results, business feasibility, and the viability of the proposed location.

Permits would be issued February/March 2011.

## Permit Fees

### Option A

The Annual Permit Fee in the amount of \$211,000 will be due before a finalized permit may be issued. Failure to pay the annual renewal fee within five (5) calendar days of the due date, as set forth in the permit, will be a basis for immediate revocation of the permit.

### Option B

The Annual Permit Fee in the amount of \$211,000 will be due in four quarterly installments of \$52,750 due upon issuance of the permit and every four months immediately thereafter. Failure to pay a fee installment within five (5) calendar days of the due date, as set forth in the permit, will be a basis for immediate revocation of the permit.

### Option C

The Annual Permit Fee in the amount of \$211,000 will be due 12 months after issuance of the permit to the permit holder. Failure to pay the annual renewal fee within five (5) calendar days of the due date, as set forth in the permit, will be a basis for immediate revocation of the permit.

## **SUBMITTAL REQUIREMENTS**

Please submit one (1) copy of the completed proposal and transmittal letter to the City Administrator's Office, Special business Permit Division, 1 Frank H. Ogawa Plaza, 11<sup>th</sup> Floor, Oakland, CA 94612, no later than 5:00 p.m., TBD, 2011. The City reserves the right to accept or reject any or all proposals received not received on time, without appropriate attachments, or submitted at the incorrect location.

All proposals submitted via US Mail or common carrier must be delivered in a sealed package and must reference the RFP, Applicant's location, submittal date, time and location of the proposals on the outside of the package or the documents **may not be** accepted.

### A. Required Proposal Elements And Format

#### 1. Transmittal Letter

- a. Addressed to Mr. Arturo M. Sanchez, Assistant to the City Administrator, Special Business Permits Division.
- b. Signed by an officer of the Applicant Corporation, Association, Cooperative, or Collective and who is a Patient/Patient Care giver member. In case of joint



venture or other joint-prime relationship, an officer of each venture partner shall sign.

2. A letter from Managing Partner stating under penalty of perjury that they have personal knowledge of the information contained in the application and it is true and correct and submitted under their supervision.
3. Applicant Business Plan – In addition to information described below in the categories section of the RFPA, a business plan must contain the following information:
  - a. In response to this RFPA, identify the primary contact/applicant who is and shall be a patient/patient care giver as defined pursuant to the California Health and Safety Code.
  - b. Include articles of incorporation, and/or documentation establishing valid Cooperative, Association, or Collective in conformance with the Attorney General's guidelines, as well as corporation bylaws.
  - c. Include Sub-lessee/contractor: In instances where the proposed business includes sub-lessee Dispensaries, Cooperatives, Associations, or Collectives list addresses, telephone numbers and qualifications as patient/patient care giver for each sub lessee entity. Briefly describe the project responsibility of each team member. All managing members will be required to go through Live Scan process.
  - d. Clearly identify proposed site, its conformance with site requirements as mandated by the ordinance and this RFPA, and provide proof of ownership, lease, and or letter of landlord's commitment to lease upon issuance of a permit to this site.
  - e. Identify all proposed managers and executives of the business and submit Live Scan applications for each person identified.

B. Submit all of the following documents with your proposal.

1. Proof of Insurance
2. Building and Construction – detailed description
3. Security Plan – detailed description
4. Fire Plan – detailed description
5. Environmental Plan
6. Proof of Capitalization
7. Community Benefits Plan

C. A proposal will be rejected for any of the following reasons:

1. The proposal is delivered to the wrong location by TBD, 2010 at

- 5:00 p.m. local time;
2. The proposal is received at designated location after designated time;
  3. The proposal is not in compliance with the City of Oakland's RFPA requirements and/or any of the required Schedules are missing, proposed Applicants fail to submit all eligible member managers for Live Scan background check by application deadline;
  4. The proposal does not contain the required elements or is not organized in the required format;
  5. The proposal contains a disclaimer;
  6. Incomplete submissions will not be considered; and
  7. Applications will be immediately determined "null and void" if they do not comply with location requirements (i.e. they are located outside light industrial areas or areas specifically authorized in RFPA).

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

## EVALUATION OF PROPOSALS

### General Criteria

Applications for the Medical Cannabis Industrial Cultivation and Processing Facility Permits received by the deadline set forth above will be reviewed for completeness. Application will be voided if Applicant fails to submit all of the required information, including but not limited to: 1) Address of proposed facility for mapping purposes (Staff will work with planning department to map proposed site). Facility must be located in an area zoned for Light Manufacturing Industrial or its equivalent uses as defined herein; 2) Articles of Incorporation and Bylaws which have been previously filed with the State of California; 3) Live scan submission for all business partners and managers operating the facility; and 4) Business Plan; 5) Building and Construction Plan; 6) Security Plan; 7) Fire prevention plan; 8) Environmental Plan; 9) Proof of Capitalization; and 10) Proof of Insurance.

The best submissions will be forward thinking and deploy solutions that identify the best "green" cultivation practices, while employing "sustainable" energy and waste solutions, and implement the "best practices" available in the agricultural and industrial cultivation arenas designed to reduce and address any actual or potential concern the City may have regarding the environment or product safety.

No late submissions will be accepted. Incomplete submissions will not advance to Phase I consideration and will be voided.

1. All proposals will be evaluated by a panel which may include City staff and other parties, such as security experts, with expertise or experience in business, fire inspection, police and Community Policing Through Environmental Design (CPTED), Revenue, Nuisance, Building and Construction design. The panel will rank and score all complete applications in their respective areas of expertise. The evaluation of the proposals shall be within the sole judgment and discretion of the panel.
2. Proposals will be numerically ranked. The top ten (10) proposals will be submitted in rank order to the City Administrator's designee for bonus point allocation, examination, and determination of the four (4) awardees.
3. A public hearing will be held for the four (4) awardees, upon completion of hearing a permit will be issued with appropriate conditions and Permittees may proceed with implementation.

#### Specific Criteria

A. The following specific criteria will be used in evaluating and rating the proposals:

1. Overall quality of the proposal including responsiveness and conformance to RFP requirements for content and format;
2. Quality and appropriateness of proposed Applicant team, professional; experience and background of prime Applicants and key sub lessees;
3. Appropriate personnel principals, project location, and other key personnel with required experience and skills relevant to this project;
4. Prime Applicants experience and ability to manage operations of proposed facility, scheduling of work and implementation necessary to operate, cost estimating and budget management;
5. Primary makeup of applicant corporation's board, and prior ability to work with local government agencies;
6. Quality and appropriateness of proposed project site, business model, organization, and their knowledge and experience in working with specific legal codes and regulations.
7. Applicants use and implementation of "sustainable" energy and waste solutions, "best practices" available in the agricultural and industrial cultivation arenas, and deployment of solutions designed to reduce and address any actual or potential concerns of the City and its residents.

B. Submissions will be reviewed to determine how the applicant meets the following seven (7) major categories.

### CATEGORIES FOR APPLICATION

1) Overall Business Plan – Each applicant should submit a business plan generally describing their business model and plans. Plans will provide a description of proposed operation and completely detail the overall make up of the corporate entity that will be operating pursuant to the permit. Each plan should detail and articulate all scope of work proposed, partnerships, property and location, relationship to owner, and provide as much detail as possible into the day to day operation of the facility. The plan should identify types of cultivation that will be conducted aeroponics, hydroponics, greenhouse, as well as whether facility will be organic, and provide a copy of their Integrated Pest Management (IPM) Plan. Business plan should also identify how clients, purchases, and product will be tracked and monitored. Applicants should identify methods and manners in which they will provide information required by the City to track product in order to prevent diversion. The plan should also articulate how Applicants business will conform to the regulations of the City of Oakland and the State of California, including but not limited to operating as a not for profit entity or other accepted business model as recognized by the Attorney general's guidelines.

2) Building and Construction – Applicants should submit a narrative outlining the elements of proposed construction and improvements; timeline for proposed construction and improvements; detailing type and number of anticipated building and construction permits that may be required and factoring in time for acquiring building and construction permits into implementation schedule. Any proposed public right of way improvements for access and safety of employees and customers shall be clearly identified; proposed sewer improvements that may be deemed necessary to meet demands of proposed facility; proposed sidewalk improvements (if any); proposed traffic engineering improvements anticipated to be needed to mitigate impact to traffic and or neighborhood; proposed lighting improvements designed to improve visibility and safety in conjunction with overall safety and fire plan. Reviewers recognize that these items may be subject to change once permit applications are submitted to building services. Such improvements will be a significant element to a winning proposal if facility is located in an existing industrial area with aging infrastructure.

If the facility is already constructed then proof that work was done with such building and construction permits and approved by building services (if possible), all construction (new or existing) should meet building code. All facilities will be subject to initial inspection for viability by building official.

Attached to narrative should be a copy of design plans which include diagrams of proposed construction, electrical, plumbing, fire and security elements.

Note: Submission of these plans to staff via this RFPA process does not in any waive or remove the requirement of eventual permit awardees to apply for and receive permits for any and all construction including electrical, plumbing, fire, and any other permits as may be deemed necessary by the relevant department in charge of said permits. Nor does it guarantee that plans submitted via this RFPA will meet the standards and requirements of those permitting agencies. All permit awardees will still be required to complete all the permitting processes for the proposed construction of their facility.

3) Security Plan – Applicants should provide a detailed description of their security plan that includes an assessment of site security by a qualified security consultant, this assessment may be required every two years prior to renewal of any permit awarded. The following items are broken down into operational and facility security categories. Appropriate plans will have considered all potential security threats and planned for any contingency needed for these situations. A successful Applicant will have both written and physical mechanisms in place to deal with each specific situation. A detailed schematic diagram of alarm systems and placements that also details by when all security measures will be operational will be required.

#### *Operational Security*

Applicants will detail their operational security including but not limited to general security policies for the facility, employee specific policies, training, sample written policies, transactional security, visitor security, 3<sup>rd</sup> part contractor security, and delivery security. This list is not intended to fully capture all areas for applicant consideration but to guide applicants into thinking about all possible security concerns related to the operation of a cultivation facility. Operational portions of a security plan will be scored based on the level of consideration applicant has given to every possible scenario and response to scenario.

#### *Facility Security*

Applicants should provide a description and detailed schematic of the overall facilities security. In particular the applicant should address ingress and egress access, perimeter security, product security (at all hours), internal security measures for access (area specific), types of security systems (alarms and cameras), and security personnel that will be employed.

Note: Submission of these plans to staff via this RFPA process does not in any waive or remove the requirement of eventual permit awardees to apply for and receive permits for any and all construction including electrical, plumbing, fire, and any other permits as may be deemed necessary by the relevant department in charge of said permits. Nor does it guarantee that plans submitted via this RFPA will meet the standards and requirements of those permitting agencies. All permit awardees will still be required to complete all the permitting processes for the proposed construction of their facility.

4) Fire Plan - Any proposed facility with a group U occupancy (agricultural buildings & greenhouses) and group F-1 occupancy (assembling, packaging, manufacturing hemp

products) classifications for their building / structure shall be in compliance with current California Fire Code requirements for fire & life safety. Any occupancy change or remodel will require upgrade or installation of modern fire protection systems in compliance with OMC, CBC and CFC regulations.

Applicants should provide a detailed description of their Fire prevention, suppression, and alarm systems that includes an assessment of the facility's fire safety by a qualified Fire prevention suppression consultant. A fire inspection will be required annually prior to renewal of any permit awarded, to assure the City that adequate fire safety measures remain in place. An appropriate plan will have considered all possible fire, hazardous material, and inhalation issues/threats and will have both written and physical mechanisms in place to deal with each specific situation. A detailed schematic diagram of alarm systems and placements that also details by when all fire prevention measures will be operational will be required.

*Minimum requirements*

An automatic fire sprinkler system shall be provided throughout all buildings containing F-1 occupancy per 903.2.3 CFC. This fire sprinkler system shall be monitored and the system shall alert the occupants of the building or structure on activation and notify the Fire Department of an alarm.

Per 901.4.3 CFC in occupancies of a hazardous nature, where special hazards exist in addition to the normal hazards of the occupancy, or where the Fire Code Official determines that access for fire apparatus is unduly difficult, the Fire Code Official shall have the authority to require additional safeguards. Such safeguards include, but shall not be limited to, the following: automatic fire detection systems, fire alarm systems, automatic fire extinguishing systems, standpipe systems, or portable or fixed extinguishers. Fire protection equipment required under this section shall be installed in accordance with this code and the applicable referenced standards.

Any additional fire protection systems required by the Fire Code Official shall be installed forthwith, with required plans and building and construction permits submitted for approval to and by the City of Oakland per 105.7 CFC.

Per 105.6.7 CFC, a Combustible Fibers permit shall be obtained annually for the storage and handling of combustible fibers (hemp) in quantities greater than 100 cubic feet (2.8m<sup>3</sup>).

An annual Inspection of operations and fire / life safety systems shall be a condition of obtaining both building and construction permits & Fire Department clearance.

*Note: Submission of these plans to staff via this RFP process does not in any waive or remove the requirement of eventual permit awardees to apply for and receive permits for any and all construction including electrical, plumbing, fire, and any other permits as may be deemed necessary by the relevant department in charge of said permits. Nor does*

it guarantee that plans submitted via this RFPA will meet the standards and requirements of those permitting agencies. All permit awardees will still be required to complete all the permitting processes for the proposed construction of their facility.

5) Environmental Plan Please include an Environmental Compliance Plan as a required element of the submission. This plan must provide a detailed description of how the applicant will comply with all existing state and local policies, including:

- A. Stormwater Management – Meet Provision C.3 requirements by developing and implementing both a Stormwater Pollution Prevention Plan to minimize potential runoff pollution during construction and a Stormwater Control Plan to minimize potential runoff pollution and runoff flows for the life of the project.
- B. Discharge into Stormwater System – Obtain a Non Point-source Discharge & Elimination Permit from the State and comply with the City’s Municipal Regional Permit regulated by the State
- C. Discharge into Sanitary Sewer System – Obtain a discharge permit from EBMUD and City building and construction permits for plumbing.
- D. Energy – Comply with Title 24 statewide building energy code.
- E. Identify number and types of PGE energy vaults transformers that will be installed, including placement on facility (if applicable).
- F. Green Building – Comply with Oakland Green Building Ordinance.
- G. Recycling – Comply with Oakland’s Construction and Demolition Debris Recycling Ordinance
- H. Recycling – Comply with Oakland’s Recycling Space Allocation Ordinance in the Planning Code.
- I. Recycling – Comply with the countywide ban on plant debris disposal in the garbage.
- J. Recycling – Provide mandatory weekly garbage collection.
- K. Air Quality – Obtain permits from the Bay Area Air Quality Management District for backup diesel generators or other equipment requiring such permits.
- L. Describe with specificity the number and types of air filters to be used in facility. Describe how air filtration system will be used to create negative or positive pressure to reduce odor and emissions into the facility and out into the neighboring areas.

M. Hazardous Materials – Develop a Spill Prevention, Control and Countermeasure plan if storing more than 1,350 gallons of liquid hazardous materials.

N. Hazardous Materials – Prepare a Hazardous Materials Business Plan (HMBP) as necessary.

O. Provide information on pesticides that will be used onsite, or whether facility will be organic or cultivate in an organic manner. Information should be folded into IPM.

In addition, this plan must describe how the Applicant will comply with the following additional requirements, including:

- Achievement of energy performance at least 10% superior to latest version of Title 24 code adopted by the State
- Ban on disposal of organics in the garbage

Note: Submission of these plans to staff via this RFP process does not in any way waive or remove the requirement of eventual permit awardees to apply for and receive permits for any and all construction including electrical, plumbing, fire, and any other permits as may be deemed necessary by the relevant department in charge of said permits. Nor does it guarantee that plans submitted via this RFP will meet the standards and requirements of those permitting agencies. All permit awardees will still be required to complete all the permitting processes for the proposed construction of their facility.

6) Capitalization – A successful Applicant will have sufficient capital in place to build, secure, and start up their proposed facility. Such costs must incorporate the City's permit fee. The Applicants must provide proof in the form of Letters of Credit sufficient to cover construction, start up, equipment, and product production. Financial information should include estimated costs of build, operation, compensation of employees, equipment costs, utility costs, and other O & M as needed.

Applicants should provide the following documents to substantiate their ability to operate proposed facility:

- A. Letter of Credit
- B. 3 years of Corporate Audited Financials and Tax Returns (if entity has existed for 3 years otherwise documentation of when entity was established and articles establishing entity)
- C. 3 years of financials and taxes for any individual with 20% or greater interest in the business
- D. Sources and Uses – Sources of capital and how these sources are expected to be expended.
- E. 3 year Performa



7) Community Benefits - Applicants must demonstrate how they intend to provide their local community with community benefits and mitigate any nuisance and/or negative impacts that the facility's existence may cause. Should the Applicant be successful and be awarded a permit of the city any area contained below for which bonus points were awarded will become a condition of their permit, and the City would reserve the right to enforce said condition. Applicants who demonstrate a commitment to their community and to improving the quality of life of their neighbors should receive additional bonus points for sustainable practices that include:

- A. Applicants must show how they plan to have minimal nuisance or negative impacts on their neighbors and community. Nuisance/negative impacts include but are not limited to: noise, odor, increased foot or vehicle traffic, increase in waste or water production, impacts to right of way access, and or increase in safety related concerns.
- B. Applicants must provide to the City how their entity will develop and implement a Community Benefits Program. Programs should be designed to give back to the community and Oakland residents by assisting in the provision of necessary support services.
  - o Areas of particular concern to the City would be:
    - Re-entry Jobs and Job Training
    - Domestic Violence
    - Revitalizing Oakland – either with improved infrastructure, providing assistance to Oakland Parks and Recreation Centers, libraries, or funding for arts, culture, and environmental programs.
    - Children and Youth programs and intervention services.
    - Cannabis-Friendly Substance Abuse Education and Rehabilitation Programs
    - Foreclosure Prevention
    - Public Schools

Applicants must detail how they will revitalize the building/site provide neighborhood improvements and will be a beneficial/positive neighbor to the neighborhood.

### **BONUS POINTS**

The Oakland City Council has determined that bonus points should be awarded to RFPA applicants who set out standards, measurable, and or written commitments (contracts or letters of intent) by which they intend to meet Council Adopted Policies and Procedures, attached here to this RFPA as Exhibit B. Should the Applicant be successful and be awarded a permit of the city their commitments in bonus points categories will become a condition of their permit, and the City would reserve the right to enforce said condition. If a violation of condition occurs it will be deemed a material breach and the City would

reserve the right to assess a penalty or seek revocation of the permit. All conditions will be monitored and tracked by staff on a regular basis via quarterly audits, surprise inspections, reporting requirements, and annual renewal process. The following criteria areas will be considered when awarding bonus points:

1) Labor & Employment Practices (250 Points) Applicants who meet the following labor and employment practices:

- A. Applicants must provide compensation to and opportunities for continuing education and training of their employees. Applicants should provide proof of their policy and regulations. Should the Applicant be successful this would become a condition of their permit, and the City would reserve the right to review their employee policies and procedures and to audit their employee records to determine how many employees have participated in education and training programs as well as what programs are being offered and how employees are being compensated to assure that they are complying. (10 points)
- B. Applicants that state they are be a card check-neutral employer. Should the Applicant be successful their commitment would become a condition of their permit, and the City would reserve the right to audit their policies and procedures to assure that they are complying. (10 points)
- C. Applicants with pre-existing union recognition, collective bargaining agreements. Should the Applicant be successful their commitment would become a condition of their permit, and the City would reserve the right to audit their files to review the collective bargaining agreement and assure that it is still in effect. (50 points)
- D. Equity participation: Applicants that are 70% local owned and operated. Local owned means 70% of the Applicants not for profit entity board is comprised of Oakland residents and reflective of the diversity of the City of Oakland. Should the Applicant be successful their commitment would become a condition of their permit, and the City would reserve the right to audit their board and ownership information to assure that they are complying. (50 points)

**Or**

A locally owned cooperative Applicant organization with no employees, locally owned means at least 70% of cooperative members are residents of Oakland and reflective of the diversity of the City of Oakland. Should the Applicant be successful their commitment would become a condition of their permit, and the City would reserve the right to audit their board and ownership information to assure that they are complying. (50 points)

- E. Applicants that maintain a staff comprised of at least 80% Oakland residents, and hire from Oakland training, employment development centers, and Oakland Union hiring halls will receive bonus points. Such commitment will be made a condition of the permit issued should the Applicant be successful. (50 points)
- Or**
- Applicant cooperatives that are 80% owner/worker locally owned will receive bonus points. Should the Applicant be successful their commitment would become a condition of their permit, and the City would reserve the right to audit cooperative ownership information to assure that they are complying. (50 points)
- F. Applicants that make a commitment in writing to, whenever feasible, to buy at least 50% of their products, equipment, materials from Oakland businesses and hire only local firms for construction. Should the Applicant be successful their commitment would become a condition of their permit, and the City would reserve the right to audit their expenditures to assure that they are complying with their local purchase requirements. (50 points)
- G. Applicants that provide a living wage to their employees. Wage scale should be provided in writing for all levels of employment at the facility. Should the Applicant be successful their commitment would become a condition of their permit, and the City would reserve the right to audit their salary ranges and wage scales to assure that they are complying. (10 points)
- H. Applicants should provide Equal Benefits and sign Declaration of Non-Discrimination. Should the Applicant be successful their commitment would become a condition of their permit, and the City would reserve the right to audit their employee policies and procedures to assure that they are complying. (10 points)

2) Environment (Bonus Points 220) Bonus points will awarded based on three categories: a) Energy, Building & Climate; b) Water; and c) Materials & Waste. Should the Applicant be successful and be awarded a permit of the city, any area contained below for which bonus points were awarded will become a condition of their permit, and the City would reserve the right to enforce said condition.

**Energy, Building & Climate (100 points)**

- A. Provide a description of how the facility and all operations will maximize energy efficiency

- B. Apply and use available PG&E programs offering free technical assistance for design and construction of building shell, tenant improvements, building systems and processes where applicable (some may only apply to new construction)
- C. Provide a description of how renewable energy will be used on-site or purchased (e.g., solar panels)
- D. Provide estimates of projected total facility energy consumption and greenhouse gas emissions
- E. Provide an estimate of energy use and a summary of the approach to be taken for lighting of cultivation area (e.g., number and type of lights per 10,000 square feet)
- F. Provide a description of efforts to reduce transportation emissions (e.g., use of biofuels, electric vehicles)
- G. Provide a description of any planned use of green building measures
- H. Provide a description of any other efforts to reduce or offset greenhouse gas emissions associated with the facility and operations (e.g., achievement of climate neutrality through efficiency, renewables and offsets)
- I. Provide a description of how existing Brownfield sites, if applicable, will be remediated and used for the planned facility

**Water (40 points)**

- A. Provide a description of how water conservation and efficiency strategies will be developed (e.g., use of EBMUD technical assistance)
- B. Provide a description of any efforts to recycle and/or treat water on-site
- C. Provide a description of how the use of toxic materials will be minimized or prohibited in all aspects of proposed operation (e.g., use of organic fertilizers, non-toxic pesticides)

**Materials & Waste (80 points)**

- A. Development of zero waste plans for operations with detail on efforts to be undertaken
- B. Provide a description of packaging to be used, including expected use of recycled content materials, recyclable materials, and reusable materials, including plans for reuse

- C. Provide a description of how others up and down the supply chain will be engaged to maximize material reuse, minimize packaging, etc. (e.g., delivery in reusable containers)
- D. Provide a prediction of operational phase waste stream broken down by garbage vs. recycled vs. composted material by volume
- E. Describe the extent to which organic fertilizers and pesticides will be used
- F. Provide a description of how toxic chemicals will be prevented from entering water, air and ground resources
- G. Provide a description of how existing Brownfield sites, if applicable, will be remediated and used for the planned facility

3) Product Safety (200 points) Permittees will be required to abide by product safety and testing standards. Applicants whose applications consider such standards in advance will be awarded bonus points. Should the Applicant be successful and be awarded a permit of the city any area contained below for which bonus points were awarded will become a condition of their permit, and the City would reserve the right to enforce said condition.

- A. Applicants who detail how growing condition used to produce the plants will produce a plant free of mold, disease, heavy metals, etc.
- B. Applicants that provide product safety through UV exposure or other non-toxic treatment mechanisms to guarantee product safe for patient use
- C. Applicants who provide information on the product safety and testing standards they will employ, for mold/contaminants and how they will provide this information to the City on a quarterly basis.
- D. Applicants shall explain how, to the best of their ability, they intend to monitor product so that substances that would not be allowed by the Organic Foods Production Act (OFPA) of 1990 and regulations in Title 7, Part 205 of the Code of Federal Regulations and The National Organic Program (NOP) are not included with their product. Such monitoring may include the curing or treating of product to eliminate any such substances prior to packaging.
- E. Applicants will explain how they intend to reduce the use of pesticides and be prepared to maintain such commitment as a component of their permit to operate.

### Scoring

1. Responsiveness – A Pass/Fail evaluation will be applied to the determination of responsiveness relative to meeting the requirements of this RFP.
2. Business Plan (500 points) – The business plan will be evaluated based on responsiveness to items identified in RFP, capacity to perform the work; familiarity with the difficulties, uncertainties, and risks associated with the work and knowledge of the staff qualifications necessary to the performance of the work. Furthermore, to the extent possible, bidders will be evaluated based on a demonstrated capacity to work quickly, efficiently, reliably, and with the ability to demonstrate confidence in their product vision and implementation of a cultivation facility, appropriateness of business in surrounding community, ability to clearly articulate business model, and conformance with Oakland and California State Law.
3. Building/Construction Plan (100 points) – The Building Construction plan will be scored based on feasibility, length of time needed for construction, design, overall scale, and appropriateness of facility structure/scale size in surrounding community.
4. Security Plan (150 points) – An evaluation will be made of (a) overall safety and security; (b) ability to adequately secure and protect employees, patients, patient/caregivers, client dispensaries, and the general public entering the facility; and (c) ability to adequately secure cultivation areas, product, and adhere to closed loop system that prevents diversion.
5. Fire Prevention Plan (50 points) - An evaluation will be made of (a) overall safety and security; (b) ability to adequately secure and protect employees, patients, patient/caregivers, client dispensaries, and the general public in case of a fire and/or other emergency, including plans and regular rehearsals; and (c) adequate fire prevention and suppression measures sufficient to prevent and or respond to a fire of any size.
6. Capitalization (200 points) – An evaluation will be made of the overall (a) fiscal health of the proposal; (b) experience and background of organization members in operating successful business ventures; (c) letters of credit and performance bond commitment in an amount sufficient to fulfill the commitments detailed in the overall plan; (d) feasibility and viability of plan from an economic perspective.
7. Environmental Plan (200 points) – An evaluation will be made of the applicants overall ability to meet state, federal, and local regulations regarding environmental protections.

8. Community Benefits Plan (100 points) – Applicants must demonstrate how they intend to provide their local community with community benefits and mitigate any nuisance and/or negative impacts that the facility’s existence may cause. Applicants who demonstrate a commitment to their community and to improving the quality of life of their neighbors should receive additional bonus points for sustainable practices that they implement.
9. Additional Preference Points – In addition preference points may be earned as follows:
  - a. *Labor & Employment* (240 points) - Applicants who agree to meet the labor and employment practices outlined above will receive additional bonus points for their ability to meet the subcategories.
  - b. *Environmental* (220 points) – Bonus points will be awarded based on three sub-categories: a) Energy, Building & Climate; b) Water; and c) Materials & Waste.
  - c. *Product Safety* (200 points) – Applicants will be awarded bonus points based on their ability to show how they will produce cannabis without pesticides, free of mold, bacteria, and other harmful substances, how they intend to test the product for safety, and what steps they will take to make sure their product will be safe for consumption.
10. Examination – will be scored on a 100 point scoring system.

Each category will be reviewed by a subject matter expert and the Special Business Permits staff, by way of example the Fire Plan category will be reviewed by OFD Fire Inspector and the Special Business Permit Assistant to the City Administrator, and their respective scores will be added together to provide actual score for the section. The maximum score available for an Applicant, based on categories, would be 1300 points.

Please be advised that there is an additional 660 points available based on Applicants ability to meet the bonus requirements identified by the Oakland City Council. Applicants that move on to Phase II of the RFPA will be subject to an examination that will be worth an additional 100 points. The examination will be taken prior to the selection of the four (4) Permit awardees selection. A Public Hearing will be held for the four (4) awardees to finalize conditions and hear concerns or consideration from residents.

### NOTICE OF DECISION

Successful applicants will be notified in writing no later than **TBD**. All applicants who fail to proceed to Phase II to will be notified within 10 days of the decision and they will be informed of their rank and total score. All applicants that proceed to Phase II but are unsuccessful will be notified within 10 days of decision along with rank and score.

All Permit Awardees will be required, as a condition of their permit, to abide by a timeline of deliverables as proscribed by Permit Staff. Failure to comply with the timeline and or meet a deliverable may result in the assessment of a monetary penalty in the amount of \$ \_\_\_\_\_ for breach of a permit condition or immediate revocation of permit for repeated failure to abide by deliverables timeline. Deliverables can include, but may not be limited to:

- A. A schedule by when construction plans will be submitted to the appropriate department;
- B. Date by when construction permits must be pulled;
- C. Date by when construction must be started;
- D. Date by when construction will be completed;
- E. Date by which Fire Alarm Systems will be installed and functional;
- F. Date by when Security Measures will be installed and deployed;
- G. Date by when local hiring practices and employment commitments begin; and
- H. Other measures as may be determined so that staff continues to see movement towards cultivation.

**THE CITY'S RESERVATION OF RIGHT'S**

The City reserves the right to reject any or all proposals, whether or not minimum qualifications are met, and to modify, postpone, or cancel the RFPA without liability, obligation, or commitment to any party, firm, or organization. In addition, the City reserves the right to request and obtain additional information from any candidate submitting a proposal. Furthermore, a proposal RISKS BEING REJECTED for any of the following reasons:

- 1. Proposal received after designated time and date.
- 2. Proposal not containing the required elements, exhibits, nor organized in the required format.
- 3. Proposal considered not fully responsive to this RFPA.
- 4. Proposal contains excess or extraneous material not called for in the RFPA.

Attachments:

General Information

Exhibit A – Draft Operating Conditions

Exhibit B – Oakland City Council policies and Procedures

Exhibit C – Oakland Municipal Code Chapter 5.81 Medical Cannabis Cultivation

Exhibit D – California Attorney general Guidelines



## GENERAL INFORMATION

1. pre-proposal conference is scheduled for:

**DATE TIME**

**1 Frank H. Ogawa Plaza, 1<sup>st</sup> Floor, Hearing Room  
Oakland, California, 94612**

The pre-proposal conference will cover the following items.

- a. Project information.
- b. 5 major categories
- c. Bonus Point Categories
- d. Proposal submittal requirements.
- e. Questions by attendees.

**The City Administrator reserves the right to reject any and all applicants.**

**2. All Permit Awardees will be required to abide by Operating Conditions that meet the City of Oakland Policies and Procedures regarding product safety, environment, labor, building, and operational standards as adopted by the Oakland City Council. Attached below are draft operational conditions currently being proposed by staff for the Medical Cannabis Industrial Cultivation And Processing Facility Permits. These conditions are subject to modification prior to issuance of the permit to successful applicants. Successful Applicants applications will at a minimum clearly delineate how their proposal could meet the operating conditions as set forth below.**

## EXHIBIT A

### **Operating Guidelines for Medical Cannabis Cultivation, Manufacturing and Processing Facilities**

As part of receiving a Medical Cannabis Industrial Cultivation And Processing permit, Cultivation and manufacturing facilities are at a minimum expected to meet the operating standards established in these guidelines. Lack of compliance with any of these operating standards shall constitute breach of the permit and may render it invalid based on the determination of the City Administrator.

#### A. Administrative

- (1) Cultivation and manufacturing facilities must substantially carry out all commitments and plans submitted in the application process, as listed in Oakland Municipal Code (OMC) section 5.81.30, except that the City Administrator may waive portions of these plans.
- (2) Cultivation and manufacturing facilities must follow all other permitting requirements established by the City Administrator.
- (3) Cultivation and manufacturing facilities must allow the City Administrator to have access to the cultivation and manufacturing facilities books, records, accounts, inventory management system, and any and all data relevant to its permitted activities for the purpose of conducting an audit or examination. Books, records, accounts, inventory management system access, and any and all relevant data shall be produced no later than twenty-four (24) hours after the City Administrator's request.
- (4) Cultivation and manufacturing facilities must sign waivers that allow PG&E to share energy use data with City staff when requested.
- (5) Cultivation and manufacturing facilities may not misinform, or fail to correct unintentional errors in reporting, Permittees are required to notify the City Administrator in writing within 72 hours of discovery of the error.
- (6) Cultivation and manufacturing facilities must submit audited financial records to the City Administrator on a quarterly basis.
- (7) The City Administrator shall notify all Permittees of any breach of this Chapter and may give the Permittee ten (10) calendar days to correct all violations prior to any revocation by the City Administrator upon written notice.

#### B. Security

- (1) Cultivation and manufacturing facilities' security plans must be reviewed and approved by the Oakland Police Department, or a designee approved by the Oakland Police Department. Such security plans should aim to deter crime, conserve police

resources, and maximize the safety of the surrounding community, in coordination with the Oakland Police Department.

- (2) Cultivation and manufacturing facilities must make transactions with payment methods other than cash whenever possible, and endeavor to limit the amount of cash held at each cultivation and manufacturing facility. The City Administrator may set an upper limit of cash that may be held at a cultivation and manufacturing facility or, if feasible, may require that none of the cultivation and manufacturing facility's transactions in medical cannabis use cash as a method of payment.
- (3) Cultivation and manufacturing facilities must maintain security guards and camera coverage of their entire grounds to an extent sufficient to deter crime, as submitted in their security plan to the City Administrator. Surveillance footage must be retained for a period of 30 days and made available to the Oakland Police Department promptly upon request by the City.
- (4) The City Administrator shall set forth in her/his administrative regulations the method and manner in which employee background checks for cultivation and manufacturing facilities shall be conducted, including standards for disqualification of an employee based on criminal history. Except that no cannabis related non-violent offenses for possession or sale shall be relevant to or a basis for disqualification.

#### C. Fire

- (1) Cultivation and manufacturing facilities must be inspected for and comply with state and local building, electrical and fire and construction codes.
- (2) Cultivation and manufacturing facilities must hold consultations with their principal utility provider regarding their specific circumstances for electrical safety, and record and follow its recommendations. In all cases, the cultivation and manufacturing facilities must ensure that:
  - Total utility usage is below the utility provider's total power capacity;
  - Any additional transformers needed for utility load are installed; and
  - The potential utility usage from the total lamp layout is below the internal power capacity of the building.

#### D. Insurance

- (1) Before commencing operations, cultivation and manufacturing facilities must provide proof of evidence to the City Administrator that such facility has obtained sufficient insurance including the following:

- General liability insurance, with a minimum claim limit of \$2,000,000 per occurrence
  - Automobile insurance, with a minimum claim limit of \$1,000,000 per accident
  - Worker's compensation insurance as required by state law
  - Professional liability insurance (including directors and officers if the cultivating entity has directors or officers)
- (2) The insurance held by the cultivation and manufacturing facilities must be AM Best rated A-VII or better and must be from a company permitted to do business in the state of California, but it may be from a company outside of California.
- (3) The adequacy of cultivation and manufacturing facilities insurance shall be determined by the City's Finance and Management Agency.

#### E. QUALITY ASSURANCE

- (1) Cultivation and manufacturing facilities must comply with all operating standards developed and established by the City
- (2) Cultivation and manufacturing facilities must cultivate cannabis products in accordance with best practices, both in terms of production methods and available technology; these best practices must meet or exceed state and federal agricultural standards for food-grade products, and minimize as practicable the use of fertilizers, sprays, or other chemicals that would not meet the Organic Foods Production Act (OFPA) of 1990 and regulations in Title 7, Part 205 of the Code of Federal Regulations
- (3) Cultivation and manufacturing facilities must allow the City Administrator or his/her designee to take samples of their product at any time for testing purposes, in accordance with the procedures set out in this Chapter.
- (4) Cultivation facility must develop and integrate a system for tracking all medical cannabis from seed to harvesting. Such system should provide tracking for medical cannabis at all times to prevent diversion of product. Ex: a bar code system designed to track individual plants and subsequent umbrella and cannabis produced.
- (5) Cultivation and manufacturing facilities must carry out independent testing of medical cannabis to detect the presence of molds, yeasts, or other microbiological contaminants, heavy metals or other toxins, and pesticides or nutrients, based on standards set by the City Administrator.
- (6) Cultivation and manufacturing facilities must follow instructions of the City Administrator regarding any medical cannabis found to be non-compliant with testing standards. These instructions may extend to any medical cannabis that may be unsafe in light of such

testing results or to the relevant cultivation and manufacturing facilities' operations and practices generally.

- (7) Cultivation and manufacturing facilities must carry out independent chemical testing of every batch of medical cannabis to identify percentage content of delta-9(Trans) tetrahydrocannabinol, cannabidiol, and cannabinol, and disclose each batch's content when transferring it to a medical cannabis dispensary.
- (8) For all private testing required of them, facilities must use only testing facilities pre-approved by the City Administrator, based on a determination that the testing facility clearly has no conflict of interest with the cultivation and manufacturing facility in question.
- (9) Cultivation and manufacturing facilities must require all authorized personnel who shall be in contact with medical cannabis in any form to take sanitary precautions (washing, changing clothes, etc.) adequate to prevent contamination of cannabis from outside sources. Cultivation and manufacturing facilities must provide appropriate rooms such that employees may take required sanitary precautions.

#### F. Non-Diversion

- (1) The City Administrator may limit the cultivation area a cultivation and manufacturing facility may use if he/she determines that the cultivation and manufacturing facility current or planned cultivation area is excessive in light of existing medical consumption needs.
- (2) Cultivation and manufacturing facilities may not transfer medical cannabis to any person or entity outside California, regardless of the person or entity's legal status.
- (3) Cultivation and manufacturing facilities may not transfer medical cannabis, plant cuttings (clones), or any other cannabis product to any person or entity unless it is (a) an Oakland permitted medical cannabis dispensary, or (b) a medical cannabis dispensary that (i) holds a valid permit to operate in its local jurisdiction, (ii) complies with state regulations, and (iii) holds a valid business tax license from the City of Oakland. A file must be maintained in which all identifying and necessary information can be provided to the City Administrator's designee upon request.
- (4) Cultivation and Manufacturing Facilities will be required to maintain a database that tracks all clients, assigns an individual and distinct client number, tracks product purchased, frequency of purchase, total number of patients affiliated with the dispensary, location, local jurisdiction permit number, and all affiliated business tax license numbers.
- (5) Cultivation and manufacturing facilities may not transfer medical cannabis to any person or entity, even if legally qualified if they have reason to believe such person or entity is likely to divert such

medical cannabis toward persons or entities unauthorized to possess it under state law, or outside of California. In such cases the cultivation and manufacturing facilities must report its grounds for such belief to the City Administrator.

- (6) Cultivation and manufacturing facilities must maintain a computerized inventory management system that:
  - a. Accounts thoroughly for all products, byproducts, and discarded items in their operations;
  - b. Uniquely tracks each batch of medical cannabis to the permitted dispensary to whom it is transferred, including each batch's active ingredient content for which testing is required under OMC section 5.81.050(E)(4); and
  - c. Retains all information listed above for a period of at least 180 days.
- (7) Cultivation and manufacturing facilities must limit access to crop and stock to authorized personnel only.
- (8) Contracts / agreements must exist between the cultivation and manufacturing facilities and the dispensaries business is transacted with. A mutual, closed loop, relationship is required between the cultivation and manufacturing facilities and the Dispensaries and plant limits align with the number of members of the Dispensaries that the cultivation and manufacturing facility is providing medical cannabis to.

#### G. Environment

- (1) Runoff and waste disposal by the cultivation and manufacturing facility must be in compliance with applicable city, county, state, and federal laws and regulations and must endeavor to use the best production practices reasonably available to minimize its environmental impact.
- (2) The cultivation and manufacturing facility shall make a contribution to entirely offset the carbon emissions resulting from its utility usage through a means approved by the City Administrator.
- (3) The City Administrator shall set forth in her/his administrative regulations the method and manner in which a cultivation and manufacturing facility shall make contributions to electric/electronic recycling programs in accordance with their level of electric/electronic waste disposal.

#### H. Labor

- (1) Cultivation and manufacturing facilities may not employ, or accept volunteer services from, anyone who is not a qualified medical cannabis patient under state law or under the age of 21.

#### I. Neighborhood Impact

- (1) Cultivation and manufacturing facilities must install and maintain appropriate equipment to reliably prevent any odor distinctive to its operations from being detectable in its surroundings and neighborhood, including the following equipment or other equipment which has the same or better effectiveness at this task:
  - An exhaust air filtration system that prevents external odor from being emitted; and
  - A system creating negative air pressure between the cultivation and manufacturing facilities' interior and exterior.
- (2) Signage for the cultivation and manufacturing facility shall be limited to one wall sign not to exceed ten square feet in area, and one identifying sign not to exceed two square feet in area; such signs shall not be directly illuminated. Signage may not include the words "cannabis," "marijuana," or any language, picture, or other representation conveying to a person without prior knowledge the nature of the business within.
- (3) Cultivation and manufacturing facilities must provide the City Administrator or his/her designee, the chief of police, and all neighbors located within fifty (50) feet of the cultivation and manufacturing facility with the name, phone number, and facsimile number of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the cultivation and manufacturing facility. The cultivation and manufacturing facility shall make every good faith effort to encourage neighbors to call this person to try to solve operating problems, if any.
- (4) Violations of this Chapter shall constitute a public nuisance and shall be investigated and abated as authorized by Title 1 of the Oakland Municipal Code and shall subject the property owner and or operator to daily penalties as authorized by Title 1.

### **Product Safety**

The City Administrator shall develop procedures to ensure the safety and quality of medical cannabis produced by cultivation and manufacturing facilities permitted under the provisions of this Chapter. The procedures shall at minimum include the following:

- A. Standards shall be set, based on scientific and technical expertise, for safe levels of molds, yeasts, pests, or other microbiological or biological contaminants; safe levels of heavy metals or other toxins; safe levels of pesticides and nutrients, with a view toward the elimination of the use of chemical pesticides and nutrients; and full disclosure of active ingredient

- content (delta-9{trans} tetrahydrocannabinol, cannabidiol, and other cannabinoids relevant to patients' needs) in the medical cannabis.
- B. The City Administrator may contract with an outside party to take samples of medical cannabis twelve (12) times a year or more from cultivation and manufacturing facilities for testing purposes, without prior notification to cultivation and manufacturing facilities of sampling; the party taking these samples shall provide facilities with receipts for samples taken, and shall establish a chain-of-custody system appropriate to ensure the security and identity of samples taken. Testing reports shall be furnished within seven (7) days of sampling. Samples may be taken before standards and procedures are fully established to aid in the policymaking process. Cultivation and manufacturing facilities shall contract with a 3<sup>rd</sup> party laboratory designated by City Administrator for testing.
  - C. Cultivation and manufacturing facilities shall regularly conduct private testing for the same standards using functionally independent testing labs which have received prior approval from the City Administrator, and which have no conflict of interest with the licensed cultivation facilities. Private testing shall be implemented that achieves the testing of every batch of medical cannabis within a reasonably short timeframe as deemed appropriate by the City Administrator.
  - D. Cultivation and manufacturing facilities shall pay for all laboratory testing conducted, whether private or government-administered.
  - E. The City Administrator may establish procedures to create quality and rating standards for medical cannabis. Such procedures shall ensure that when claims regarding these qualities or rating standards are made to dispensaries or patients, samplings and assessments may be conducted to verify those claims.



**EXHIBIT B****COUNCIL POLICIES AND PROCEDURES**

The Oakland City council has adopted several policies and procedures regarding local business ownership, local hire, card check neutrality, living wage, and environmental standards required of our local businesses. Many of these policies and procedures apply to applicants whom receive contracts and or grants from the City of Oakland. The intent of the Council was to have successful applicants, to the extent possible, meet the standards and policies established by the Oakland City Council. The draft operating conditions are also intended to assure that permit holders are held to practices consistent with these policies and procedures. Below please find these general policies and procedures. The expectation will be that all Permittees will require their sub lessees and contractors to abide by these general policies and procedures to the extent possible.

Bonus points were developed to underscore the need for successful applicants to meet and exceed these local policies and procedures. They are provided below to help guide applicants through this process.

**1. The City's Local and Small Local Business Enterprise Program.**

The Local and Small Local Business Enterprise Program describes the objectives, goals and policies of the city regarding the participation of certified Local ,Business Enterprise / Small Local Business Enterprise (LBE/SLBE) in the City's design contracts. There is a twenty percent (20%) minimum participation requirement for all professional services contracts valued at fifty thousand dollars (\$50,000.00) or more. Compliance may be achieved at a rate of ten percent (10%) local and 10% small local certified business participation. The requirement may be satisfied by a certified prime and/or sub-Contractors(s) or a small local certified business may meet the twenty percent requirement. The City of Oakland's Office of Contract Compliance & Employment Services must certify a business in order to earn credit toward meeting the twenty percent requirement. A good faith effort is not required in light of the twenty percent local business participation requirement.

The twenty percent local business participation requirement will be considered a material term of every proposal. Proposals that fail to meet the 20% minimum will be deemed non-responsive.

Teams located outside the City of Oakland are encouraged to either establish a joint venture or other consulting or sub consulting arrangement with Oakland-based firms. Joint ventures will be required to conform to the pertinent laws, which govern the creation of such business arrangements. If a contractor is able to develop a Joint Venture or "Mentor-Protégé" relationship with a certified LBE or SLBE, the mentor or Joint Venture partners will enjoy the benefit of credits against the participation requirement. In order to earn credit for Joint Venture or Mentor-Protégé relationships, the Agreement must

be submitted for approval to Contract Compliance and Employment Services prior to the project bid date for construction, and by proposal due date for professional services contracts. Joint Venture Applications and elements of City approved Mentor Protégé relation are available upon request.

For tracking purposes, the contractor team is asked to show the percentage and dollar amount of MBE/WBE participation on all sub-contractor listings. Contractor Teams are asked to provide data regarding the racial, ethnic, and gender make up of listed sub-contractors and be prepared to provide documentation that demonstrates the methodology used to select all sub-contractors.

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

## 2. The City's Living Wage Ordinance

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

- a. Minimum compensation – Said employees shall be paid an initial hourly wage rate of \$11.15 with health benefits or \$12.82 without health benefits. These initial rates shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor. **Effective July 1<sup>st</sup> of each year, Contractor shall pay adjusted wage rates.**
- b. Health benefits – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least \$1.62 per hour. Contractor shall provide proof that health benefits are in effect for

those employees no later than 30 days after execution of the contract or receipt of City financial assistance.

- c. Compensated days off – Said employees shall be entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.
- d. To inform employees that he or she may be eligible for Earned Income Credit (EIC) and shall provide forms to apply for advance EIC payments to eligible employees. There are several websites and other sources available to assist you. Web sites include but are not limited to: (1) [http://www.wwwebtax.com/credits/earned\\_income\\_credit.htm](http://www.wwwebtax.com/credits/earned_income_credit.htm) for current guidelines as prescribed by the Internal Revenue Service and (2) the 2009 Earned Income Tax Outreach Kit at <http://www.cbpp.org/eic2009/>.
- e. Contractor shall provide to all employees and to the Office of Contract Compliance, written notice of its obligation to eligible employees under the City's Living Wage requirements. Said notice shall be posted prominently in communal areas of the work site(s) and shall include the above-referenced information.
- f. Contractor shall provide all written notices and forms required above in English, Spanish or other languages spoken by a significant number of employees within 30 days of employment under this Agreement.
- g. Reporting – Contractor shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. Contractor shall provide a copy of said list to the Office of Contract Compliance, on a quarterly basis, by March 31, June 30, September 30 and December 31 for the applicable compliance period. Failure to provide said list within five days of the due date will result in liquidated damages of five hundred dollars (\$500.00) for each day that the list remains outstanding. Contractor shall maintain employee payroll and

related records for a period of four (4) years after expiration of the compliance period.

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

For more information, see: [http://municipalcodes.lexisnexis.com/cgi-bin/hilite.pl/codes/oakland/ DATA/TITLE02/Chapter\\_2\\_28\\_LIVING\\_WAGE\\_ORDIN.html?living%20wage](http://municipalcodes.lexisnexis.com/cgi-bin/hilite.pl/codes/oakland/ DATA/TITLE02/Chapter_2_28_LIVING_WAGE_ORDIN.html?living%20wage)

### 3. Insurance Requirements

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

The Contractor shall name the City of Oakland, its Council members, directors, officers, agents, employees and volunteers as additional insured in its Comprehensive Commercial General Liability and Automobile Liability policies. If Contractor submits the ACORD Insurance Certificate, the additional insured endorsement must be set forth on a CG20 10 11 85 form and/or CA 20 48 - Designated Insured Form (for business auto insurance).

Please Note: A statement of additional insured endorsement on the ACORD insurance certificate is insufficient and will be rejected as proof of the additional insured requirement.

Unless a written waiver is obtained from the City's Risk Manager, Contractors must provide the insurance as found at <http://cces.oaklandnet.com/cceshome>. A copy of the requirements are attached and incorporated herein by reference. Liability insurance shall be required in accordance with the requirements specified.

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

When providing the insurance, The Certificate Holder should be listed as: City of Oakland, Department of Contracting and Purchasing, 250 Frank H. Ogawa Plaza, Suite 3341, Oakland, CA 94612.

### 4. City Contractor Performance Evaluation

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

#### 5. Equal Benefits Ordinance

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

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

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

The Equal Benefits Ordinance requires among other things, submission of the attached and incorporated herein as Equal Benefits-Declaration of Nondiscrimination form. For more information, see [http://municipalcodes.lexisnexis.com/cgibin/hilite.pl/codes/oakland/\\_DATA/TITLE02/Chapter\\_2\\_32\\_EQUAL\\_BENEFITS\\_OR.html?equal%20benefits](http://municipalcodes.lexisnexis.com/cgibin/hilite.pl/codes/oakland/_DATA/TITLE02/Chapter_2_32_EQUAL_BENEFITS_OR.html?equal%20benefits)

#### 6. Prompt Payment Ordinance

**OMC Section 2.06.070 Prompt Payment Terms Required in Notices Inviting Bids, Requests for Proposals/Qualifications and Purchase Contracts**

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

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

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

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

The Prompt Payment Ordinance requires among other things, submission of the attached and incorporated herein as

- Prompt Payment Invoice Transmittal
- Affidavit Reporting Subcontractor Payments and
- Prompt Payment Complaint & Investigation Form.

For more information regarding submission of these documents please contact the Prompt Payment Liaison, Vivian Inman at 510-238-6261.  
<http://cces.oaklandnet.com/cceshome/FormsSchedules.asp>

7. Non-Discrimination/Equal Employment Practices

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

- a. Contractor and Contractor's sub Contractors, if any, shall not discriminate against any employee or applicant for employment because of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability. This nondiscrimination policy shall include, but not be limited to, the following: employment, upgrading, failure to promote, demotion or transfer, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- b. Contractor and Contractor's Sub-contractors shall, state in all solicitations or advertisements for employees placed by or on behalf of Contractor that all qualified applicants will receive consideration for employment without regard to age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS - related complex (ARC) or disability.
- c. Contractor shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act by executing Declaration of Compliance with the Americans with Disabilities Act, attached hereto and incorporated herein.
- d. If applicable, Contractor will send to each labor union or representative of workers with whom Contractor has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of Contractor's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- e. Contractor shall submit information concerning the ownership and workforce composition of Contractor's firm as well as its sub Contractors and suppliers, by completing the Ownership, Ethnicity and Gender Questionnaire.
- f. The Project Contractor Team attached and incorporated herein and made a part of this Agreement, Exit Report and Affidavit, attached and incorporated herein and made a part of this Agreement.
- g. All affirmative action efforts of Contractors are subject to tracking by the City. This information or data shall be used for statistical purposes only. All Contractors are required to provide data regarding the make-up of their sub Contractors and agents who will perform City contracts, including the race and gender of each employee and/or Contractor and his or her job title or function and the methodology used by Contractor to hire and/or contract with the individual or entity in question.
- h. In the recruitment of sub Contractors, the City of Oakland requires all Contractors to undertake nondiscriminatory and equal outreach efforts, which include outreach to minorities and women-owned businesses as well as other segments of Oakland's business community. The City Administrator will track the City's MBE/WBE utilization to ensure the absence of unlawful discrimination on the basis of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
- i. In the use of such recruitment, hiring and retention of employees or sub Contractors, the City of Oakland requires all Contractors to undertake nondiscriminatory and equal outreach efforts which include outreach to minorities and women as well as other segments of Oakland's business community.

8. Nuclear Free Zone Disclosure

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

The City will immediately report evidence or instances of apparent discrimination in City or Agency contracts to the appropriate State and Federal agencies, and will take action against Contractors who are found to be engaging in discriminatory acts or practices by an appropriate State or Federal agency or court of law, up to and including termination or debarment.



9. The following City staff are available to answer questions regarding this RFPA:

- RFPA and Permit related issues:  
Mrs. Nancy Marcus, Permit Administration, (510) 238-3942
- Special Business Permits Division  
Arturo M Sanchez, Assistant to the City Administrator  
(510) 238-7542

10. All responses to the RFPA become the property of the City.

11. The RFPA does not commit the City to award a permit or to pay any cost incurred in the preparation of the application.

12. The City reserves the sole right to evaluate each proposal and to accept or reject any or all proposals received as a result of the RFPA process.

13. The City reserves the unqualified right to modify, suspend, or terminate at its sole discretion any and all aspects of the RFPA and/or RFPA process, to obtain further information from any and all Applicant teams and to waive any defects as to form or content of the RFPA or any responses by any contractor teams.

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