



CITY HALL 2007 NOV 15 PM 8:30A • OAKLAND, CALIFORNIA 94612

Office of the City Council
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Council District 6

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Finance and Management Committee
Oakland, California

Dear Chairperson Quan and Members of the Committee

RE: **A Report and Ordinance Establishing a Prompt Payment Policy for Purchase of Goods and/or Services Applicable to 1) the City With Respect to Contracts Let Directly to Local Businesses, 2) to Non-Profit and For-Profit Entities Contracted to Manage or Operate City Facilities or Public Programs or Concessions on City-Owned Property, and 3) to City Contractors with Respect to their Subcontractors, to be Codified at Oakland Municipal Code Title2, Chapter 2.06**

In order to ensure timely payment of invoices to small businesses doing business with the City of Oakland, relative to the purchase of goods and/or services, and to increase the number of small businesses willing to do businesses with the City of Oakland, the following actions are being proposed:

1. Adopt a Prompt Payment Policy and implement a Prompt Payment Program - The Prompt Payment Policy requires City, City Contractors and Manager/Operators to pay invoices submitted by a local prime contractor or any subcontractor (for profit and not-for profit) for purchase of goods and/or services within 15 days of invoicing or pay claimants late interest penalties at the rate of 10% per month of the late payment due.
2. Create a Business Liaison position as a single point of contact. The new Business Liaison position will be responsible for addressing payments and other issues of local prime contractors and all subcontractors relative to their work on City contracts for goods and/or services. The Business Liaison is required to implement and administer a dispute resolution process.
3. Post on the City's website information regarding City's prime contractors and subcontractors' release of retention, payment of mobilization fees and affidavits of payment.
4. Release of Retention at a rate proportional to approval of work performed and prohibits retention of funds for goods to be rendered.
5. Mobilization fees paid by the City must be distributed by prime contractors to subcontractors proportional to subcontract rendering of goods and/or services.

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The request for a full time position and start up costs are based on best practices in other jurisdictions that have implemented a similar "Prompt Payment" policy and program.

FISCAL IMPACT

Fiscal impacts include the cost of one new (a) Business Liaison position, (b) initial implementation costs, and (c) payments of interest penalties by using agencies.

Business Liaison Position (1.00 FTE) - A preliminary review of job duties, required knowledge, skills and abilities suggest a classification comparable to the existing position of Urban Economic Analyst / Business Services IV. If the City Council accepts this report and recommendation, the Department of Personnel would conduct a classification study to determine the proper classification and salary. The proposed base salary for this position is estimated at \$82,887. Other costs such as leave, retirement and benefits are estimated to bring the full cost of the position to \$131,326.

Implementation Costs, Internal and External Training - Approximately \$7,500 will cover one-time start up cost to include computer hardware, software and licenses, printing, land line, outreach materials. An estimated \$5,000.00 is recommended to cover duplication of documents, announcements, advertisements and other outreach efforts. Total one-time costs are estimated at \$12,500.

In the first year, the full cost of this initiative is anticipated at roughly \$144,000. In the following years the cost is estimated at \$131,326. The cost of the position and the start up costs (Equipment and Training) would come from the City's General Purpose Fund.

	On-Going Costs	One-Time Costs	Full Cost
Salary	82,887		82,887
Benefits	48,439		48,439
Computer & Equipment		7,500	
Supplies & Materials		5,000	
Full Cost	\$131,326	\$12,500	\$143,826

Interest Penalty Payments – This fiscal impact may not be determined until the policy has been implemented and then tracked for at least a twelve-month period. It is this area in particular staff has expressed concerns.

BACKGROUND

The State of California, the City and County of Los Angeles California, the City of New York, New York and the City and County of San Francisco California have prompt payment policies. Policies vary from thorough application procedures and rules to very general policy statements supporting public procurement. Below is a brief summary of prompt payment programs:

California Prompt Payment Act (CPPA)- Government Code Section 927-927-12 defines the CPPA as follows:

“927. (a) This chapter shall be known and may be cited as the California Prompt Payment Act.

(b) It is the intent of the Legislature that state agencies pay properly submitted, undisputed invoices within 45 days of receipt, or automatically calculate and pay the appropriate late payment penalties as specified in this chapter.

(c) Notwithstanding any other provision of law, this chapter shall apply to all state agencies, including, but not limited to, the Public Employees' Retirement System, the State Teachers' Retirement System, the Treasurer, and the Department of General Services.”¹

Departments are expected to adhere to the following provisions of the California Prompt Payment Act:

Provision	Description
1	State departments are required to pay properly submitted undisputed supplier invoices within 45 calendar days of receipt.
2	A department may dispute an invoice submitted by the contractor for reasonable cause if the department notifies the contractor within 15 working days from receipt of the invoice or delivery of the property or services whichever is later.
3	Departments have 30 calendar days to file a claim schedule with the State Controller's Office (SCO) or process a payment within 45 days if paying by Revolving Fund (RF).
4	The SCO has 15 calendar days to issue a warrant.

¹ California Government Code Section 927, as seq. (1999)

5	Interest penalties begin accruing on the 46th calendar day following receipt of an undisputed invoice.
6	Interest penalties for businesses are 1% above the Pooled Money Investment Account rate from the prior year.
7	Interest penalties for small businesses are .25% per calendar day.
8	For non-small businesses, if the amount of the penalty is seventy-five dollars (\$75.00) or less, the penalty shall be waived and not paid by the department.
9	Departments are required to pay qualifying interest penalties automatically without the need for businesses to request them. Interest penalties stop accruing the day a warrant is issued.

Los Angeles Prompt Payment Program – The Internal Services Department (ISD) of the County of Los Angeles was instructed to implement the “Small Business Payment Liaison in the Department of Auditor-Controller, as a single point of contact, to implement a Prompt Payment Board Policy and Program” for the purpose of expediting payments to certified small businesses within 15 calendar days after receipt of an “undisputed invoice”. In addition, the Liaison would be responsible for providing assistance in resolving payment disputes. The LA system uses vendor identification “stamp and label” system to flag purchases subject to expedited payments.

New York, New York – Procurement Policy Board (PPB) – Under direction of the Mayor’s Office, the PPB is responsible for establishing policies and rules for the purpose of maintaining comprehensive procurement polices. The PPB is not involved in payments but monitors and makes recommendation to agencies on their processes. The PPB publishes an annual report on prompt payment results. Under the New York prompt payment policy, the City must pay bills within 30 days after receipt of an approved or “proper” invoice. Agency heads are responsible for following PPB guidelines and must pay interest penalties if bills are not paid within 30 days after receipt of an approved invoice. The Comptroller and the Office of Management & Budget set Prompt Payment Interest Rates every six months to a year. As of 2007, the interest rate is 5.75% from July1, 2007 to December 31, 2007.

City of Oakland’s Dispute Resolution Program - In 1999, the City implemented a dispute resolution program designed to resolve disagreements between prime contractors and subcontractors and between the City and all contractors. The Dispute Resolution Program engaged three on-call independent arbitrators. Businesses were asked to submit a dispute in writing with and supportive documentation and submit the dispute to the compliance officer responsible for that project. An arbitrator was assigned to work with the claimant and the City as buyer or the business against which the claim was filed. The program was discontinued in 2001.

City of Oakland's Fairness in Purchasing and Contracting Disparity Study- Oakland City Council received Volume I of the City's Fairness in Purchasing and Contracting Disparity Study. Chapter 10 of the study titled "Late Payment by the City (Page 10-21) notes that businesses generally depend on being paid in a timely fashion and late payments create cash flow problems and undermine their capacity to operate. Anecdotal data suggests that late payments, however infrequently, create undue hardships for small, minority, and women-owned businesses.

Low Bidder Study - Finally, the Oakland City Council expressed concern for the low number of bidders in some trade specific projects such as underground work. While there are a variety of factors influencing the low bidder responses, key among them is the factor of timely payments.

KEY ISSUES AND IMPACTS

A Prompt Payment Policy is an excellent race neutral tool. Cutting edge government entities have taken bold steps to embrace small businesses by adopting prompt payment policies. Timely payment of invoices may increase the number of small businesses doing business with the City of Oakland. Such a policy may also increase the competitive pool of vendors and in turn stimulate the local economy.

A variety of circumstances create late payment of invoices. Adopting a prompt payment policy does not accuse or find fault with internal operations or processes but rather seeks to focus on those circumstances that create, for whatever reason, late payments. This policy opens the door to tracking log jams and having a central point of contact receiving complaints and working to release the log jams. This action is particularly critical for small for profit and not-for-profit businesses that must carry the financial burdens of late payments. Anecdotal business comments have claimed that late payments can put small businesses out of business. This unintended consequence is clearly not the desire of the Oakland City Council.

Creating a business liaison position as a central point of contact can re-direct the perception of doing business with the City and the City may realize an increase in the number of small businesses that choose to do businesses with Oakland.

PROGRAM DESCRIPTION

The proposed ordinance would amend the Oakland Municipal Code to add Chapter 2.06, the Prompt Payment Policy. Key provisions of the ordinance are as follows:

Application of Ordinance - Imposes expedited payment requirements on contracts for the purchase of goods and/or services issued by:

- City - City agencies and departments, and City contractors and subcontractors,
- Manager/Operators - non-profit and for-profit entities that are contracted to manage City facilities (e.g., parking garages), to manage concessions on City-owned property (e.g., golf courses) and to operate public programs on City-owned property (e.g., the Oakland Zoo, Oakland Museum Store, Children's Fairyland).

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Applies to new contracts and to existing contract amendments, extensions, change orders or other modifications that are entered into after the effective date of the ordinance.

15-Day Turnaround on Payment of Invoices - City, City Contractors and Manager/Operators are required to pay invoices submitted by a local prime contractor or any subcontractor within 15 days of receipt of approved invoicing.

City Liaison - City is required to create a new Liaison position to address payment and other issues of local prime contractors and all subcontractors relative to their work on City contracts;

Late Interest Penalties - City, City contractors and Manager/Operators are required to pay claimants late interest penalties at the rate of 10% per month of the late payment due.

Undisputed Invoices - Expedited payment requirement applies to undisputed invoices.

Disputed Invoices - City agencies and departments, City contractors and Manager/Operators are required to file notice of dispute with the City within 3 days of receipt of invoices,

Posting of Security - Manager/Operators or City Contractors that dispute invoices are required to post cash, certified check or bond to cover the alleged overdue payment plus 10% interest,

Complaint Process

- Aggrieved Contractors file a claim with the Liaison
- Liaison determines whether:
 - the invoice is complete, and if there is any discrepancy between the claimed amount and the provisions of the City contract,
 - there is a discrepancy between the claimed amount and the actual goods and/or services rendered,
 - the City agency, department, Manager/Operator or contractor responsible for payment issued a timely notice of dispute,
 - the invoice is complete or additional information is needed.
- Liaison releases posted security to complainant when the claim is determined to be valid, and returns security to the Manager/Operator or superior contractor when the claim is determined to be invalid.
- Liaison's determination is final. No party may appeal the determination or seek further review.

Release of Retention - City, Managers/Operators and City Contractors are prohibited from retaining funds for goods to be delivered, are required to release retention in proportion to goods and/or services rendered within 5 days of a payment to a Local Prime Contractor or subcontractor, and provide notice of such release to the Liaison for posting.

- Mobilization Fees. Manager/Operators and City Contractors are required to pass on mobilization fees to their subcontractors within 5 days of payment of such fees by the City, and provide notice of such payment to the Liaison for posting.
- Affidavit of Payment to Subcontractors. Prime Contractors will be required to provide an affidavit of payment of subcontractors within ___ days of payment to the prime.

Website Posting - City will be required to post on the City's website information regarding City's, prime contractors' and subcontractors' release of retention, payment of mobilization fees and affidavits of payment.

SUSTAINABLE OPPORTUNITIES

Economic: A shortened payment cycle for local primes and local subcontractors may attract and encourage more businesses to move to Oakland and small Oakland businesses to participate in City contracts because timely payments are essential to the successful operation of a small business.

Environmental: There are no sustainable environmental opportunities.

Social Equity: Anecdotal data suggest that small local certified minority and women owned businesses are most impacted by late payments. This policy will eliminate the financial burdens created by late payment.

RECOMMENDATION(S) AND RATIONALE

It is recommended that the City Council accept this report and Ordinance establishing a Prompt Payment Policy for Purchase of Goods and/or Services Applicable to 1) the City With Respect to Contracts Let Directly to Local Businesses, 2) to Non-Profit and For-Profit Entities Contracted to Manage or Operate City Facilities or Public Programs or Concessions on City-Owned Property, and 3) to City Contractors with Respect to their Subcontractors, to be Codified at Oakland Municipal Code Title2, Chapter 2.06 for the following reasons:

- The City of Oakland is on the cutting edge of public policies sensitive to businesses based in Oakland;
- The City of Oakland has maintained a Local and Small Local Business Enterprise program since 1992, to support, maintain and foster the development of a healthy small business community in Oakland;
- Small businesses in Oakland experience invoice and payment related issues and in many cases, by not knowing or communicating with the appropriate department contact(s) find it difficult to navigate through various departments;
- Small businesses would be better served if the City were to appoint a liaison as a single point of contact to address payment issues with City departments; and


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- Small businesses would be better served by a shortened payment cycle of fifteen (15) days.

ACTION REQUESTED OF THE CITY COUNCIL

It is recommended that the City Council approve the report and Ordinance establishing a (1) Prompt Payment Policy and Implement a Prompt Payment Program; (2) Creating a Business Liaison position as a single point of contact; (3) Post on the City's website, information regarding City's, prime contractors and subcontractors' release of retention, payment of mobilization fees and affidavits of payment; and (4) Up-front payment of mobilization and release of retention in proportion to work completed.

Respectfully submitted,



Desley Brooks
Councilmember, District 6

INTRODUCED BY COUNCILMEMBER DESLEY BROOKS

FILED
OFFICE OF THE CITY CLERK
OAKLAND

APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY

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ORDINANCE NO. _____ C.M.S.

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

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

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

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

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

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

Whereas, it would better serve the interests of the City and the Oakland business community to make project funds more available to local prime contractors and subcontractors by prohibiting the retention of contractor funds for goods and materials,

by requiring expedited release of contractor retention in proportion to delivery of services, by requiring expedited pass-through of mobilization fees paid by the City to subcontractors; and

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

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

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

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

Chapter 2.06 Prompt Payment

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

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

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

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

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

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

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

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

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

“Managers and Operators” as used in this Chapter shall mean a non-profit or for-profit business that is contracted by the City of Oakland to operate and/or manage City programs, programs open to the public on City of Oakland property, City facilities or concession businesses on City of Oakland property.

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

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

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

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

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

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

serve as a single point of contact to address payment delays and other issues relative to City of Oakland purchase contracts.

2.06.030. Local Business and Subcontractor Payment Liaison.

- A. The City will appoint a single point of contact (Liaison) to address invoice payment or other issues raised by City of Oakland Local Prime Contractors or any subcontractor in connection with City of Oakland purchase contracts for goods and/or services, or invoice payment issues raised by a subcontractor in connection with a City of Oakland Manager/Operator contract. The Liaison position will be assigned to perform duties within the Office of Contract Compliance. The Liaison will be the City's central point of contact for local prime contractors and subcontractors, and will be responsible for coordinating the actions required to resolve issues with City agencies and departments and Manager/Operators.
- B. The Office of Contract Compliance will establish a City-wide procedural mechanism to identify local contractors, will inform such businesses of the program through *electronic means as well as through existing and ongoing training programs and workshops*, and will issue a statement of the requirements of this ordinance with bid notices and requests for proposals/qualifications.

2.06.040. Local Prime Contractors, Contractor Retention.

- A. Local Prime Contractors. The City of Oakland shall pay all Local Prime Contractors for goods and/or services rendered pursuant to a purchase contract within **fifteen (15) business days** after receipt of an undisputed invoice. In the event an invoice is disputed, the City shall notify the subcontractor and Liaison in writing within **three (3) business days** of receiving the disputed invoice that there is a bona fide dispute, in which case the City may withhold the disputed amount but shall pay the undisputed amount.
- B. Retention.
 - 1. City shall not withhold any monies as project retention associated with the rendering of goods; and
 - 2. City shall release retention held for services in proportion to the percentage of completed services rendered by a prime contractor for which payment is due and undisputed within **five (5) business days** of payment.

2.06.050. Subcontractor Payment, Retention, Mobilization Fees.

- A. Prompt Payment. All Manager/Operators, City prime contractors and subcontractors shall pay their subcontractors for goods and/or services rendered in connection with a purchase contract within **fifteen (15) business days** of receipt of the subcontractor's undisputed invoice. In the event an invoice is disputed, Manager/Operators, prime contractors and subcontractors shall notify the Liaison in writing within **three (3) business days** of receiving the disputed invoice that there is

a bona fide dispute, in which case the prime contractor or subcontractor may withhold the disputed amount but shall pay the undisputed amount.

- B. If a subcontractor files a claim for all or a portion of a disputed invoice pursuant to Section 2.06.080 below, Manager/Operators or contractors shall be required to post with the City cash, a certified check, or a bond in an amount sufficient to cover the disputed amount and penalty. Upon the Liaison's determination that the invoice is valid the cash, certified check or bond shall be released to the claimant. If the Liaison finds in favor of the contractor the cash, certified check or bond shall be returned to the contractor. If the Manager/Operator or contractor fails or refuses to post security, the Liaison may withhold funds from the next progress payment sufficient to cover the claim.
- C. Affidavit Reporting Subcontractor Payments. Contracts in which subcontracting is used shall require the prime contractor or subcontractor, within **five (5)** business days following receipt of a payment from the City, to file an affidavit, under penalty of perjury, that he or she has paid all subcontractors. The affidavit shall provide the names and address of all subcontractors and the amount paid to each.
- D. Retention.
 - 1. Manager/Operators, prime contractors and subcontractors shall not withhold any monies for project retention associated with the rendering of goods; and
 - 2. Manager/Operators, prime contractors and subcontractors shall release retention held for services in proportion to the percentage of subcontractor services for which payment is due and undisputed within **five (5) business days** of payment. Manager/Operators, prime contractors and subcontractors shall file notice with the City **within five (5) business days** of release of retention.
- E. Mobilization Fee. Prime contractors and subcontractors shall pay subcontractors that will render goods and/or services their portion of mobilization fees within **Five (5) business days** of being paid such fees. Prime contractors and subcontractors shall file notice with the City **within five (5) business days** of payment of mobilization fees to a subcontractor.
- F. Website Posting. Information regarding City's retention release and payment of mobilization fees shall be posted on the City's Website **within five (5) business days** of such payment or release. Information regarding Manager/operators, prime contractor and subcontractor retention release and payment of mobilization fees, and affidavits reporting subcontractor payments shall be posted on the website within **five (5) business days** of the filing of such notices and affidavits with the City.

2.06.070. Interest Penalty.

- A. If any amount due by the City to a Local Prime Contractor for goods and/or services rendered pursuant to a purchase contract is not timely paid in accordance with this Chapter, the Local Prime Contractor is entitled to interest penalty in the amount of

ten (10%) of the improperly withheld amount per month for every month that payment is not made, provided the Local Prime Contractor agrees to release the City from any and all further claims for interest penalties that may be claimed or collected on the amount due and paid. Local Prime Contractors that receive interest penalties for late payment pursuant to this Chapter may not seek further interest penalties on the same late payment in law or equity.

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

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

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

This contract is subject to the Prompt Payment Ordinance of Oakland Municipal Code, Title 2, Chapter 2.06. The Ordinance requires that, unless specific exemptions apply, Contractor and its subcontractors shall pay undisputed invoices of their subcontractors for goods and/or services within fifteen **(15) business days** of submission of invoices unless the Contractor or its subcontractors notify the Liaison in writing within **three (3) business days** that there is a bona fide dispute between the Contractor or its subcontractor and claimant, in which case the Contractor or its subcontractor may withhold the disputed amount but shall pay the undisputed amount.

Disputed payments are subject to investigation by the City of Oakland Liaison and, and upon the filing of a compliant, Contractor or its subcontractors opposing

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

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

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

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

2.06.080. Complaint and Investigation.

- A. Any claims made pursuant to Sections 2.06.040 and 2.06.050 above are subject to investigation and notice of violation and demand for payment and interest penalties by the Liaison. A local prime contractor or subcontractor who alleges violation of any provision of this chapter may report such acts to the Liaison.
- B. Complaints shall be handled as follows:
 - 1. The complainant shall submit a completed complaint form and copies of invoices or billing documents that have been submitted to the City, to a City purchase contractor or to a Manager/Operator. To expedite investigation, complainant shall also submit any documents in their possession showing that his/her goods and/or services or other deliverables have been rendered to and inspected or reviewed and accepted by the City or Manager/Operator in connection with the claim.
 - 2. The Liaison shall collect a security deposit in the form of cash, certified a check, or bond in an amount sufficient to cover the claim from the Manager/Operator or contractor that has disputed the invoice. If a Manager/Operator or contractor that

is required to post security fails or refuses to do so, the Liaison may withhold funds from the next progress payment sufficient to cover the claim. Upon the Liaison's determination that the invoice is valid the cash, certified check or bond shall be released to the claimant. If the Liaison finds in favor of the Contractor the cash, certified check or bond shall be returned to the Contractor.

3. The Liaison shall contact the City agency, department, Manager/Operator or contractor responsible for payment within three (3) businesses days of receipt of the complaint form to investigate the claim. The Liaison's determination of whether an invoice is valid shall be based on the following:
 - i) Whether the invoice conformed to requirements defined in Section 2.06.020 of this Chapter, at the time of submission to the contractor,
 - ii) Whether there is a discrepancy between the invoice or claimed amount and the provisions of the purchase contract,
 - iii) Whether there is a discrepancy between the invoice or claimed amount and either the contractor's actual delivery of goods and/or services to the City, or the City's acceptance of such goods and/or services,
 - iv) Whether the City Agency, Prime Contractors or subcontractor responsible for payment provided timely notice of the disputed invoice as required under 2.06.050.A, and
 - v) Whether additional evidence supporting the validity of the invoice or claimed amount must be provided by the claimant.
4. There shall be no appeal of the Liaison's determination in favor of the claimant. If, however, the Liaison determines that the claimant's invoice provides insufficient evidence for payment, the claimant shall be advised of the additional information required for payment and given an opportunity to provide the same.
5. When the Liaison determines that a violation of this Chapter has occurred, the Liaison shall assess interest penalties at the rate provided in Section 2.06.060 of this Chapter and issue a demand to the City employee responsible for administering the related purchase contract, the Manager/Operator, the prime contractor or the subcontractor responsible for the late payment. City shall issue a check for the amount of the undisputed claim and interest penalties assessed by the Liaison to the Local Prime Contractor **within three (3) business days** of the date of the Liaison determination. The City may not appeal Liaison determinations for claims submitted by Local Prime Contractors.

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

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

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

2.06.110. Applicable to New Contracts. The provisions of this Ordinance shall apply to any purchase contract, amendment, extension, change order or modification, and to any Manager/Operator contract, amendment, extension or modification, entered into or consummated after the effective date of the ordinance codified in this chapter.

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

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

IN COUNCIL, OAKLAND, CALIFORNIA, (DATE), 20(YEAR)

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST:

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

NOTICE AND DIGEST

ORDINANCE ESTABLISHING A PROMPT PAYMENT POLICY FOR PURCHASE OF GOODS AND/OR SERVICES APPLICABLE TO 1) THE CITY WITH RESPECT TO CONTRACTS LET DIRECTLY TO LOCAL BUSINESSES, 2) TO NON-PROFIT AND FOR-PROFIT ENTITIES CONTRACTED TO MANAGE OR OPERATE CITY FACILITIES OR PUBLIC PROGRAMS OR CONCESSIONS ON CITY-OWNED PROPERTY, AND 3) TO CITY CONTRACTORS WITH RESPECT TO THEIR SUBCONTRACTORS, TO BE CODIFIED AT OAKLAND MUNICIPAL CODE TITLE 2, CHAPTER 2.06

This ordinance will add Chapter 2.06 to the Oakland Municipal Code to establish expedited payment requirements for contractors that render goods and/or services to the City of Oakland as follows:

- Require City of Oakland, City Contractors and City Manager/Operators to pay invoices submitted by a local prime contractor or any subcontractor within 15 days of invoicing or pay late interest penalties at the rate of 10% per month on the late payment due;
- Create a Business Liaison position as a single point of contact responsible for addressing payments and other issues of local prime contractors and all subcontractors relative to their work on City contracts for goods and/or services;
- Require release of monies held for project retention at a rate proportional to the rendering of services, and prohibit retention of funds for goods or materials to be rendered;
- Require prime contractors and subcontractors to promptly distribute mobilization fees paid by the City of Oakland proportional to subcontractors that will render of goods and/or services; and
- Require posting on the City of Oakland website, information regarding City, prime contractor and subcontractor release of retention, payment of mobilization fees and affidavits of payment.