

THE CITY OF SAN DIEGO

REPORT TO THE CITY COUNCIL

DATE ISSUED:

October 30, 2013

REPORT NO: 13-085

ATTENTION

Budget and Finance Committee

Agenda of October 30, 2013

SUBJECT:

Living Wage Ordinance Annual Report for Fiscal Year 2013

REFERENCE:

Living Wage Ordinance: San Diego Municipal Code Chapter 2, Article 2,

Division 42

REQUESTED ACTION: Accept report.

STAFF RECOMMENDATION: Accept report.

BACKGROUND:

This annual report describes administration of the Living Wage Ordinance [LWO] during Fiscal Year 2013 (July 1, 2012 – June 30, 2013). The LWO, adopted in June 2005 and effective beginning July 1, 2006, requires employers to compensate employees who perform work on applicable service contracts under a predetermined wage structure. An annual report has not been submitted to Council since March 2010 due to staff vacancies and, in part, difficulty confirming accurate contract data post-SAP transition; these matters are now resolved.

For reference, full text of the Living Wage Ordinance, San Diego Municipal Code [SDMC] Chapter 2, Article 2, Division 42, (Attachment A) is included with this report. A one-page summary of LWO applicability, exemptions, and requirements is also provided as Living Wage Ordinance Synopsis (Attachment B).

EXECUTIVE SUMMARY:

In Fiscal Year 2013, the Living Wage Program was located in the Administration Department. Effective July 1, 2013, the program was moved into Purchasing & Contracting Department.

During Fiscal Year 2013, the Living Wage hourly rate was \$11.47 plus \$2.30 in health benefits

for a total of \$13.77. This reflected a 3.0% cost-of-living increase from the prior calendar year. The cost-of-living increase for the previous two fiscal years totaled 1.3%. The LWO hourly rate for Fiscal Year 2014 is \$11.65 plus \$2.34 in health benefits for a total of \$13.99. During the eight years since passage of the Living Wage Ordinance, the hourly wage rate has increased \$1.99 (15.5%, the region's cost-of-living increase as published by the Department of Labor). [See Chart 2.]

A total of 133 LWO contracts were active in FY 2013 with a combined value of \$32,961,041, as measured by the Purchasing Agreement amount. Landscaping services were the largest portion (56% of all LWO contracts and 41% of LWO contract dollars). Sixty covered employers held LWO contracts. [See Charts 4, 5, 6 and 7.]

LWO Compliance Reviews were conducted for 30 firms since inception of the Ordinance. The reviews found 43% of firms examined had underpaid covered employees and 37% did not provide required compensated leave time. Discrepancies were identified in 50% of all LWO Compliance Reviews. [See Charts 10, 11, 12 and 13.]

Only one LWO Employee Complaint was received during FY 2013. In the history of the LWO, 47 LWO Complaints were investigated; 48.9% were found to be violations. Backpay in a total amount of \$283,318 has been recovered for employees. [See Charts 14, 15 and 16.]

Fifty-eight covered employers (100%) submitted an Annual Contractor Compliance Report as required by SDMC §22.4225(d). In response to a query, 59% stated they believed the LWO reduced their firm's absenteeism or turnover; 59% also confirmed the LWO improved their firm's quality of service. [See Chart 17.]

Most covered employers successfully comply with requirements of the Living Wage Ordinance; however, compliance reviews and complaint investigations reveal lingering problems. Some covered employers underpay workers and do not increase wages on July 1 when required, even though they're notified directly by the Living Wage Program. Many employers on LWO-covered contracts have not established procedures to track employee work hours or accrual of compensated leave time. Interviews with covered employees consistently indicate their employer neglects to notify them of their rights under the LWO as required. The Living Wage Program seeks to remedy these discrepancies through increased direct communications with covered employers, maintenance of dedicated City web pages with clear information regarding covered employers' obligations, aggressive investigation of complaints, and continued execution of proactive compliance reviews.

Information in the Executive Summary is expanded upon in the body of this report.

LWO PROGRAM ADMINISTRATION DURING FISCAL YEAR 2013

LWO Administration

In accordance with SDMC §22.4235(a), Rules Implementing the Living Wage Ordinance (provided for Fiscal Year 2013 with this report as Attachment C) are posted on the City's website at sandiego.gov/administration/programs/living wage. Sections in the Rules clarify components of the LWO:

- Applicability;
- Exemptions;
- Employer Requirements;
- Recordkeeping and Reports;
- Monitoring and Investigation;
- Enforcement; and
- Employee Complaint Process.

Appendices to the Rules include relevant notices and forms:

- Current Living Wage Rates;
- LWO Notice to Employees (English, Spanish);
- Earned Income Tax Credit information sheet (English, Spanish);
- LWO Certification of Compliance form;
- LWO Application for Exemption form; and
- LWO Employee Complaint Form (English, Spanish).

Additional information is maintained on the City's website and updated as required.

The Living Wage Program consists of two staff positions, one Supervising Management Analyst and one Senior Management Analyst; these positions also administer the City's Equal Benefits Program. The Senior Management Analyst position remained vacant for five months during the year. Program staffing costs are shown in Chart 1, LWO Program Staff Costs in FY 2013.

CHART 1:	LWO Program Staff Costs in Fiscal Year 2013					
Classification	Employees	Salary		Fringe		Total
BUDGETED:						
Supervising Management Ana	lyst 1.00 FTE	\$76,037	+	\$30,616	=	\$106,653
Senior Management Analyst	1.00 FTE	\$59,363	+	\$40,736	=	<u>\$100,099</u>
TOTAL	2.00 FTE	\$135,400	+	\$71,352	=	\$206,752
ACTUAL:						
Supervising Management Ana	lyst 1.00 FTE	\$76,037	+	\$30,616	=	\$106,653
Senior Management Analyst	0.55 FTE	\$32,650	+	\$22,405	=	\$55,055
TOTAL	1.55 FTE	\$108,687	+	\$53,021	=	\$161,708

LWO Program functions include: determination of applicability; investigation and resolution of complaints; performance of contract compliance reviews; compilation of annual compliance report from covered employers; record maintenance; provision of information in response to requests from contractors, workers, City Facility operators, the public, and City staff; and posting and distribution of informational materials including annual wage adjustment and *Rules Implementing the LWO*.

The City Attorney's Office expended staff time to support Living Wage enforcement during Fiscal Year 2013 by providing advice on issues upon request. No litigation expenses were incurred during this fiscal year.

Annual LWO Wage Adjustment

SDMC §22.4220(b) stipulates an upward adjustment of hourly wage and health benefit rates to take effect each year on July 1 and requires new rates to be posted on the City's website prior to April 1. This adjustment is based on the prior calendar year's Consumer Price Index for All Urban Consumers for the San Diego–Carlsbad–San Marcos Metropolitan Statistical Area as published (in February) by the U.S. Department of Labor, Bureau of Labor Statistics.

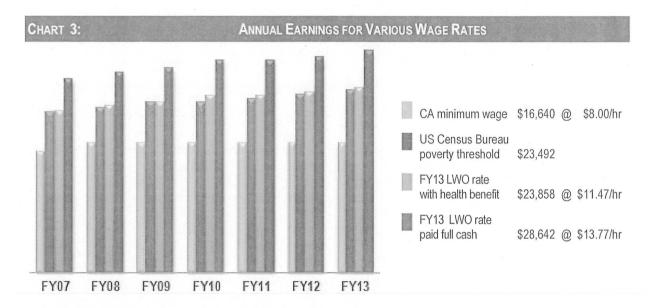
Chart 2, City of San Diego Living Wage Rates, lists a history of LWO wage and health benefit rates.

CHART 2:	Сіту	OF SAN DIEG	O LIVING WAGE RATES	
Year	Effective Dates	Increase	Wage + Health Benefit	Full Cash Wage
FY 2014	July 1, 2013 – June 30, 2014	1.6%	\$11.65 + \$2.34 /hr	\$13.99 /hr
FY 2013	July 1, 2012 – June 30, 2013	3.0%	\$11.47 + \$2.30 /hr	\$13.77 /hr
FY 2012	July 1, 2011 – June 30, 2012	1.3%	\$11.14 + \$2.23 /hr	\$13.37 /hr
FY 2011	July 1, 2010 – June 30, 2011	0.0%	\$11.00 + \$2.20 /hr	\$13.20 /hr
FY 2010	July 1, 2009 – June 30, 2010	3.9%	\$11.00 + \$2.20 /hr	\$13.20 /hr
FY 2009	July 1, 2008 – June 30, 2009	2.3%	\$10.58 + \$2.12 /hr	\$12.70 /hr
FY 2008	July 1, 2007 – June 30, 2008	3.4%	\$10.34 + \$2.07 /hr	\$12.41 /hr
FY 2007	July 1, 2006 – June 30, 2007	N/A	\$10.00 + \$2.00 /hr	\$12.00 /hr

The Purpose and Intent (SDMC §22.4201) of the Living Wage Ordinance states, in part:

"It is the experience of the *City* that many of these services to the public and to the City are provided by workers who live at or below the poverty line. This division provides that when agreements ... are extended by the *City* to private *businesses* these taxpayer funded benefits are used in a way that advances the interests of the *City* as a whole, by creating jobs that keep workers and their families out of poverty."

Chart 3, *Annual Earnings for Various Wage Rates*, compares annual incomes for Living Wage rates, California minimum wage rate and the U.S. Census Bureau's poverty threshold.

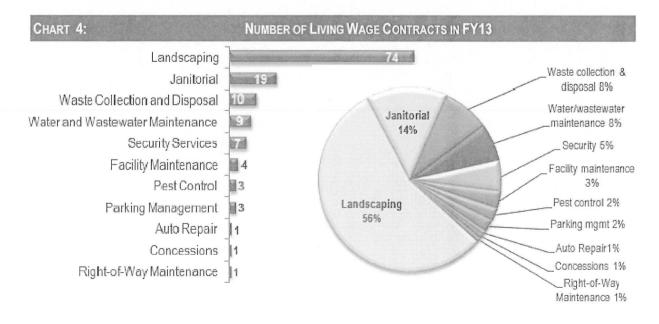


LWO Contracts

During Fiscal Year 2013, there were a total of 133 active LWO contracts with a value of \$32,961,041, as measured by the Purchasing Agreement amount. Detailed spreadsheets are provided as attachments to this report in three views:

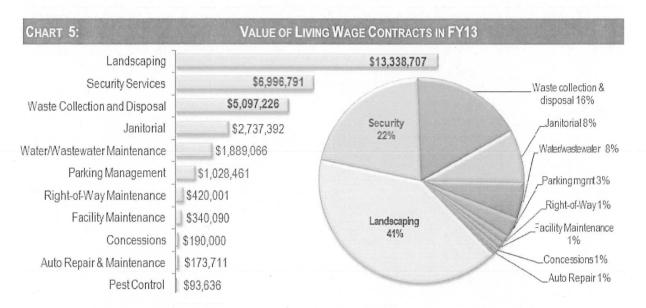
- LWO Contracts in Fiscal Year 2013, Sorted by Contract Number [Attachment D];
- LWO Contracts in Fiscal Year 2013, Sorted by Bid Number [Attachment E]; and
- LWO Contracts in Fiscal Year 2013, Sorted by Commodity Type [Attachment F].

Chart 4, *Number of Living Wage Contracts in FY13*, shows a comparison of contracts for various commodity types based on the number of contracts and the percentage of the total.



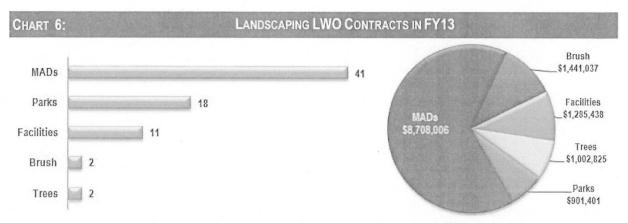
Landscaping contracts (74) were more than half of all LWO contracts. The second largest commodity by number of contracts was Janitorial (19). Waste Collection and Disposal (10) and Water and Wastewater Maintenance (9) followed. Security guard services (7) had the fifth highest total. The remaining five commodity types together composed the final ten percent.

Chart 5, Value of Living Wage Contracts in FY13 is a graphic representation of the value of contracts for various commodity types. The value is the Purchasing Agreement amount for each contract for the fiscal year.



From a perspective of contract cost – as differentiated from the number of contracts – percentages of the various contract commodity types differed. Landscaping (\$13,338,707) remained the greatest portion of expense at 41%. Its value was nearly twice that of the second largest commodity cost, Security guard services (\$6,996,791). Waste Collection and Disposal (\$5,097,226) came in third. Janitorial (\$2,737,392), though second in the number of contracts, ranked fourth in total value of contracts. Water and Wastewater Maintenance (\$1,889,066) followed. The value for Parking Management (\$1,028,461) does not reflect the fact that the City receives a certain amount of revenue for these contracts. The final four commodity types together amounted to less than 5%of LWO contract expenditures.

Because Landscaping contracts represent such a large portion of the City's LWO contracting dollars, a more detailed view is provided in Chart 6, *Landscaping LWO Contracts in FY13*.



There were a total of 74 Landscape contracts performed by 17 contractors for \$13,338,707. Maintenance Assessment District [MAD] contracts (41) were the largest portion (41%) with a cost of \$8,708,006 which was 65.3% of total Landscape cost. Two Brush contracts had a value of \$1,441,037. Eleven Facilities contracts cost \$1,285,438. Two Tree maintenance contracts totaled \$1,002,825. There were 18 Landscape maintenance contracts for Parks at a cost of \$901,401.

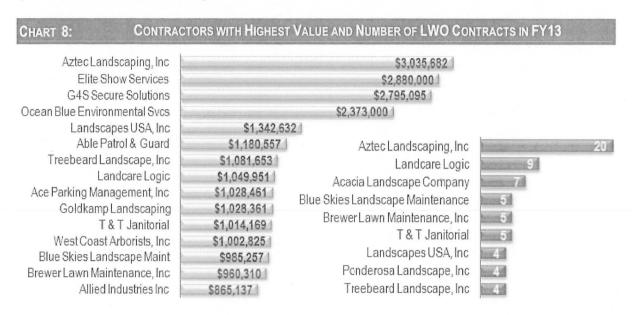
LWO Covered Employers

During Fiscal Year 2013, sixty covered employers held LWO contracts. Detailed information is provided as attachments to this report in three views:

- LWO Contracts in Fiscal Year 2013, Sorted by Contractors [Attachment G];
- LWO Contractors in Fiscal Year 2013, Sorted by Total Contract Value [Attachment H]; and
- LWO Contractors in Fiscal Year 2013, Sorted by Number of Contracts [Attachment I].

All covered employers are listed in Chart 7, LWO Covered Employers in Fiscal Year 2013:

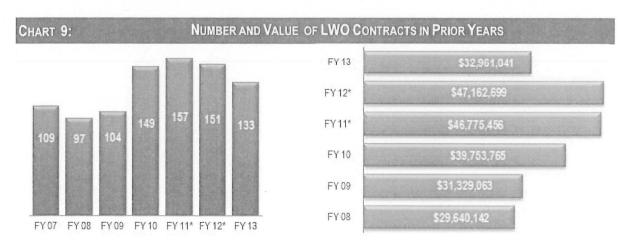
Chart 8, Contractors with Highest Value and Number of LWO Contracts in FY13, shows the highest-earning contractors totals for LWO-covered contracts by dollar value and total contracts. (Note: Total amount for Ace Parking Management, Inc. includes revenue amounts.) Aztec Landscaping, Inc., held 20 contracts (15% of all LWO contracts) for a total value of \$3,035,682 (9.2% of LWO contract value).



During this fiscal year, no contractors requested an exemption from LWO requirements because their firm employed twelve or fewer employees in accordance with SDMC §22.4215(b)(1). Contractors do not receive a universal exempt status, but are granted exemptions on a per contract basis; sufficient documentation must be provided.

Prior Year Comparisons

Chart 9, *Number and Value of LWO Contracts in Prior Years*, shows totals during previous fiscal years. Values are total costs for Purchasing Agreements at time of award. (Note: amounts for Fiscal Years 2011 and 2012 are based on available data.)



LWO Compliance Reviews

SDMC §22.4235(a) requires periodic reviews to verify compliance with LWO requirements. Proactive LWO Compliance Reviews are conducted as part of an integrative approach to ensure compliance through diligent oversight. The City strengthens working relationships with covered employers while identifying and resolving errors before they become longstanding. In a difficult economy, potential complainants may be less likely to step forward. Compliance Reviews help assure a level playing field for all participants in the City's service contract bid process.

Contracts for review are selected randomly or based on concerns of possible noncompliance; selection of a firm for review does not imply wrongdoing. During the review, payroll records, employee manuals, project files, and other documents as needed are examined by LWO Program staff. At the job site, staff conducts interviews with covered employees in English or Spanish. Discrepancies, if identified, are resolved before a Compliance Review is closed out. At conclusion, the subject firm receives a report of Compliance Review findings. A response is required from the firm within 30 days to affirm the findings.

Chart 10, shows LWO Contract Compliance Reviews in Fiscal Year 2013.

CHART 10:	LWO CONTRACT COMPLIANCE REVIEWS IN FISCAL YEAR 2013						
Review	<u>Firm</u>	Result	Comments				
#R13-001	NMS Management, Inc	No discrepancies found					
#R13-002	Prizm Janitorial Services, Inc	Discrepancies found	Referred to County DA Fraud Investigation Unit				
#R13-003	US Security Associates, Inc	No discrepancies found	Trada invocagation one				
#R13-004	Contemporary Design Landscape	No discrepancies found					
TOTAL	4 REVIEWS	1 FIRM WITH DISCREPANCIES					

Over the years, LWO Program staff conducted 30 Compliance Reviews as summarized in Chart 11, *Annual Record of LWO Compliance Reviews*.

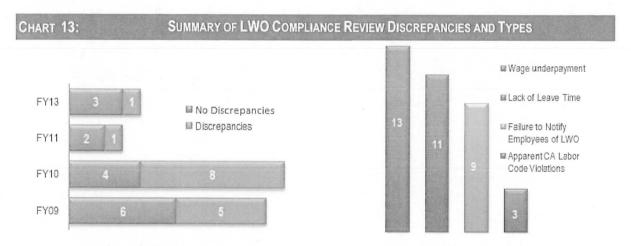
CHART 11	:	Annual Record of LWO Compliance Reviews				
	Reviews	No Discrepancies	Discrepancies	Funds Recovered	Comments	
FY 2013	4	3	1	\$0	Referred to County DA	
FY 2011	3	2	1	\$0		
FY 2010	12	4	8	\$8,906	Agreements terminated	
FY 2009	<u>11</u>	<u>6</u>	<u>5</u>	<u>\$28,019</u>	Referred to County DA; Contractor debarred	
TOTAL	30	15	15	\$36,925		

Half (50%) of LWO Compliance Reviews found discrepancies. These include wage underpayment; failure to allocate 10 compensated leave days per year; lack of method to track accrual of leave time; and failure to notify covered employees in accordance of their LWO rights.

Chart 12, Summary of LWO Compliance Review Violation Types, lists the different LWO requirements found to be violated and shows the frequency of occurrence.

CHART 12:	SUMMARY OF LWO COMPLIANCE REVIEW VIOLATION TYPES				
Municipal Code	Requirement	Violations	% of Reviews		
§22.4220(a)	Pay covered employees specified wage and benefits	13	43%		
§22.4225(b)	Notify covered employees of LWO requirements	9	30%		
§22.4220(c)	Provide minimum 10 compensated leave days per year	11	37%		
Other	CA Labor Code	3	10%		

A summary of findings is presented in Chart 13, Summary of LWO Compliance Review Discrepancies and Types.



Two LWO Compliance Reviews resulted in severe enforcement actions. One contractor was ultimately debarred from City contracts (J.L. Krueger Landscaping) and another contractor's agreements were terminated (Goldkamp Landscaping).

LWO Complaints

The LWO Program is required by SDMC §22.4230(c) to investigate and address an alleged LWO violation within 60 days. Resolution of Employee Complaints includes: complaint receipt and written acknowledgement to claimant and firm; investigation, including review of records and interviews; issuance of determination of violation or non-violation; and, when required, calculation of back pay and verification of payment. If a complaint is not resolved within 60 days, the claimant and the subject receive status updates from the Living Wage Program every 30 days until completion.

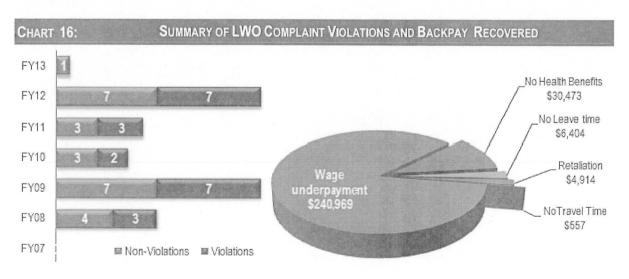
Only one LWO Employee Complaint was received during Fiscal Year 2013 as shown in Chart 14, LWO Complaints in Fiscal Year 2013.

CHART 14:	LWO COMPLAINTS IN FISCAL YEAR 2013				
Complaint	Allegation	Result	Back Pay		
#C13-001	Nonpayment for all hours and leave time	No violation	_		
TOTAL	1 COMPLAINT	0 VIOLATIONS	\$0.00		

Chart 15, *Annual Record of LWO Employee Complaints*, lists LWO Employee Complaints since inception of the Ordinance:

CHART 15:	ANNUAL RECORD OF LWO EMPLOYEE COMPLAINTS				
	Complaints	Non-Violations	Violations	Back Pay	
FY 2013	1	1	0	\$0	
FY 2012	14	7	7	\$6,696	
FY 2011	6	3	3	\$11,669	
FY 2010	5	3	2	\$224	
FY 2009	14	7	7	\$211,888	
FY 2008	7	3	4	\$52,841	
FY 2007	<u>0</u>	<u>0</u>	<u>0</u>	<u>\$0</u>	
TOTAL	47	24	23	\$283,318	

Chart 16, Summary of LWO Complaint Violations and Backpay Recovered, exhibits trends for the number of complaints (47) and back payments (\$283,318 total) during the history of the Ordinance:



Nearly half (48.9%) of all LWO Employee Complaints were found to be violations. When measured by amount of back payment, the majority of violations were for Wage Underpayment (85%). Nonpayment of Health Benefits (11%) comprised the next largest category. Lack of

Compensated Leave Time (2.3%) and Retaliation (1.7%) followed. One small amount (0.2%) was recovered when an employer did not pay LWO rates for covered employees' time spent traveling to and from the jobsite.

Contractor Compliance Reports

Covered employers are required to complete an annual Contractor Compliance Report in accordance with SDMC §22.4225(d). The Living Wage Program distributed a single-page form to firms with active LWO contracts in April 2013. This Contractor Compliance Report was included in a packet with a notice of the annual wage adjustment, a request for a newly-signed LWO Certification of Compliance, an updated LWO Notice to Employees and a handout explaining the Earned Income Tax Credit, in both English and Spanish. Some relevant results are shown in Chart 17, Covered Employer Compliance Report Responses:

CHART 17:	COVERED EMPLOYER COMPLIANCE REPORT R	ESPONSES	
		Number	Percent
LWO covered empl	oyers who submitted Contractor Compliance Report	58	100%
Number of LWO co	vered employees	2,070	19%
LWO covered empl	oyers offering health benefit option	31	53%
LWO covered empl	oyees receiving health benefits	656	31%
Covered employers	reporting LWO improved firm's quality of service	43	59%
Covered employers	reporting LWO reduced absenteeism or turnover	43	59%

Responses reflect self-reporting by contractors.

City Facility Agreements

LWO requirements are applicable to contracts and subcontracts at City facilities, in accordance with SDMC §22.4210(a)(4). City facilities are defined in the ordinance as Petco Park, Qualcomm Stadium, San Diego Sports Arena, San Diego Convention Center, San Diego City Concourse, and San Diego Civic Theatre.

As soon as the wage adjustment amount becomes available, LWO Program staff sends correspondence to notify City facilities. Prior to the start of the fiscal year, the Living Wage Program sends a notice to each City facility to remind them of the adjusted wage rate, re-state their obligations regarding LWO requirements, request signed LWO Certification of Compliance forms for contractors and subcontractors, and offer assistance. Throughout the year, contact is maintained to support City facilities in understanding and attaining LWO compliance.

Over the years, there have been six LWO Employee Complaints filed for City facilities; however, none resulted in a violation.

Financial Assistance Agreements

LWO requirements are applicable to certain financial assistance agreements for (a) economic development, job creation, or job retention or (b) tourism, arts, and cultural programs, in accordance with SDMC §22.4210(a)(2-3). To date, this section has been found to apply in only

one instance. The San Diego Tourism Marketing District requested and received exemption status with less than 12 employees; subcontractors have provided *LWO Certifications of Compliance* or requested exemption approval.

<u>FISCAL CONSIDERATIONS</u>: There was a 3.0% upward adjustment of LWO wages for Fiscal Year 2013. During the eight years since passage of the Living Wage Ordinance, the hourly wage rate increased \$1.99 (16.58%, the region's cost-of-living increase as published by the Department of Labor). All bidders must pay the same wage rates, and a successful low bid is the result of increased efficiencies or a narrower profit margin rather than suppressed wages.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None regarding this report.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: The City continues to provide convenient access to LWO information for contractors and workers. The Living Wage Program maintains accurate, up-to-date information on the City's website including Municipal Code text, *Rules Implementing the LWO*, all forms and notices (most with Spanish translations), and all past annual reports on LWO administration. Brochures summarizing LWO requirements are available. Living Wage Program staff presents at Purchasing & Contracting Department workshops entitled "How to Do Business with the City."

Various community-based organizations maintain an active interest in the City's LWO administration including the Center on Policy Initiatives and the Maintenance Cooperation Trust Fund. During Fiscal Year 2013, the Living Wage Program maintained working relationships with representatives from the Department of Industrial Relations, Division of Labor Standards Enforcement; County of San Diego District Attorney's Office, Insurance Fraud Division; Living Wage Deputy Compliance Officer for the County of Los Angeles; and San Francisco's Office of Labor Standards Enforcement Manager.

<u>KEY STAKEHOLDERS AND PROJECTED IMPACTS</u>: Key stakeholders for the LWO remain the City of San Diego citizens, covered employees, and covered employers. The City's Living Wage Program employs efficient methods to provide information about the Living Wage Ordinance, monitor compliance with ordinance requirements, and assist covered employers in meeting their obligations.

Official version signed by

Official version signed by

Dennis Gakunga, Director Purchasing & Contracting Department Scott Chadwick Assistant Chief Operating Officer