

ORDINANCE NO. _____

1 AN ORDINANCE amending Title 2 of the Lincoln Municipal Code relating to
 2 Officers, Departments and Personnel by creating a new Chapter 2.81 to provide for a Living
 3 Wage of at least 110% of the federal poverty guideline for a family of four, or 100% of the
 4 federal poverty guideline if described health insurance benefits are paid by the employer, and
 5 mandating adjustments July 1 of each year hereafter.

6 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

7 Section 1. That Title 2 of the Lincoln Municipal Code be amended by adding
 8 a new section numbered 2.81.010 to read as follows:

9 **2.81.010** **Purpose and Title.**

10 (a) This Chapter shall be known as the "Lincoln Living Wage Ordinance."

11 (b) The City of Lincoln employs many individuals, awards many contracts to private
 12 firms to provide services to the public and to City Government and provides financial
 13 assistance for the purpose of promoting economic development and job growth. Such
 14 expenditures of public money are intended to serve a public purpose by creating good paying
 15 jobs, expanding the City's economic base, promoting economic security for all citizens, and
 16 providing public services. Such public expenditures should be spent only with deliberate
 17 purpose to promote the creation of jobs that allow citizens to support themselves and their
 18 families. Sub-poverty level wages do not serve the public purpose and place an undue burden
 19 on taxpayers and the community which must further subsidize employers who pay sub-

1 poverty wages by providing their employees health care, housing, nutrition, energy assistance,
2 and other government provided services.

3 (c) The City therefore has a responsibility when spending public money to set a
4 community standard that permits workers employed through such public funding to live above
5 at least the federal poverty guideline, and to move towards living wage employment.

6 Section 2. That Title 2 of the Lincoln Municipal Code be amended by adding
7 a new section numbered 2.81.020 to read as follows:

8 **2.81.020 Definitions.**

9 For the purpose of this chapter the following definitions shall apply:

10 Agency shall mean that subordinate or component entity or person of the City (such
11 as a department, office, or agency) that is responsible for solicitation of proposals or bids and
12 responsible for the administration of service contracts or financial assistance agreements.

13 City shall mean the City of Lincoln and all City agencies, departments and offices.

14 City financial assistance recipient (CFAR) shall mean any person who receives from
15 the City financial assistance in an amount of \$25,000 or more in a twelve-month period.

16 Categories of such financial assistance include, but are not limited to, grants, tax
17 credits, bond financing, rent subsidies, financial planning, the sale of land for less than its fair
18 market value, and land writedowns. City staff assistance shall not be regarded as financial
19 assistance for purposes of this article. The forgiveness of a loan shall be regarded as financial
20 assistance, and a loan provided at below market interest rate shall be regarded as financial
21 assistance to the extent of any differential between the amount of the loan and the present

1 value of the payments thereunder, discounted over the life of the loan by the applicable
2 federal rate.

3 A tenant or leaseholder of a CFAR who occupies property that is improved or
4 developed as a result of the financial assistance awarded to the CFAR and who will employ
5 at least twenty employees for each working day in each of twenty or more calendar weeks in
6 the twelve months after occupying or using said property, shall be considered a City financial
7 assistance recipient for the purposes of this Ordinance and shall be covered for the same
8 period as the CFAR of which they are a tenant or leaseholder.

9 **Contractor** shall mean any person that enters into a service contract with the City in
10 an amount equal to or greater than \$25,000.

11 **Employee** shall mean any person who is employed (1) as an employee of the City of
12 Lincoln; (2) as an employee of a contractor or subcontractor under the authority of one or
13 more service contracts and who expends any of his or her time on the service contract; (3) as
14 an employee of a CFAR and who expends any of his or her time on the project provided such
15 financial assistance; (4) by a service contractor of a CFAR and who expends at least half of his
16 or her time on the premises of the CFAR and is directly involved with the funded project,
17 program or property which is the subject of city financial assistance; or (5) not as a principal
18 or independent contractor and expends at least half of his or her time on the contract or
19 project that qualifies for CFAR. Any person who is a managerial, supervisory or confidential
20 employee is not an employee for purposes of this definition. Any person who is a temporary,
21 seasonal, or permanent part-time employee working less than thirty hours per week for the
22 City is not an employee for purposes of this definition.

1 **Employer** shall mean any person who is a City financial assistance recipient, contractor,
2 subcontractor or the City of Lincoln.

3 **Person** shall mean any individual, proprietorship, partnership, joint venture,
4 corporation, limited liability company, trust, association, or other entity that may employ
5 individuals or enter into contracts.

6 **Service contract** shall mean: (1) a contract let to a contractor by the City for the
7 furnishing of services, to or for the City that involves an expenditure equal to or greater than
8 twenty-five thousand dollars (\$25,000), except contracts where services are incidental to the
9 delivery of products, equipment or commodities; or (2) a lease or license under which services
10 contracts are let by the lessee or licensee. A contract for the purchase or lease of goods,
11 products, equipment, supplies or other property is not a “service contract” for the purpose of
12 this definition.

13 **Subcontractor** shall mean any person who enters into a contract with (1) a contractor
14 to assist the contractor in performing a service contract; or (2) a CFAR to assist the recipient
15 in performing the work for which the assistance is being given or to perform services on the
16 property which is the subject of City financial assistance. Service contractors of CFARs shall
17 not be regarded as subcontractors except to the extent provided in subsection (4) of the
18 definition of “employee” herein.

19 **Trainee** shall mean a person enrolled in a job training or job readiness program
20 conducted by an organization whose primary mission is to provide such services.

21 Section 3. That Title 2 of the Lincoln Municipal Code be amended by adding
22 a new section numbered 2.81.030 to read as follows:

1 **2.81.030** **Payment of Minimum Compensation to Employees.**

2 (a) Wages. Employers shall pay employees a wage to each employee of no less
3 than the hourly rates set under the authority of this Ordinance. The initial rate shall be an
4 hourly wage of at least 110% of the federal poverty guideline for a family of four for the
5 contract or other city financial assistance. The hourly wage shall be adjusted on July 1 of each
6 year subsequent to the issuance of annual updates of the federal poverty guideline by the
7 United States Department of Commerce, Bureau of the Census. Hourly wages shall be based
8 on a forty-hour work week and a fifty-two week year. Employers that provide their employees
9 basic health insurance benefits, as defined in Section 2.81.030(b), shall pay an initial hourly
10 rate of at least 100% of the federal poverty level for a family of four.

11 (b) Basic Health Insurance Benefits. Basic health insurance benefits required by this
12 Ordinance to qualify for the wage rate in Section 2.81.030(a) for employees with such benefits
13 shall be defined as the payment of at least one dollar and twenty-five cents (\$1.25) per hour
14 towards the provision of health care benefits for employees and their dependents. Proof of
15 the provision of such benefits must be submitted by the City to qualify for the wage rate in
16 2.81.030(a) for employees with health benefits.

17 Section 4. That Title 2 of the Lincoln Municipal Code be amended by adding
18 a new section numbered 2.81.040 to read as follows:

19 **2.81.040** **Duration of Requirements.**

20 For CFARs, assistance given in an amount equal to or greater than twenty-five thousand
21 dollars (\$25,000) in any twelve-month period shall require compliance with this Ordinance
22 for the life of the project or five years in the case of assistance given to purchase real property,

1 tangible property or construct facilities, including but not limited to materials, equipment,
2 fixtures, merchandise, machinery or the like.

3 A service contractor and subcontractor shall be required to comply with this Ordinance
4 for the term of the contract.

5 Section 5. That Title 2 of the Lincoln Municipal Code be amended by adding
6 a new section numbered 2.81.050 to read as follows:

7 **2.81.050 Notifying Employees of their Potential Right to the Federal Earned Income**
8 **Credit.**

9 Employers shall inform employees making less than twelve dollars (\$12.00) per hour
10 of their possible right to the federal Earned Income Credit (“EIC”) under §32 of the Internal
11 Revenue Code of 1954, 26 U.S.C. §32, and shall make available to employees forms from the
12 federal government informing them about the EIC and forms from the federal government
13 required to secure advance EIC payments. These forms shall be provided to the eligible
14 employees in English, Spanish and other languages spoken by twenty-five percent (25%) of
15 the employees within thirty days of employment under the terms of this Ordinance and as
16 required by the Internal Revenue Code.

17 Section 6. That Title 2 of the Lincoln Municipal Code be amended by adding
18 a new section numbered 2.81.060 to read as follows:

19 **2.81.060 Contract Review Process and City Reporting and Record Keeping.**

20 (a) The Finance Department shall promulgate rules and regulations subject to
21 review and adoption by the City Council for the preparation of bid specifications, contracts
22 and preparations for contract negotiations subject to this Ordinance.

1 **(b)** The Finance Department shall submit periodic reports to the City Council which
2 shall include the following information:

3 **(1)** A listing and the status of all requests for proposals, service contracts and
4 lease agreements executed and financial assistance awarded, to which this Ordinance applies
5 including the term, dollar amount and the service performed or assistance provided;

6 **(2)** A description of every instance where an exemption or waiver was
7 granted by action of the City Council.

8 **(c)** The Finance Department shall develop an administrative procedure and appeal
9 process subject to review and adoption by the City Council for determining compliance with
10 this Ordinance.

11 **(1)** Such an appeal process shall be available to every bidder, proposer or
12 applicant who has been deemed noncompliant with this Ordinance, or who disputes the
13 determination of applicability of this Ordinance to its business operation which will be
14 involved in the proposed contract. A contract or other documents regarding the financial
15 assistance shall not be executed until there is resolution of the relevant appeal.

16 **(2)** Appeals shall be filed with the Finance Department within twenty-one
17 calendar days of the date of the notice of the City's written determination of noncompliance
18 and reasons therefor, or written determination of the applicability of this Ordinance.

19 **(3)** The Finance Department shall maintain records pertaining to all
20 complaints, hearings, determinations and findings, and shall submit a regular report on
21 compliance with this Ordinance no less than annually to the City Council. Special reports and

1 recommendations on significant issues of interest to the Council will be submitted as deemed
2 appropriate.

3 Section 7. That Title 2 of the Lincoln Municipal Code be amended by adding
4 a new section numbered 2.81.070 to read as follows:

5 **2.81.070 Noncompliance Review and Appeal.**

6 Contractors, subcontractors and CFARs who fail to submit documents, declarations or
7 information required to demonstrate compliance with this Ordinance shall be deemed
8 nonresponsive and subject to disqualification.

9 Section 8. That Title 2 of the Lincoln Municipal Code be amended by adding
10 a new section numbered 2.81.080 to read as follows:

11 **2.81.080 Waivers.**

12 (a) A contractor, or CFAR who contends it is unable to pay all or part of the hourly
13 wage rate required by Section 2.81.030 must provide a detailed explanation in writing to the
14 Finance Department which may recommend a waiver to the City Council. The explanation
15 must set forth the reasons for its inability to comply with the provisions of this Ordinance,
16 including a complete cost accounting for the proposed work to be performed with the contract
17 or financial assistance sought, including wages and benefits to be paid all employees, as well
18 as an itemization of the wage and benefits paid to the five highest paid individuals employed
19 by the contractor or CFAR. The contractor or CFAR must also demonstrate that the waiver will
20 further the interests of the City in creating training positions which will enable employees to
21 advance into permanent living wage jobs or better and will not be used to replace or displace
22 existing positions or employees or to lower the wages of current employees.

1 **(b)** The City Council will grant a waiver only upon finding and determining that the
2 contractor or CFAR has demonstrated economic hardship and that a waiver will further the
3 interests of the City in providing training positions which will enable employees to advance
4 into permanent jobs that pay self-sufficient living wages or better. However, no waiver will
5 be granted if the effect of the waiver is to replace or displace existing positions or employees
6 or to lower the wages of current employees.

7 **(c)** Waivers from the Ordinance are disfavored, and will be granted only where the
8 balance of competing interests weighs clearly in favor of granting the waiver. If waivers are
9 to be granted, partial waivers are favored over blanket waivers. Moreover, any waiver shall
10 be granted for no more than one year. At the end of the year the contractor or CFAR may
11 reapply for a new waiver which may be granted subject to the same criteria for granting the
12 initial waiver.

13 **(d)** The City Council reserves the right to waive the requirements of this Ordinance
14 upon a finding and determination of the City Council that waiver is in the best interests of the
15 City, e.g. when the City has declared an emergency due to natural disasters and needs
16 immediate services.

17 Section 9. That Title 2 of the Lincoln Municipal Code be amended by adding
18 a new section numbered 2.81.090 to read as follows:

19 **2.81.090** **Exemptions.**

20 **(a)** An employer shall be exempted from application of this article if (1) it employs
21 fewer than ten employees for each working day in each of twenty or more calendar weeks in
22 the current or preceding calendar year; (2) it obtains a waiver as provided herein; or (3) it is

1 an intermediary, such as a community development corporation or community bank, which
2 serves solely as a pass-through agency for the granting of assistance to the intended employer.

3 (b) A trainee shall be exempted for the period of training in a job readiness or job
4 training program whose primary purpose is to provide such services and for which the
5 financial assistance is intended to support.

6 (c) An employee shall be exempted when he or she is under twenty-one years of
7 age and employed by the City of Lincoln for after school or summer employment, or as a
8 trainee for a period not longer than ninety days.

9 (d) Projects, employment, goods or services pursuant to tax increment financing.

10 (e) Any interlocal or joint contract involving the City.

11 Section 10. That Title 2 of the Lincoln Municipal Code be amended by adding
12 a new section numbered 2.81.100 to read as follows:

13 **2.81.100 RFP, Contract and Financial Assistance Agreement Language.**

14 All requests for proposals, City contracts and financial assistance agreements subject
15 to this Ordinance shall contain the following two paragraphs or substantially equivalent
16 language:

17 (a) This contract or financial assistance is subject to the Living Wage Ordinance of
18 the Lincoln Municipal Code. The Ordinance requires that, unless specific exemptions apply
19 or a waiver is granted, all employers (as defined) under service contracts and recipients of City
20 financial assistance (as defined), shall provide payment of a minimum living wage to
21 employees. Such rate shall be adjusted annually pursuant to the terms of the Lincoln Living
22 Wage Ordinance of the Lincoln Municipal Code.

1 **(b) Under the provisions of the Lincoln Living Wage Ordinance, the City shall have**
2 **the authority, under appropriate circumstances, to terminate this contract or financial**
3 **assistance agreement and to seek other remedies as set forth therein, for violations of the**
4 **Ordinance.**

5 Section 11. That Title 2 of the Lincoln Municipal Code be amended by adding
6 a new section numbered 2.81.110 to read as follows:

7 **2.81.110 Obligations of Contractors and Financial Assistance Recipients.**

8 **(a) All proposed contractors and CFARs subject to the provisions of this Ordinance**
9 **shall submit a completed Declaration of Compliance form, signed by an authorized**
10 **representative, along with each proposal. The completed Declaration of Compliance form**
11 **certifying compliance with this article shall be made a part of the executed contract.**

12 **(b) Contractors and CFARs shall require their subcontractors and tenants/**
13 **leaseholders to comply with the provisions of this Ordinance. Language indicating the**
14 **subcontractor's or tenants/leaseholders agreement to comply shall be included in the contract**
15 **between the contractor and subcontractor or any agreement between a CFAR and**
16 **tenants/leaseholders.**

17 **(c) Contractors, subcontractors and CFARs shall maintain payrolls for all employees**
18 **and basic records relating thereto and shall preserve them for a period for three years after**
19 **termination of their contracts or city financial assistance.**

20 **(d) Contractors, subcontractors and CFARs shall give written notification to each**
21 **current and new employee, at time of hire, or his or her rights to receive the benefits under**
22 **the provisions of this Ordinance. The notification shall be provided in English, Spanish and**

1 other languages spoken by twenty-five percent (25%) of the employees, and shall be posted
2 prominently in communal areas at the work site. The City shall provide basic notices for this
3 purpose, which must include the following:

4 (1) Minimum compensation – The initial living wage rates of \$_____ per hour
5 with health benefits or \$_____ per hour without health benefits will be adjusted annually to
6 correspond to adjustments, if any. The living wage shall be upwardly adjusted each year no
7 later than July 1 in proportion to the increase in the federal poverty guideline calculated by
8 the United States Department of Commerce applicable to the City of Lincoln.

9 (2) Health benefits – Proof of the provision of such benefits shall be
10 submitted to the City not later than 30 days after execution of the contract or receipt of city
11 financial assistance to qualify for the wage rate in Section 2.81.030. Health benefits shall be
12 provided to part-time employees as well as full-time employees.

13 (3) Federal Earned Income Credit (EIC) – Forms to inform employees of their
14 possible right to EIC and forms to secure advance EIC payments from the federal government
15 shall be provided to the eligible employees in English, Spanish and other languages spoken
16 by twenty-five percent (25%) of the employees within thirty days of employment under the
17 subject agreement.

18 (4) Notice that the employers are required to file a Declaration of
19 Compliance form as part of the contract with the City and that the City will make said
20 declarations available for public inspection and copying during its regular business hours.

21 (e) Contractors, subcontractors and CFARs shall permit access to work sites and
22 relevant payroll records for authorized City representatives for the purpose of monitoring

1 compliance with this Ordinance, investigating employee complaints of non-compliance and
2 evaluating the operation and effects of this Ordinance, including the production for inspection
3 of payroll records for any or all of its employees for the term of the contract or city financial
4 assistance, or for five years, whichever period of compliance is applicable.

5 Section 12. That Title 2 of the Lincoln Municipal Code be amended by adding
6 a new section numbered 2.81.120 to read as follows:

7 **2.81.120 Retaliation and Discrimination Barred.**

8 Contractors, subcontractors and CFARs shall not discharge, reduce the compensation
9 of or otherwise discriminate against any employee for making a complaint to the City,
10 participating in any of its proceedings, using any civil remedies to enforce his or her rights,
11 or otherwise asserting his or her rights under this Ordinance.

12 Section 13. That Title 2 of the Lincoln Municipal Code be amended by adding
13 a new section numbered 2.81.130 to read as follows:

14 **2.81.130 Monitoring, Investigation and Compliance.**

15 The provisions of this Ordinance will augment the City's normal and customary
16 procedure for administering its contracts and financial assistance. The City shall administer the
17 requirements of this Ordinance as follows:

18 (a) The Finance Department shall develop rules and regulations to review contract
19 documents and financial assistance agreements to insure that relevant language and
20 information are included in City agreements and other relevant documents.

21 (b) The Finance Department, subject to the review and approval of the City
22 Council, shall develop rules and regulations for the monitoring of the operations of the

1 contractors, subcontractors and financial assistance recipients to insure compliance including
2 the review, investigation and resolution of specific concerns or complaints about the
3 employment practices of a contractor, subcontractor or CFAR relative to this Ordinance. In
4 such cases, the City will attempt to resolve the problem within thirty days.

5 (c) Where a violation of any provision of this Ordinance has been determined, the
6 contractor, subcontractor or CFAR will be given a written notice by the City per the rules and
7 regulations. Should the violation continue and/or no resolution is imminent, the City shall
8 pursue all available legal remedies, including but not limited to any or all of the following
9 penalties and relief:

10 (1) Suspension and/or termination of the contract, subcontract or financial
11 assistance agreement for cause;

12 (2) Restitution of any or all of the contract or financial assistance awarded
13 by the City;

14 (3) Deem the contractor, subcontractor, or CFAR ineligible for future City
15 contracts and/or financial assistance until all penalties and restitution have been paid in full;

16 (4) A fine in the sum of \$500 for each week for each employee found not
17 to have been paid in accordance with this Ordinance;

18 (5) Wage restitution for each affected employee.

19 Section 14. That Title 2 of the Lincoln Municipal Code be amended by adding
20 a new section numbered 2.81.140 to read as follows:

1 **2.81.140 Employee Complaint Process.**

2 An employee who alleges violation of any provision of this Ordinance may report such
3 acts to the City and, at the employee’s discretion, exhaust available employer internal
4 remedies. The complaint to the City shall be handled as follows:

5 (a) The employee shall submit to the City a completed complaint form and copies
6 of all documents supporting the allegation. The City shall provide the complaint forms in
7 English and Spanish.

8 (b) The City shall notify the agency and the employer of the complaint and seek
9 resolution within twenty-one days from receipt of the complaint form. If resolution is not
10 accomplished, the City shall initiate an investigation and seek legal remedies, if appropriate.

11 (c) An employee claiming retaliation (such as, termination, reduction in wages or
12 benefits or adverse changes in working conditions) for alleging non-compliance with this
13 Ordinance may report the alleged retaliation in the same manner as the initial complaint.

14 (d) The complainant’s or witness’ identity will not be divulged to the employer
15 without the individual employee’s written consent.

16 Section 15. That Title 2 of the Lincoln Municipal Code be amended by adding
17 a new section numbered 2.81.150 to read as follows:

18 **2.81.150 Superseding by Collective Bargaining Agreement.**

19 All of the provisions of this Ordinance, or any part hereof, may be waived in a bona
20 fide collective bargaining agreement, but only if the waiver is explicitly set forth in such
21 agreement in clear and unambiguous terms.

1 Section 16. That Title 2 of the Lincoln Municipal Code be amended by adding
2 a new section numbered 2.81.160 to read as follows:

3 **2.81.160 Expenditures Covered by this Article.**

4 This Ordinance shall apply to expenditures entirely within the City’s control, and to
5 other funds, such as federal or state grant funds, where the application of this Ordinance is
6 consonant with the laws authorizing the City to expend such other funds.

7 Section 17. That Title 2 of the Lincoln Municipal Code be amended by adding
8 a new section numbered 2.81.170 to read as follows:

9 **2.81.170 Implementing Regulations.**

10 All implementing rules, regulations, and procedures promulgated by the Finance
11 Department shall be presented to the City Council for approval within sixty (60) days of
12 adoption of this Ordinance.

13 Section 18. That Title 2 of the Lincoln Municipal Code be amended by adding
14 a new section numbered 2.81.180 to read as follows:

15 **2.81.180 Applicability of Ordinance.**

16 With respect to contracts and City financial assistance, the provisions of this Ordinance
17 shall apply to (a) a contract entered into and financial assistance provided after the effective
18 date of this Ordinance; (b) a contract amendment consummated after the effective date of this
19 Ordinance which itself meets the financial threshold requirement of this Ordinance; and (c)
20 supplemental financial assistance provided for after the effective date of this Ordinance which
21 itself meets the requirements of this Ordinance. Contracts let through a bid process begun by
22 the City prior to the effective date of this Ordinance are exempt.

1 Section 19. That Title 2 of the Lincoln Municipal Code be amended by adding
2 a new section numbered 2.81.190 to read as follows:

3 **2.81.190** **Severability.**

4 In the event that any provision of this Ordinance shall be held invalid or unenforceable
5 by any court of competent jurisdiction, such holding shall not invalidate or render unenforce-
6 able any other provisions hereof.

7 Section 20. That Sections 1 through 19 hereof be codified in the Lincoln
8 Municipal Code as Chapter 2.81, Lincoln Living Wage Ordinance.

9 Section 21. That the operative date of this ordinance shall be sixty days after
10 its passage.

11 Section 22. That this ordinance shall take effect and be in force from and after
12 its passage and publication according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ___ day of _____, 2004: _____ Mayor
