

## **THE SANCTUARY [city/county] CONTRACTING AND INVESTMENT ORDINANCE**

**Whereas**, President Trump issued an Executive Order on January 25, 2017 titled “Border Security and Immigration Enforcement” and created heightened fear and insecurity among many immigrant communities in [city/county] and across the nation; and

**Whereas**, the [City Council/Board of Supervisors] finds that the [City/County of] has a moral obligation to protect its residents from persecution; and

**Whereas**, the [City Council/Board of Supervisors] finds that immigrants are valuable and essential members of both the [state] and [city/county] community; and

**Whereas**, the [city/county] has been on record since [date] as a [city/county] of Refuge when it adopted [resolution/ordinance]; and

**Whereas**, the [City Council/Board of Supervisors] finds that a registry of individuals identified by religion, national origin, or ethnicity, in a list, database, or registry including that information, could be used by the government to persecute those individuals; and

**Whereas**, President Trump has repeatedly signaled that he intends to require Muslims to register in a database; and

**Whereas**, Trump advisors have invoked WWII Japanese-American internment as a precedent for the proposed expansion of the registry; and

**Whereas**, the Census Bureau turned over confidential information in 1943, including names and addresses, to help the US government identify Japanese Americans during World War II for the purpose of relocation; and

**Whereas**, President Trump has ordered a sweeping expansion of deportations and assigned unprecedented powers to Immigration and Customs Enforcement (ICE) officers targeting and terrorizing immigrant communities; and

**Whereas**, President Trump has issued three executive orders banning entry from certain Muslim-majority countries; and

**Whereas**, ICE Enforcement Removal Operations issued a Request for Information on August 3, 2017, to obtain commercial subscription data services capable of providing continuous real-time information pertaining to 500,000 identities per month from sources such as State Identification Numbers; real time jail booking data; credit history; insurance claims; phone number account information; wireless phone accounts; wire transfer data; driver’s license information; Vehicle Registration Information; property information; pay day loan information; public court records; incarceration data; employment address data; Individual Taxpayer Identification Number (ITIN) data; and employer records; and

**Whereas**, ICE has a \$1.6 million contract with Thomson-Reuters, maker of popular law firm software products such as WestLaw and PeopleMap, for the above services via its CLEAR software (Consolidated Lead Evaluation and Reporting); and

**Whereas**, ICE has proposed a \$13.6 million four-year contract with Thomson-Reuters for continuing access to CLEAR that requires CLEAR to interface with Palantir's FALCON analytics, for the purposes of asset forfeiture investigations; and

**Whereas**, ICE has a \$41 million contract with Palantir Technologies for the development of an intelligence system called Investigative Case Management, intended to be capable of providing information pertaining to an individual's schooling, family relationships, employment information, phone records, immigration history, foreign exchange program status, personal connections, biometric traits, criminal records, and home and work addresses; and

**Whereas**, the Department of Homeland Security published a new rule on September 18, 2017, authorizing the collection of social media information on all immigrants, including permanent residents and naturalized citizens; and

**Whereas**, ICE has awarded Giant Oak with \$3 million for three separate contracts pertaining to social media data analytics services; and

**Whereas**, on September 8, 2017, ICE arrested hundreds of immigrants in intentionally targeted 'sanctuary' cities; and

**Whereas**, ICE's "Extreme Vetting Initiative" industry day attracted large corporations like IBM, Lexis-Nexis, SAS, Deloitte, Unisys, Booz Allen, SAIC, and Palantir in pursuit of contracts that would provide ICE with various data broker, social media threat modeling, and extreme vetting services; and

**Whereas**, on January 8, 2018, ICE awarded a contract to Vigilant to obtain access to Vigilant's commercially available license plate reader database, for the purpose of enhancing ICE's ability to pursue civil immigration violations; and

**Whereas**, Microsoft's \$19.4 million "Azure Government" contract with ICE is being used to "utilize deep learning capabilities to accelerate facial recognition and identification," causing 300 Microsoft employees to threaten to resign in an open letter to the company; and

**Whereas**, IBM provided census tabulating card machines (Dehomag Hollerith D-11) and punch cards to Hitler's Third Reich, and custom-designed specialized applications at each major concentration camp throughout Germany and greater Europe enabling the Nazi Party to automate identification and persecution of Jews and others during the Holocaust; now therefore

**THE [City Council/Board of Supervisors] OF THE [city/county] DOES ORDAIN AS FOLLOWS:**

**Section 1. Title**

This ordinance shall be known as the Sanctuary [city/county] Contracting and Investment Ordinance.

**Section 2. Definitions**

- 1) ["City" or "County"] means the [city/county]
- 2) "Data Broker" (also commonly called information broker, information reseller, data aggregator, and information solution provider) means either of the following:
  - a. The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector businesses and government agencies;
  - b. The aggregation of data that was collected for another purpose from that for which it is ultimately used.
- 3) "Extreme Vetting" means data-mining, threat modeling, analytics, predictive risk analysis, or other similar service.
- 4) "Detention Facilities" means any private party that provides transport, identification, processing, security, maintenance, or other operational support to a private or public facility intended or actually used for immigration detention purposes.
- 5) "Federal Immigration Agencies" means any subdivision of the United States Government that has jurisdiction over, participates in, or facilitates any immigration activity, including but not limited to processing, enforcement, and deportation. Such agencies include but are not limited to Immigrations and Customs Enforcement, Customs and Border Patrol, and the Office of Refugee Settlement.
- 6) "Person or Entity" means any private natural person, corporation, institution, subsidiary, affiliate, or division under operating control of such person; the parent entities that have operating control over such person, and the subsidiaries, affiliates and divisions under operating control of such parent entity. Government entities and employees are expressly excluded from this definition.

**Section 3. Prohibition on Use of [city/county] Resources**

- 1) No officer, employee, agent, department, board, commission, [City Council/Board of Supervisors], [city/county] Administrator, or other subdivision of the [city/county] shall enter into a new, amended, or extended contract or agreement with any Person or Entity that provides Federal Immigration Agencies with any "Data Broker", "Extreme Vetting", or "Detention Facilities" services, as defined herein, unless the [City Council/Board of Supervisors] makes a specific

determination that no reasonable alternative exists, taking into consideration the following:

- a) The intent and purpose of this ordinance;
  - b) The availability of alternative services, goods and equipment; and
  - c) Quantifiable additional costs resulting from use of available alternatives.
- 2) All public works, construction bids, requests for information, requests for proposals, or any other solicitation issued by the [city/county] shall include notice of the prohibition listed above.
  - 3) For the purpose of determining which Person or Entity provides Federal Immigration Agencies with Data Broker, Extreme Vetting or Detention Facilities services, the [city/county] Administrator shall rely on:
    - a) Information published by reliable sources;
    - b) Information released by public agencies;
    - c) A declaration under the penalty of perjury executed by the Person or Entity, affirming that they do not provide Data Broker, Extreme Vetting or Detention Facilities services to Federal Immigration Agencies;
    - d) Information submitted to the [city/county] Administrator by any member of the public, and thereafter duly verified.
  - 4) Any Person or Entity identified as a supplier of Data Broker, Extreme Vetting or Detention Facilities services to Federal Immigration Agencies and potentially affected by this section shall be notified by the [city/county] Administrator of the determination. Any such Person or Entity shall be entitled to a review of the determination by appeal to the [city/county] Administrator. Request for such review shall be made within thirty (30) days of notification, or seven (7) days of the date of a [city/county] solicitation or notice of a pending contract or purchase, of interest to the Person or Entity seeking review. Any Person or Entity vendor so identified may appeal the [city/county] Administrator's determination to the [City Council/Board of Supervisors], within fifteen (15) days of the determination.

#### **Section 4. Prohibition on Investment**

- 1) The [city/county] shall not make any investment in stocks, bonds, securities, or other obligations issued by any provider of Data Broker, Extreme Vetting or Detention Facilities services to Federal Immigration Agencies.
- 2) The [city/county] shall adopt a plan with respect to pension fund investments and shall implement such a plan consistent with the intent of this act.

#### **Section 5. Investigation And Reporting**

- (a) The [city/county] Administrator, or his or her designee, shall review compliance with Sections 3-4. The [city/county] Administrator may initiate and shall receive and investigate all complaints regarding violations of Sections 3- 4. After investigating such complaints, the [city/county] Administrator shall issue findings regarding any alleged violation. If the [city/county] Administrator finds that a

violation occurred, the [city/county] Administrator shall, within 30 days of such finding, send a report of such finding to the [City Council/Board of Supervisors], the Mayor, and the head of any department involved in the violation or in which the violation occurred. All officers, employees, departments, boards, commissions, and other entities of the [city/county] shall cooperate with the [city/county] Administrator in any investigation of a violation of Sections 3-4.

- (b) The [city/county] Administrator shall coordinate with the [city/county] Attorney's office to remedy any such violations, and the [city/county] Attorney shall use all legal measures available to rescind, terminate, or void contracts awarded in violation of this ordinance.
- (c) By April 1 of each year, each department shall certify its compliance with this ordinance by written notice to the [city/county] Administrator. By May 1 of each year, the [city/county] Administrator shall submit to the [City Council/Board of Supervisors] a written, public report regarding compliance with Sections 3-4 over the previous calendar year. At minimum, this report must (1) detail with specificity the steps taken to ensure compliance with Sections 3-4, (2) disclose any issues with compliance, including any violations or potential violations of this Ordinance, and (3) detail actions taken to cure any deficiencies with compliance.

## **Section 6. Enforcement**

- (a) Cause of Action. Any violation of this Ordinance constitutes an injury, and any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce this Ordinance.
- (b) Damages and Civil Penalties. If the [city/county] is found liable in a cause of action brought by an individual under section (a) above, the [city/county] shall be liable for (1) the damages suffered by the plaintiff, if any, as determined by the court, and (2) a civil penalty no greater than \$5,000 per violation, as determined by the court. In determining the amount of the civil penalty, the court shall consider whether the violation was intentional or negligent, and any other prior violations of this ordinance by the [city/county] department that committed the violation.
- (c) Attorney's Fees and Costs. A court shall award a plaintiff who prevails on a cause of action under subsection (a) reasonable attorney's fees and costs.
- (d) Limitations on Actions. Any person bringing an action pursuant to this ordinance must first file a claim with the [city/county] pursuant to Government Code 905 or any successor statute within four years of the alleged violation.
- (e) Any Person or Entity knowingly or willingly supplying false information in violation of Section 3 (3)(c), shall be guilty of a misdemeanor and up to a \$1,000 fine.
- (f) A Person or Entity shall defend and indemnify and hold harmless the City of Oakland, its officers, and employees, (collectively, "Indemnified Parties") from and against all third party allegations, claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including without limitation reasonable attorneys' fees and costs) ("Claims")

which arise out of or, related to, the Section 3 (3)(c) declaration made by the Person or Entity, except to the extent that such losses result from, in whole or in part, the negligence, unlawful or wrongful acts of the Indemnified Parties or any other person acting in concert with them.

### **Section 7. Severability**

The provisions in this Ordinance are severable. If any part of provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid, the remainder of this Ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue to have force and effect.

### **Section 8. Construction**

The provisions of this Ordinance are to be construed broadly to effectuate the purposes of this Ordinance.

### **Section 9. Effective Date**

This Ordinance shall take effect on [DATE].