

1 [Adding a “wages” component to the Minimum Compensation Ordinance]

2 **Ordinance amending Chapter 12P of the San Francisco Administrative Code by**
3 **amending sections 12P.2 and 12P.3, to define and incorporate a “wages” portion of**
4 **Minimum Compensation.**

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6 Note: Additions are single-underline italics Times New Roman;
7 deletions are ~~strikethrough italics Times New Roman~~.
8 Board amendment additions are double underlined.
9 Board amendment deletions are ~~strikethrough normal~~.

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11 Be it ordained by the People of the City and County of San Francisco:

12 Section 1. The San Francisco Administrative Code Chapter 12P is hereby amended by
13 amending sections 12P.2 and 12P.3, to read as follows:

14
15 Chapter 12P
16 Minimum Compensation

- 17 Sec. 12P.1. Title
- 18 Sec. 12P.2. Definitions
- 19 Sec. 12P.3. Minimum Compensation Components
- 20 Sec. 12P.4. San Francisco International Airport
- 21 Sec. 12P.5. Contract Requirements
- 22 Sec. 12P.6. Administration and Enforcement
- 23 Sec. 12P.7. Waivers by the Agency
- 24 Sec. 12P.8. Additional Waivers by the Agency-Nonprofit Corporations
- 25 Sec. 12P.9. Special Waiver by the Public Utilities Commission

- 1 Sec. 12P.10. Waiver Through Collective Bargaining
- 2 Sec. 12P.11. City Departments to Cooperate with Agency
- 3 Sec. 12P.12. Relationship to Other Requirements
- 4 Sec. 12P.13. Report by Airport Director
- 5 Sec. 12P.14. Preemption
- 6 Sec. 12P.15. Effective Date
- 7 Sec. 12P.16. Severability

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9 SEC. 12P.1. TITLE. This Chapter shall be known as the “Minimum Compensation
10 Ordinance.”

11 SEC. 12P.2. DEFINITIONS. As used in this Chapter the following capitalized terms shall
12 have the following meanings:

13 “Agency” shall mean the Department of Administrative Services.

14 “City” shall mean the City and County of San Francisco.

15 “Contract” shall mean an agreement or portion of an agreement that provides for services to
16 be purchased at the expense of the City or out of trust funds established by Charter,
17 ordinance or MOU. The term “Contract” shall include, without limitation, Included
18 Subcontracts and agreements such as grant agreements, pursuant to which agreements the
19 City grants funds to a Contractor for services (including, without limitation, cultural activities,
20 performances or exhibitions) to be rendered to all or any portion of the public rather than to
21 City government. Notwithstanding the foregoing, the term “Contract” shall exclude:

- 22 (i) Excluded Subcontracts;
- 23 (ii) any agreement with a Contractor that, together with the Employees of any Included
24 Subcontractor and of any entity that is owned or controlled by the Contractor or which owns or
25 controls the Contractor, would have twenty (20) or fewer Employees;

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(iii) agreements for the purchase or lease of goods or for guarantees, warranties, shipping, delivery or initial installation of such goods;

(iv) agreements entered into pursuant to settlement of legal proceedings;

(v) agreements for urgent or specialized litigation requirements where the City Attorney's Office finds that it would be in the best interests of the City not to include the requirements of this Chapter;

(vi) agreements with any person or entity in which the cumulative amount of compensation payable to such person or entity under all agreements with a Contracting Department is less than twenty-five thousand dollars (\$25,000), or \$50,000 in the case of Nonprofit Corporations, in any fiscal year, provided that the agreement in question shall be deemed a Contract on and after the effective date of any instrument which causes such cumulative compensation under all agreements with a Contracting Department to exceed twenty-five thousand dollars (\$25,000), or \$50,000 in the case of Nonprofit Corporations;

(vii) agreements for the investment, management or use of trust assets where compliance with this Chapter would violate the fiduciary duties of the trustee;

(viii) agreements entered into prior to the Effective Date (unless and until a Contract Amendment is entered into);

(ix) agreements entered into after the Effective Date (unless and until a Contract Amendment is entered into) pursuant to, and within the scope of, bid packages or requests for proposals advertised and made available to the public prior to the Effective Date, which bid packages or requests for proposals were not amended on or after the Effective Date;

(x) agreements involving the expenditure by the City of grant or special funds (A) to the extent the application of this Chapter would violate or be inconsistent with the terms or conditions of the applicable grant agreement, or with the rules, regulations or instructions of

1 the public agency administering such grant agreement, which terms or conditions or rules,
2 regulations or instructions provide for compensation lower than the Minimum Compensation
3 and/or (B) to the extent that application of this Chapter would require the City to use General
4 Fund monies to supplement the grants, special funds or other non-General Fund revenues to
5 maintain the current level of services;

6 (xi) agreements with a Contractor that is a public entity whose jurisdictional
7 boundaries are not coterminous with those of the City;

8 (xii) agreements for employee benefits to be provided to City employees, where the
9 Director of Human Resources finds that no entity is willing to comply with this Chapter and is
10 capable of providing the required employee benefits;

11 (xiii) agreements that require the Contractor to pay no less than the “prevailing rate of
12 wage” in accordance with Section A7.204 of Appendix A to the City’s Charter or Chapter 6 of
13 the San Francisco Administrative Code, but only to the extent (A) each Covered Employee is
14 covered by such requirement, and (B) such prevailing rate of wage is not less than the gross
15 hourly compensation required under Section 12P.3(a)(i) of this Chapter;

16 (xiv) agreements for the investment of City monies where the Treasurer finds that
17 requiring compliance with this Chapter will violate the Treasurer’s fiduciary duties and for the
18 investment of retirement, health or other funds held in trust pursuant to Charter, statute,
19 ordinance or MOU where the official or officials responsible for investing or managing such
20 funds finds that requiring compliance with this Chapter will violate their fiduciary duties;

21 (xv) agreements made in connection with loans or grants under which the City, as
22 creditor or grantor, is providing funds to be used by the debtor or grantee to: (A) acquire an
23 interest in real property on which residential improvements for low or moderate income
24 households will be constructed; (B) construct improvements owned or leased by the debtor or
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1 grantee, on condition that residents of the improvements qualify as low or moderate income
2 households; or (C) rehabilitate improvements owned or leased by the debtor or grantee; and
3 (xvi) agreements (including, without limitation, any lease, concession, franchise or
4 easement agreement) for the exclusive use of real property owned by the City or of which the
5 City has exclusive use, other than agreements for the use of airport property as set forth in
6 Section 12P.4.

7 “Contract Amendment” shall mean an agreement entered into on or after the Effective Date,
8 pursuant to which a Contract entered into prior to the Effective Date is modified or
9 supplemented in order to: (i) extend the term; (ii) modify the total amount of payments due
10 from the City under a Contract; or (iii) modify the scope of services to be performed by a
11 Contractor; or (iv) expand or relocate the premises covered under an airport property contract.
12 The term does not include construction change orders.

13 “Contracting Department” shall mean the City department, office, commission or other City
14 entity which enters into the applicable Contract on behalf of the City.

15 “Contractor” shall mean either: (i) the person or entity that enters into a Services Contract with
16 the City; or (ii) in the case of an Included Subcontract, the subcontractor who enters into the
17 Included Subcontract with the Contractor.

18 “Covered Employee” shall mean:

19 (a) An Employee of a Contractor who, during the applicable Pay Period, performs at
20 least four (4) hours per week during the Pay Period work funded (in whole or in part) under
21 the applicable Contract or to the project funded under the applicable Contract: (i) within the
22 geographic boundaries of the City; (ii) on real property owned or controlled by the City, but
23 outside the geographic boundaries of the City; or (iii) elsewhere in the United States, but only
24 if such related work performed elsewhere within the United States consists of at least ten (10)
25 hours per each work week during the Pay Period in question.

1 (b) Notwithstanding the foregoing, the term "Covered Employee" shall exclude the
2 following Employees of a Contractor that is a Nonprofit Corporation:

3 (i) Any Employee who is:

4 (A) under the age of eighteen (18) and is claimed as a dependent for federal
5 income tax purposes and is employed as an after-school or summer Employee; or

6 (B) employed as a trainee in a bona fide training program consistent with
7 Federal law, which training program enables the Employee to advance into a permanent
8 position; provided, however, these exemptions only apply when the Employee does not
9 replace, displace or lower the wage or benefits of any existing position or Employee; and,

10 (ii) Any disabled Employee of a Contractor, which disabled Employee:

11 (A) is covered by a current sub-minimum wage certificate issued to the
12 Contractor by the U.S. Department of Labor; or

13 (B) would be covered by such a certificate but for the fact that the Contractor
14 is paying a wage equal to or higher than the minimum wage.

15 "Effective Date" shall mean the applicable effective date specified in Section 12P.12 of this
16 Chapter.

17 "Employee" shall mean any person who is employed by a Contractor, including part-time and
18 temporary employees.

19 "Excluded Subcontract" shall mean any agreement or portion of an agreement between a
20 Contractor and a person or entity who is not an Employee of such Contractor, which
21 agreement or portion of an agreement relates to a Contract but is not an Included
22 Subcontract. The term "Excluded Contract" shall include, without limitation, an agreement
23 pursuant to which a Contractor obtains from such a person or entity goods to be used in the
24 fulfillment of the Contractor's duties under the applicable Contract. The term shall also
25 include agreements (including, without limitation, any lease, concession, franchise or

1 easement agreement) for the exclusive use of real property owned by the City or of which the
2 City has exclusive use, other than agreements for the use of airport property as set forth in
3 Section 12P.4.

4 “Included Subcontract” shall mean an agreement or portion of an agreement between a
5 Contractor and a person or entity who is not an Employee of such Contractor, pursuant to
6 which such person or entity: (i) agrees to assist a Contractor in performing a Contract; or (ii)
7 agrees to assist a Contractor with a project funded by grant monies conveyed to the
8 Contractor under the applicable Contract. An agreement to assist a Contractor shall mean an
9 agreement to perform all or a portion of a component of the services covered by the Contract
10 with the City.

11 “Minimum Compensation” shall mean each of the components required under Section 12P.3.
12 of this Chapter.

13 “Nonprofit Corporation” shall mean a nonprofit corporation, duly organized, validly existing and
14 in good standing under the laws of the jurisdiction of its incorporation and (if a foreign
15 corporation) in good standing under the laws of the State of California, which corporation has
16 established and maintains valid nonprofit status under Section 501(c)(3) of the United States
17 Internal Revenue Code of 1986, as amended, and all rules and regulations promulgated
18 under such Section.

19 “Pay Period” shall mean the applicable Contractor’s regular pay period.

20 “Wages” shall mean the amount paid to an employee as compensation for labor performed. Wages do
21 not include benefits, tips or commissions, or any amount paid to an employee not directly related to the
22 labor performed, such as for parking, uniforms, and contributions to retirement plans.

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24 **SEC. 12P.3. MINIMUM COMPENSATION COMPONENTS.** Minimum Compensation shall consist
25 of each of the following:

1 (a) (i) Hourly ~~gross compensation~~ wages in the amount of nine dollars (\$9.00) per
2 hour.

3 (ii) In no less than twelve (12) nor more than eighteen (18) months from the
4 Effective Date, the City shall increase the hourly ~~gross compensation~~ wages to ten dollars
5 (\$10.00) per hour; provided, however, that in the case of Nonprofit Corporations and public
6 entities, this adjustment shall only be made if the Joint Report issued by the Controller,
7 Mayor's Budget Office, and Budget Analyst, pursuant to San Francisco Administrative Code
8 Section 3.6, finds that the City has sufficient funds to pay the anticipated costs of the
9 adjustment. A finding of "sufficient funds" shall mean that the City will not be required to
10 reduce services in order to pay the anticipated costs of the adjustment.

11 (iii) For each of the next three (3) years after the adjustment provided in
12 Subsection (a)(ii) is made, at annual intervals, the City shall make an additional adjustment of
13 2.5%.

14 (b) Compensated time off (at the compensation rates specified in subsection (a) of
15 this Section) in an hourly amount that, on an annualized basis for a full-time employee, equals
16 twelve (12) days per year. Such time off shall vest with the Covered Employee at the end of
17 the applicable Pay Period and may be used, for sick leave, vacation or personal necessity.
18 Notwithstanding the foregoing, if a Contractor reasonably determines, in good faith, that the
19 Contractor cannot comply with this requirement for compensated time off, the Contractor shall
20 provide the Covered Employee with a cash equivalent of such compensated time off.

21 (c) Uncompensated time off in an hourly amount that, on an annualized basis for a
22 full-time employee, equals ten (10) days per year. Such time off shall vest with the Covered
23 Employee at the end of the applicable Pay Period and may be used, at the option of the
24 Covered Employee, for sick leave for the illness of the Covered Employee or such Covered
25 Employee's spouse, domestic partner, child, parent, sibling, grandparent or grandchild.

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2 **SEC. 12P.4. SAN FRANCISCO INTERNATIONAL AIRPORT.** The requirements of this
3 Chapter shall apply to a written agreement (including, without limitation, any lease,
4 concession, franchise or easement agreement) for the exclusive use of real property that is
5 owned by the City or of which the City has exclusive use, if such property is under the
6 jurisdiction of the San Francisco Airport Commission and the term of the agreement exceeds
7 twenty-nine (29) days in any calendar year, whether by single or cumulative instruments. If
8 cumulative instruments cause the term of the agreement to exceed twenty-nine (29) days, the
9 agreement in question shall be subject to this Article only on and after the effective date of the
10 instrument which causes the term to exceed twenty-nine (29) days. The requirements of this
11 Chapter shall also apply to (i) any sublease or other agreement allowing other parties the
12 exclusive right to occupy or use all or any portion of the property covered by the agreement
13 and (ii) any agreement between a tenant or subtenant and any other person or entity to
14 perform services on the airport property. Contractors who have agreements covered by this
15 Section shall comply with the requirements of this Chapter insofar as they have “Covered
16 Employees.” For purposes of this Section, “Covered Employee” shall mean an employee who
17 provides at least ten (10) hours of work on the property that is the subject of the agreement in
18 a two-week Pay Period, adjusted proportionately if the Pay Period is other than two weeks.
19 Notwithstanding the provisions of this Section, all exemptions and waivers from the
20 requirements of this Chapter that apply to Contracts shall also apply to agreements for the
21 use of airport property described in this Section, except for the exemption in Subsection (xvii)
22 (relating to property contracts). Except as otherwise specifically provided, all requirements of
23 this Chapter, and the monitoring and enforcement mechanisms provided in this Chapter, shall
24 apply to agreements covered by this Section.

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1 **SEC. 12P.5. CONTRACT REQUIREMENTS.** Every Contract or Contract Amendment
2 entered into on or after the Effective Date shall provide as follows:

3 (a) For each hour worked by a Covered Employee during each Pay Period during
4 the term of the Contract (as such term may be extended from time to time), Contractor shall
5 provide to such Covered Employee no less than the Minimum Compensation as required in
6 this Chapter.

7 (b) Failure to comply with the foregoing requirement shall constitute a material
8 breach by Contractor of the terms of the Contract. Such failure shall be determined by the
9 City in its sole discretion.

10 (c) If, within thirty (30) days after the Contractor receives written notice of such a
11 breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured
12 within such period of thirty (30) days, Contractor fails to commence efforts to cure within such
13 period, or thereafter fails diligently to pursue such cure to completion, the City shall have the
14 right to pursue any rights or remedies available under the terms of the Contract or under
15 applicable law.

16 (d) The Contractor shall not discharge, reduce in compensation, or otherwise
17 discriminate against any Employee for complaining to the City with regard to the employer's
18 compliance or anticipated compliance with this Chapter, for opposing any practice proscribed
19 by this Chapter, for participating in proceedings related to this Chapter, or for seeking to
20 assert or enforce any rights under this Chapter by any lawful means.

21 (e) The Contractor represents and warrants that it is not an entity that was set up, or
22 is being used, for the purpose of evading the intent of this Chapter.

23 (f) The Contractor shall keep itself informed of the current Minimum Compensation,
24 and shall provide prompt written notice to all Covered Employees of annual adjustments to the
25 Minimum Compensation, as well as any written communications received by the Contractor

1 from the City, which communications are marked to indicate that they are to be distributed to
2 Covered Employees.

3 (g) The Contractor shall provide reports to the City in accordance with any reporting
4 standards promulgated by the Agency.

5 (h) The Contractor shall provide the City with access to pertinent records after
6 receiving a written request to do so and being provided at least five (5) business days to
7 respond.

8 (i) The Agency may conduct random audits of Contractors. Random audits shall
9 be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are
10 paid at least the minimum compensation required by this Article; (iii) accomplished through an
11 examination of pertinent records at a mutually agreed upon time and location within ten (10)
12 days of the written notice; and (iv) limited to one audit per Contractor every two years for the
13 duration of the Contract. Nothing in this Section shall be deemed to interfere with the
14 authority of the Agency to investigate any report of an alleged breach of contract as provided
15 in Section 12P.6.

16 (j) Any Contractor subject to the provisions of this Chapter shall promptly notify the
17 Agency of any subcontractors performing services covered by this Chapter and shall certify to
18 the Agency that it has notified the subcontractors of their obligations under this Chapter.

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20 **SEC. 12P.6. ADMINISTRATION AND ENFORCEMENT.**

21 (a) The Agency shall promulgate guidelines or rules for the administration of this
22 Chapter. Such guidelines and rules shall not be adopted finally by the Agency until the
23 Agency has held a public hearing. The guidelines and rules shall establish procedures for
24 providing administrative hearings requested by Covered Employees to determine whether a
25 Contractor has breached a Contract based on the Minimum Compensation requirements of

1 this Chapter. The guidelines and rules shall also establish procedures permitting Contractors
2 to provide payroll information in confidence to the City for purposes of monitoring compliance
3 under this Chapter and authorizing disclosure of the information by the City only when
4 necessary for enforcement purposes. Upon the request of a Contracting Department, the
5 Agency shall also issue a determination as to whether a particular instrument constitutes a
6 Contract or agreement is subject to the requirements of this Chapter. The Agency shall report
7 annually on compliance with this Chapter to the Board of Supervisors. Such report shall
8 include cumulative information regarding the number of waivers granted by the Agency
9 pursuant to Sections 12P.7 and 12P.8 of this Chapter and statistical data regarding such
10 waivers.

11 (b) A Covered Employee may report to the Agency in writing any alleged breach by
12 a Contractor of the terms required to be contained in the applicable Contract under this
13 Chapter. The Agency shall investigate any such report. If the Agency determines that a
14 Contractor is in breach of any such term, the Agency shall notify the Contracting Department
15 of its findings and of any action that the Agency requests the Contracting Department to take
16 with respect to such breach. In order to ensure compliance with this Chapter and to enhance
17 the monitoring activities of the Agency, the City desires to encourage reporting by Covered
18 Employees pursuant to this subsection. The Agency shall keep confidential, to the maximum
19 extent permitted by applicable laws, the Covered Employee's name and other identifying
20 information.

21 (c) In addition to any other rights or remedies available to the City under the terms
22 of the Contract or under applicable law, the City shall have the following rights, in the event of
23 such failure by the Contractor: (i) the right to charge the Contractor an amount equal to the
24 difference between the Minimum Compensation levels required by this Chapter and any
25 compensation actually provided to each Covered Employee who was not paid in accordance

1 with the terms of this Chapter, together with interest on such amount from the date payment
2 was due at the maximum rate then permitted by law; (ii) the right to set off all or any portion of
3 the amount described in the preceding clause (i) of this Subsection against amounts due to
4 Contractor under the Contract; (iii) the right to terminate the Contract in whole or in part; (iv) in
5 the event of a breach by Contractor of the covenant referred to in Section 12P.5(d), the right
6 to seek reinstatement of the affected Covered Employee or to obtain other appropriate
7 equitable relief; and (iv) the right to bar a Contractor from entering into future contracts with
8 the City for three (3) years. Each of these rights shall be exercisable individually or in
9 combination with any other rights or remedies available to the City. Any amounts realized by
10 the City pursuant to this subsection shall be paid to each applicable Covered Employee.

11 (d) Each Covered Employee shall be a third-party beneficiary under the Contract as
12 set forth in this subsection and in subsection (e) of this Section, and may pursue the following
13 remedies in the event of a breach by the Contractor of any contractual covenant described in
14 Section 12P.5(a) or Section 12P.5(d), but only after the Covered Employee has provided the
15 notice and participated in the administrative review hearing provided in this subsection. The
16 Covered Employee shall give written notice of a breach to the Contractor and to the Agency.
17 If the Agency and the Contracting Department determine that no breach has occurred, or if
18 the Contracting Department fails to obtain the cure of a breach by the Contractor within sixty
19 (60) days after receipt of notice by the Covered Employee, the Covered Employee may
20 request an administrative review hearing. The Covered Employee must request such a
21 hearing within ninety (90) days after giving written notice of the breach. Unless the Covered
22 Employee withdraws the request for a hearing, the Agency shall conduct, or arrange to have
23 conducted, a hearing. The Employee shall have the right to attend the hearing personally or
24 through a designated representative. The Agency shall notify the Contractor of the hearing so
25 that the Contractor may attend and present evidence. After the hearing is completed, the

1 person conducting the hearing shall determine whether the Contractor has breached the
2 Contract. Upon the issuance of a written decision finding a breach, and after a waiting period
3 of twenty-one (21) days, the Covered Employee may bring an action against the Contractor
4 for such breach in the Superior Court of the State of California, as appropriate, unless the City
5 has commenced an action against the Contractor based on the breach, or obtained
6 compliance, within the 21-day waiting period and provided notice to the Covered Employee of
7 that action. If the Covered Employee prevails in such action, the Covered Employee may be
8 awarded: (A) an amount equal to the difference between the Minimum Compensation and
9 any compensation actually provided to the Covered Employee, together with interest on such
10 amount from the date payment was due at the maximum rate then permitted by law; and (B)
11 in the event of a breach by Contractor of the covenant referred to in Section 12P.5(d), the
12 right to seek reinstatement or to obtain other appropriate equitable relief.

13 (e) In the event of any legal action or proceeding between Contractor and a
14 Covered Employee arising from this Agreement, the unsuccessful party to such action or
15 proceeding shall pay to the prevailing party all costs and expenses, including reasonable
16 attorney's fees and disbursements, incurred by such prevailing party in such action or
17 proceeding and in any appeal in connection with such action or proceeding; provided,
18 however, that a Contractor shall be entitled to such costs and expenses only if the court
19 determines that the Covered Employee's action or proceeding was frivolous, vexatious or
20 otherwise an act of bad faith. If such prevailing party recovers a judgment in any such action,
21 proceeding or appeal, such costs, expenses and attorneys' fees and disbursements shall be
22 included in and as a part of such judgment. This Article does not authorize any award of
23 costs, expenses, or attorney's fees in favor of or against the City.

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1 (f) The City shall maintain the confidentiality of payroll information obtained in the
2 course of monitoring compliance with this Chapter and shall disclose such information only as
3 necessary for enforcement purposes.

4 (g) The Agency shall develop a procedure for obtaining an assurance from
5 Contractors when they sign an agreement subject to this Chapter that they comply with the
6 requirements of this Chapter, such as the signing of an affidavit of compliance.

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8 **SEC. 12P.7. WAIVERS BY THE AGENCY.** The Agency shall waive the requirements of this
9 Chapter under the following circumstances:

10 (a) The Contracting Department has certified in writing to the Agency, and the
11 Agency has found that:

12 (i) either

13 (A) there is only one prospective Contractor willing to enter into the
14 applicable Contract on the terms and conditions established by the City (other than the
15 requirements of this Chapter); or

16 (B) the needed services under the applicable Services Contract are
17 available only from a sole source; and

18 (ii) the prospective Contractor is not currently disqualified from doing
19 business with the City or any other governmental agency.

20 (b) The Contracting Department has certified in writing to the Agency (prior to the
21 Controller's contract certification), and the Agency has found that:

22 (i) pursuant to Chapters 6 and 21 of the Administrative Code, the Contract is
23 necessary to respond to an emergency which endangers the public health or safety; and
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1 (ii) no entity that complies with the requirements of this Chapter and is
2 capable of responding to the emergency is immediately available to perform the required
3 services.

4 (c) The Contracting Department has certified in writing to the Agency, and the
5 Agency has found that:

6 (i) there are no qualified responsive bidders or prospective vendors that
7 comply with the requirements of this Chapter; and

8 (ii) the Contract is for a service, project, or property that is essential to the
9 City or the public.

10 (d) The Contracting Department has certified in writing to the Agency, and the
11 Agency has found that:

12 (i) the Services to be purchased are available under a bulk purchasing
13 arrangement with a federal, state or local governmental entity;

14 (ii) purchase under such arrangement will substantially reduce the City's cost
15 of purchasing such Services; and

16 (iii) purchase under such an arrangement is in the best interest of the City or
17 the public.

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19 **SEC. 12P.8. ADDITIONAL WAIVERS BY THE AGENCY-NONPROFIT CORPORATIONS.**

20 A Nonprofit Corporation may seek a waiver from the requirements of the adjustments
21 provided in 12P.3(a)(ii) and (iii) if the highest paid managerial position in the organization
22 earns a salary which, when calculated on an hourly basis, is not more than six times the
23 lowest wage paid by the organization to a Covered Employee. The Nonprofit Corporation
24 shall provide to the Contracting Department a written statement, prepared and signed by the
25 Nonprofit Corporation, setting forth an explanation of the economic hardship to the Nonprofit

1 Corporation or the negative impact on services that would result from compliance with this
2 Chapter. If the Contracting Department determines that the written explanation is adequate to
3 justify the waiver and that substantial evidence supports the written explanation, it shall
4 recommend the requested waiver to the Agency. The Agency may grant the requested
5 waiver. Each waiver shall be effective for a period of up to one year, and subsequent waivers
6 may be requested and granted.

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8 **SEC. 12P.9. SPECIAL WAIVER BY THE PUBLIC UTILITIES COMMISSION.** The General
9 Manager of the Public Utilities Commission may waive the requirements of this Chapter where
10 the Contractor is providing to or on behalf of the San Francisco Public Utilities Commission
11 services relating to: (a) the provision, conveyance or transmission of wholesale or bulk water,
12 electricity or natural gas; or (b) ancillary requirements such as spinning reserve, voltage
13 control, or loading scheduling, as required for ensuring reliable services in accordance with
14 good utility practice; provided, however, that: (i) the purchase of such services may not
15 practically be accomplished through the City's standard competitive bidding procedures; and
16 (ii) the Contractor is not providing direct, retail services to end users within the geographic
17 boundaries of the City.

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19 **SEC. 12P.10. WAIVER THROUGH COLLECTIVE BARGAINING.** All or any portion of the
20 applicable requirements of this Chapter may be waived in a bona fide collective bargaining
21 agreement, provided that such waiver is explicitly set forth in such agreement in clear and
22 unambiguous terms.

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1 **SEC. 12P.11. CITY DEPARTMENTS TO COOPERATE WITH AGENCY.** All City
2 departments shall cooperate with the Agency by providing such information and assistance as
3 the Agency shall request with respect to implementation of this Chapter.

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5 **SEC. 12P.12. RELATIONSHIP TO OTHER REQUIREMENTS.** This Chapter provides a
6 minimum level of compensation and shall not be construed to preempt or otherwise affect any
7 other law, regulation or requirement providing a higher level of compensation.

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9 **SEC. 12P.13. REPORT BY AIRPORT DIRECTOR.** One year after the Effective Date, the
10 Airport Director shall prepare a written report assessing the impact of this Chapter on Airport
11 property contracts, including any economic impact, benefits, and recommended changes.
12 The Airport Director shall submit the report to the Clerk of the Board, who shall schedule a
13 hearing before the appropriate committee to consider the report.

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15 **SEC. 12.P.14. PREEMPTION.** Nothing in this Chapter shall be interpreted or applied so as
16 to create any power or duty in conflict with any federal or state law.

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18 **SEC. 12P.15. EFFECTIVE DATE.** This Chapter shall become effective 30 days after it is
19 adopted This Chapter is intended to have prospective effect only.

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21 **SEC. 12P.16. SEVERABILITY.** If any part or provision of this Chapter, or the application of
22 this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter,
23 including the application of such part or provisions to other persons or circumstances, shall
24 not be affected by such a holding and shall continue in full force and effect. To this end, the
25 provisions of this Chapter are severable.

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APPROVED AS TO FORM:
LOUISE H. RENNE, City Attorney

By: _____
David W. Shipper
Deputy City Attorney