

[San Francisco Local Hiring Policy for Construction]

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3 **Ordinance amending Administrative Code Chapter 6, Public Works Contracting**
4 **Policies and Procedures, Subsection 6.22(G), to: 1) establish a local hiring policy for**
5 **City public work or improvement projects requiring contractors and their**
6 **subcontractors to perform certain percentages of project work hours using San**
7 **Francisco residents and disadvantaged San Francisco residents; 2) making findings in**
8 **support of the policy; 3) authorizing incentives for contractors and subcontractors who**
9 **exceed local hiring requirements; 4) mandating assessment of liquidated damages**
10 **against contractors and subcontractors who fail to meet minimum local hiring**
11 **requirements; and 5) establishing monitoring, enforcement and administrative**
12 **procedures in support of the policy.**

13 NOTE: Additions are *single-underline italics Times New Roman*;
14 deletions are *strike-through italics Times New Roman*.
15 Board amendment additions are double-underlined;
16 Board amendment deletions are ~~strike-through normal~~.

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

18 Section 1. The San Francisco Administrative Code is hereby amended by amending
19 Section 6.22, to read as follows:

20 **SEC. 6.22. PUBLIC WORK CONSTRUCTION CONTRACT TERMS AND WORKING**
21 **CONDITIONS.**

22 All construction contracts awarded by the City and County of San Francisco shall
23 contain the following minimum terms and conditions:

24 (A) **Bonds.** Before the execution of any contract for public works or improvements
25 in excess of \$25,000, the department head authorized to execute such contracts shall require
the successful bidder to file corporate surety bonds for the faithful performance thereof and to

1 guarantee the payment of wages for services engaged and of bills contracted for material,
2 supplies and equipment used in the performance of the contract. The bond shall be for a sum
3 not less than 100 percent of the award.

4 The City and County of San Francisco, acting through its Human Rights Commission
5 ("HRC"), intends to provide guarantees to private bonding assistance companies and financial
6 institutions in order to induce those entities to provide required bonding and financing to
7 eligible contractors bidding on and performing City public work contracts. This bonding and
8 financial assistance program is subject to the provisions of Administrative Code Chapter 14B.

9 (B) **Insurance.** All construction contracts awarded under this Chapter must conform
10 to the insurance requirements established by the Risk Manager. The Risk Manager shall
11 develop uniform insurance requirements for City contracts subject to this Chapter and shall
12 publish such requirements in the Risk Manager's Manual. The Risk Manager shall review and
13 update such insurance requirements on an annual basis.

14 Every contractor and subcontractor shall comply with the provisions of California Labor
15 Code section 3700. Prior to commencing the performance of work under any public work
16 contract, the contractor and all of its subcontractors shall file with the awarding department a
17 certificate of insurance against liability for workers compensation or proof of self-insurance in
18 accordance with the provisions of the California Labor Code.

19 (C) **Indemnification.** All construction contracts awarded under this Chapter shall
20 require that the contractor fully indemnify the City and County to the maximum extent provided
21 by law, such that each contractor must save, keep, bear harmless and fully indemnify the City
22 and County and any of its officers or agents from any and all liability, damages, claims,
23 judgments or demands for damages, costs or expenses in law or equity that may at any time
24 arise.

1 This indemnification requirement may not be waived or abrogated in any way for any
2 contract without the recommendation of the City's Risk Manager and the express permission
3 and approval of the Board of Supervisors.

4 (D) **Assignment.** No contract shall be assigned except upon the recommendation
5 of the department head concerned and with the approval of the Mayor or the Mayor's
6 designee, relative to the department under the Mayor's jurisdiction, or the approval of the
7 board or commission concerned for departments not under the Mayor.

8 (E) **Prevailing Wages.**

9 (1) **Generally.** All contractors and subcontractors performing a public work or
10 improvement for the City and County of San Francisco shall pay its workers on such projects
11 the prevailing rate of wages as provided below. For the purpose of prevailing wage
12 requirements only, the definition of a public work shall include those public works or
13 improvements defined in the foregoing section 6.1 of this Chapter and shall also include (a)
14 any trade work performed at any stage of construction (including preconstruction work) and
15 (b) any public work paid for by the City and County of San Francisco with "the equivalent of
16 money" under the meaning of Labor Code section 1720(b).

17 (2) **Leased Property Included.** For the limited purposes of this subsection, a
18 "public work or improvement" also means and includes any construction work done under
19 private contract when all of the following conditions exist:

20 (a) The construction contract is between private persons; and

21 (b) The property subject to the construction contract is privately owned, but upon
22 completion of the construction work will be leased to the City and County of San Francisco for
23 its use; and

24 (c) Either of the following conditions exist: (1) The lease agreement between the
25 lessor and the City and County of San Francisco, as lessee, is entered into prior to the

1 construction contract, or (2) The construction work is performed according to the plans,
2 specifications, or criteria furnished by the City and County of San Francisco, and the lease
3 agreement between the lessor and the City and County of San Francisco as lessee, is
4 entered into during, or upon completion, of the construction work.

5 (3) **Determination of the Prevailing Wage.** It shall be the duty of the Board of
6 Supervisors, from time to time and at least once during each calendar year, to fix and
7 determine the prevailing rate of wages as follows:

8 On or before the first Monday in November of each year, the Civil Service Commission
9 shall furnish to the Board of Supervisors data as to the highest general prevailing rate of
10 wages of the various crafts and kinds of labor as paid in private employment in the City and
11 County of San Francisco, plus "per diem wages" and wages for overtime and holiday work.
12 The Civil Service Commission shall provide the Board of Supervisors data for "per diem
13 wages" pursuant to California Labor Code sections 1773.1 and 1773.9, as amended from time
14 to time. The Board of Supervisors shall, upon receipt of such data, fix and determine the
15 prevailing rate of wages. The prevailing rate of wages as so fixed and determined by the
16 Board of Supervisors shall remain in force and shall be deemed to be the highest general
17 prevailing rate of wages paid in private employment for similar work, until the same is
18 changed by the Board of Supervisors. In determining the highest general prevailing rate of
19 wages per diem wages and wages for overtime and holiday work, as provided for in this
20 section, the Board of Supervisors shall not be limited to the consideration of data furnished by
21 the Civil Service Commission, but may consider such other evidence upon the subject as the
22 Board shall deem proper and thereupon base its determination upon any or all of the data or
23 evidence considered.

1 In the event that the Board of Supervisors does not fix or determine the highest general
2 prevailing rate of wages in any calendar year, the rates established by the California
3 Department of Industrial Relations for such year shall be deemed adopted.

4 (4) **Specifications to Include Wage Rate.** The department head authorized to
5 execute a construction contract under this Chapter shall include in the contract specifications,
6 or make available in the offices of the department or at the job site, a detailed statement of the
7 prevailing rate of wages as fixed and determined by the Board of Supervisors at the time the
8 department issued the Advertisement For Bids on the contract. The contractor shall agree to
9 pay to all persons performing labor in and about the public work or improvement the highest
10 general prevailing rate of wages as determined pursuant to this Chapter, including wages for
11 holiday and overtime work. If the specifications do not include the prevailing rate of wages,
12 the specifications shall include a statement that copies of the prevailing rate of wages as fixed
13 and determined by the Board of Supervisors are on file at the department's principal office or
14 at the job site and shall be made available to any interested party on request.

15 (5) **Subcontractors Bound by Wage Provisions.** Every contract for any public
16 work or improvement shall also contain a provision that the contractor shall insert in every
17 subcontract or other arrangement which he or she may make for the performance of any work
18 or labor on a public work or improvement. This provision shall be that the subcontractor shall
19 pay to all persons performing labor or rendering service under said subcontract or other
20 arrangement the highest general prevailing rate of wages as fixed and determined by the
21 Board of Supervisors for such labor or services.

22 (6) **Records to be Kept by Contractors and Subcontractors.** Every public works
23 contract or subcontract awarded under this Chapter shall contain a provision that the
24 contractor shall keep, or cause to be kept, for a period of four years from the date of
25 substantial completion of a public work, payrolls and basic records including time cards, trust

1 fund forms, apprenticeship agreements, accounting ledgers, tax forms and superintendent
2 and foreman daily logs for all trades workers performing work at or for a City and County of
3 San Francisco public work or improvement. Such records shall include the name, address
4 and social security number of each worker who worked on the project, including apprentices,
5 his or her classification, a general description of the work each worker performed each day,
6 the rate of pay (including rates of contributions for, or costs assumed to provide fringe
7 benefits), daily and weekly number of hours worked, deductions made and actual wages paid.
8 Every subcontractor who shall undertake the performance of any part of a public work or
9 improvement shall keep a like record of each person engaged in the execution of the
10 subcontract.

11 The contractor shall maintain weekly certified payroll records for submission to the
12 awarding department as required. The contractor shall be responsible for the submission of
13 payroll records of its subcontractors. All certified payroll records shall be accompanied by a
14 statement of compliance signed by the contractor indicating that the payroll records are
15 correct and complete, that the wage rates contained therein are not less than those
16 determined by the San Francisco Board of Supervisors and that the classifications set forth for
17 each employee conform with the work performed.

18 All such records as described in this section shall at all times be open to inspection and
19 examination of the duly authorized officers and agents of the City and County of San
20 Francisco, including representatives of the Office of Labor Standards Enforcement.

21 Should the department head responsible for the public work or the Labor Standards
22 Enforcement Officer determine that a contractor or subcontractor is not in compliance with the
23 requirements of this subsection, the department head or the Labor Standards Enforcement
24 Officer shall issue written notification to the contractor or subcontractor mandating compliance
25 within not fewer than ten calendar days from the date of the notification. Should the

1 contractor or subcontractor fail to comply as required in the notification, the department head
2 who executed the contract or the Labor Standards Enforcement Officer may impose a penalty
3 of \$25.00 for each calendar day of noncompliance, or portion thereof, for each worker. Upon
4 the request of the responsible department head or the Labor Standards Enforcement Officer,
5 the Controller shall withhold these penalties from progress payments then due or to become
6 due.

7 (7) **Additional Required Contract Provisions.** Every public works contract shall
8 contain provisions stating that (1) the contractor will cooperate fully with the Labor Standards
9 Enforcement Officer and other City employees and agents authorized to assist in the
10 administration and enforcement of the prevailing wage requirements and other labor
11 standards imposed on public works contractors by the Charter and Chapter 6 of the San
12 Francisco Administrative Code; (2) the contractor agrees that the Labor Standards
13 Enforcement Officer and his or her designees, in the performance of their duties, shall have
14 the right to engage in random inspections of job sites and to have access to the employees of
15 the contractor, employee time sheets, inspection logs, payroll records and employee
16 paychecks; (3) the contractor shall maintain a sign-in and sign-out sheet showing which
17 employees are present on the job site; (4) the contractor shall prominently post at each job-
18 site a sign informing employees that the project is subject to the City's prevailing wage
19 requirements and that these requirements are enforced by the Labor Standards Enforcement
20 Officer; and (5) that the Labor Standards Enforcement Officer may audit such records of the
21 contractor as he or she reasonably deems necessary to determine compliance with the
22 prevailing wage and other labor standards imposed by the Charter and this Chapter on public
23 works contractors. Failure to comply with these requirements may result in penalties and
24 forfeitures consistent with California Labor Code section 1776(g), as amended from time to
25 time.

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(8) **Non-compliance with Wage Provisions—Penalties.**

(a) **Penalty and Forfeiture.** Any contractor or subcontractor who shall fail or neglect to pay to the several persons who shall perform labor under any contract, subcontract or other arrangement on any public work or improvement as defined in this Chapter the highest general prevailing rate of wages as fixed by the Board of Supervisors under authority of this Chapter, shall forfeit; and, in the case of any subcontractor so failing or neglecting to pay said wage, the original contractor and the subcontractor shall jointly and severally forfeit to the City and County of San Francisco back wages due plus the penal sum of \$50.00 per day for each laborer, workman or mechanic employed for each calendar day or portion thereof, while they shall be so employed and not paid said highest general prevailing rate of wages, and in addition shall be subject to the penalties set forth in Article V of this Chapter, including debarment.

(b) **Enforcement.** It shall be the duty of the officer, board or commission under whose jurisdiction said public work or improvement is being carried on, made or constructed, when certifying to the Controller any payment which may become due under said contract, to deduct from said payment or payments the total amount of said forfeiture provided for in this subsection. In doing so, the department head must also notify in writing the Labor Standards Enforcement Officer of his/her action. The Labor Standards Enforcement Officer may also, upon written notice to the department head who is responsible for the project, certify to the Controller any forfeiture(s) to deduct from any payment as provided for in this subsection. Certification of forfeitures under this subsection shall be made only upon an investigation by the responsible department head or the Labor Standards Enforcement Officer and upon written notice to the contractor identifying the grounds for the forfeiture or forfeitures. The Controller, in issuing any warrant for any such payment, shall deduct from the amount which

1 would otherwise be due on said payment or payments the amount of said forfeiture or
2 forfeitures as so certified.

3 (c) **Recourse Procedure.** If the contractor or subcontractor disagrees with the
4 forfeiture as so provided in the foregoing subparagraph (b), then the following procedure
5 applies:

6 (i) The contractor or subcontractor may request a hearing in writing within 15 days
7 of the date of the notification of forfeiture. The request shall be directed to the City Controller.
8 Failure by the contractor or subcontractor to submit a timely, written request for a hearing
9 shall constitute concession to the assessment and the forfeiture shall be deemed final upon
10 expiration of the 15-day period;

11 (ii) Within 15 days of receiving a proper request, the Controller shall appoint a
12 hearing officer with knowledge and not less than five years' experience in labor law, prevailing
13 wage, and/or wage and hour issues, and shall so advise the enforcing official and the
14 contractor or subcontractor, and/or their respective counsel or authorized representative;

15 (iii) The hearing officer shall promptly set a date for a hearing. The hearing must
16 commence within 45 days of the notification of the appointment of the hearing officer and
17 conclude within 75 days of such notification unless all parties agree to an extended period;

18 (iv) The contractor or subcontractor shall have the burden of proving that the basis
19 for the back wage and penalty assessment is incorrect;

20 (v) Within 30 days of the conclusion of the hearing, the hearing officer shall issue a
21 written decision affirming, modifying, or dismissing the assessment. The decision of the
22 hearing officer shall consist of findings and a determination. The hearing officer's findings and
23 determination shall be final.

24 (vi) The contractor or subcontractor may appeal a final determination under this
25 section only by filing in the San Francisco Superior Court a petition for a writ of mandate

1 under California Code of Civil Procedure, section 1084, et seq., as applicable and as may be
2 amended from time to time.

3 (d) **Distribution of Forfeiture.** The Controller shall withhold any forfeiture as
4 provided in the foregoing paragraphs until such time as either the contractor or subcontractor
5 has conceded to the forfeiture or, in the event of an objection, there is a determination no
6 longer subject to judicial review. The Controller shall then distribute the amounts withheld in
7 the following order: (1) the Labor Standards Enforcement Officer shall make its best efforts to
8 distribute back wages withheld to the individual workers identified as not having been paid the
9 proper wage rate; (2) the penal sums provided for above shall inure to the benefit of the
10 general fund of the City and County of San Francisco; (3) the Controller shall hold the balance
11 of any back wages in escrow for workers whom the Labor Standards Enforcement Officer,
12 despite his/her best efforts, cannot locate; funds so held for two years or more shall be
13 dedicated to the enforcement of the prevailing wage requirements.

14 (F) **Hours and Days of Labor.**

15 (1) **Generally.** For the purpose of meeting prevailing conditions and enabling
16 employers to secure a sufficient number of satisfactory workers and artisans, no person
17 performing labor or rendering service in the performance of any contract or subcontract for
18 any public work or improvement as defined in this Chapter shall perform labor for a longer
19 period than five days (Monday through Friday) of eight hours each, with two 10-minute breaks
20 per eight-hour day, except in those crafts in which a different work day or week now prevails
21 by agreement in private employment. Any person working hours in addition to the above shall
22 be compensated in accordance with the prevailing overtime standards and rates.

23 (2) **Noncompliance—Penalties and Forfeiture.** Any contractor or subcontractor
24 who shall violate any of the provisions of this subsection shall be liable for the same penalties
25 and forfeits as those specified in Subsection 6.22(E) of this Chapter; penalties and forfeits

1 shall be applicable for each laborer, mechanic or artisan employed for each calendar day or
2 portion thereof whereon such laborer, mechanic or artisan is compelled or permitted to work
3 more than the days and hours specified herein. The provisions of this subsection shall be
4 made a part of all contracts and subcontracts for the construction of any public work or
5 improvement.

6 (3) **Contracts Outside City and County.** In the event that any public work or
7 improvement is to be constructed outside of the City and County of San Francisco and at such
8 a distance therefrom that those engaged in performing labor on said public work or
9 improvement must under ordinary conditions remain at or near the site of said work or
10 improvement when not actually engaged in the performance of labor thereon, then the officer,
11 board or commission responsible for the construction of said public work or improvement may,
12 in making specifications or letting contracts therefor, make provision therein for days and
13 hours of labor beyond the limitations provided for in Section 6.22(F) of this Chapter; but not to
14 exceed eight hours in any one calendar day, or six days in any calendar week. In the event
15 that emergency conditions shall arise, making a change advisable during the performance of
16 any such contract, or any portion thereof, the hours and days of labor may be extended
17 beyond the limits hereinabove expressed; but not to exceed eight hours per day, upon the
18 written authority of the officer, board or commission awarding such contract. Failure of the
19 contractor to perform such contract within the time provided shall not constitute an
20 emergency.

21 ~~(G) — **Local Hiring.**~~

22 ~~(H) — **Contract Requirements.** All construction contracts for public works or improvements to~~
23 ~~be performed within the boundaries of the City and County of San Francisco shall contain the~~
24 ~~following provisions:~~

1 Contractor agrees to make a good faith effort, with the assistance of community organizations
2 designated by the City or local labor union hiring halls, to hire qualified individuals who are residents
3 of the City and County of San Francisco to comprise not less than 50% of each contractor's total
4 construction work force, measured in labor work hours, and contractor promises to give special
5 preference to minorities, women and economically disadvantaged individuals.

6 Contractor shall keep, and provide to the City, an accurate record showing the name, place of
7 residence, hours employed and per diem pay of each person employed by the contractor, including full-
8 time, part time, permanent and temporary employees.

9 Contractor shall keep, and provide to the City, an accurate record describing in detail
10 contractor's good faith efforts to secure employment of residents of the City and County of San
11 Francisco.

12 A failure to abide by these contract provisions may result in the imposition of sanctions and
13 penalties, including those provided for in San Francisco Administrative Code Section 6.80.

14 (2) — **Definitions.**

15 "Qualified Individual" shall mean an individual who (A) is eligible for a certified
16 apprenticeship program in an applicable trade; (B) has completed a certified apprenticeship program
17 in an applicable trade; or (C) has completed comparable time in an applicable trade.

18 "Resident of the City and County of San Francisco" shall mean an individual who is domiciled,
19 as defined by Section 200(b) of the California Election Code, within the boundaries of the City and
20 County during the entire time of the performance of the contract and who can verify his or her
21 domicile, upon request of the contractor or City, by producing documentation such as a rent/lease
22 agreement, telephone and utility bills or payment receipts, a valid California driver's license or
23 identification card, and/or any other similar, reliable evidence that verifies that the individual is
24 domiciled within the City and County of San Francisco.

1 ~~"Economically disadvantaged" shall mean an individual who has been unable to secure~~
2 ~~employment in his or her trade for more than 20 working days in the past six months, or whose annual~~
3 ~~maximum income falls within the income limits established by the Mayor's Office of Community~~
4 ~~Development for the Community Development Block Grant (CDBG) programs.~~

5 ~~(3) — **Enforcement.** The Human Rights Commission shall be the City agency charged with the~~
6 ~~monitoring and enforcement of the provisions of this subsection.~~

7 ~~(G) Short Title. This subsection 6.22(G) shall be known as and may be cited as the San~~
8 ~~Francisco Local Hiring Policy for Construction ("Policy").~~

9 ~~(1) Findings and Purpose.~~

10 ~~(a) The Board of Supervisors passed Ordinance 286-94 on August 4, 1994, to establish~~
11 ~~local hiring requirements for City public work or improvement projects performed within the~~
12 ~~boundaries of the City.~~

13 ~~(b) In 2010, the San Francisco Redevelopment Agency and the City's Office of Economic~~
14 ~~and Workforce Development commissioned a study of the labor market in the construction industry in~~
15 ~~San Francisco (the "Labor Market Analysis"), including review of comparative demographic data~~
16 ~~regarding workers on public and private projects, scope of past and future public and private~~
17 ~~construction work in San Francisco, comparative compensation on public and private projects,~~
18 ~~demographic data regarding apprenticeship programs operating in San Francisco, and income and~~
19 ~~residency data regarding construction workers in San Francisco.~~

20 ~~(c) In 2010, the Walter and Elise Haas Fund and the San Francisco Foundation, with~~
21 ~~assistance of the City's Office of Economic and Workforce Development, convened a local hiring~~
22 ~~stakeholder process to discuss possible revision of subsection 6.22(G), at which community, labor,~~
23 ~~contractor, and City stakeholders participated.~~

1 (d) In August 2010, a report from Chinese for Affirmative Action and Brightline Defense
2 Project entitled, "The Failure of Good Faith," found that the City has historically failed to meet its
3 local hiring goals.

4 (e) The Budget & Finance and Land Use & Economic Development Committees of the
5 Board of Supervisors held public hearings regarding local hiring and proposed revisions to subsection
6 6.22(G).

7 (f) The San Francisco Public Utilities Commission, Redevelopment Agency, Human Rights
8 Commission, and other City departments and agencies held public hearings regarding local hiring.

9 (g) The construction industry is one of the few industries providing a path to middle-class
10 careers for individuals without advanced degrees or facing barriers to quality employment, and is
11 therefore a crucial component of the effort to build economic opportunities for targeted residents of
12 San Francisco, with a particular emphasis on low-income and underrepresented workers in various
13 building and construction trades, in order to elevate historically disadvantaged populations and create
14 more sustainable communities throughout San Francisco.

15 (h) The City has awarded more than \$8 billion in public work and improvement contracts
16 during the last 10 years.

17 (i) The City anticipates that it will award approximately \$27 billion in public work and
18 improvement contracts in the next 10 years.

19 (j) City spending on public work and improvement projects over the next 10 years will
20 generate tens of thousands of construction work hours.

21 (k) The Board desires to ensure that employment and training opportunities created by such
22 public work and improvement projects provide consistent and high-quality opportunities to the San
23 Francisco labor pool, especially low-income residents of San Francisco and other disadvantaged
24 residents.

1 (l) Although approximately 40% of construction workers employed in San Francisco are
2 San Francisco residents, from 2002 to 2010 San Francisco residents worked only approximately 24%
3 of the work-hours on publicly-funded construction projects in the City, and only 20% of work-hours
4 since July 2009.

5 (m) The City faces unemployment levels that have risen dramatically over the past four
6 years, climbing from a low of 3.7% in December 2006 to an average of 9.8% for each month of 2010
7 through July, leaving at least 44,500 San Franciscans out of work according to the California
8 Employment Development Department, with disproportionate concentrations of high unemployment in
9 neighborhoods such as Bayview-Hunters Point, Chinatown, the Mission, Western Addition, Visitacion
10 Valley, the Excelsior, South of Market, Ocean View, Merced Heights and Ingleside.

11 (n) The 2010-2014 Consolidated Plan for the City and County of San Francisco indicates
12 that several San Francisco neighborhoods face concentrated poverty and San Francisco's slow job
13 growth rate and changing job base has had major impacts on patterns of income inequality and
14 disparity in the City, with distinctive, adverse, neighborhood-specific effects.

15 (o) The loss of middle-income jobs has been associated with a diminishing middle class in
16 San Francisco, as indicated by rising income inequality. San Francisco's unequal income distribution
17 threatens the City's future competitiveness and overall economic stability, and the City's anti-poverty
18 strategy aims to ensure that the City and its partners are marshaling its limited resources in an
19 effective and coordinated way to create economic opportunities in San Francisco's low-income
20 communities.

21 (p) The City has made substantial public investments in its workforce development system,
22 including CityBuild and the City's community-based partners, to create job opportunities in industries
23 such as construction, which are vital to the economic health of the local economy, have a capacity to
24 generate a significant number of jobs, are accessible to low- and middle-skilled individuals, have
25

1 career ladder opportunities where workers can move up with additional training and skill development,
2 and provide access to living wage and family-sustaining jobs.

3 (q) City-funded construction projects provide a crucial opportunity to connect participants
4 in these City-funded or City-operated workforce development programs with employment and training
5 opportunities, and to direct employment and training opportunities created by the City's public
6 expenditures.

7 (r) The City and the San Francisco Redevelopment Agency have made substantial public
8 investments toward creating and facilitating growth in economic opportunities for low-income
9 individuals and neighborhoods in San Francisco.

10 (s) CityBuild, San Francisco's construction training workforce program, was initiated in
11 2005 to serve as a training vehicle for ushering disadvantaged workers ~~San Francisco residents~~ into
12 the construction skilled trades. The program is a multi-craft pre-apprenticeship training program, and
13 has assisted over 450 graduates, ~~all San Francisco residents,~~ into union-sponsored apprentice
14 programs. CityBuild, in 2009-2010, contributed approximately 44 percent of all new San Francisco
15 resident apprentice intakes based on data provided by the California Department of Industrial
16 Relations, Division of Apprenticeship Standards. San Francisco's workforce construction training
17 infrastructure has the capacity to meet future demand for high quality and well trained workers ~~San~~
18 ~~Francisco residents~~ in the construction trades.

19 (t) Employment of workers that reside close to job sites has environmental benefits,
20 including reducing the distance of commutes and resulting vehicle emissions. These environmental
21 benefits are consistent with the mandates, policies and goals of the California Global Warming
22 Solutions Act (AB 32), the Sustainable Communities and Climate Protection Act (SB 375), and the
23 Climate Action Plan for San Francisco.

24 (u) The Board seeks terms and conditions that advance the City's workforce and community
25 development goals, removing obstacles that may have historically limited the full employment of local

1 residents on the wide array of opportunities created by public works projects, curbing spiraling
2 unemployment, population decline, and reduction in the number of local businesses located in the City,
3 eroding property values and depleting San Francisco's tax base.

4 (v) A local hiring policy is necessary to counteract these grave economic and social ills.

5 (2) **Definitions.** For purposes of this subsection 6.22(G), the following terms shall have
6 the following meanings:

7 (a) "Apprentice" means any worker who is indentured in a construction apprenticeship
8 program that maintains current registration with the State of California's Division of Apprenticeship
9 Standards.

10 (b) "Area Median Income" or "AMI" means unadjusted median income levels derived from
11 the Department of Housing and Urban Development ("HUD") on an annual basis for the San
12 Francisco area, adjusted solely for household size, but not high housing cost area.

13 (c) "Awarding department" means a department or commission empowered on behalf of
14 the City to contract for a covered project.

15 (d) "City" means the City and County of San Francisco, California.

16 (e) "Contractor" means any person, firm, partnership, owner operator, limited liability
17 company, corporation, joint venture, proprietorship, trust, association, or other entity that contracts
18 directly with the City to perform construction work on a covered project. A contractor may also be
19 referred to as a "prime contractor" or "general contractor."

20 (f) "Covered project" means a public work or improvement project or part thereof to which
21 this subsection 6.22(G) applies, under standards set forth in subsection 6.22(G)(3).

22 (g) "Disadvantaged worker" means a local resident, as defined below, who (i) resides in a
23 census tract within the City with a rate of unemployment in excess of 150% of the City unemployment
24 rate, as reported by the State of California Employment Development Department; or (ii) at the time of
25 commencing work on a covered project has a household income of less than 80% of the AMI, or

1 (iii) faces or has overcome at least one of the following barriers to employment: being homeless; being
2 a custodial single parent; receiving public assistance; lacking a GED or high school diploma; or
3 having a criminal record or other involvement with the criminal justice system.

4 (h) "Local hiring incentives" means the incentives set forth in subsection 6.22(G)(5) of this
5 Policy.

6 (i) "Local hiring requirements" means the requirements set forth in subsection 6.22(G)(4)
7 of this Policy.

8 (j) "Local resident" means an individual who is domiciled, as defined by Section 349(b) of
9 the California Election Code, within the City at least seven (7) days prior to commencing work on the
10 project.

11 (k) "OEWD" means the City's Office of Economic and Workforce Development.

12 (l) "Policy" means this subsection 6.22(G).

13 (m) "Project work" means construction work performed as part of a covered project.

14 (n) "Project work hours" means the total hours worked on a construction contract by all
15 apprentices and journeylevel workers, whether those workers are employed by the contractor or any
16 subcontractor.

17 (o) "Subcontractor" means any person, firm, partnership, owner operator, limited liability
18 company, corporation, joint venture, proprietorship, trust, association, or other entity that contracts
19 directly with a prime contractor to provide services to a prime contractor in fulfillment of the prime
20 contractor's obligations arising from a contract with the City for construction work on a covered
21 project.

22 (p) "Targeted worker" means any local resident or disadvantaged worker.

23 (q) "New Hire" means any employee of a contractor who is not listed on the contractor's
24 quarterly tax statements for the tax period and has been hired prior to the commencement of work.

1 (r) “Core Employee or Worker” means an apprentice or journey level employee, who
2 possesses any license required by state or federal law for the project work to be performed, of a
3 contractor or subcontractor who appears on that contractor or ~~S~~Subcontractor’s certified payroll sixty
4 (60) of the previous one hundred calendar (100) days prior to date of award of a city contract.

5 (3) Coverage.

6 (a) Threshold for Public Work and Improvement Projects. This Policy applies to contracts
7 with prime contractors for public works or improvements estimated to cost in excess of the Threshold
8 Amount set forth in section 6.1 of this Chapter, as that amount may be amended.

9 (b) Projects Constructed Outside the City. Covered City projects constructed within 70
10 miles from the jurisdictional boundary of the City and County of San Francisco shall be governed by
11 the terms of this Policy, except that percentage requirements shall apply in proportion to the City's
12 actual cost after reimbursement from non-City sources compared to the total cost of the project.
13 Covered City projects constructed 70 miles or more beyond the jurisdictional boundary of the City and
14 County of San Francisco shall be subject to this Policy, except the "local" requirement shall include
15 San Francisco residents, workers local to the area where the work is located, and workers residing
16 within the region where the work is located. Awarding departments shall work with OEWD and
17 regional local hiring programs to comply.

18 (c) Projects Utilizing Federal or State Funds.

19 (i) Segregation of Funds and Contract Awards. Where the application of this Policy would
20 violate federal or state law, or would be inconsistent with the terms or conditions of a grant or a
21 contract with an agency of the United States or the State of California, the City department or agency
22 receiving the grant or contract shall, where administratively feasible, segregate federal or state funds
23 from City funds, and/or segregate project administration and contracts, so as to maximize application
24 of this Policy to City-funded construction work.

1 (ii) Alternative Terms in Case of Conflict. Where the provisions of this Policy would be
2 prohibited by federal or state law, or where the application of this Policy would violate or be
3 inconsistent with the terms or conditions of a grant or a contract with an agency of the United States or
4 the State of California, and where segregation of funds pursuant to subsection 6.22(G)(3)(c)(i) is not
5 administratively feasible with regard to some or all of the project in question, then OEWD, in
6 consultation with the awarding department, shall adapt requirements of this Policy into a set of
7 contract provisions that advance the purposes of this Policy to the maximum extent feasible without
8 conflicting with federal or state law or with terms or conditions of the state or federal grant or contract
9 in question. The awarding department shall include this set of contract provisions in the public works
10 or improvement contract with regard to the project or portions of the project for which this Policy
11 would conflict with federal or state requirements.

12 (d) Out-of-State Workers. Project work hours performed by residents of states other than
13 California shall not be considered in calculation of the number of project work hours to which the local
14 hiring requirements apply. Contractors and subcontractors shall report to awarding departments and
15 OEWD the number of project work hours performed by residents of states other than California.

16 (4) **Local Hiring Requirements.**

17 (a) For each covered project, the following requirements shall apply to each prime
18 contractor and subcontractor that performs project work in excess of the Threshold Amount set forth in
19 section 6.1 of this Chapter, as that amount may be amended, with regard to project work actually
20 performed by the prime contractor and work included under any subcontract, including all work
21 performed by a subcontractor and all lower-tier subcontractors under the subcontract:

22 (i) The initial mandatory participation level is 25% of all project work hours within each
23 trade performed by local residents, with no less than 12.5% of all project work hours within each trade
24 performed by disadvantaged workers. Subject to the periodic review process set forth in subsection
25 6.22(G)(4)(b), below, the mandatory participation level for project work hours shall increase annually

1 over six years up to a mandatory participation level of 50% of project work hours within each trade
 2 performed by local residents, with no less than 25% of all project work hours within each trade
 3 performed by disadvantaged workers. For each mandatory participation percentage specified below,
 4 one-half of the specified percentage of project work hours within each trade shall be performed by
 5 disadvantaged workers.

<u>Year After Effective Date That Contract Is Advertised for Bids</u>	<u>Mandatory Participation Level For Project Work Hours</u>
<u>0-1</u>	<u>25%</u>
<u>1-2</u>	<u>30%</u>
<u>2-3</u>	<u>35%</u>
<u>Periodic Review</u>	<u>Periodic Review</u>
<u>3-4</u>	<u>40%</u>
<u>4-5</u>	<u>45%</u>
<u>5-6</u>	<u>50%</u>

17 (ii) At least 50% of the project work hours performed by apprentices shall be performed by
 18 local residents, with no less than 25% of project work hours performed by apprentices to be performed
 19 by disadvantaged workers.

20 (iii) Specialized Trades. Every two calendar years, OEWD shall publish a list of trades
 21 designated as "Specialized Trades," for which the local hiring requirements of this Policy shall not be
 22 applicable. Prior to designating a trade as a Specialized Trade, OEWD shall have made findings that:
 23 (a) considering all referral sources and best estimates of workers residing in the City, there will be
 24 insufficient numbers of qualified and available local residents and disadvantaged workers to enable
 25 contractors and subcontractors to satisfy the local hiring requirements for such trade; and (b) best

1 estimates indicate that on all covered projects during those calendar years, in the aggregate, demand
2 for work hours in such trade will not exceed 10,000 hours. All contractors and subcontractors shall
3 report to OEWD the project work hours utilized in each designated Specialized Trade.

4 (b) Periodic Review By OEWD and Controller. OEWD, in coordination with the
5 Controller's Office, shall every three years from the effective date of this Policy, evaluate the impact of
6 existing mandatory participation levels and the continued need for financial incentives as set forth in
7 subsection 6.22(G)(5). The OEWD/Controller review shall (i) determine whether there is a sufficient
8 supply of qualified unemployed resident workers to meet the escalation rate set forth in subsection
9 6.22(G)(4)(a)(i), above; (ii) assess the length of time required for each trade to develop a pool of
10 qualified resident workers sufficient to support a 50% mandatory participation target; and (iii) make
11 relevant findings in support of those determinations, and, if necessary, propose amendments to the
12 mandatory participation level by trade. OEWD and the Controller's Office ~~shall~~will further report on
13 the financial incentive program and make relevant findings and, if necessary, propose reducing or
14 eliminating financial incentives. During the periodic review process, OEWD and the Controller's
15 Office shall consult with a broad spectrum of relevant stakeholders (including the community, the
16 California Department of Industrial Relations Division of Apprenticeship Standards, contractors,
17 building trades, and City departments and agencies). Promptly upon completion of a periodic review,
18 OEWD and the Controller's Office shall furnish to the Board of Supervisors a report setting forth their
19 findings, determinations and proposed amendments to the mandatory participation level by trade
20 and/or the financial incentive program, if any. The Board shall, by resolution, fix and determine the
21 mandatory participation levels by trade and available financial incentives, if any. The mandatory
22 participation levels by trade and financial incentives as so fixed and determined by the Board shall
23 supplant the mandatory participation levels and financial incentives that this Policy sets and
24 shall remain in force until the same are changed by the Board. In determining the mandatory
25 participation levels by trade and available financial incentives, as so provided for in this subsection,

1 the Board shall not be limited to consideration of the periodic review report furnished by OEWD and
2 the Controller's Office, but may consider other such evidence upon the subject as the Board shall deem
3 proper and base its determination upon any or all of the evidence considered.

4 (c) Credit for Hiring on Non-covered Projects. Contractors and subcontractors may
5 accumulate credit hours for hiring San Francisco residents on non-City funded projects and apply
6 those credit hours to contracts for covered projects to meet the applicable minimum mandatory hiring
7 requirements set forth above or work off assessed liquidated damages. OEWD shall establish criteria
8 for credit hours and their application to meet the minimum participation requirements. OEWD shall
9 consider credit hours be accumulated for work on non-City funded projects performed by San
10 Francisco residents only if (i) the San Francisco resident performing work on the non-City funded
11 project is a graduate of the CityBuild program; (ii) the San Francisco resident performing work on the
12 non-City funded project is paid prevailing wages for such work; and (iii) the overall percentage of San
13 Francisco resident workers on the non-City funded project in question exceeds the applicable
14 mandatory local hiring requirement that would apply if the project were a City-funded covered project.

15 (5) Local Hiring Incentives.

16 (a) Incentive Criteria. Contractors and subcontractors may receive financial and non-
17 financial incentives for exceeding the local hiring requirements on a covered project. Project work
18 hours credited under subsection 6.22(G)(4)(c) shall not be the basis for any financial or non-financial
19 incentive payment or entitlement.

20 (b) Administration. Awarding departments will work in consultation with OEWD to
21 establish the operation and amounts of the incentives, if any.

22 (i) Any financial incentives provided on a covered project shall comply with applicable law
23 and shall not exceed one percent of the estimated cost of the project. If financial incentives are made
24 available for a covered project, awarding departments shall pay such incentives, if earned by a
25 contractor or subcontractor, only after a contractor or subcontractor has completed work on the

1 project and OEWD has approved the contractor's or subcontractor's request for incentive payment.
2 Subcontractors requesting incentive payments shall submit requests to the awarding department and
3 OEWD through the prime contractor, not directly to the awarding department or OEWD. Payment of
4 subcontractor incentives shall be paid to the prime contractor for the benefit of the appropriate
5 subcontractor(s). Prime contractor must pay subcontractor(s) within 10 days of receipt of financial
6 incentives from the City.

7 (ii) OEWD shall, by regulation, develop non-financial incentives such as expedited
8 permitting and reduced administrative burden.

9 (6) Additional Contractor Rights and Responsibilities.

10 (a) Local Hiring Plan for Large Projects. For covered projects estimated to cost more than
11 \$1,000,000, the prime contractor shall prepare and submit to the awarding department and OEWD
12 for approval a local hiring plan for the project. The local hiring plan shall be a written plan for
13 implementation of the requirements of this Policy, including an approximate timeframe for hiring
14 decisions of subcontractors, a description of the hiring processes to be utilized by subcontractors, an
15 estimate of numbers of targeted workers needed from various referral sources, and qualifications
16 needed for such targeted workers. An awarding department shall not issue a Notice to Proceed (NTP)
17 without receiving the Local Hiring Plan. The awarding department may issue an NTP upon
18 submittal of the Plan, but in no case may any payment be made until such time as it has verified
19 in writing that OEWD has approved the prime contractor's local hiring plan.

20 (b) Referral Sources. Where a contractor's or subcontractor's preferred or preexisting
21 hiring or staffing procedures for a covered project do not enable that contractor or subcontractor to
22 satisfy the local hiring requirements of this Policy, the contractor or subcontractor shall use other
23 procedures to identify and retain targeted workers. These procedures shall include requesting workers
24 from CityBuild, San Francisco's centralized referral program, and considering targeted workers who
25 are referred by CityBuild within three business days of the request and who meet the qualifications

1 described in the request. Such consideration shall include in-person interviews. Qualifications
2 described in the request shall be limited to skills directly related to performance of job duties.

3 (c) Hiring Discretion. This Policy does not limit contractors' or subcontractors' ability to
4 assess qualifications of prospective workers, and to make final hiring and retention decisions. No
5 provision of this Policy shall be interpreted so as to require a contractor or subcontractor to employ a
6 worker not qualified for the position in question, or to employ any particular worker.

7 (d) Subcontractor Compliance. Each contractor and subcontractor shall ensure that all
8 subcontractors agree to comply with applicable requirements of this Policy. All subcontractors agree
9 as a term of participation on a covered project that the City shall have third party beneficiary rights
10 under all contracts under which subcontractors are performing project work. Such third party
11 beneficiary rights shall be limited to the right to enforce the requirements of this Policy directly against
12 the subcontractors.

13 (7) Enforcement.

14 (a) Role of OEWD. OEWD is authorized to enforce all terms of this Policy. Awarding
15 departments shall work cooperatively with OEWD to implement requirements of this Policy, to include
16 the provisions of the Policy in every contract for which inclusion is required, to assist contractors and
17 subcontractors in complying with the Policy, and to assist OEWD in furthering the purposes of the
18 Policy through monitoring and enforcement activities. OEWD shall determine the records required to
19 be verified and/or provided by contractors and subcontractors to establish workers' qualifications and
20 statuses relevant to this Policy.

21 (b) Role of Community-Based Partners. OEWD shall be authorized to engage its
22 community-based partners in the City's workforce development system to assist with the
23 recruitment and retention of targeted workers. OEWD shall, through the existing Workforce
24 Investment Board, provide a forum for community members, community-based organizations, and
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1 representatives of all stakeholders affected by or interested in this Policy to exchange information and
2 ideas and to advise OEWD staff concerning the operation and results of the Policy.

3 (c) Recordkeeping. Each contractor and subcontractor shall keep, or cause to be kept, for a
4 period of four years from the date of substantial completion of project work on a covered project,
5 certified payroll and basic records, including time cards, tax forms, and superintendent and foreman
6 daily logs, for all workers within each trade performing work on the covered project. Such records
7 shall include the name, address and social security number of each worker who worked on the covered
8 project, his or her classification, a general description of the work each worker performed each day,
9 the apprentice or journey-level status of each worker, daily and weekly number of hours worked, the
10 self-identified race, gender, and ethnicity of each worker, whether or not the worker was a local
11 resident or disadvantaged worker, and the referral source or method through which the contractor or
12 subcontractor hired or retained that worker for work on the covered project (e.g., core workforce,
13 name call, union hiring hall, City-designated referral source, or recruitment or hiring method).
14 Contractors and subcontractors may verify that a worker is a local resident through the worker's
15 possession of a valid SF City ID Card or other government-issued identification. OEWD and awarding
16 departments may require additional records to be kept with regard to contractor or subcontractor
17 compliance with this Policy. All records described in this section shall at all times be open to
18 inspection and examination by the duly authorized officers and agents of the City, including
19 representatives of the awarding department and the OEWD.

20 (d) Reporting. The OEWD shall establish reporting procedures for contractors and
21 subcontractors to submit to OEWD and the awarding department the records described above, for
22 purposes of monitoring compliance with and effectiveness of this Policy and monitoring operation of
23 the City's public construction sector for other valid purposes, including prevention of race and
24 gender discrimination. All records submitted by contractor or subcontractor shall be accompanied
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1 by a statement of compliance signed by an authorized representative of contractor or subcontractor
2 indicating that the records are correct and complete.

3 (e) Monitoring. From time to time and in its sole discretion, OEWD and/or the awarding
4 department may monitor and investigate compliance of contractor and subcontractors working on
5 covered projects with requirements of this Policy. OEWD and awarding departments shall have the
6 right to engage in random inspections of job sites, subject to construction schedule and safety concerns.
7 Each contractor and subcontractor shall allow representatives of OEWD and the awarding
8 department, in the performance of their duties, to engage in random inspections of job sites and to have
9 access to the employees of the contractor and subcontractor and the records required to be kept by this
10 Policy. The OEWD shall establish an administrative procedure for OEWD monitoring of compliance
11 with this Policy and to address allegations of noncompliance. The OEWD shall have sole authority
12 over the administration of this procedure. Except as prohibited by law, OEWD will make data
13 collected under subsections 7(c) and (d) of this Policy available on-line to the public in real-time and
14 create a process for members of the public to submit complaints regarding alleged violations of this
15 Policy. The OEWD shall investigate all complaints filed by members of the public; the scope, methods,
16 and conclusions of all such complaint-driven investigations shall be within the discretion of OEWD,
17 with no right of the complaining party to determine the scope or methods of the investigation. All
18 contractors, subcontractors and awarding departments shall cooperate fully with the OEWD in
19 monitoring and compliance activities. The OEWD may interview, either at the worksite or elsewhere,
20 any witness who may have information related to a complaint.

21 (f) **Compliance Procedures.**

22 (i) Consequences of Noncompliance. Awarding departments and OEWD have the authority
23 to seek for violations of this Policy all of the consequences imposed by or described in this Policy, in
24 the contract for a covered project, or by statute, including the authority to assess liquidated damages

1 as described herein, assess damages for other violations of terms of this Policy, and/or seek penalties
2 set forth in Article V of this Chapter, including debarment.

3 (ii) Liquidated Damages -- Amount. Any contractor or subcontractor who fails to satisfy
4 local hiring requirements of this Policy shall pay; and, in the case of any subcontractor so failing, the
5 contractor and subcontractor shall jointly and severally be liable to the City for an amount equal to the
6 journeyman or apprentice prevailing wage rate, as applicable, with such wage as established by the
7 Board of Supervisors or the California Department of Industrial Relations under subsection 6.22(E)(3),
8 for the primary trade used by the contractor or subcontractor on the covered project for each hour by
9 which the contractor or subcontractor fell short of the local hiring requirement. The assessment of
10 liquidated damages under this subsection shall not preclude the City from exercising any other rights
11 or remedies to which it is entitled.

12 (iii) Assessment of Liquidated Damages. It shall be the duty of the awarding department,
13 when certifying to the Controller any payment which may become due under a contract, to deduct from
14 said payment or payments the total amount of liquidated damages due under this subsection. In doing
15 so, the department head must also notify the OEWD of his or her action. OEWD may also upon written
16 notice to the awarding department, certify to the Controller any assessment of liquidated damages to
17 deduct from any payment as provided for in this subsection. Certification of assessments under this
18 subsection shall be made only upon an investigation by the awarding department or OEWD and upon
19 written notice to the contractor or subcontractor identifying the grounds for the assessment or
20 assessments, and providing the contractor or subcontractor with the opportunity to respond. The
21 Controller, in issuing any warrant for any such payment, shall deduct from the amount which would
22 otherwise be due on said payment or payments the amount of said assessment or assessments as so
23 certified. Any retainage to cover contract performance that may become due to contractor under
24 subsection 6.22(J) may be withheld by the City pending a determination by the awarding department or
25 OEWD as to whether a contractor or subcontractor must pay liquidated damages.

1 (iv) A contractor or subcontractor may avoid the requirement to pay liquidated damages
2 outlined above by demonstrating the high impracticality of complying with the mandatory participation
3 level for a particular contract or classes of employees before project commencement by agreeing to
4 sponsor an OEWD-specified number of new apprentices in trades in which noncompliance is likely and
5 retaining those apprentices throughout the duration of the project. OEWD will verify with the
6 California Department of Industrial Relations Division of Apprenticeship Standards that the OEWD-
7 specified number of new apprentices are registered and active apprentices prior to issuing a release
8 from liquidated damages.

9 (v) Recourse Procedure. If the contractor or subcontractor disagrees with the assessment
10 of liquidated damages as so provided in this subsection, then the following procedure applies:

11 (a) The contractor or subcontractor may request a hearing in writing within 15 days of the
12 date of the final notification of assessment. The request shall be directed to the City Controller.
13 Failure by the contractor or subcontractor to submit a timely, written request for a hearing shall
14 constitute concession to the assessment and the assessment shall be deemed final upon expiration of the
15 15-day period. The contractor or subcontractor must exhaust this administrative remedy prior to
16 commencing further legal action.

17 (b) Within 15 days of receiving a proper request, the Controller shall appoint a hearing
18 officer with knowledge and not less than five years' experience in labor law, and shall so advise the
19 enforcing official and the contractor or subcontractor, and/or their respective counsel or authorized
20 representative.

21 (c) The hearing officer shall promptly set a date for a hearing. The hearing must commence
22 within 45 days of the notification of the appointment of the hearing officer and conclude within 75 days
23 of such notification unless all parties agree to an extended period.

24 (d) The contractor or subcontractor shall have the burden of proving that the basis
25 for the assessment of liquidated damages is incorrect.

1 (de) Within 30 days of the conclusion of the hearing, the hearing officer shall issue a written
2 decision affirming, modifying, or dismissing the assessment. The decision of the hearing officer shall
3 consist of findings and a determination. The hearing officer's findings and determination shall be final.

4 (ef) The contractor or subcontractor may appeal a final determination under this section
5 only by filing in the San Francisco Superior Court a petition for a writ of mandate under California
6 Code of Civil Procedure, section 1084, et seq., as applicable and as may be amended from time to time.

7 (vi) Distribution of Liquidated Damages. The Controller shall withhold any liquidated
8 damages assessed as provided in the foregoing subparagraphs until such time as either the contractor
9 or subcontractor has conceded to the liquidated damages or, in the event of an objection, there is a
10 determination no longer subject to judicial review. The Controller shall then deposit the amounts
11 withheld into a special account which shall be created for the sole purpose of receiving said funds.
12 The funds deposited into this account shall be used to support the enforcement of this Policy and the
13 further development of workforce development initiatives to train and prepare local residents for
14 careers in construction.

15 (vii) Other Violations; Repeated Violations. Violations of this Policy for which damages or
16 other remedies are not specified above constitute violations of contract terms, for which the full range
17 of remedies under the contract may be invoked, including but not limited to withholding of progress
18 payments in amounts deemed proportional to the violation. Awarding departments shall comply with
19 and implement damages claims and other noncompliance consequences assessed or required by
20 OEWD.

21 (8) **Miscellaneous.**

22 (a) Regulations and Administrative Guidance. OEWD shall be the primary department
23 authorized to implement and enforce this Policy. OEWD shall issue regulations and/or administrative
24 guidance regarding implementation of the Policy, including (i) documentation and recordkeeping
25 requirements, (ii) incentive payments, (iii) monitoring and compliance activities, (iv) project and/or

1 contract coverage determinations, (v) designated referral sources, (vi) bid and contract documents
2 implementing the Policy, (vii) procedures for application of the Policy to alternative competitive
3 bidding processes set forth in Article IV of this Chapter, and (viii) other matters related to
4 implementation of this Policy. Awarding departments shall cooperate with and assist in
5 implementation of OEWD actions and determinations regarding this Policy.

6 (b) Assistance in Monitoring, Investigations, and Implementation. In accordance with
7 applicable law, the City may enter into one or more contracts for investigative and monitoring services
8 to further the purposes of this Policy, or to assist OEWD or awarding departments in developing and
9 implementing systems needed to advance the purposes of this Policy.

10 (c) Departmental Assistance with Monitoring and Enforcement Costs. Subject to the fiscal
11 and budgetary provisions of the City Charter and applicable federal and state laws and regulations,
12 OEWD is authorized to receive from awarding departments the amount reasonably calculated to pay
13 for the costs, including litigation costs, of monitoring and enforcing requirements of this Policy.
14 OEWD shall supervise the expenditure of all funds appropriated for these purposes.

15 (d) Effective Date. This Policy shall become effective upon the date of its enactment and
16 shall apply to covered projects first advertised for bids by awarding departments more than sixty (60)
17 days after such date.

18 (e) Existing Project Labor Agreements. This Policy shall not apply to project labor
19 agreements entered into by awarding departments prior to the effective date of this Policy ("Existing
20 PLAs") or to public work or improvement contracts advertised for bids after the effective date of this
21 Policy that are covered by Existing PLAs, where the terms of the Existing PLAs and this Policy are in
22 conflict. Notwithstanding the foregoing, this Policy shall apply to (i) any material amendment to an
23 Existing PLA executed by an awarding department after the effective date of this Policy; (ii) any new
24 public work or improvement contract over the threshold amount set forth in subsection 6.22(G)(3)(a)
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1 that is added to the scope of an Existing PLA based on a discretionary decision by the awarding
2 department after the effective date of this Policy.

3 (f) Annual Report To Board. Commencing on March 1, 2012, and annually thereafter, the
4 Director of OEWD shall submit a written report to the Board of Supervisors. That report shall
5 document each awarding department's performance under the terms of this Policy, including, among
6 other things, the compliance of each department's contractors and subcontractors with the
7 requirements of this Policy, any significant challenges experienced by OEWD or awarding departments
8 in implementing or enforcing this Policy, and proposed remedies to address any such challenges. That
9 report shall include documentation, organized by awarding department, of the overall percentage of
10 project work hours on covered projects performed by local residents, disadvantaged workers, local
11 resident apprentices, and residents of states other than California. Awarding departments shall
12 cooperate with requests by OEWD for information needed by the Director to make such reports to the
13 Board.

14 (g) Material Term; Contractors' Agreements. All contracts and subcontracts for
15 performance of project work shall include compliance with this Policy as a material term, directly
16 enforceable by the City as described herein. As a condition of performance of project work, each
17 contractor and subcontractor agrees: to comply with all provisions of this Policy; that provisions of
18 this Policy are reasonable and are achievable by the contractor or subcontractor, including the
19 reporting requirements and consequences for noncompliance described herein; and that the contractor
20 or subcontractor had a full and fair opportunity to review and understand terms of this Policy, in
21 consultation with counsel if so desired.

22 (h) Severability. If any provision of this Policy or any application thereof to any person or
23 circumstances is held invalid by final judgment of any court of competent jurisdiction, such invalidity
24 shall not affect other provisions or application of this Policy which can be given effect without the
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1 invalid provision or application, and to this end the provisions of this Policy are declared to be
2 severable.

3 (i) Conflicting Agreements. In case of conflict between terms of this Policy and a
4 contractual agreement entered into by a contractor, subcontractor or awarding department, terms of
5 this Policy shall govern. Each party to a contract incorporating terms of this Policy agrees through
6 that contract that either it is not a party to such a conflicting agreements, or that it will comply with
7 terms of this Policy as incorporated into the contract, rather than with any conflicting agreements.
8 After the effective date of this Policy, no awarding department may enter into a project labor
9 agreement or other contract relating to or applying to the performance of project work on a covered
10 project that conflicts with or precludes contractor and subcontractor compliance with terms of this
11 Policy.

12 (j) Reciprocity. An awarding department or OEWD may negotiate reciprocity agreements
13 with other local jurisdictions that maintain local hiring programs, provided that such agreements
14 advance the policy goals of this subsection. Any such reciprocity agreement shall allow targeted
15 workers in each jurisdiction to utilize and benefit from local hiring requirements and referral systems
16 in the other jurisdiction on the same terms as do the workers residing in that jurisdiction. When such a
17 reciprocity agreement is in effect, residents of another jurisdiction may be counted toward satisfaction
18 of the local hiring requirements of this Policy. Any reciprocity agreement negotiated by an awarding
19 department or OEWD shall be subject to the approval of the Board of Supervisors by resolution.

20 **(H) Modifications—General Requirements.** If it becomes necessary in the
21 prosecution of any public work or improvement under contract to make alterations or
22 modifications or to provide for extras, such alterations, modifications or extras shall be made
23 only on written recommendation of the department head responsible for the supervision of the
24 contract, together with the approval of the Mayor or the Mayor's designee or the board or
25 commission, as appropriate to the department, and also the approval of the Controller, except

1 as hereafter provided. The Mayor or the board or commission, as appropriate to the
2 department, may delegate in writing the authority to approve such alterations, modifications or
3 extras to the department head, except as provided below. The Controller may delegate in
4 writing the authority to encumber funds from prior appropriations for such alterations,
5 modifications or extras to the department head prior to the certification for payment. Such
6 authority, when granted, will clearly state the limitations of the changes to be encompassed.

7 (1) **Increasing or Decreasing Price.** Alterations, modifications or extras in any
8 contract, which will increase or decrease the contract cost or scope, may be made or allowed
9 only on the written recommendation of the department head responsible for the supervision of
10 the contract stating the amount and basis for such increase or decrease. For any cumulative
11 increase or decrease in price in excess of ten percent of the original contract price or scope,
12 the department head shall obtain the approval of the Mayor or Mayor's designee or the board
13 or commission as appropriate and also the approval of the Controller notwithstanding any
14 delegation provided for above.

15 (2) **Extensions of Time.** Upon finding that work under a construction contract
16 cannot be completed within the specified time because of an unavoidable delay as defined in
17 the contract, the department head may extend the time for completion of the work. If the
18 cumulative extensions of time exceeds ten percent of the original contract duration, the
19 department head shall first obtain the approval of the Mayor, the Mayor's Designee, board or
20 commission, as appropriate to the department notwithstanding any delegation provided for
21 above. All time extensions shall be in writing, but in no event shall any extension be granted
22 subsequent to the issuance of a certificate of final completion.

23 (a) **Time Extension Not Waiver of City's Rights.** The granting of an extension of
24 time because of unavoidable delays shall in no way operate as a waiver on the part of the City
25 and County or the department head, Mayor, board or commission of the right to collect

1 liquidated damages for other delays or of the right to collect other damages or of any other
2 rights to which the City and County is entitled.

3 (b) **No Extension Granted When Contract Based on Time Estimates.** When any
4 award of contract has been made in consideration, in whole or in part, of the relative time
5 estimates of bidders for the completion of the work, no extension of time may be granted on
6 such contract beyond the time specified for completion, unless the liquidated damages for
7 each day the work is uncompleted beyond the specified time shall be collected; provided,
8 however, that this shall not apply to unavoidable delays due to acts of God.

9 (c) **Avoidable and Unavoidable Delay; Limitation of Damages for Delay.** The
10 department head administering the public work shall have the authority to specify in the
11 contract the delays that shall be deemed avoidable or unavoidable. The City and County shall
12 not pay damages or compensation of any kind to a contractor because of delays in the
13 progress of the work, whether such delays be avoidable or unavoidable; provided, however,
14 the City and County may pay for (1) delays caused to the contractor by the City and County;
15 and (2) such unavoidable delays as may be specifically stated in the contract. Such latter
16 delays will be compensated for only under the conditions specified in the contract.

17 (d) **Notice of Delay Required.** The contractor shall promptly notify the department
18 head in writing, of all anticipated delays in the prosecution of the work and, in any event,
19 promptly upon the occurrence of a delay, the notice shall constitute an application for an
20 extension of time only if the notice requests such extension and sets forth the contractor's
21 estimate of the additional time required together with a full recital of the causes of unavoidable
22 delays relied upon. The department head may take steps to prevent the occurrence or
23 continuance of the delay, may classify the delay as avoidable or unavoidable and may
24 determine to what extent the completion of the work is delayed thereby.

1 (I) **Liquidated Damages.** Any contract may provide a time within which the
2 contract work, or portions thereof, shall be completed and may provide for the payment of
3 agreed liquidated damages to the City and County for every calendar or working day
4 thereafter during which such work shall be uncompleted.

5 (J) **Retention of Progressive Payments.** Any contract may provide for
6 progressive payments, if the Advertisement For Bids shall so specify. Each progress payment
7 shall constitute full compensation for the value of work performed and materials furnished for
8 a specified period, less amounts withheld as a result of dispute or as required by law.

9 (1) From every progress payment, the City shall hold 10 percent in retention.

10 (2) If the department head responsible for the public work determines that the
11 contract is 50 percent or more complete, that the contractor is making satisfactory progress,
12 and that there is no specific cause for greater withholding, the department head, upon the
13 written request of contractor, may authorize one of the following two options: (a) the City shall
14 release part of the retention to the contractor so that the amount held in retention by the City,
15 after release to the contractor, is reduced to an amount not less than 5 percent of the total
16 value of the labor and materials furnished, and the City shall proceed to retain 5 percent of
17 any subsequent progress payment under the contract; or (b) the City shall continue to hold the
18 already withheld retention amount, up to 5 percent of the total contract price, and shall not
19 deduct further retention from progress payments.

20 (3) The department head shall authorize the release of retention, in whole or in part,
21 for work completed by subcontractors certified by the HRC as LBEs. The department head
22 shall do so only upon a written request by the contractor certifying (i) the work by the certified
23 LBE subcontractor is completed and satisfactory (ii) the total final amount paid to the certified
24 LBE subcontractor and (iii) the amount of retention associated with the work performed by the
25 certified LBE subcontractor. Following a release of such retention, and in order to calculate

1 retention and retention withholding from further progress payments, the City will reduce the
2 total retention required under the foregoing paragraphs (1) and (2) by the amount paid to the
3 certified LBE subcontractor(s) for whom the City released the retention. The release of
4 retention under this subparagraph shall not reduce the responsibilities or liabilities of the
5 contractor or its surety under the contract or applicable law. For any contract awarded under
6 this Chapter prior to the enactment of this subparagraph, a department head may in his or her
7 sole discretion incorporate this subparagraph by change.

8 (4) The department head shall authorize the release of retention, in whole or in part,
9 for work completed by subcontractors under any public work contract awarded under this
10 Chapter with a construction duration of more than two years. The department head shall do
11 so only upon a written request by the contractor certifying (i) the work by the subcontractor is
12 completed and satisfactory (ii) the total final amount paid to the subcontractor and (iii) the
13 amount of retention associated with the work performed by the subcontractor. The City may
14 issue the retention within six months of the date of the request. Following a release of such
15 retention, and in order to calculate retention and retention withholding from further progress
16 payments, the City will reduce the total retention required under the foregoing paragraphs (1)
17 and (2) by the amount paid to the subcontractor(s) for whom the City released retention. The
18 release of retention under this subparagraph shall not reduce the responsibilities or liabilities
19 of the contractor or its surety under the contract or applicable law. For any contract awarded
20 under this Chapter prior to the enactment of this subparagraph with a construction duration of
21 more than two years, a department head may in his or her sole discretion incorporate this
22 subparagraph by change order.

23 (5) Retention shall be withheld solely for the benefit and protection of the City,

24 (6) The City shall release retention to the contractor upon the following conditions:

25 (a) the contractor has reached final completion under the contract terms and conditions and

1 (b) the contract is free of offsets by the City for liquidated damages, defective work and the
2 like, and is free of stop notices, forfeitures, and other charges. When the department head
3 responsible for the public work or his/her designee determines that the contract is 98 percent
4 or more complete, the department head or his/her designee may reduce retention funds to an
5 amount equal to 200 percent of the estimated value of work yet to be completed, provided that
6 the contract is free of offsets by the City and is free of stop notices, forfeitures, and other
7 charges.

8 (7) In no event shall the City be liable for interest or charges arising out of or
9 relating to the date the City issues any progress payment or the date the City releases all or
10 part of the retention, except that the City will pay interest at the legal rate, as set forth in
11 section 685.010(a) of the California Code of Civil Procedure as that section may be amended
12 from time to time, on any improperly withheld amounts commencing no earlier than 90 days
13 after the date the City should have made any progress payment or released all or part of the
14 retention. Under no circumstances shall the legal rate of interest paid by the City under this
15 provision exceed 10 percent per annum. The payment of interest under this provision is the
16 limit of the City's liability with respect to any claim for interest on improperly withheld amounts.

17 (K) **Inspection and Acceptance of Completed Work; Final Payment.** The
18 department head authorized to execute any contract for public works or improvements shall
19 be responsible for the inspection and acceptance of such work on completion. Such
20 acceptance shall be in writing and shall include the certificate of the department head
21 concerned that the work covered by the contract has been fully and satisfactorily completed in
22 accordance with the plans and specifications therefor. Receipt of copy of such acceptance in
23 writing shall constitute the Controller's authority to complete any payments due the contractor
24 under the contract; provided that the Controller may make such additional investigation or
25 inspection as is provided by Administrative Code Section 10.07.

1 (L) **Termination for Convenience.** In all contracts for the construction of any
2 public work or improvement, the department head authorized to execute any contract for any
3 public work or improvement may include in the specifications setting forth the terms and
4 conditions for the performance of the contract a provision that the City and County may
5 terminate the performance of work under the contract whenever the department head shall
6 determine, with the approval of the Mayor, the Mayor's designee or the board or commission
7 concerned, that such termination is in the best interest of the City and County. Any such
8 termination shall be effected by delivery to the contractor of a notice of termination specifying
9 the extent to which performance of work under the contract is terminated and the date upon
10 which such termination becomes effective. The department head is hereby authorized to
11 include within such construction contract the appropriate language to implement this
12 subsection.

13 (M) **Articles Not to be Prison Made.** No article furnished under any contract
14 awarded under the provisions of this Chapter shall have been made in a prison or by convict
15 labor except for articles made in prisons or by convicts under the supervision and control of
16 the California Department of Corrections and limited to articles for use by the City and
17 County's detention facilities.

18 (N) **Employment of Apprentices.** All construction contracts awarded under this
19 Chapter shall require the Contractor to comply with the requirements of the State
20 Apprenticeship Program (as set forth in the California Labor Code, Division 3, Chapter 4
21 [commencing at Section 3070] and Section 1777.5), as it may be amended from time to time,
22 and shall require the Contractor to include in its subcontracts the obligation for subcontractors
23 to comply with the requirements of the State Apprenticeship Program.

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1 (O) **Safety.** All construction contracts awarded under this Chapter shall require the
2 Contractor and all of its subcontractors to abide by the applicable Occupational Safety and
3 Health statutes and regulations.

4 Additionally, all construction contracts awarded under this Chapter shall require the
5 Contractor and all of its subcontractors to abide by the requirements of Administrative Code
6 Section 64.1, prohibiting masonry-dry cutting and masonry dry-grinding, with exceptions.

7 (P) **Claims.** The City shall consider only those claims for additional payment under
8 a public work contract that are certified and that conform to the contract requirements for
9 claims, pricing, and schedule.

10 (1) **Claims by Contractors.** The contractor shall certify under penalty of perjury that
11 (a) the claim is made in good faith; (b) the supporting data are accurate and complete to the
12 best of Contractor's knowledge and belief; and (c) the amount request accurately reflects the
13 Contract adjustment for which the Contractor believes the City is liable. An individual or
14 officer authorized to act on behalf of the Contractor shall execute the certification.

15 (2) **Claims by Subcontractors.** Subcontractors at any tier are not third-party
16 beneficiaries of any Contract awarded under this Chapter. The City shall not consider a direct
17 claim by any subcontractor. A Contractor presenting to the City any claim on behalf of a
18 subcontractor must certify the subcontractor's claim in the same manner the Contractor would
19 certify its own claim under the foregoing paragraph (1).

20 APPROVED AS TO FORM:
21 DENNIS J. HERRERA, City Attorney

22 By: _____
23 JOHN G. WHITE
24 Deputy City Attorney