

1 [Prohibiting Masonry Dry-Cutting.]

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3 **Ordinance amending the Administrative Code by adding new Chapter 64, Section 64.1**
4 **to prohibit City employees and City contractors from engaging in masonry dry-cutting**
5 **and dry-grinding, with exceptions, and establishing alternative procedures; amending**
6 **the Administrative Code by amending Section 6.22 to require that City contracts**
7 **include the prohibition against masonry dry-cutting and dry-grinding found in Chapter**
8 **64; and making environmental findings.**

9 Note: Additions are *single-underline italics Times New Roman*;
10 deletions are *strikethrough italics Times New Roman*.
11 Board amendment additions are double underlined.
12 Board amendment deletions are ~~strikethrough normal~~.

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

13 Section 1. Environmental Findings. The Planning Department has determined that the
14 actions contemplated in this Ordinance are in compliance with the California Environmental
15 Quality Act (California Public Resources Code section 21000 et seq.). Said determination is
16 on file with the Clerk of the Board of Supervisors in File No. _____ and is
17 incorporated herein by reference.

18 Section 2. The San Francisco Administrative Code is hereby amended by adding
19 Chapter 64, Section 64.1, to read as follows:

20 CHAPTER 64: CITY EMPLOYEE AND CITY CONTRACTOR SAFETY AND HEALTH.

21 SEC. 64.1 MASONRY DRY-CUTTING AND DRY-GRINDING PROHIBITED FOR CITY
22 EMPLOYEES AND CITY CONTRACTORS.

23 (a) Application. In order to protect the safety and health of City employees and City
24 contractors against the effects of silicosis and other respiratory diseases, the following practices set
25 forth in subsection 64.1(b) shall apply to:

1 (i) all City employees; and

2 (ii) City contractors engaged in construction projects funded by the City and conducted
3 pursuant to a construction contract with the City awarded under Chapter 6 of this Code.

4 (b) Prohibition. The dry-cutting of masonry units by means of hand-held, gas-powered or
5 electrical, portable chop saws or skil saws and the dry-grinding of masonry materials are prohibited,
6 except when it is determined that the use of water in the cutting or grinding is not feasible. In any
7 instance where it is determined pursuant to this subsection that the use of water in the cutting or
8 grinding is not feasible:

9 (i) The City or City contractor shall use engineering and work practice controls, such as a
10 vacuum with a high efficiency particulate air filter or other dust control system, to control the dust;

11 (ii) Any dry cutting that occurs shall be done in a designated area away from all other
12 workers, if possible; and

13 (iii) The City or City contractor shall provide workers with full-face respirators as part of a
14 complete respiratory program that also includes training, the proper selection of respiratory cartridges
15 and fit testing to ensure that the workers are able to wear the respirators.

16 (c) Exception. The provisions of this section 64.1 shall not apply to emergency service
17 personnel responding to emergency situations.

18 (d) Preemption. In adopting this section 64.1, the Board of Supervisors does not intend to
19 regulate or affect the rights or authority of any employer or employee, other than the City, City
20 employees, and City contractors, to do those things that are required, directed, or expressly authorized
21 by federal or state law or administrative regulation. This section 64.1 is adopted pursuant to section
22 144(e) of the California Labor Code.

23 Section 3. The San Francisco Administrative Code is hereby amended by amending
24 Section 6.22, to read as follows:

1 SEC. 6.22. PUBLIC WORK CONSTRUCTION CONTRACT TERMS AND WORKING
2 CONDITIONS.

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

5 (A) Bonds. Before the execution of any contract for public works or improvements,
6 the department head authorized to execute such contracts shall require the successful bidder
7 to file corporate surety bonds for the faithful performance thereof and to guarantee the
8 payment of wages for services engaged and of bills contracted for material, supplies and
9 equipment used in the performance of the contract. The bond shall be for a sum not less than
10 100 percent of the award.

11 The City and County of San Francisco, acting through its Human Rights Commission
12 (“HRC”), intends to provide guarantees to private bonding assistance companies and financial
13 institutions in order to induce those entities to provide required bonding and financing to
14 eligible contractors bidding on and performing City public work contracts. This bonding and
15 financial assistance program is subject to the provisions of Administrative Code Section
16 12D.A.9.

17 (B) Insurance. All construction contracts awarded under this Chapter must conform
18 to the insurance requirements established by the Risk Manager. The Risk Manager shall
19 develop uniform insurance requirements for City contracts subject to this Chapter and shall
20 publish such requirements in the Risk Manager's Manual. The Risk Manager shall review and
21 update such insurance requirements on an annual basis.

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

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

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

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

16 (E) Prevailing Wages.

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

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

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

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

8 (c) Either of the following conditions exist: (1) The lease agreement between the
9 lessor and the City and County of San Francisco, as lessee, is entered into prior to the
10 construction contract, or (2) The construction work is performed according to the plans,
11 specifications, or criteria furnished by the City and County of San Francisco, and the lease
12 agreement between the lessor and the City and County of San Francisco as lessee, is
13 entered into during, or upon completion, of the construction work.

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

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

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

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

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

6 (6) Records to be Kept by Contractors and Subcontractors. Every public works
7 contract or subcontract awarded under this Chapter shall contain a provision that the
8 contractor shall keep, or cause to be kept, for a period of four years from the date of
9 substantial completion of a public work, payrolls and basic records including time cards, trust
10 fund forms, apprenticeship agreements, accounting ledgers, tax forms and superintendent
11 and foreman daily logs for all trades workers performing work at or for a City and County of
12 San Francisco public work or improvement. Such records shall include the name, address
13 and social security number of each worker who worked on the project, including apprentices,
14 his or her classification, a general description of the work each worker performed each day,
15 the rate of pay (including rates of contributions for, or costs assumed to provide fringe
16 benefits), daily and weekly number of hours worked, deductions made and actual wages paid.
17 Every subcontractor who shall undertake the performance of any part of a public work or
18 improvement shall keep a like record of each person engaged in the execution of the
19 subcontract.

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

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

6 Should the department head responsible for the public work or the Labor Standards
7 Enforcement Officer determine that a contractor or subcontractor is not in compliance with the
8 requirements of this subsection, the department head or the Labor Standards Enforcement
9 Officer shall issue written notification to the contractor or subcontractor mandating compliance
10 within not fewer than ten calendar days from the date of the notification. Should the
11 contractor or subcontractor fail to comply as required in the notification, the department head
12 who executed the contract or the Labor Standards Enforcement Officer may impose a penalty
13 of \$25.00 for each calendar day of noncompliance, or portion thereof, for each worker. Upon
14 the request of the responsible department head or the Labor Standards Enforcement Officer,
15 the Controller shall withhold these penalties from progress payments then due or to become
16 due.

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

12 (8) Non-compliance with Wage Provisions - Penalties.

13 (a) Penalty and Forfeiture. Any contractor or subcontractor who shall fail or neglect
14 to pay to the several persons who shall perform labor under any contract, subcontract or other
15 arrangement on any public work or improvement as defined in this Chapter the highest
16 general prevailing rate of wages as fixed by the Board of Supervisors under authority of this
17 Chapter, shall forfeit; and, in the case of any subcontractor so failing or neglecting to pay said
18 wage, the original contractor and the subcontractor shall jointly and severally forfeit to the City
19 and County of San Francisco back wages due plus the penal sum of \$50 per day for each
20 laborer, workman or mechanic employed for each calendar day or portion thereof, while they
21 shall be so employed and not paid said highest general prevailing rate of wages, and in
22 addition shall be subject to the penalties set forth in Article V of this Chapter, including
23 debarment.

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

15 (c) Recourse Procedure. If the contractor or subcontractor disagrees with the
16 forfeiture as so provided in the foregoing subparagraph (b), then the following procedure
17 applies:

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

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

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

6 (iv) The contractor or subcontractor shall have the burden of proving that the basis
7 for the backwage and penalty assessment is incorrect;

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

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

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

3 (F) Hours and Days of Labor.

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

12 (2) Noncompliance - Penalties and Forfeiture. Any contractor or subcontractor who
13 shall violate any of the provisions of this subsection shall be liable for the same penalties and
14 forfeits as those specified in Subsection 6.22(E) of this Chapter; penalties and forfeits shall be
15 applicable for each laborer, mechanic or artisan employed for each calendar day or portion
16 thereof whereon such laborer, mechanic or artisan is compelled or permitted to work more
17 than the days and hours specified herein. The provisions of this subsection shall be made a
18 part of all contracts and subcontracts for the construction of any public work or improvement.

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

10 (G) Local Hiring.

11 (1) Contract Requirements. All construction contracts for public works or
12 improvements to be performed within the boundaries of the City and County of San Francisco
13 shall contain the following provisions:

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

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

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

4 A failure to abide by these contract provisions may result in the imposition of sanctions
5 and penalties, including those provided for in San Francisco Administrative Code Section
6 6.80.

7 (2) Definitions.

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

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

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

23 (3) Enforcement. The Human Rights Commission shall be the City agency charged
24 with the monitoring and enforcement of the provisions of this subsection.

1 (H) Modifications—General Requirements. If it becomes necessary in the
2 prosecution of any public work or improvement under contract to make alterations or
3 modifications or to provide for extras, such alterations, modifications or extras shall be made
4 only on written recommendation of the department head responsible for the supervision of the
5 contract, together with the approval of the Mayor or the Mayor's designee or the board or
6 commission, as appropriate to the department, and also the approval of the Controller, except
7 as hereafter provided. The Mayor or the board or commission, as appropriate to the
8 department, may delegate in writing the authority to approve such alterations, modifications or
9 extras to the department head, except as provided below. The Controller may delegate in
10 writing the authority to encumber funds from prior appropriations for such alterations,
11 modifications or extras to the department head prior to the certification for payment. Such
12 authority, when granted, will clearly state the limitations of the changes to be encompassed.

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

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

5 (a) Time Extension Not Waiver of City's Rights. The granting of an extension of
6 time because of unavoidable delays shall in no way operate as a waiver on the part of the City
7 and County or the department head, Mayor, board or commission of the right to collect
8 liquidated damages for other delays or of the right to collect other damages or of any other
9 rights to which the City and County is entitled.

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

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

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

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

13 (J) Retention of Progressive Payments. Any contract may provide for progressive
14 payments, if the Advertisement For Bids shall so specify. No progressive payments under
15 any contract shall be made which, with prior payments, shall exceed in amount 90 percent of
16 the value of the work and labor and materials furnished. However, if the department head
17 responsible for the public work determines that the contract is 50 percent or more complete,
18 that the contractor is making satisfactory progress and that there is no specific cause for
19 greater withholding, the department head may authorize that either (a) the amount held in
20 retention be liquidated to an amount not less than 5% of the contract price, including all
21 modifications, and that future progressive payments may not exceed 95% of the value of the
22 work and labor and materials furnished or (b) once the amount held in retention equals an
23 amount not less than 10% of the contract price, including all modifications, that no further
24 retention be deducted from progressive payments. When the department head responsible
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1 for the public work determines that the contract is 95 percent complete, the department shall
2 make no further payments to the contractor until the department head responsible for the
3 public work determines the project to be 100% complete.

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

13 (L) Termination for Convenience. In all contracts for the construction of any public
14 work or improvement, the department head authorized to execute any contract for any public
15 work or improvement may include in the specifications setting forth the terms and conditions
16 for the performance of the contract a provision that the City and County may terminate the
17 performance of work under the contract whenever the department head shall determine, with
18 the approval of the Mayor, the Mayor's designee or the board or commission concerned, that
19 such termination is in the best interest of the City and County. Any such termination shall be
20 effected by delivery to the contractor of a notice of termination specifying the extent to which
21 performance of work under the contract is terminated and the date upon which such
22 termination becomes effective. The department head is hereby authorized to include within
23 such construction contract the appropriate language to implement this subsection.

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1 (M) Violations of Chapter 6; False Claims. Every public work contract performed at
2 the expense of the City and County of San Francisco, or the cost of which is paid for out of
3 monies deposited in the treasury of the City and County, whether directly awarded or
4 indirectly by or under subcontract, subpartnership, day labor, station work, piece work or any
5 other arrangement whatsoever, shall incorporate the provisions of Article V (commencing at
6 Section 6.80) of this Chapter, relating to administrative debarments and false claims. The
7 failure to include such reference or incorporation shall not in any way abrogate the rights of
8 the City and County under Article V of this Chapter.

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

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

20 (P) Safety. All construction contracts awarded under this Chapter shall require the
21 Contractor and all of its subcontractors to abide by the applicable Occupational Safety and
22 Health statutes and regulations.

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1 Additionally, all construction contracts awarded under this Chapter shall require the
2 Contractor and all of its subcontractors to abide by the requirements of Administrative Code Section
3 64.1, prohibiting masonry-dry cutting and masonry dry-grinding, with exceptions.

4 (Q) Claims. The City shall consider only those claims for additional payment under
5 a public work contract that are certified and that conform to the contract requirements for
6 claims, pricing, and schedule.

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

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

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18 APPROVED AS TO FORM:
19 DENNIS J. HERRERA, City Attorney

20 By: _____
21 Marlena G. Byrne
22 Deputy City Attorney
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