

BOARD of SUPERVISORS



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MEMORANDUM

TO: Carol Isen, Director, Department of Human Resources

FROM: Victor Young, Assistant Clerk, Rules Committee *Victor Young*
Board of Supervisors

DATE: October 17, 2024

SUBJECT: LEGISLATION INTRODUCED – MEET AND CONFER DETERMINATION

The Board of Supervisors' Rules Committee has received the following Ordinance. This matter is being **referred** to you as it may require the Department of Human Resources to fulfill "**Meet and Confer**" requirements. Please review, assess the impact and provide proper noticing as required and report back to on the status of the "Meet and Confer" requirement.

File No. 240985 (ver1)

Ordinance amending the Administrative Code and Labor and Employment Code to move certain employment-related provisions, including, among others, certain Prevailing Wage requirements, apprenticeship requirements, and hours and days of labor requirements, from the Administrative Code to the Labor and Employment Code; establish new defined terms encompassing the projects and contracts subject to Prevailing Wage requirements; revise penalty and enforcement requirements and procedures for Prevailing Wage and certain other labor requirements; change the process for fixing and determining Prevailing Wage rates; move and revise the Transition Employment requirements and create new enforcement procedures for those requirements; apply Notice of Forfeiture/Certification of Forfeiture procedures for violations of Prevailing Wage requirements on Covered Real Estate Projects; renumber certain Municipal Code sections or provisions; and make other substantive or technical amendments to the Administrative Code and Labor and Employment Code, including, among others: and eliminating certain exemptions from Prevailing Wage requirements for Broadcast Services work and the work of loading and unloading Commercial Vehicles on City property, while creating an exemption from Prevailing Wage requirements for work covered by the Modular Furniture Installers (Carpenters) classification.

If you have any questions or concerns, please call me at (415) 554-7723 or email: victor.young@sfgov.org. To submit documentation, please email or forward to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM THE DEPARTMENT OF HUMAN RESOURCES - Date: _____

☒ **Meet and Confer requirement has been fulfilled.**

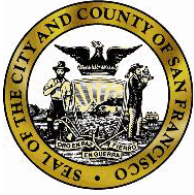
☐ **Meet and Confer requirement not applicable.**

☐ **Additional information attached.**

Kate Howard

Department of Human Resources

c: Aliya Chisti, Department of Human Resources
Kate Howard, Department of Human Resources



City and County of San Francisco

Master Report

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 240985	File Type: Ordinance	Status: 30 Day Rule
Enacted:	Effective:	
Version: 1	In Control: Rules Committee	
File Name: Administrative, Labor and Employment Codes - Prevailing Wage and Other Labor Requirements	Date Introduced: 10/08/2024	
Requester:	Cost:	Final Action:
Comment:	Title: Ordinance amending the Administrative Code and Labor and Employment Code to move certain employment-related provisions, including, among others, certain Prevailing Wage requirements, apprenticeship requirements, and hours and days of labor requirements, from the Administrative Code to the Labor and Employment Code; establish new defined terms encompassing the projects and contracts subject to Prevailing Wage requirements; revise penalty and enforcement requirements and procedures for Prevailing Wage and certain other labor requirements; change the process for fixing and determining Prevailing Wage rates; move and revise the Transition Employment requirements and create new enforcement procedures for those requirements; apply Notice of Forfeiture/Certification of Forfeiture procedures for violations of Prevailing Wage requirements on Covered Real Estate Projects; renumber certain Municipal Code sections or provisions; and make other substantive or technical amendments to the Administrative Code and Labor and Employment Code, including, among others: and eliminating certain exemptions from Prevailing Wage requirements for Broadcast Services work and the work of loading and unloading Commercial Vehicles on City property, while creating an exemption from Prevailing Wage requirements for work covered by the Modular Furniture Installers (Carpenters) classification.	
Sponsor: Safai		

History of Legislative File 240985

Ver	Acting Body	Date	Action	Sent To	Due Date	Result
1	President	10/08/2024	ASSIGNED UNDER 30 DAY RULE	Rules Committee	11/07/2024	

[Administrative, Labor and Employment Codes - Prevailing Wage and Other Labor Requirements]

Ordinance amending the Administrative Code and Labor and Employment Code to move certain employment-related provisions, including, among others, certain Prevailing Wage requirements, apprenticeship requirements, and hours and days of labor requirements, from the Administrative Code to the Labor and Employment Code; establish new defined terms encompassing the projects and contracts subject to Prevailing Wage requirements; revise penalty and enforcement requirements and procedures for Prevailing Wage and certain other labor requirements; change the process for fixing and determining Prevailing Wage rates; move and revise the Transition Employment requirements and create new enforcement procedures for those requirements; apply Notice of Forfeiture/Certification of Forfeiture procedures for violations of Prevailing Wage requirements on Covered Real Estate Projects; renumber certain Municipal Code sections or provisions; and make other substantive or technical amendments to the Administrative Code and Labor and Employment Code, including, among others: and eliminating certain exemptions from Prevailing Wage requirements for Broadcast Services work and the work of loading and unloading Commercial Vehicles on City property, while creating an exemption from Prevailing Wage requirements for work covered by the Modular Furniture Installers (Carpenters) classification.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in single-underline italics Times New Roman font.
Deletions to Codes are in ~~strikethrough italics Times New Roman font~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

2
3 Section 1. Background and Findings.

4 (a) Overview. As of 2024, the City's Municipal Code contained multiple provisions
5 related to the payment of Prevailing Wages, including in Chapters 6 and 23 of the
6 Administrative Code and Article 102 of the Labor and Employment Code. Prevailing Wage
7 requirements have grown in complexity and length, with Chapter 6, Chapter 23, and Article
8 102 each having distinct requirements that differ from one another in significant ways.
9 Locating such provisions across multiple codes, chapters, and articles can make it more
10 difficult for City officials and employees and for the public (including, among others,
11 employees, unions, and businesses) to find and understand the requirements, which is key to
12 ensuring that workers receive legally required wage and fringe benefits. This ordinance moves
13 the Prevailing Wage requirements of Chapters 6 and 23, along with other City labor
14 requirements, to the Labor and Employment Code to consolidate them with the requirements
15 of Article 102, and improve and clarify Prevailing Wage requirements as a whole. In addition,
16 certain Prevailing Wage requirements – for instance, the penalty provisions of Labor and
17 Employment Code Article 102 – benefit from substantive amendments in this ordinance that
18 help to ensure compliance.

19 (b) Reorganization. As noted above, a key feature of this ordinance is to reorganize
20 and consolidate related legal provisions that have been scattered in the Municipal Code. In
21 particular:

22 (1) This ordinance creates Articles 101 and 103 through 109 in the Labor and
23 Employment Code. It moves the Prevailing Wage requirements and Hours and Days of Labor
24 requirements of Chapter 6 of the Administrative Code, and the Prevailing Wage,
25 Apprenticeship, and Local Hire requirements of Chapter 23 of the Administrative Code into the

1 newly created Articles 101 and 103 through 107 of the Labor and Employment Code.

2 (2) The ordinance moves many of the general provisions in Article 102 –
3 including, among others, provisions related to penalties, enforcement, and the keeping of
4 payroll records – out of Article 102 and into new articles addressing those topics.

5 (3) This ordinance consolidates the City's Prevailing Wage requirements, and
6 other labor requirements, and organizes the provisions as follows:

7 (A) Article 101 contains the general provisions for Articles 101 through
8 109, including definitions;

9 (B) Article 102 contains requirements for certain service contracts that are
10 subject to Prevailing Wage requirements;

11 (C) Article 103 includes the requirement to pay the Prevailing Rate of
12 Wages, procedures for the setting of the Prevailing Rate of Wages, and language the City
13 must include in contracts subject to Prevailing Wage requirements;

14 (D) Article 104 contains Apprenticeship requirements for real property
15 sales and leases subject to Prevailing Wage requirements;

16 (E) Article 105 contains Hours and Days of Labor requirements applicable
17 to certain Covered Projects subject to Prevailing Wage requirements;

18 (F) Article 106 contains consolidated penalty and enforcement provisions
19 for violations of the City's Prevailing Wage requirements;

20 (G) Article 107 authorizes the Office of Labor Standards Enforcement
21 ("OLSE") to administer and enforce Prevailing Wage requirements and other labor standards;

22 (H) Article 108 sets forth Local Hire requirements for real property sales
23 and leases subject to Prevailing Wage requirements; and

24 (I) Article 109 contains transition employment requirements for certain
25 City services contracts.

1 (c) Technical and Non-Substantive Amendments. The ordinance also makes technical
2 and non-substantive amendments to the text of the Administrative Code and the Labor and
3 Employment Code in order to correctly designate or reference the reorganized provisions.
4 These technical amendments include renumbered provisions and amended citations to reflect
5 the changed and/or relocated text, as well as deleted text that otherwise would be redundant
6 with another consolidated provision.

7 (d) Substantive Amendments. The ordinance makes a number of substantive
8 amendments to the City's Municipal Code. The following list is a summary of such
9 amendments, but it is not a comprehensive list or summary of those changes.

10 (1) Prior to this ordinance, Chapter 6 of the Administrative Code defined "Public
11 Work or Improvement" in multiple ways: Section 6.1 provided a general definition, and Section
12 6.22(e) provided a separate definition solely for the purpose of the Prevailing Wage
13 requirements and certain other labor standards that referenced Section 6.22(e). These
14 multiple definitions created a risk of misunderstanding. To address this problem, this
15 ordinance re-designates the classes of contracts and projects subject to Prevailing Wage
16 requirements into two categories, Covered Contracts and Covered Projects. Covered
17 Contracts is the term Article 102 of the Labor and Employment Code has used to identify
18 service contracts subject to the Prevailing Wage requirements of Article 102. Covered
19 Projects is a new term that encompasses projects that were subject to Prevailing Wage
20 requirements under Chapter 6 or Chapter 23 of the Administrative Code. There are three sub-
21 definitions within the broader definition of Covered Project:

22 (A) Covered Local Project encompasses projects that are subject to
23 Prevailing Wage requirements because they fall within Chapter 6 of the Administrative Code's
24 definition of Public Work or Improvement; they qualify as residential projects required to
25 comply with "City Contracting Requirements" pursuant to Chapter 43, Article IX of the

1 Administrative Code; or they are projects required to pay Prevailing Wages pursuant to the
2 City Loan program in Administrative Code Section 66.13;

3 (B) Covered State Project encompasses projects that are subject to
4 Prevailing Wage requirements as a result of the Municipal Code having incorporated and
5 adopted by reference certain State requirements for Prevailing Wages; this includes the
6 Municipal Code's incorporating for Prevailing Wage purposes the California Labor Code's
7 definition of "public works"; and

8 (C) Covered Real Estate Project encompasses projects subject to
9 Prevailing Wage requirements as a result of the work arising from a City property sale
10 contract or lease.

11 (2) The ordinance creates a new Article 103 of the Labor and Employment
12 Code.

13 (A) Section 103.1 requires that all Contractors and Subcontractors
14 performing work on a Covered Project or a Covered Contract shall pay their workers not less
15 than the Prevailing Rate of Wages. In addition, Section 103.1 clarifies that in situations where
16 the rate required by the Minimum Compensation Ordinance, Labor and Employment Code
17 Article 111, exceeds the Prevailing Rate of Wages, the worker is entitled to the higher rate of
18 the Minimum Compensation Ordinance.

19 (B) Section 103.2 establishes the process by which the Board of
20 Supervisors (the "Board") sets the Prevailing Rate of Wages under the City's Municipal Code.
21 The ordinance sets a deadline of December 31 of each year for the Board to fix and
22 determine the Prevailing Rate of Wages, and provides that if the Board does not do so by the
23 deadline, the Civil Service Commission's recommended rates shall become the Prevailing
24 Rate of Wages. This provision will help keep rates under the Labor and Employment Code
25 reasonably in line with changes in private wage rates. In addition, because the California

1 Department of Industrial Relations generally issues two wage determinations per year for
2 recognized crafts and classifications – one determination taking effect in March, the other
3 taking effect in September – the ordinance endorses and permits the Board to update the
4 Prevailing Rate of Wages to track and match future wage determinations issued by the
5 California Department of Industrial Relations.

6 (C) Section 103.3 contains multiple requirements applicable to Covered
7 Contracts and Covered Projects. The City must generally require inclusion of these
8 requirements in its contracts; however, this ordinance confirms that a failure to do so does not
9 annul the applicability of Prevailing Wage requirements. The ordinance further specifies the
10 documentation related to the payment of wages which a Contractor must maintain and make
11 available for inspection. Covered Projects must submit certified payroll reports to OLSE;
12 however, any Covered Contract that does not also qualify as a Covered Project is exempt
13 from the certified payroll submission requirement, unless required by contract.

14 (3) This ordinance creates Articles 104 and 105 of the Labor and Employment
15 Code. Article 104 contains Apprenticeship requirements applicable to Covered Real Estate
16 Projects, and Article 105 contains Hours and Days of Labor requirements applicable to
17 Covered Local Projects and Covered Real Estate Projects. The ordinance amends the penalty
18 and enforcement provisions that apply to Articles 104 and 105, providing for enforcement
19 under Article 106. In addition, the ordinance amends Hours and Days of Labor requirements
20 to apply expressly to Covered State Projects and places the amended requirements in Article
21 105.

22 (4) This ordinance creates Article 106 of the Labor and Employment Code,
23 which establishes consolidated penalty and enforcement provisions for Prevailing Wage,
24 Apprenticeship, and Hours and Days of Labor requirements. The penalty and enforcement
25 provisions are similar to the provisions that were previously located in Section 6.22(e) of the

1 Administrative Code, with Article 106 providing for OLSE's or the contracting Department
2 Head's enforcement through issuance of a Notice of Forfeiture/Certification of Forfeiture
3 ("NOF/COF") in instances where the City can withhold funds, and OLSE's enforcement
4 through issuing a Determination of Violation ("DOV") where the City cannot withhold funds.

5 A significant substantive amendment of this ordinance in Article 106 is the
6 application of new penalties and enforcement procedures to Covered Contracts. For Covered
7 Contracts, Article 106 provides for expanded and more detailed enforcement and recourse
8 procedures, including the City's issuance of a NOF/COF or DOV for violations, recourse
9 procedures, and additional detail on a party's right to appeal.

10 (5) Under Administrative Code Chapter 23, which required Prevailing Wages on
11 certain projects related to City real estate transactions, Prevailing Wage violations were
12 subject to enforcement through the DOV process. With this ordinance, Covered Real Estate
13 Projects are now, under Section 106.2 of Article 106, subject to enforcement through the
14 NOF/COF process. However, a Covered Real Estate Project is exempt from enforcement
15 under Section 106.2 where the funds available for the City to withhold consist of funds the City
16 has agreed to disburse through a loan.

17 (6) This ordinance also amends Article 102 of the Labor and Employment
18 Code.

19 (A) The ordinance moves the Transition Employment Requirements of
20 Labor and Employment Code Section 102.1(d) to the new Article 109, and provides for OLSE
21 enforcement of the Transition Employment Requirements. The ordinance also enacts new
22 enforcement and resource provisions, incorporating the text of Sections 71.3 and 71.4 of
23 Article 71 of the Labor and Employment Code's Transition Employment Requirements, with
24 the exception of the provision allowing the City Attorney or an employee to bring an action for
25 an injunction against the award authority, which this ordinance omits.

1 (B) This ordinance makes certain other substantive amendments to
2 Article 102, including:

3 (i) For Moving Services contracts as defined under Section
4 102.6, this ordinance creates an exemption for work covered by the California Department of
5 Industrial Relations' Modular Furniture Installers (Carpenters) classification;

6 (ii) For Motor Bus Service contracts as defined under Section
7 102.7, the Purchaser no longer has discretion to omit a contract from coverage where the
8 contract would otherwise meet the requirements of the Section;

9 (iii) For Trade Show and Special Event Work on City property
10 as defined under Section 102.8, this ordinance removes the prior exemption from coverage
11 for "[a]ny permit or agreement to engage in film production pursuant to Chapter 57 of [the
12 Administrative] Code or under the circumstances set forth in Section 57.7 of [that] Code"; and
13 the ordinance clarifies the definition of "Exhibit, Display, or Trade Show Work" to include
14 enclosures, tenting, and furniture;

15 (iv) For Broadcast Services work as defined under Section
16 102.9, this ordinance deletes the exemption for work covered by a collective bargaining
17 agreement; and

18 (v) For loading and unloading of Commercial Vehicles on City
19 property as defined under Section 102.10, this ordinance deletes the prior exemption for work
20 covered by a collective bargaining agreement.

21
22 Section 2. Chapter 6, Article I, of the Administrative Code is hereby amended by
23 revising Section 6.1, to read as follows:
24
25

1 **SEC. 6.1. DEFINITIONS.**

2 **Advertisement For Bid.** An Advertisement For Bid is a set of documents which
3 includes without limitation the published Advertisement for Bids on a construction Contract;
4 the forms to be submitted with a Bid, as required by the contracting department and CMD; the
5 construction Contract general and special conditions; and the plans and specifications for the
6 Public Work or Improvement.

7 **Award.** The action taken by the City in conformance with the Administrative Code and
8 the Charter to enter into a Contract pursuant to this Chapter 6.

9 (a) For Contracts in excess of the Threshold Amount, a Contract is awarded by the
10 City when the following events have occurred:

11 (1) For departments under the Mayor, ~~(a)~~ the Mayor has approved the Contract
12 for Award; and ~~(b)~~ the Department Head has then issued an order of Award;

13 (2) For departments empowered to contract for Public Works or Improvements
14 with boards or commissions, ~~(a)~~ the Department Head has recommended to the board or
15 commission concerned a Contract for Award; and ~~(b)~~ such board or commission has then
16 adopted a resolution awarding the Contract.

17 (b) For Contracts less than or equal to the Threshold Amount, a Contract is awarded
18 when the Department Head either signs the Contract or issues an order of Award, whichever
19 occurs first. Pursuant to Charter Section 3.105, all Contract Awards are subject to certification
20 by the Controller as to the availability of funds.

21 **Bid.** A sealed document submitted in response to an Advertisement For Bids. No Bid
22 shall be deemed accepted by the City until such time as the Contract is awarded in
23 accordance with this Chapter 6.

24 **Bidder.** One who submits a Bid in response to an Advertisement For Bids.

25 **City.** The City and County of San Francisco.

1 **Construction Manager.** Any individual, firm, partnership, corporation, association, joint
2 venture or other legal entity permitted by law to furnish construction management services to
3 the City.

4 **Contract.** For the purposes of this Chapter, a Contract is an agreement in writing
5 between the City and any party to perform professional design services, consultant services,
6 construction management services or construction services relative to a Public Work or
7 Improvement. No Contract shall be deemed awarded, effective or binding on the City until
8 such time as the requirements for Award are met, as provided in this Chapter 6.

9 **Contract Monitoring Division (“CMD”).** A division of the Office of the City
10 Administrator to which the City Administrator has delegated responsibility to implement
11 Administrative Code Chapter 14B.

12 **Contractor.** A party who contracts directly with the City to perform professional design
13 services, consultant services, construction management services or construction services
14 relevant to a Public Work or Improvement. A Contractor performing construction services may
15 also be referred to as a "General Contractor" or a "Prime Contractor."

16 **Core Trade Subcontractor.** A subcontractor identified by the City or the Contractor
17 that may provide key pre-construction services for a procurement under Section 6.61 or
18 Section 6.68.

19 **Department Head.** The duly appointed General Manager, Director, or Executive
20 Director of a City department authorized to perform Public Work or Improvements under
21 Section 6.2. For purposes of this Chapter 6 only, an authorized Department Head may
22 designate an individual to execute on the Department Head’s behalf any document referenced
23 in this Chapter 6, including but not limited to Contracts, change orders, modifications, service
24 orders, task orders, approvals, progress payments, and certificates of acceptance. Such
25

1 designation shall be in writing and shall identify the individual by name and title and the scope
2 and term of the designation.

3 **Integrated Furniture, Fixtures, and Equipment (“IFF&E”).** Furniture, fixtures, and/or
4 equipment that require integration that significantly affects the building design and/or the
5 design of interior renovation of a Public Work or Improvement due to physical dimension,
6 power connection, or data communication, and/or coordination with construction trades,
7 including but not limited to, electrical, plumbing, mechanical, or building controls.

8 **Mayor.** The Mayor of the City and County of San Francisco or the Mayor’s designee,
9 provided that the designee is not the Department Head of the department concerned in the
10 particular matter that the Mayor is responsible for reviewing.

11 ~~—Prevailing Wage or Prevailing Rate of Wage. For purposes of this Chapter 6, the highest~~
12 ~~general prevailing rate of wage plus "per diem wages" and wages paid for overtime and holiday work~~
13 ~~paid in private employment in the City for the various crafts and kinds of labor employed in the~~
14 ~~performance of any Public Work or Improvement. "Per diem wages" are defined pursuant to Labor~~
15 ~~Code Section 1773.1, as amended from time to time.~~

16 **Public Work or Improvement.** Any erection, construction, renovation, alteration,
17 improvement, demolition, excavation, installation, or repair of any public building, structure,
18 infrastructure, bridge, road, street, park, dam, tunnel, utility, or similar public facility performed
19 by or for the City, the cost of which is to be paid wholly or partially out of moneys deposited in
20 the Treasury of the City. A Public Work or Improvement may include IFF&E Integrated
21 ~~Furniture, Fixtures, and Equipment.~~

22 **Quote or Quotation.** A statement or proposal setting out the estimated cost for work or
23 services submitted in response to a request for a quote from a department for work or
24 services on a Public Work or Improvement.

1 **Responsible or Responsibility.** A Bidder General Contractor, or Prime Contractor for
2 a Public Work or Improvement, that:

3 (a) meets the qualifying criteria required for a particular project, including without
4 limitation the expertise, experience, record of prior timely performance, license, resources,
5 and bonding and insurance capability necessary to perform the work under the Contract; and

6 (b) at all times deals in good faith with the City and submits bids, estimates,
7 invoices, claims, requests for equitable adjustments, requests for change orders, requests for
8 Contract modifications, or requests of any kind seeking compensation on a City Contract only
9 upon a good faith honest evaluation of the underlying circumstances and a good faith, honest
10 calculation of the amount sought; and

11 (c) substantiates its record of safe performance on construction projects, including
12 but not limited to consideration of federal or state Occupational Safety and Health
13 Administration (“OSHA”) violations and work place fatalities, including OSHA citations under
14 appeal, in accordance with regulations issued by the City Administrator.

15 **Responsive.** A Bid or proposal that complies with the requirements of the subject
16 Advertisement For Bids or request for proposals and/or qualification without condition or
17 qualification.

18 **Threshold Amount.** The Threshold Amount, for the purposes of this Chapter 6, is
19 \$1,000,000. For every five-year period starting with January 1, 2020-December 31, 2024, the
20 Controller shall recalculate the Threshold Amount to reflect any proportional increase in the
21 Urban Regional Consumer Price Index from January 1, 2020, rounded to the nearest \$10,000.
22 The Threshold Amount as recalculated by the Controller shall take effect by operation of law
23 on January 1 of the first year of the next five-year period (thus, for example, on January 1,
24 2025 following the five-year period ending December 31, 2024).

Section 3. Chapter 6, Article II, of the Administrative Code is hereby amended by revising Section 6.22, to read as follows:

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

All construction Contracts awarded under this Chapter 6 by the City shall contain the following minimum terms and conditions:

* * * *

(e) Prevailing Wages.

~~—————(1) **Generally.** All Contractors and subcontractors performing a Public Work or Improvement for the City shall comply with the requirements of Articles 101 through 107 of the Labor and Employment Code, as applicable. pay its workers on such projects the Prevailing Rate of Wages as provided below. For the purpose of Prevailing Wage requirements only, the definition of a public work shall include Public Works or Improvements as defined in the Section 6.1, and shall also include (A) any trade work performed at any stage of construction (including preconstruction work) and (B) any public work paid for by the City with "the equivalent of money" under the meaning of California Labor Code Section 1720(b).~~

~~—————(2) **Additional Projects Considered as "Public Works or Improvements" for Purposes of Prevailing Wages.**~~

~~—————(A) **Property Leased or Sold by the City.** For construction work performed on real property leased by the City or sold by the City for Housing Development, as that term is defined in Administrative Code subsection 23.61(a), Contractors and subcontractors must pay prevailing wages in accordance with Article VII of Chapter 23 of the Administrative Code and this subsection 6.22(e) as applicable.~~

~~—————(B) **Public Works Under California Labor Code.** For the limited purposes of this subsection 6.22(e) and Section 6.24, a "public work or improvement" also means and includes all~~

1 ~~projects for "public works" as defined in California Labor Code Section 1720, and projects for which~~
2 ~~Prevailing Wages are required to be paid pursuant to California Labor Code Section 1782. This~~
3 ~~subsection 6.22(e)(2)(B) is intended to have prospective effect only, and shall not be interpreted to~~
4 ~~impair the obligations of any pre-existing grant agreement, lease, development agreement or other~~
5 ~~contract entered into by the City. Notwithstanding the prior sentence, this subsection shall apply to~~
6 ~~newly included work in pre-existing grant agreements, leases, development agreements, or other~~
7 ~~contracts amended on or after the operative date. The subsection shall apply to grant agreements,~~
8 ~~leases, development agreements and other contracts entered into by the City on or after the operative~~
9 ~~date. All grant agreements, leases, development agreements and other contracts which allow for such~~
10 ~~construction on property owned by the City that the City enters after the operative date of the~~
11 ~~subsection must contain a provision that such construction shall comply with this subsection.~~

12 ~~—(3) **Determination of the Prevailing Wage.** It shall be the duty of the Board of Supervisors,~~
13 ~~from time to time and at least once during each calendar year, to fix and determine the Prevailing Rate~~
14 ~~of Wages as follows:~~

15 ~~—On or before the first Monday in November of each year, the Civil Service Commission~~
16 ~~shall furnish to the Board of Supervisors data as to the highest general Prevailing Rate of Wages of the~~
17 ~~various crafts and kinds of labor as paid in private employment in the City and County of San~~
18 ~~Francisco, plus "per diem wages" and wages for overtime and holiday work. The Civil Service~~
19 ~~Commission shall provide the Board of Supervisors data for "per diem wages" pursuant to California~~
20 ~~Labor Code Sections 1773.1 and 1773.9, as amended from time to time. The Board of Supervisors~~
21 ~~shall, upon receipt of such data, fix and determine the Prevailing Rate of Wages. The Prevailing Rate~~
22 ~~of Wages as so fixed and determined by the Board of Supervisors shall remain in force and shall be~~
23 ~~deemed to be the highest general Prevailing Rate of Wages paid in private employment for similar~~
24 ~~work, until the same is changed by the Board of Supervisors. In determining the highest general~~
25 ~~Prevailing Rate of Wages per diem wages and wages for overtime and holiday work, as provided for in~~

1 ~~this section, the Board of Supervisors shall not be limited to the consideration of data furnished by the~~
2 ~~Civil Service Commission, but may consider such other evidence upon the subject as the Board shall~~
3 ~~deem proper and thereupon base its determination upon any or all of the data or evidence considered.~~

4 ~~—In the event that the Board of Supervisors does not fix or determine the highest general~~
5 ~~Prevailing Rate of Wages in any calendar year, the rates established by the California Department of~~
6 ~~Industrial Relations for such year shall be deemed adopted.~~

7 ~~—(4) **Specifications to Include Wage Rate.** The Department Head shall include in the~~
8 ~~contract specifications, or make available in the offices of the department or at the job site, a detailed~~
9 ~~statement of the Prevailing Rate of Wages as fixed and determined by the Board of Supervisors at the~~
10 ~~time the department issued the Advertisement For Bids on the contract. The Contractor shall agree to~~
11 ~~pay to all persons performing labor in and about the Public Work or Improvement the highest general~~
12 ~~Prevailing Rate of Wages as determined pursuant to this Chapter, including wages for holiday and~~
13 ~~overtime work. If the specifications do not include the Prevailing Rate of Wages, the specifications~~
14 ~~shall include a statement that copies of the Prevailing Rate of Wages as fixed and determined by the~~
15 ~~Board of Supervisors are on file at the department's principal office or at the job site and shall be made~~
16 ~~available to any interested party on request.~~

17 ~~—(5) **Subcontractors Bound by Wage Provisions.** Every contract for any Public Work or~~
18 ~~Improvement shall also contain a provision that the Contractor shall insert in every subcontract or~~
19 ~~other arrangement which he or she may make for the performance of any work or labor on a Public~~
20 ~~Work or Improvement. This provision shall be that the subcontractor shall pay to all persons~~
21 ~~performing labor or rendering service under said subcontract or other arrangement the highest general~~
22 ~~Prevailing Rate of Wages as fixed and determined by the Board of Supervisors for such labor or~~
23 ~~services.~~

24 ~~—(6) **Records to be Kept by Contractors and Subcontractors.** Every Public Works contract~~
25 ~~or subcontract for any Public Work or Improvement shall contain a provision that the Contractor shall~~

1 ~~keep, or cause to be kept, for a period of four years from the date of substantial completion of a public~~
2 ~~work, payrolls and basic records including time cards, trust fund forms, apprenticeship agreements,~~
3 ~~accounting ledgers, tax forms and superintendent and foreman daily logs for all trades workers~~
4 ~~performing work at or for a City Public Work or Improvement. Such records shall include the name,~~
5 ~~address and social security number of each worker who worked on the project, including apprentices,~~
6 ~~his or her classification, a general description of the work each worker performed each day, the rate of~~
7 ~~pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly~~
8 ~~number of hours worked, deductions made and actual wages paid. Every subcontractor who shall~~
9 ~~undertake the performance of any part of a Public Work or Improvement shall keep a like record of~~
10 ~~each person engaged in the execution of the 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 payroll~~
13 ~~records of its subcontractors. All certified payroll records shall be accompanied by a statement of~~
14 ~~compliance signed by the Contractor indicating that the payroll records are correct and complete, that~~
15 ~~the wage rates contained therein are not less than those determined by the Board of Supervisors and~~
16 ~~that the classifications set forth for each employee conform with the work performed.~~

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

20 ~~——Should the Department Head responsible for the public work or the Labor Standards~~
21 ~~Enforcement Officer determine that a Contractor or subcontractor is not in compliance with the~~
22 ~~requirements of this subsection, the Department Head or the Labor Standards Enforcement Officer~~
23 ~~shall issue written notification to the Contractor or subcontractor mandating compliance within not~~
24 ~~fewer than 10 calendar days from the date of the notification. Should the Contractor or subcontractor~~
25 ~~fail to comply as required in the notification, the Department Head who executed the Contract or the~~

1 ~~Labor Standards Enforcement Officer may impose penalties consistent with analogous provisions of the~~
2 ~~California Labor Code, including Section 1776, as amended from time to time, for each calendar day of~~
3 ~~noncompliance, or portion thereof, for each worker. Upon the request of the responsible Department~~
4 ~~Head or the Labor Standards Enforcement Officer, the Controller shall withhold these penalties from~~
5 ~~progress payments then due or to become due.~~

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

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

24 ~~—(A) **Penalty and Forfeiture.** Any Contractor or subcontractor who shall fail or neglect to~~
25 ~~pay to the several persons who shall perform labor under any contract, subcontract or other~~

1 ~~arrangement on any public work or Improvement as defined in this Chapter the highest general~~
2 ~~Prevailing Rate of Wages as fixed by the Board of Supervisors under authority of this Chapter, shall~~
3 ~~forfeit; and, in the case of any subcontractor so failing or neglecting to pay said wage, the original~~
4 ~~Contractor and the subcontractor shall jointly and severally forfeit to the City back wages due plus~~
5 ~~penalties in amounts consistent with analogous provisions of the California Labor Code as amended~~
6 ~~from time to time, including Sections 1775 and 1813, but not less than \$50 per day for each laborer,~~
7 ~~workman or mechanic employed for each calendar day or portion thereof, while they shall be so~~
8 ~~employed and not paid said highest general Prevailing Rate of Wages, and in addition shall be subject~~
9 ~~to the penalties set forth in Article V of this Chapter 6, including debarment.~~

10 ~~——(B) **Enforcement.**~~

11 ~~——(i) For a public work or improvement undertaken through a contract with the City and~~
12 ~~under which the City has the ability to withhold funds, it shall be the duty of the officer, board or~~
13 ~~commission under whose jurisdiction said Public Work or Improvement is being carried on, made or~~
14 ~~constructed, when certifying to the Controller any payment which may become due under said contract,~~
15 ~~to deduct from said payment or payments the total amount of said forfeiture provided for in this~~
16 ~~subsection. In doing so, the Department Head must also notify in writing the Labor Standards~~
17 ~~Enforcement Officer of his/her action. The Labor Standards Enforcement Officer may also upon written~~
18 ~~notice to the Department Head who is responsible for the project, certify to the Controller any~~
19 ~~forfeiture(s) to deduct from any payment as provided for in this subsection 6.22(e)(8). Certification of~~
20 ~~forfeitures under this subsection shall be made only upon an investigation and audit by the responsible~~
21 ~~Department Head or the Labor Standards Enforcement Officer and upon service of written notice to the~~
22 ~~Contractor that includes identification of the grounds for the forfeiture or forfeitures ("Certification of~~
23 ~~Forfeiture"). The audit supporting the forfeiture shall be appended to the Certification of Forfeiture,~~
24 ~~but failure to append such documentation shall not invalidate the Certification. Service of the~~
25 ~~Certification of Forfeiture shall be made by United States mail and the date of service shall be the date~~

1 of mailing. The Controller, in issuing any warrant for any such payment, shall deduct from the amount
2 which would otherwise be due on said payment or payments the amount of said forfeiture or forfeitures
3 as so certified.

4 ~~—— (ii) For any contract in which the City has required a third party to pay prevailing~~
5 ~~wages and for which the City does not have the ability to withhold funds, the Labor Standards~~
6 ~~Enforcement Officer shall determine whether a contractor and/or any subcontractor has failed to~~
7 ~~comply with the prevailing wage requirement. If after conducting an investigation, the Labor Standards~~
8 ~~Enforcement Officer determines that a violation has occurred, it shall issue to and serve a~~
9 ~~Determination of Violation on the contractor and/or any subcontractor, which sets forth the basis of the~~
10 ~~determination and orders payment of back wages due plus the penalty of at least \$50 per day for each~~
11 ~~laborer, workman, or mechanic employed for each calendar day or portion thereof. Service of the~~
12 ~~Determination of Violation shall be made by United States mail and the date of service shall be the date~~
13 ~~of mailing.~~

14 ~~—— (C) **Recourse Procedure.** A Contractor and/or a subcontractor may appeal from a~~
15 ~~Certification of Forfeiture under subsection 6.22(e)(8)(B)(i) or Determination of Violation under~~
16 ~~subsection 6.22(e)(8)(B)(ii). The Controller shall adopt and maintain rules and regulations for any~~
17 ~~appeal under this subsection 6.22(e)(8)(C), which rules shall be consistent with the following~~
18 ~~parameters:~~

19 ~~—— (i) Any Appeal from Certification of Forfeiture or Determination of Violation (referred~~
20 ~~to in this subsection 6.22(e)(8)(C) as the "Appeal") shall be filed in writing by the Contractor and/or~~
21 ~~subcontractor (referred to in this subsection 6.22(e)(8)(C), whether singular or plural, as the~~
22 ~~"Appellant") within 15 days of the date of service of the Certification of Forfeiture or Determination of~~
23 ~~Violation. Appellant shall file the Appeal with the City Controller and serve a copy on the Labor~~
24 ~~Standards Enforcement Officer. Failure by the Contractor or subcontractor to submit a timely, written~~
25

~~Appeal shall constitute concession to the forfeiture or determination, and the forfeiture or determination shall be deemed final upon expiration of the 15-day period.~~

~~—— (ii) The Office of Labor Standards Enforcement shall promptly afford Appellant an opportunity to meet and confer in good faith regarding possible resolution of the Certification of Forfeiture or Determination of Violation in advance of further proceedings under this subsection 6.22(e)(8)(C), with the intention that such meeting occur within 30 days of the date the Appeal is filed.~~

~~—— (iii) After the expiration of 30 days following the date the Appeal is filed, any party may request in writing, with concurrent notice to all other parties, that the Controller appoint a hearing officer to hear and decide the Appeal. If no party requests appointment of a hearing officer, the Certification of Forfeiture or Determination of Violation shall be deemed final on the 60th day after the date the Appeal is filed.~~

~~—— (iv) Within 15 days of receiving a written request for appointment of a hearing officer under subsection 6.22(e)(8)(C)(iii), the Controller shall appoint an impartial hearing officer and immediately notify the enforcing official and Appellant, and their respective counsel or authorized representative if any, of the appointment. The appointed hearing officer shall be an Administrative Law Judge with at least 10 years' experience with the City and not less than two years experience in labor law, Prevailing Wage, and/or wage and hour matters; or shall be an attorney with knowledge and not less than five years' experience in labor law, Prevailing Wage, and/or wage and hour matters.~~

~~—— (v) The hearing officer shall promptly set a date for a hearing. The hearing must commence within 45 days of the date of the notification of the hearing officer appointment, and conclude within 75 days of such notice. The hearing officer shall conduct a fair and impartial evidentiary hearing in conformance with the time limitations set forth in this subsection 6.22(e)(8)(C) and in the rules and regulations, so as to avoid undue delay in the resolution of any appeal. The hearing officer shall have the discretion to extend the times under this subsection 6.22(e)(8)(C), and any time requirements under the rules and regulations, only upon a showing of good cause.~~

1 ~~—— (vi) Appellant has the burden of proving by a preponderance of the evidence that the~~
2 ~~basis for the Certification of Forfeiture or Determination of Violation is incorrect, including any back~~
3 ~~wage and penalty assessments that are at issue in the appeal.~~

4 ~~—— (vii) Within 30 days of the conclusion of the hearing, the hearing officer shall issue a~~
5 ~~written decision affirming, modifying, or dismissing the Certificate of Forfeiture or Determination of~~
6 ~~Violation. The decision of the hearing officer shall consist of findings and a determination. The hearing~~
7 ~~officer's findings and determination shall be the final determination.~~

8 ~~—— (viii) Appellant may appeal a final determination under this subsection 6.22(e)(8) only~~
9 ~~by filing in the San Francisco Superior Court a petition for a writ of mandate under California Code of~~
10 ~~Civil Procedure, Section 1084, et seq., as applicable and as may be amended from time to time.~~

11 ~~—— (D) **Distribution of Forfeiture and Damages.** The Controller shall withhold any~~
12 ~~forfeiture as provided in the foregoing paragraphs until such time as either the Contractor or~~
13 ~~subcontractor has conceded to the forfeiture or, in the event of an Appeal, there is a determination no~~
14 ~~longer subject to judicial review. The Controller shall then distribute the amounts withheld in the~~
15 ~~following order: (1) the Labor Standards Enforcement Officer shall make best efforts to distribute back~~
16 ~~wages withheld to the individual workers identified as not having been paid the proper wage rate; (2)~~
17 ~~the penal sums provided for above shall inure to the benefit of the general fund of the City; (3) the~~
18 ~~Controller shall hold the balance of any back wages in escrow for workers who the Labor Standards~~
19 ~~Enforcement Officer, despite his or her best efforts, cannot locate. In the event back wages are~~
20 ~~unclaimed for a period of three years, the Controller shall undertake administrative procedures for~~
21 ~~unclaimed funds in conformance with California Government Code Section 50050, et seq., as may be~~
22 ~~amended from time to time. This subsection 6.22(e)(8)(D) also shall be applicable to damages obtained~~
23 ~~as a result of an enforcement action pursuant to subsection 6.22(e)(8)(E), as applicable.~~

24 ~~—— (E) **Remedies for Non-Compliance with Determination of Violation.** No later than 30~~
25 ~~days after receipt of a Notice of Determination or, in the case of an Appeal, after an adverse final~~

~~determination by a hearing officer, the contractor and/or subcontractor shall comply with the Notice of Determination of Violation by paying the amounts due for back wages and any penalty amount as set forth in the Determination of Violation or final determination. The contractor and/or subcontractor shall, in addition, be subject to the penalties set forth in Article V of this Chapter 6, including debarment. If any contractor and/or subcontractor fails to pay the amounts required under this subsection 6.22(e)(8)(E) within the required 30 days, the City may bring a civil action in a court of competent jurisdiction against the non-complying party and, upon prevailing, shall be entitled to such legal and equitable relief as may be appropriate to remedy the violation including, without limitation: (i) damages in the amount of back wages and any penalty amounts due to workers for violation of the prevailing wage requirement, which amounts the City shall, on receipt, distribute to workers following the procedures in subsection 6.22(e)(8)(D); and (ii) an award of reasonable attorney's fees and costs.~~

(f) Hours and Days of Labor.

Contractors and subcontractors performing a Public Work or Improvement for the City shall comply with the Hours and Days of Labor requirements of Labor and Employment Code Article 105.

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

~~—(2) **Noncompliance and Forfeiture.** Any Contractor or subcontractor who shall violate any of the provisions of this subsection 6.22(f) shall be liable for the same penalties and forfeits as those specified in subsection 6.22(e) of this Chapter; penalties and forfeits shall be applicable for each~~

1 ~~laborer, mechanic or artisan employed for each calendar day or portion thereof whereon such laborer,~~
2 ~~mechanic or artisan is compelled or permitted to work more than the days and hours specified herein.~~
3 ~~The provisions of this subsection 6.22(f) shall be made a part of all Contracts and subcontracts for the~~
4 ~~construction of any Public Work or Improvement.~~

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

18 * * * *

19
20 Section 4. Chapter 6, Article II, of the Administrative Code is hereby amended by
21 revising Section 6.24, to read as follows:

22 **SEC. 6.24. OFFICE OF LABOR STANDARDS ENFORCEMENT; PREVAILING WAGE**
23 **REQUIREMENTS.**

24 ~~—(a) Subject to the approval of the Mayor and Director of the Department of Administrative~~
25 ~~Services, As set forth in Article 107 of the Labor and Employment Code, the Labor Standards~~

1 Enforcement Officer ~~shall~~ has, without limitation, the authority to administer, develop, and/or enforce
2 the labor standards imposed by the Charter and this Chapter 6. ~~develop and administer a plan for the~~
3 ~~enforcement of the Prevailing Wage requirements and other labor standards imposed by the Charter~~
4 ~~and this Chapter 6 on Public Work or Improvements as defined in subsection 6.22(e). The Labor~~
5 ~~Standards Enforcement Officer shall coordinate his or her activities with federal and state labor~~
6 ~~standards agencies. The Labor Standards Enforcement Officer shall direct the City's enforcement of the~~
7 ~~Prevailing Wage requirements and other labor standards imposed by the Charter and this Chapter 6 on~~
8 ~~Contractors as directed by the Mayor, and to this end all City departments shall cooperate with the~~
9 ~~Labor Standards Enforcement Officer. The Labor Standards Enforcement Officer has the authority to~~
10 ~~seek for violations of Prevailing Wage, working conditions and apprenticeship requirements all of the~~
11 ~~penalties imposed by this Chapter, including the authority to file charges, in the same manner and to~~
12 ~~the same extent as a Department Head, which may lead to the debarment of the Contractor under~~
13 ~~Article V of this Chapter 6. The Labor Standards Enforcement Officer shall oversee the training of City~~
14 ~~personnel in the area of labor standards enforcement. In accordance with applicable law, the Mayor~~
15 ~~may enter into a contract for investigative and monitoring services to further the purposes of this~~
16 ~~Section 6.24. In evaluating the qualifications of persons seeking that contract, the Mayor shall~~
17 ~~consider, among other relevant factors, the experience of those persons in monitoring and investigating~~
18 ~~labor standards compliance.~~

19 ~~—(b) Subject to the fiscal and budgetary provisions of the Charter, the Office of Labor~~
20 ~~Standards Enforcement is authorized to receive from departments awarding contracts the amount~~
21 ~~reasonably calculated to pay for the costs, including litigation costs, of enforcing the City Prevailing~~
22 ~~Wage requirements and other labor standards for contracts awarded by those departments. The Labor~~
23 ~~Standards Enforcement Officer shall supervise the expenditure of all funds appropriated for~~
24 ~~enforcement of Prevailing Wage requirements and other labor standards imposed by the Charter and~~
25 ~~this Chapter 6 on Contractors.~~

1 ~~—(c) The Labor Standards Enforcement Officer shall establish an administrative procedure to~~
2 ~~address allegations of labor standards violations in connection with any contract under this Chapter 6.~~
3 ~~The Labor Standards Enforcement Officer shall have sole authority over the administration of this~~
4 ~~complaint procedure. The complaint procedure shall include but need not be limited to the following:~~
5 ~~(1) any person may file a complaint, written or oral, alleging one or more violations of any labor~~
6 ~~standards requirement imposed by this Chapter 6 on Public Work Contractors; (2) before beginning to~~
7 ~~investigate the complaint, the Labor Standards Enforcement Officer shall determine if the allegations~~
8 ~~of the complaint are sufficient and based on that assessment shall determine to either dismiss it or~~
9 ~~proceed with an investigation; (3) if the Labor Standards Enforcement Officer at any time determines~~
10 ~~that the allegations contained in the complaint are without merit, the Labor Standards Enforcement~~
11 ~~Officer shall notify the complainant; and (4) if the Labor Standards Enforcement Officer finds that any~~
12 ~~allegations in a complaint have merit, the Labor Standards Enforcement Officer shall proceed in~~
13 ~~accordance with the enforcement procedures under Section 6.22. This complaint procedure is~~
14 ~~applicable to allegations of labor standards violations in connection with any Public Work contract~~
15 ~~under this Chapter 6, but is not applicable to those matters under the administrative jurisdiction of the~~
16 ~~San Francisco Human Rights Commission. This procedure shall not preclude the Labor Standards~~
17 ~~Enforcement Officer from initiating or proceeding with an investigation on his or her own authority.~~
18 ~~All Contractors and departments engaged in Public Work shall cooperate fully with the Office of Labor~~
19 ~~Standards Enforcement in connection with any investigation of any complaint filed in accordance with~~
20 ~~this complaint procedure. The Labor Standards Enforcement Officer may interview, either at the~~
21 ~~worksite or elsewhere, any witness who may have information relative to a complaint.~~

22
23 Section 5. Chapter 23, Article VII, of the Administrative Code is hereby amended by
24 revising Section 23.60, deleting Sections 23.61 and 23.62, and renumbering existing Sections
25

23.63, 23.64, 23.65, and 23.66 as new Sections 23.61, 23.62, 23.63, and 23.64 respectively, to read as follows:

SEC. 23.60. COMPLIANCE WITH THE LABOR AND EMPLOYMENT CODE SCOPE OF ARTICLE.

When the City sells real property for Housing Development or leases real property as a landlord or as a tenant, and the real property in each of these types of transactions is located within the jurisdictional boundaries of the City, the City, in the applicable sales contract or lease and all ~~contracts for a Covered Real Estate Project~~ *Construction Contracts* thereunder, shall require compliance with the ~~p~~*Prevailing* ~~w~~*Wage*, apprenticeship, and local hiring requirements as set forth in *Articles 101 through 108 of the Labor and Employment Code, as applicable.*

SEC. 23.61. PREVAILING WAGE AND APPRENTICESHIP REQUIREMENTS.

~~(a) Definitions. The following definitions shall apply to the terms used in this Article VII:~~

~~—Apprentice. Any worker who is indentured in a construction apprenticeship program that maintains current registration with the State of California's Division of Apprenticeship Standards.~~

~~—Construction Contract. The construction agreement entered into by the Contracting Party for Covered Construction.~~

~~—Contracting Party. Any entity or individual, or successor in interest to the rights of any entity or individual, who is (1) the buyer of real property intended for Housing Development under a City-as-seller contract, (2) the landlord under a City-as-tenant lease, or (3) the tenant under a City-as-landlord lease; provided, however, that public entities shall not be considered Contracting Parties.~~

~~—Contractor. Any person, firm, partnership, owner operator, limited liability company, corporation, joint venture, proprietorship, trust, association, or other entity that directly enters into a Construction Contract to perform Covered Construction work. A Contractor may also be referred to as a "Prime Contractor" or "General Contractor."~~

1 ~~—**Covered Construction**. Any project for any erection, construction, renovation, alteration,~~
2 ~~improvement, demolition, excavation, installation, or repair, including tenant improvements, that meets~~
3 ~~the following requirements: (1) the real property on which the project is located is within the~~
4 ~~jurisdictional boundaries of the City; (2) the estimated project cost exceeds the Threshold Amount; and~~
5 ~~(3) the project is performed on (A) any real property sold to the Contracting Party under a City-as-~~
6 ~~seller contract for Housing Development; or (B) real property leased by the City as a landlord or~~
7 ~~leased to the City as a tenant, where the construction is performed before or during the term of the~~
8 ~~lease in accordance with plans, specifications, or criteria approved by the City.~~

9 ~~—**Housing Development**. Any residential or mixed-use project that includes the construction,~~
10 ~~expansion, or rehabilitation of three or more residential units.~~

11 ~~—**Prevailing Rate of Wages**. The Prevailing Rate of Wages as defined in Section 6.1, and~~
12 ~~established under subsections 6.22(e)(3) and 6.22(f), of the Administrative Code.~~

13 ~~—**Subcontractor**. Any person, firm, partnership, owner operator, limited liability company,~~
14 ~~corporation, joint venture, proprietorship, trust, association, or other entity that contracts with a Prime~~
15 ~~Contractor or a subcontractor to provide construction work on Covered Construction.~~

16 ~~—**Threshold Amount**. The Threshold Amount as defined in Section 6.1 of the Administrative~~
17 ~~Code.~~

18 ~~—(b) **Prevailing Wage and Apprentice Requirements**. The City shall include in all real~~
19 ~~property sales contracts and leases that include or contemplate Covered Construction the requirement~~
20 ~~that the Contracting Party and each Contractor and Subcontractor performing work on Covered~~
21 ~~Construction pay prevailing wages and employ Apprentices in accordance with this Section 23.61.~~
22 ~~Each Contracting Party shall comply with such provisions as if the Covered Construction is a "public~~
23 ~~work and improvement" under subsection 6.22(e) of this Code and the California Labor Code, and as if~~
24 ~~the Contractors and Subcontractors are "Contractors" and "subcontractors" under subsection 6.22(e)~~
25 ~~of this Code.~~

1 ~~—The following requirements are in addition to any applicable requirements under state and~~
2 ~~federal law:~~

3 ~~—(1) **Prevailing Wage Rates.** Each Contracting Party shall (A) pay, and shall require its~~
4 ~~Contractors and Subcontractors to pay, all persons performing work on Covered Construction no less~~
5 ~~than the applicable Prevailing Rate of Wages, and (B) comply with, and require its Contractors and~~
6 ~~Subcontractors to comply with, the provisions of subsections 6.22(e)(5), (6), (7) and subsection 6.22(f)~~
7 ~~of this Code. If, under subsection 6.22(e)(6) of this Code, there is no department authorized to award a~~
8 ~~contract under Chapter 6 of this Code for whom the Contractor or Subcontractor shall maintain weekly~~
9 ~~certified payroll records for submission, then the Contractor or Subcontractor shall maintain weekly~~
10 ~~certified payroll records to be submitted to the Office of Labor Standards Enforcement upon request in~~
11 ~~order to comply with Section 6.22(e)(6) of this Code.~~

12 ~~—(2) **Employment of Apprentices.** Each Contracting Party shall require its Contractors and~~
13 ~~Subcontractors to employ Apprentices in compliance with the requirements of the State Apprenticeship~~
14 ~~Program as set forth in the California Labor Code, Division 3, Chapter 4 commencing at Section 3070,~~
15 ~~and Section 1777.5 of the Labor Code, as amended from time to time.~~

16 ~~—(c) **City as Third Party Beneficiary.** Each Construction Contract will (1) require the~~
17 ~~payment of the Prevailing Rate of Wages and employment of Apprentices in all contracts and~~
18 ~~subcontracts for the Covered Construction, with specific reference to this Section 23.61, (2) name the~~
19 ~~City and County of San Francisco, affected workers, and employee organizations formally representing~~
20 ~~affected workers, as third party beneficiaries for the limited purpose of having the right to enforce the~~
21 ~~prevailing wage and apprenticeship requirements, including the right to file charges and seek penalties~~
22 ~~against any Contractor or Subcontractor in accordance with this Article VII and (3) require the~~
23 ~~Contracting Party to reasonably cooperate with the City in any action or proceeding against a~~
24 ~~Contractor or Subcontractor that fails to pay the Prevailing Rate of Wages or employ Apprentices as~~
25 ~~required. A Contracting Party that requires the payment of prevailing wages and employment of~~

1 ~~Apprentices in the Construction Contract and reasonably cooperates with the City in any enforcement~~
2 ~~action shall not be in breach of the applicable sales contract or lease with the City due to a~~
3 ~~Contractor's or Subcontractor's failure to pay the Prevailing Rate of Wages or employ Apprentices. So~~
4 ~~long as the Contracting Party satisfies the requirements of the previous sentence, any enforcement~~
5 ~~action by the City, through the City's Labor Standards Enforcement Officer or otherwise, shall be~~
6 ~~directly against the Contractor or Subcontractor that failed to pay prevailing wages or employ~~
7 ~~Apprentices as required. Nothing in this Section 23.61 shall limit the remedies available to a City~~
8 ~~department, as set forth in the applicable sales contract or lease, for a Contracting Party's failure to~~
9 ~~require the payment of the Prevailing Rate of Wages or the employment of Apprentices in a~~
10 ~~Construction Contract, or for a Contracting Party's failure to reasonably cooperate with the City in~~
11 ~~any enforcement action as set forth above.~~

12 ~~—(d) **Enforcement.** The City's Labor Standards Enforcement Officer shall have the authority~~
13 ~~to enforce the prevailing wage and apprenticeship requirements against a Contractor or Subcontractor~~
14 ~~as set forth in this Section 23.61.~~

15 ~~—(1) **Penalty and Forfeiture.** Any Contractor or Subcontractor that fails to pay the~~
16 ~~Prevailing Rate of Wages or fails to employ Apprentices as required under this Section 23.61 shall (A)~~
17 ~~pay and, in the case of any Subcontractor so failing, the original Contractor and the Subcontractor~~
18 ~~shall be jointly and severally liable to pay the City back wages due plus penalties in amounts consistent~~
19 ~~with analogous provisions of the California Labor Code as amended from time to time, including~~
20 ~~Sections 1775, 1813 and 1777.7, but not less than the sum of \$50 for each day or portion thereof for~~
21 ~~each violation, and (B) be subject to the penalties set forth in Article V of this Chapter 6,1 including~~
22 ~~debarment.~~

23 ~~—(2) The Labor Standards Enforcement Officer shall determine whether a contractor or~~
24 ~~Subcontractor has failed to comply with the prevailing wage and apprenticeship requirements of this~~
25 ~~Section. If after conducting an investigation, the Labor Standards Enforcement Officer determines that~~

1 ~~a violation has occurred, the Officer shall issue and serve a Determination of Violation on the~~
2 ~~Contractor or Subcontractor that sets forth the basis of the determination and orders payment of back~~
3 ~~wages due plus the penalty sum set forth in subsection 23.61(d)(1). Service of the Determination of~~
4 ~~Violation shall be made by United States mail and the date of service shall be the date of mailing.~~

5 ~~—(3)—**Recourse Procedure.** A Contractor and/or a Subcontractor may appeal from a~~
6 ~~Determination of Violation. The Controller shall adopt and maintain rules and regulations for any~~
7 ~~appeal under this subsection 23.61(d)(3), which rules shall be consistent with the following~~
8 ~~parameters:~~

9 ~~——(A)—Any Appeal from a Determination of Violation (referred to in this subsection~~
10 ~~23.61(d)(3) as the "Appeal") shall be filed in writing by the Contractor and/or Subcontractor (referred~~
11 ~~to in this subsection 23.61(d)(3), whether singular or plural, as the "Appellant") within 15 days of the~~
12 ~~date of service of the Determination of Violation. Appellant shall serve the Appeal on the Controller~~
13 ~~and the Labor Standards Enforcement Officer. Failure by the contractor or Subcontractor to serve a~~
14 ~~timely, written Appeal shall constitute concession to the Determination of Violation, and that~~
15 ~~determination shall be deemed final upon expiration of the 15-day period.~~

16 ~~——(B)—The Office of Labor Standards Enforcement shall promptly afford Appellant an~~
17 ~~opportunity to meet and confer in good faith regarding possible resolution of the Determination of~~
18 ~~Violation in advance of further proceedings under this subsection 23.61(d)(3), with the intention that~~
19 ~~such meeting occur within 30 days of the date the Appeal is filed.~~

20 ~~——(C)—After the expiration of 30 days following the date the Appeal is filed, any party may~~
21 ~~request in writing, with concurrent notice to all other parties, that the Controller appoint a hearing~~
22 ~~officer to hear and decide the Appeal. If no party requests appointment of a hearing officer, the~~
23 ~~Determination of Violation shall be deemed final on the 60th day after the date the Appeal is filed.~~

24 ~~——(D)—Within 15 days of receiving a written request for appointment of a hearing officer~~
25 ~~under subsection 23.61(d)(3)(C), the Controller shall appoint an impartial hearing officer and~~

1 ~~immediately notify the enforcing official and Appellant, and their respective counsel or authorized~~
2 ~~representative if any, of the appointment. The appointed hearing officer shall be an Administrative Law~~
3 ~~Judge with at least 10 years' experience with the City and not less than two years' experience in labor~~
4 ~~law, prevailing wage, and/or wage and hour matters, or shall be an attorney with knowledge of and not~~
5 ~~less than five years' experience in labor law, prevailing wage, and/or wage and hour matters.~~

6 ~~——(E) The hearing officer shall promptly set a date for a hearing. The hearing must~~
7 ~~commence within 45 days of the date of the notification of the hearing officer appointment, and~~
8 ~~conclude within 75 days of such notice. The hearing officer shall conduct a fair and impartial~~
9 ~~evidentiary hearing in conformance with the time limitations set forth in this subsection 23.61(d)(3) and~~
10 ~~in the rules and regulations, so as to avoid undue delay in the resolution of any appeal. The hearing~~
11 ~~officer shall have the discretion to extend the times under this subsection 23.61(d)(3), and any time~~
12 ~~requirements under the rules and regulations, only upon a showing of good cause.~~

13 ~~——(F) Appellant has the burden of proving by a preponderance of the evidence that the~~
14 ~~basis for the Determination of Violation is incorrect, including any back wage and penalty assessments~~
15 ~~that are at issue in the Appeal.~~

16 ~~——(G) Within 30 days of the conclusion of the hearing, the hearing officer shall issue a~~
17 ~~written decision affirming, modifying, or dismissing the Determination of Violation. The decision of the~~
18 ~~hearing officer shall consist of findings and a determination. The hearing officer's findings and~~
19 ~~determination shall be the final determination of the City.~~

20 ~~——(H) Appellant may appeal a final determination under this subsection 23.61(d)(3) only by~~
21 ~~filing in the San Francisco Superior Court a petition for a writ of mandate under California Code of~~
22 ~~Civil Procedure Section 1084 et seq., as applicable and as amended from time to time.~~

23 ~~**(4) Remedies for Non-Compliance with Determination of Violation.** No later than 30 days~~
24 ~~after receipt of a Determination of Violation or, in the case of an Appeal, after an adverse final~~
25 ~~determination by a hearing officer, the Contractor or Subcontractor shall comply with the~~

~~Determination of Violation by paying the amounts due for back wages and any penalty amount as set forth therein. The Contractor or Subcontractor shall, in addition, be subject to the penalties set forth in Article V of Chapter 6 of this Code, including debarment. If any Contractor or Subcontractor fails to pay the amounts required under this Section 23.61 within the required 30 days, it shall be subject to enforcement actions, including the following:~~

~~——(A) The City may bring a civil action in a court of competent jurisdiction against the non-complying party and, upon prevailing, shall be entitled to such legal and equitable relief as may be appropriate to remedy the violation including, without limitation: (i) damages in the amount of back wages and any penalty amounts due to workers for violation of the prevailing wage and/or apprenticeship requirements, which amounts the City shall, on receipt, distribute to workers following the procedures in subsection 23.61(d)(5); and (ii) an award of reasonable attorney's fees and costs;~~

~~(B) Each worker entitled to back pay as set forth in the Determination of Violation or, where a hearing officer has decided the matter, as set forth in the decision of the hearing officer, may bring a civil action in a court of competent jurisdiction against the non-complying party and, upon prevailing, shall be entitled to such legal and equitable relief as may be appropriate to remedy the violation including, without limitation: (i) damages in the amount of back wages due to such workers for violation of the prevailing wage and/or penalties due for violation of the apprenticeship requirements; and (ii) an award of reasonable attorney's fees and costs. An employee organization that formally represents a worker or workers entitled to bring a civil action under this subsection 23.61(d)(4)(B) may do so on behalf of the worker or workers, with the same range of possible legal and equitable relief as would be available in an action brought by the worker or workers.~~

~~(5) **Distribution of Damages.** Upon payment of back wages and/or penalties, as provided in the foregoing paragraphs, the City shall distribute the amounts in the following order: (A) the Labor Standards Enforcement Officer shall make reasonable best efforts to distribute back wages withheld to the individual workers identified as not having been paid the proper wage rate; (B) the assessed~~

1 ~~penalties shall inure to the benefit of the general fund of the City; (C) the Controller shall hold the~~
2 ~~balance of any back wages in escrow for workers whom the Labor Standards Enforcement Officer,~~
3 ~~despite his or her reasonable best efforts, cannot locate. In the event back wages are unclaimed for a~~
4 ~~period of three years, the Controller shall undertake administrative procedures for unclaimed funds in~~
5 ~~conformance with California Government Code Section 50050 et seq., as may be amended from time to~~
6 ~~time. This subsection 23.61(d)(5) also shall be applicable to damages obtained as a result of an~~
7 ~~enforcement action pursuant to subsection 23.61(d)(4), as applicable.~~

8
9 ***SEC. 23.62. LOCAL HIRE REQUIREMENTS.***

10 ~~(a) **Local Hire Requirement.** The City shall include in all real property sales contracts for~~
11 ~~Housing Development, as that term is defined in Section 23.61(a), and in all City as landlord leases~~
12 ~~that include or contemplate construction of a Covered Project, the requirement that the purchaser or~~
13 ~~tenant of the real property comply with the requirements of the City's Local Hiring Policy, as set forth~~
14 ~~in Administrative Code Chapter 82 and under the standards set forth in subsection 82.4(b). For~~
15 ~~purposes of this Section 23.62, the terms "Covered Project" and, notwithstanding Section 23.61,~~
16 ~~"Contractor" and "Subcontractor," shall have the same meaning as the definitions set forth in Section~~
17 ~~82.3.~~

18 ~~(b) **Mandatory Participation Levels.** In the performance of work or labor on a Covered~~
19 ~~Project, each purchaser or tenant shall comply, and shall require its Contractors and Subcontractors~~
20 ~~to comply, with the mandatory participation levels set forth in Section 82.5 of the Administrative Code.~~

21 ~~(c) **City as Third Party Beneficiary.** Each applicable construction contract for a Covered~~
22 ~~Project will (1) require compliance with the local hiring policy, with reference to this Section 23.62;~~
23 ~~(2) name the City and County of San Francisco as a third party beneficiary for the limited purpose of~~
24 ~~having the right to enforce the local hiring policy, including the right to file charges and seek penalties~~
25 ~~against any Contractor or Subcontractor; and (3) require the purchaser or tenant to reasonably~~

1 ~~cooperate with the City in any action or proceeding against a Contractor or Subcontractor that fails to~~
2 ~~comply with the requirements of this Section 23.62. A purchaser or tenant that requires compliance~~
3 ~~with this Section in the construction contract for the Covered Project and reasonably cooperates with~~
4 ~~the City in any enforcement action shall not be in breach of the applicable sales contract or lease with~~
5 ~~the City due to a Contractor's or Subcontractor's failure to comply or to meet the mandatory~~
6 ~~participation levels. So long as the purchaser or tenant complies with the requirements of the previous~~
7 ~~sentence, any enforcement action by the City, through the Office of Economic and Workforce~~
8 ~~Development ("OEWD") or otherwise, shall be directly against the Contractor or Subcontractor that~~
9 ~~failed to meet the mandatory participation levels. Nothing in this Section shall limit the remedies~~
10 ~~available to a City department, as set forth in the applicable sales contract or lease, for a purchaser's~~
11 ~~or tenant's failure to require compliance with this Section in a construction contract for the Covered~~
12 ~~Project or to reasonably cooperate with the City in any enforcement action as set forth above.~~

13 ~~(d) **Enforcement.**~~

14 ~~(1) **Assessment of Penalties.** OEWD shall have the authority to enforce this Section~~
15 ~~23.62 against a Contractor or Subcontractor as set forth in Administrative Code Section 82.8. OEWD~~
16 ~~shall determine whether a Contractor or Subcontractor has failed to comply with the local hiring~~
17 ~~requirements. If after conducting an investigation, OEWD determines that a violation has occurred, it~~
18 ~~shall issue and serve an assessment of penalties that sets forth the basis of the assessment and orders~~
19 ~~payment of penalties under subsection 82.8(f) of this Code.~~

20 ~~(2) **Remedies for Non-Compliance with Assessment of Penalties.** Each Contractor~~
21 ~~and Subcontractor shall comply with the final assessment of penalties by paying the amounts due for~~
22 ~~wages as set forth in Administrative Code subsection 82.8(f)(3) no later than 30 days after the~~
23 ~~determination or decision of the hearing officer is final. The Contractor or Subcontractor shall, in~~
24 ~~addition, be subject to the penalties set forth in Article V of Chapter 6 of the Administrative Code,~~
25 ~~including debarment. If any Contractor or Subcontractor fails to pay the amounts required under~~

1 ~~subsection 82.8(f) of this Code within the required 30 days, the non-complying party shall be subject to~~
2 ~~the enforcement actions set forth in subsection 82.8(f)(5).~~

3
4 **SEC. 23.613. APPLICATION.**

5 The requirements of this Article VII are intended to have prospective effect only, and
6 shall not be interpreted to impair the obligations of any existing sales contract, lease, or
7 amendment thereto entered into by the City before the operative date of this Article VII. Where
8 the Covered Construction or Covered Project involves Housing Development on real property
9 sold by the City, the requirements of this Article VII shall terminate upon issuance of a final
10 certificate of occupancy for the Covered Construction or Covered Project.

11
12 **SEC. 23.624. NO CAUSE OF ACTION AGAINST THE CITY.**

13 In no event shall any person or entity have the right to bring an action against the City
14 based on any alleged failure to enforce or negligent enforcement of the requirements of this
15 Article VII.

16
17 **SEC. 23.635. PREEMPTION.**

18 In contracts that involve the use of any funds furnished, given, or loaned by the
19 Government of the United States or the State of California, all laws, rules and regulations of
20 the Government of the United States or the State of California or of any federal or State
21 departments relative to the performance of such work and the conditions under which the
22 work is to be performed, shall prevail over the requirements of this Article VII when such laws,
23 rules or regulations are in conflict.

1 **SEC. 23.6~~46~~. SEVERABILITY.**

2 If any part or provision of this Article VII, or the application thereof to any person or
3 circumstance, is held invalid, the remainder of this Article, including the application of such
4 part or provisions to other persons or circumstances, shall not be affected thereby and shall
5 continue in full force and effect. To this end, the provisions of this Article are severable.

6
7 Section 6. Chapters 66, 82, and 83 of the Administrative Code are hereby amended by
8 revising Sections 66.13, 82.4, 82.8, and 83.4, to read as follows:

9 **SEC. 66.13. PREVAILING WAGES.**

10 All construction funded in whole or in part by a Loans shall be subject to the requirements of
11 the Prevailing Wage Provisions, Articles 101 through 107 of the Labor and Employment Code~~are~~
12 ~~subject to the highest general prevailing rate of wages as determined in accordance with~~
13 ~~Administrative Code Section 6.22E or other applicable City laws regarding the determination of~~
14 ~~prevailing wages.~~

15
16 **SEC. 82.4. COVERAGE.**

17 (a) **Threshold for Public Work and Improvement Projects.** This Policy applies to
18 contracts issued by the City with Prime Contractors for Public Works or Improvements
19 estimated to cost in excess of the Threshold Amount set forth in Section 6.1 of the
20 Administrative Code, as that amount may be amended from time to time.

21 (b) **Threshold for Projects Constructed on Property Owned or Sold by the**
22 **City.**

23 (1) For purposes of this Chapter 82 only, this Policy applies to

24 (A) all construction projects on real property owned by the City; and
25

1 (B) all construction projects on City-owned real property located within
2 the jurisdictional boundaries of the City ~~and County of San Francisco~~ that is sold to private
3 parties, or their successor in interest, for the purpose of Housing Development, as defined in
4 Section ~~23.61(a)~~ 101.1 of the ~~Administrative~~ Labor and Employment Code;

5 provided that, under either subsection 82.4(b)(1)(A) or subsection 82.4(b)(1)(B),
6 the project is estimated to cost in excess of the Threshold Amount set forth in Section 6.1 of
7 the Administrative Code, as that amount may be amended from time to time, including
8 construction contracts that are issued by an entity or individual other than the City.

9 * * * *

10 11 **SEC. 82.8. ENFORCEMENT.**

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

19 * * * *

20 (f) **Compliance Procedures.**

21 (1) **Consequences of Noncompliance.** Awarding Departments and OEWD
22 have the authority to seek for violations of this Policy all of the consequences imposed by or
23 described in this Policy, in the contract for a Covered Project, or by statute, including the
24 authority to assess penalties as described herein, assess damages for other violations of
25

terms of this Policy, and/or seek penalties set forth in Article V of Chapter 6 of the Administrative Code, including debarment.

(2) **Penalties Amount.** Any Contractor or Subcontractor who fails to satisfy Local Hiring Requirements of this Policy applicable to Project Work Hours performed by Local Residents shall forfeit to the City, and, in the case of any Subcontractor so failing, the Contractor and Subcontractor shall jointly and severally forfeit to the City, an amount equal to the journeyman or Apprentice ~~p~~Prevailing ~~w~~Wage rate, as applicable, with such wage as established by the Board of Supervisors or the California Department of Industrial Relations under Section 103.2 of the Labor and Employment Codes~~subsection 6.22(e)(3) of the Administrative Code~~, for the primary trade used by the Contractor or Subcontractor on the Covered Project for each hour by which the Contractor or Subcontractor fell short of the Local Hiring Requirement. The assessment of penalties under this subsection 82.8(f) shall not preclude the City from exercising any other rights or remedies to which it is entitled.

* * * *

SEC. 83.4. DEFINITIONS.

When used in this Chapter 83, the following terms have the following meanings:

* * * *

"Prevailing Wage" shall mean "Prevailing Wage or Prevailing Rate of Wages" as defined in Labor and Employment Code Section 101.1~~the highest general prevailing rate of wage plus "per diem wages" and wages paid for overtime and holiday work paid in private employment in the county where the work is performed for the various crafts and kinds of labor employed in the performance of any public work or improvement under Chapter 6 of this Code as fixed by Board of Supervisors pursuant to Administrative Code Section 6.22(E)(3). "Per diem wages" are defined pursuant to Labor Code section 1773.1, as amended from time to time.~~

1 * * * *

2
3 Section 7. The Labor and Employment Code is amended by adding Article 101,
4 consisting of Sections 101.1 through 101.4, as follows:

5 **ARTICLE 101: GENERAL PROVISIONS**

6 **SEC. 101.1. GENERAL DEFINITIONS.**

7 *For the purposes of Articles 101 through 109, the following definitions apply.*

8 **Apprentice.** *Any worker who is indentured in a construction apprenticeship program that*
9 *maintains current registration with the State of California's Division of Apprenticeship Standards.*

10 **City.** *The City and County of San Francisco.*

11 **Contractor.** *Any person, firm, partnership, owner operator, limited liability company,*
12 *corporation, joint venture, proprietorship, trust, association, or other entity that directly enters into an*
13 *agreement, including, without limitation, any contract, franchise, lease, or permit, for a Covered*
14 *Contract or Covered Project. A Contractor may also be referred to as a "Prime Contractor" or*
15 *"General Contractor."*

16 **Contracting Officer.** *Any officer or employee of the City authorized to enter into a Covered*
17 *Contract on behalf of the City.*

18 **Covered Contract.** *Covered Contract shall mean an agreement, including, without limitation,*
19 *any contract, franchise, lease, or permit, between the City and a Contractor for the following services:*
20 *"Janitorial Services" as defined in Section 102.2; "Public Off-Street Parking Lots, Garages, or*
21 *Storage Facilities for Automobiles" as defined in Section 102.3; "Theatrical Services" as defined in*
22 *Section 102.4; "Hauling of Solid Waste Generated By The City In Course of City Operations" as*
23 *defined in Section 102.5; "Moving Services" as defined in Section 102.6; "Motor Bus Services" as*
24 *defined in Section 102.7, subject to the provisions of Section 102.7; "Trade Show and Special Event*
25 *Work" as defined in Section 102.8; "Broadcast Services" as defined in Section 102.9; "Loading,*

1 Unloading, and Driving of Commercial Vehicles” as defined in Section 102.10; or “Security Guard
2 Services” as defined in Section 102.11.

3 **Covered Project.** “Covered Project” shall mean a project satisfying one or more of the
4 following definitions:

5 **“Covered Local Project.”** Any Public Work or Improvement as defined in Section 6.1 of
6 the Administrative Code; any residential project required to comply with “City Contracting
7 Requirements” pursuant to Chapter 43, Article IX of the Administrative Code; and/or any project
8 required to pay prevailing wages pursuant to Administrative Code Section 66.13.

9 **“Covered State Project.”** Any “public works” as defined in California Labor Code
10 Section 1720; any project for which Prevailing Wages are required to be paid pursuant to California
11 Labor Code Section 1782; and/or any project subject to prevailing wage requirements under State law,
12 including, but not limited to, California Government Code Section 65913.4(a)(8)(A)(ii), where the City,
13 through its discretion or not, approves or permits plans, specification, or criteria for the project, and
14 State law does not bar City enforcement of the prevailing wage requirements.

15 **“Covered Real Estate Project.”** Any project for any erection, construction, renovation,
16 alteration, improvement, demolition, excavation, installation, or repair, including tenant improvements,
17 that meets the following requirements: (1) the real property on which the project is located is within the
18 jurisdictional boundaries of the City; (2) the estimated project cost exceeds the Threshold Amount; and
19 (3) the project is performed, in whole or in part, on (A) any real property sold to the Real Property
20 Contracting Party under a City-as-seller contract for Housing Development; or (B) real property
21 leased by the City as a landlord or leased to the City as a tenant, where the construction is performed
22 before or during the term of the lease in accordance with plans, specifications, or criteria approved by
23 the City.

24 The scope of the Covered Project shall include any trade work performed at any stage of
25 construction, including, without limitation, preconstruction work.

1 **Department Head.** *The term as defined under Section 6.1 of the Administrative Code; or the*
2 *Purchaser or any other officer authorized to award a Services contract under Chapter 21 of the*
3 *Administrative Code.*

4 **Housing Development.** *Any residential or mixed-use project that includes the construction,*
5 *expansion, or rehabilitation of three or more residential units.*

6 **Labor Standards Enforcement Officer.** *Labor Standards Enforcement Officer shall have the*
7 *meaning established in Section 2A.23(b) of the Administrative Code.*

8 **Prevailing Wage or Prevailing Rate of Wages.** *The highest general prevailing rate of wages*
9 *plus “per diem wages” and wages paid for overtime and holiday work paid in private employment for*
10 *similar work for the various crafts and kinds of labor employed in the performance of any Covered*
11 *Project or Covered Contract. “Per diem wages” are defined pursuant to California Labor Code*
12 *Section 1773.1, as amended from time to time, which includes benefits, as defined therein.*

13 **Prevailing Wage Provisions.** *“Prevailing Wage Provisions” refers collectively to Articles 101*
14 *through 107. Certain of these provisions include subjects other than Prevailing Wage, such as*
15 *apprenticeship requirements in Article 104 and the hours and days of labor requirements in Article*
16 *105.*

17 **Real Property Contracting Party.** *Any entity or individual, or successor in interest to the rights*
18 *of any entity or individual, who is: (1) the buyer of real property intended for Housing Development*
19 *under a City-as-seller contract, (2) the landlord under a City-as-tenant lease, or (3) the tenant under a*
20 *City-as-landlord lease; provided, however, that a public entity shall not be considered a Real Property*
21 *Contracting Party.*

22 **Subcontractor.** *Any person, firm, partnership, owner operator, limited liability company,*
23 *corporation, joint venture, proprietorship, trust, association, or other entity that contracts with a*
24 *Contractor or a Subcontractor to provide work on a Covered Contract or Covered Project.*

1 **Threshold Amount.** The Threshold Amount as defined in Section 6.1 of the Administrative
2 Code.

3
4 **SEC. 101.2. NO CAUSE OF ACTION AGAINST THE CITY.**

5 In no event shall any person or entity have the right to bring an action against the City based on
6 any alleged failure to enforce or negligent enforcement of the requirements of Articles 101 through
7 109.

8
9 **SEC. 101.3. PREEMPTION.**

10 For any contract that receives funds furnished, given, or loaned by the Government of the
11 United States or the State of California, any requirement of Articles 101 through 109 that conflicts with
12 a requirement of the funding source shall not apply to the contract. Nothing in Articles 101 through
13 109 shall be interpreted or applied so as to create any power or duty in conflict with any federal law.
14 Nothing in Articles 101 through 109 shall be interpreted or applied so as to create any power or duty in
15 conflict with any State law, except to the extent the City's home rule powers govern. For the purposes
16 of this Section 101.3, a conflict does not exist where the federal law or State law does not prohibit
17 standards exceeding those set by the federal law or State law.

18
19 **SEC. 101.4. SEVERABILITY.**

20 If any part or provision, including a section, subsection, sentence, or word, of Articles 101
21 through 109 or the application thereof to any person or circumstance, is held invalid, the remainder of
22 Articles 101 through 109, including the application of such part or provisions to other persons or
23 circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the
24 provisions of Articles 101 through 109 are severable.

Section 8. Article 102 of the Labor and Employment Code is hereby amended by revising Sections 102.1 through 102.11, to read as follows:

SEC. 102.1. STANDARD PROVISIONS GOVERNING THE PREVAILING RATE OF WAGES FOR SERVICES CONTRACTS, WORKER RETENTION, AND USE OF EMPLOYEES FOR WORK UNDER CITY CONTRACTS FOR CERTAIN SERVICES.

(a) **Prevailing Wage Requirement.** Every Covered Contract issued by the City ~~and County of San Francisco~~ must require that any Individual performing services thereunder be paid not less than the Prevailing Rate of Wages and must include a provision in which the Contractor agrees to comply with, and to require Subcontractors to comply with, Prevailing Wage requirements imposed by the applicable provisions of Article 103.

(b) **Definitions.** For purposes of this Article 102, the following definitions shall apply to the terms used herein.

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

~~“Contracting Officer” shall mean any officer or employee of the City authorized to enter into a Covered Contract on behalf of the City.~~

~~“Contractor” shall mean any Person who submits a bid or proposal and/or enters into a Covered Contract.~~

~~“Covered Contract” shall mean an agreement between the City and a Contractor for the following services: “Motor Bus Services” as defined in Section 102.7, subject to the provisions of Section 102.7; “Janitorial Services” as defined in Section 102.2; “Public Off-Street Parking Lots, Garages, or Storage Facilities for Automobiles” as defined in Section 102.3; “Theatrical Services” as defined in Section 102.4; “Solid Waste Generated By The City In Course of City Operations” as defined in Section 102.5; “Moving Services” as defined in Section 102.6; “Trade Show and Special Event Work” as defined in Section 102.8; “Broadcast Services” as defined in Section 102.9 and “Loading,~~

~~Unloading, and Driving of Commercial Vehicles” under Section 102.10 and “Security Guard Services” as defined in Section 102.11.~~

“Individual” shall mean any person who performs work under a Covered Contract.

~~—“Permit” shall mean a permit to use City property, and shall include a permit to use a public right of way, including a street or sidewalk encroachment permit or closure permit, including but not limited to an ISCOTT (Interdepartmental Staff Committee on Traffic and Transportation) permit.~~

“Person” shall mean any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ or hire individuals or enter into contracts.

~~—“Prevailing Rate of Wages” shall mean that rate of compensation, including fringe benefits or the matching equivalents thereof, being paid to a majority of workers engaged in the services for which a Covered Contract is entered into by the City and County of San Francisco, if a majority of such workers are paid at a single rate; if there is no single rate being paid to a majority, then the prevailing rate shall be that single rate being paid to the greatest number of workers.~~

~~—“Subcontract” shall mean any agreement under or subordinate to a prime Contract.~~

~~—“Subcontractor” shall mean any Person who enters into a Subcontract with a Contractor.~~

~~—(c) Prevailing Wage Rate Requirements.~~

~~—(1) Determination of Prevailing Rate of Wages. It shall be the duty of the Board of Supervisors, from time to time and at least once during each calendar year, to fix and determine the Prevailing Rate of Wages paid in private employment in the City for Individuals engaged in services under Covered Contracts including such rate of wages paid for overtime and holiday work, which said Prevailing Rate of Wages shall be fixed and determined as follows:~~

~~—The Civil Service Commission shall furnish to the Board of Supervisors on or before the first Monday in November of each year, data as to the Prevailing Rate of Wages for Individuals engaged in services under Covered Contracts including such rate of wages paid for overtime and holiday work,~~

1 ~~and the Board of Supervisors shall, upon receipt of such data, fix and determine the Prevailing Rate of~~
2 ~~overtime and holiday work, as paid for similar work in the City in private employment. Such Prevailing~~
3 ~~Rate of Wages as so fixed and determined by the Board of Supervisors shall remain in force and shall~~
4 ~~be deemed to be the Prevailing Rate of Wages paid in private employment for similar work, until the~~
5 ~~same is changed by the Board of Supervisors.~~

6 ~~—— In determining the Prevailing Rate of Wages, as provided for in this Section, the Board of~~
7 ~~Supervisors shall not be limited to the consideration of data furnished by the Civil Service Commission,~~
8 ~~but may consider such other evidence upon the subject as the Board of Supervisors shall deem proper~~
9 ~~and thereupon base its determination upon any or all of the data or evidence considered.~~

10 ~~—— For purposes of this Section, the Civil Service Commission shall provide data on and the Board~~
11 ~~shall certify two components for each craft, classification, and type of work, which together shall be~~
12 ~~deemed the “Prevailing Rate of Wages”: (1) the basic hourly wage rate and (2) the hourly rate of each~~
13 ~~fringe benefit, which together equal the hourly prevailing rate of wages. The Civil Service Commission~~
14 ~~shall provide this data to the Board of Supervisors within days of the effective date of this Section.~~

15 ~~(2)(c)~~ **Contracting Officers.** Each bid or proposal for a Covered Contract shall include,
16 on a form provided by the Contracting Officer, the following: (a) the basic hourly rate of wages
17 to be paid by the Contractor and Subcontractor, if any, for each craft, classification, or type of
18 work to be performed by eEmployees under the Covered Contract; and (b) for each required
19 fringe benefit, the hourly cost of each fringe benefit, or cash equivalent, the Contractor and
20 Subcontractor, if any, intend to provide. In meeting the Prevailing Rate of Wages, no amount
21 of fringe benefit credit shall be used to reduce the obligation to pay the basic hourly straight
22 time or overtime wage rate. The Contracting Officer shall reject any bid or proposal that does
23 not include payment of the Prevailing Rate of Wages as defined in this Section 102.1. ~~This~~
24 ~~provision shall become operative after the Board of Supervisors adopts a “Prevailing Rate of Wages”~~
25 ~~under Subsection (c)(1) that includes a wage rate and the hourly rate of each fringe benefit.~~

1 ~~—(3) Contractual Provision Concerning Prevailing Wage Rate Requirement. All Contracts subject~~
2 ~~to this Section shall include a provision in which the Contractor agrees to comply with, and to require~~
3 ~~Subcontractors to comply with, the prevailing wage rate requirement imposed by this Section.~~

4 ~~—(4) Enforcement of Prevailing Wage Rate Requirements. Where the Contracting Officer or the~~
5 ~~Labor Standards Enforcement Officer determines that a Contractor or a Subcontractor may have~~
6 ~~violated the prevailing wage rate requirements of this Section, the Contracting Officer or Labor~~
7 ~~Standards Enforcement Officer shall send written notice to the Contractor of the possible violation (a~~
8 ~~“violation notice”). In addition to and without prejudice to any other remedy available, the~~
9 ~~Contracting Officer may terminate the Contract, in which case the Contractor shall not be entitled to~~
10 ~~any additional payment thereon unless within thirty (30) days of receipt of the violation notice the~~
11 ~~Contractor has either (i) cured the violation or (ii) established by documentary evidence, including but~~
12 ~~not limited to payroll records, the truth and accuracy of which is attested to by affidavit, proof of~~
13 ~~compliance with the provisions of this Section. For purposes of this Section, where a Contractor or~~
14 ~~Subcontractor fails to pay at least the Prevailing Rate of Wages to Individuals as required by this~~
15 ~~Section, the Contractor shall have “cured the violation” once the Contractor or Subcontractor~~
16 ~~reimburses such Individuals by paying each individual the balance of what he or she should have~~
17 ~~earned in accordance with the requirements of this Section, plus an annualized rate of interest of ten~~
18 ~~percent (10%). In addition to, or instead of terminating the Contract, if the Contracting Officer or the~~
19 ~~Labor Standards Enforcement Officer finds that the Contractor has willfully violated the requirements~~
20 ~~of this Section, the Contracting Officer or the Labor Standards Enforcement Officer, shall assess a~~
21 ~~penalty (a “willful violation penalty”) of not more than ten (10%) percent of the dollar amount of the~~
22 ~~Contract, such sums to be deposited in the fund out of which the Contract is awarded or, if none exists,~~
23 ~~the General Fund. The Contracting Officer or Labor Standards Enforcement Officer may impose such~~
24 ~~willful violation penalty regardless of whether the Contractor has cured the violation.~~

1 ~~—(d) Transition Employment Requirements. The City has an important proprietary interest in~~
2 ~~maintaining the stability of the workforce engaged by a Contractor or Subcontractor under a Covered~~
3 ~~Contract. Turnover of experienced workers resulting from a change in the City's Contractor~~
4 ~~jeopardizes the quality, efficiency, and cost-effectiveness of service provided to the City under the~~
5 ~~successor Contract. All Covered Contracts shall impose the following obligations on the Contractor~~
6 ~~and Subcontractor.~~

7 ~~—(1) Where the Contracting Officer has given notice that a Covered Contract will be bid, or where~~
8 ~~a Contractor has given notice of termination, upon giving or receiving such notice, as the case may be,~~
9 ~~the Contractor ("ending Contractor") shall, within ten days thereafter, provide to the Contracting~~
10 ~~Officer and the Purchaser, for each Employee who worked at least 15 hours per week for the ending~~
11 ~~Contractor, the name, date of hire, number of hours and months worked in total for the employer, wage~~
12 ~~rate, and employment occupation classification. This provision shall also apply to the subcontractors of~~
13 ~~the ending Contractor.~~

14 ~~—Where a Subcontractor has been terminated prior to the termination or ending of the Contract,~~
15 ~~the Subcontractor shall for the purposes of this Section be deemed an ending Contractor.~~

16 ~~—All requests for bids for Covered Contracts shall include the information listed above for~~
17 ~~Employees and shall notify prospective bidders about the Transition Employment requirements of this~~
18 ~~Section.~~

19 ~~—(2) A successor Contractor shall retain, for a six-month transition employment period, Employees~~
20 ~~who have worked at least 15 hours per week and have been employed by the ending Contractor or its~~
21 ~~Subcontractors, if any, for the preceding twelve months under the Covered Contract, providing that just~~
22 ~~cause does not exist to terminate such Employee. The ending Contractor's Employees who worked at~~
23 ~~least 15 hours per week shall be employed in order of their seniority with the predecessor within job~~
24 ~~classification and shall be paid the Prevailing Rate of Wages to which they were entitled when~~
25

1 ~~employed by the ending Contractor. This requirement shall be stated by the City in all initial bid~~
2 ~~packages involving a Covered Contract.~~

3 ~~—(3) If at any time a successor Contractor determines that fewer Employees are required to perform~~
4 ~~the new Contract than were required by the ending Contractor (and Subcontractors, if any), the~~
5 ~~successor Contractor shall retain Employees by seniority within job classification.~~

6 ~~—(4) During such six-month period the successor Contractor (or Subcontractor, where applicable)~~
7 ~~shall maintain a preferential hiring list of eligible covered Employees not retained by the successor~~
8 ~~Contractor (or Subcontractor) from which the successor Contractor (or Subcontractor) shall hire~~
9 ~~additional Employees.~~

10 ~~—(5) During the six-month period, the successor Contractor (or Subcontractor, where applicable)~~
11 ~~shall not discharge without cause an Employee retained pursuant to this Subsection. “Cause,” for this~~
12 ~~purpose, shall include, but not be limited to, the Employee’s conduct while in the employ of the ending~~
13 ~~Contractor or Subcontractor that contributed to any decision to terminate the Contract or Subcontract~~
14 ~~for fraud or poor performance, excluding permissible union-related activity.~~

15 ~~—(6) At the end of the six-month period, a successor Contractor (or Subcontractor, where~~
16 ~~applicable) shall perform a written performance evaluation for each Employee retained pursuant to~~
17 ~~this Subsection. If the Employee’s performance during such six-month period is satisfactory, the~~
18 ~~successor Contractor (or Subcontractor) shall offer the Employee continued employment under the~~
19 ~~terms and conditions established by the successor Contractor (or Subcontractor) or as required by law.~~

20 ~~—(7) All Covered Contracts subject to this Section shall include a provision in which the Contractor~~
21 ~~agrees to require any Subcontractor to comply with the obligation imposed by this Subsection (d).~~

22 ~~—(8) Successor’s Prior Employees. Notwithstanding the provisions of this Subsection (d), a~~
23 ~~successor Contractor or Subcontractor may replace an Employee otherwise entitled to be retained with~~
24 ~~a person employed by the Contractor or Subcontractor continuously for twelve months prior to the~~
25 ~~commencement of the successor Contract or Subcontract in a capacity similar to that proposed under~~

1 ~~the successor Contract or Subcontract. This provision shall apply only where the existing Employee of~~
2 ~~the successor Contractor or Subcontractor would otherwise be laid off work as a result of the award of~~
3 ~~the successor Contract.~~

4 ~~—(9) The retention requirements of this Subsection (d) shall not apply where there is no successor~~
5 ~~Contractor or Subcontractor. For example, where a Contract is for services over a single day, week, or~~
6 ~~month for a discrete nonrepeating event there is no successor and the retention requirements described~~
7 ~~herein are inapplicable.~~

8 ~~—(10) For the purposes of this Subsection (d) on Transition Employment Requirements only, the~~
9 ~~term “Employee” shall include any person who performs work under a Covered Contract but shall not~~
10 ~~include an individual who serves in a managerial, supervisory, or confidential capacity, including~~
11 ~~those individuals who would be defined as such under the Fair Labor Standards Act.~~

12 ~~—(11) Enforcement. An Employee who has not been hired or has been discharged in violation of this~~
13 ~~Section by a successor Contractor or its Subcontractor may bring an action in the Superior Court of~~
14 ~~the State of California, as appropriate, against the successor Contractor and, where applicable, its~~
15 ~~Subcontractor, and shall be awarded back pay, including the value of benefits for each day during~~
16 ~~which the violation continues, which shall be calculated at a rate of compensation not less than the~~
17 ~~higher of:~~

18 ~~—(i) The average regular rate of pay received by the Employee during the last three years of the~~
19 ~~Employee’s employment in the same occupation classification; or~~

20 ~~—(ii) The final regular rate received by the Employee.~~

21 ~~—If the Employee is the prevailing party in any such legal action, the Court shall award reasonable~~
22 ~~attorney’s fees and costs as part of the costs recoverable.~~

23 ~~—(12) This Section is not intended to create a private right of action against the City and County of~~
24 ~~San Francisco.~~

1 ~~—(13) If during the term of a Covered Contract, a Contractor (or Subcontractor engaged by said~~
2 ~~Contractor) violates the worker transition requirements of this Subsection (d), the Contractor or~~
3 ~~Subcontractor shall be subject to the enforcement remedies as set forth in Subsection (c)(4), including~~
4 ~~termination of the Contract or Subcontract and penalties for willful violation.~~

5 ~~(de)~~ **Requirement of Employer-Employee Relationship.**

6 (1) The City has an important proprietary interest in maintaining the stability
7 of the workforce engaged by a Contractor for a Covered Contract by ensuring that individuals
8 working pursuant to City contracts have the protections afforded by ~~s~~State and municipal laws
9 governing employment. In order for the City to maintain the integrity of its contracting process,
10 the ~~e~~City's ~~p~~Prevailing ~~w~~Wage laws ensure contractors a level playing field on which to bid for
11 contracts. When contractors are allowed to classify workers as independent owner operators,
12 contractors can appear to pay the ~~p~~Prevailing ~~w~~Wage when in reality, after the owner
13 operator's operating costs are taken into account, the owner operator receives less than the
14 ~~p~~Prevailing ~~w~~Wage for the owner operator's ~~his or her~~ labor. This outcome contradicts one of the
15 goals of the ~~p~~Prevailing ~~w~~Wage law, which is to provide for fair competition among contractors,
16 all of whom must pay workers, at a minimum, the same ~~p~~Prevailing ~~r~~Rate of ~~w~~Wages and
17 benefits. The City's proprietary interest is such that employment of Employees in an
18 Employer-Employee relationship shall be required for all work done under any Covered
19 Contract.

20 (2) Every Covered Contract shall require the Contractor (and Subcontractors,
21 if any) to perform said Covered Contract, with Individuals employed by said Contractor or
22 Subcontractor in an Employer-Employee relationship as defined by California law.

23 (3) No Covered Contract shall be awarded by the City to a Contractor and/or
24 Subcontractor who proposes to perform the Covered Contract with self-employed persons or
25 independent contractors.

1 (4) If during the term of a Covered Contract, a Contractor (or Subcontractor
2 engaged by said Contractor) engages any self-employed persons or independent contractors
3 to perform the Contract for a period of three ~~(3)~~ days or more, the Contractor or Subcontractor
4 shall be subject to the enforcement remedies as set forth in ~~Subsection (e)(4), Article 106,~~
5 including termination of the Covered Contract or ~~Subcontract~~subcontract under Section 106.4, and
6 penalties ~~for willful violation.~~

7 (5) Contractors shall be fully responsible for the compliance of
8 Subcontractors with this ~~provision~~ subsection (d). Contractors shall be jointly and severally liable
9 for any penalties assessed against their Subcontractors in the event that the Subcontractor is
10 unable or unwilling to pay a penalty.

11 ~~(ef)~~ **Preemption.** Nothing in this Section 102.1 shall be interpreted or applied so as
12 to create any power or duty in conflict with any federal or ~~s~~State law.

13 ~~(fg)~~ **No Cause of Action Against City.** This Section 102.1 is not intended to create
14 a private right of action against the City.

15 ~~(gh)~~ **Prospective Application.** This Section 102.1 is intended to have prospective
16 effect only, and shall not be interpreted to impair the obligations of any pre-existing Contract
17 entered into by the City. This Section shall only apply to Contracts entered into on or after the
18 effective date of this Section.

19 ~~(hi)~~ **Severability.** If any part or provision of this Section 102.1, or the application
20 thereof to any Person or circumstance, is held invalid, the remainder of this Section, including
21 the application of such part or provisions to other Persons or circumstances, shall not be
22 affected thereby and shall continue in full force and effect. To this end, the provisions of this
23 Section are severable.

1 **SEC. 102.2. ~~PREVAILING RATE OF WAGES REQUIRED IN~~ CONTRACTS FOR**
2 **JANITORIAL SERVICES; NON-PROFIT ORGANIZATIONS EXCLUSION.**

3 (a) **Prevailing Wage Requirement.** Every Contract issued by the City ~~and County of~~
4 ~~San Francisco~~ for Janitorial Services to be performed at any facility owned or leased by the City
5 ~~and County of San Francisco~~, where such work is to be done directly under the ~~e~~Contract
6 awarded (a "~~P~~prime ~~C~~contract") must require that any Individual performing Janitorial Services
7 thereunder be paid not less than the Prevailing Rate of Wages, ~~including fringe benefits or the~~
8 ~~matching equivalents thereof, paid in private employment for similar work in the area in which the~~
9 ~~Contract is being performed, as determined by the Civil Service Commission in accordance with~~
10 ~~Section 103.2.~~ This Section 102.2 does not extend to contracts beyond those entered into by
11 the City specifically for ~~janitorial services~~ Janitorial Services on property owned or leased by the
12 City.

13 ~~(b) — Exclusions. This Section shall not apply to a Contract for Janitorial Services with a~~
14 ~~nonprofit organization to provide work experience for persons with disabilities.~~

15 ~~(c)~~(b) **Definitions.** For purposes of this Section 102.2, the following definitions shall
16 apply to the terms used herein:

17 "Contract" shall mean an agreement for Janitorial Services to be performed at the
18 expense of the City ~~and County of San Francisco~~ or to be paid out of moneys deposited in the
19 treasury or out of trust moneys under the control or collected by the City, ~~and County of San~~
20 ~~Francisco, and does not include contracts for the sale of goods, contracts issued by the San Francisco~~
21 ~~Airport Commission or to be performed at any facility owned, leased or otherwise under the~~
22 ~~jurisdiction of the San Francisco Airport Commission, agreements entered into before the effective date~~
23 ~~of this Section, or contracts for a cumulative amount of \$10,000 or less per janitorial service provider~~
24 ~~in each fiscal year.~~

1 “Janitorial Services” shall mean maintenance and cleaning services on property owned
2 or leased by the City ~~and County of San Francisco~~.

3 ~~“Prevailing Rate of Wages” shall mean that rate of compensation as determined under Section~~
4 ~~102.1.~~

5 (c) **Exclusions.** *This Section 102.2 shall not apply to:*

6 *(1) a Contract for Janitorial Services with a non-profit organization to provide work*
7 *experience for persons with disabilities;*

8 *(2) a Contract for the sale of goods;*

9 *(3) a contract issued by the Airport Commission or to be performed at any facility*
10 *owned, leased or otherwise under the jurisdiction of the Airport Commission, agreements entered into*
11 *before the effective date of this Section; or*

12 *(4) contracts for a cumulative amount of \$10,000 or less per janitorial service provider*
13 *in each fiscal year.*

14 (d) **Preemption.** Nothing in this Section 102.2 shall be interpreted or applied so as
15 to create any power or duty in conflict with any federal or ~~s~~State law.

16 (e) ~~**Effective Date and Application**~~**Prospective Effect.** This Section 102.2 ~~shall become~~
17 ~~effective 30 days after it is enacted,~~ is intended to have prospective effect only, and shall not be
18 interpreted to impair the obligations of any pre-existing agreement to which the City is a party,
19 unless such pre-existing agreement has been amended after the effective date of this Section.

20 (f) **Severability.** If any part or provision of this Section 102.2, or the application
21 thereof to any Person or circumstance, is held invalid, the remainder of this Section, including
22 the application of such part or provisions to other Persons or circumstances, shall not be
23 affected thereby and shall continue in full force and effect. To this end, the provisions of this
24 Section are severable.

1 **SEC. 102.3. ~~PREVAILING RATE OF WAGES AND DISPLACED WORK PROTECTION~~**
2 **~~REQUIRED FOR WORKERS IN~~ PUBLIC OFF-STREET PARKING LOTS, GARAGES, OR**
3 **STORAGE FACILITIES FOR AUTOMOBILES.**

4 (a) **Prevailing Wage Requirement.** Every Lease, Management Agreement, or Other
5 Contractual Arrangement for the operation of a pPublic eOff-sStreet pParking lLot, gGarage, or
6 Automobile sStorage fFacility ~~for automobiles~~ on property owned or leased by the City ~~and~~
7 ~~County of San Francisco~~ must require that any Individual working in such pPublic eOff-sStreet
8 pParking lLot, gGarage, or Automobile sStorage fFacility ~~for automobiles~~, including but not
9 limited to ~~i~~Individuals engaged in Wwashing, Ppolishing, Llubrication, Rrent-Ccar Sservice,
10 Pparking Vehicles, Cashiers, Attendants, Checking Coin Bboxes, Non-Attendant
11 Pparking Lot Checking, Daily Ticket Audit, Traffic Directors and Shuttle Drivers, shall
12 be paid not less than the Prevailing Rate of Wages, ~~including fringe benefits or the matching~~
13 ~~equivalents thereof, paid in private employment for similar work in the area in which the Lease,~~
14 ~~Management Agreement, or Other Contractual Arrangement is being performed,~~ as determined by
15 the ~~Civil Service Commission~~ Board of Supervisors.

16 (b) **Definitions.** For purposes of this Section 102.3, the following definitions shall
17 apply to the terms used herein

18 ~~(1)~~ “Lease, Management Agreement, or Other Contractual Arrangement” shall mean
19 an agreement with the City ~~and County of San Francisco~~ for the operation of a Public Off-
20 Str~~ee~~t Parking Lot, Garage, or Automobile Sstorage Facility ~~for automobiles~~ on property
21 owned or leased by the City ~~and County of San Francisco~~.

22 ~~—(2)—~~ “Prevailing Rate of Wages” shall mean that rate of compensation as determined in
23 ~~Section 102.1.~~

1 ~~(3)~~ “Public Off-Street Parking Lot, Garage, or Automobile Storage Facility” shall mean
2 any off-street parking lot, garage, or automobile storage facility that is operated on property
3 owned or leased by the City ~~and County of San Francisco~~.

4 (c) **Preemption.** Nothing in this Section 102.3 shall be interpreted or applied so as to
5 create any power or duty in conflict with any federal or ~~s~~State law.

6 (d) ~~Effective Date and Application~~**Prospective Effect.** This Section 102.3 ~~shall become~~
7 ~~effective 30 days after it is enacted~~, is intended to have, prospective effect only, and shall not be
8 interpreted to impair the obligations of any pre-existing Lease, Management Agreement, or
9 Other Contractual Arrangement to which the City ~~and County of San Francisco~~ is a party, unless
10 such pre-existing Lease, Management Agreement, or Other Contractual Arrangement has
11 been amended after the effective date of this Section.

12 (e) **Public Entities with Coterminous Boundaries with the City ~~and County of San~~**
13 ~~Francisco~~. It is the policy of the City ~~and County of San Francisco~~ that all public entities with
14 coterminous boundaries with the City ~~and County of San Francisco~~, including but not limited to
15 the Parking Authority of the City ~~and County of San Francisco~~, adopt this ~~p~~Prevailing ~~w~~Wage and
16 employee transition period policy. The Board of Supervisors ~~of the City and County of San~~
17 ~~Francisco~~ urges all public entities with coterminous boundaries with the City ~~and County of San~~
18 ~~Francisco~~, including but not limited to the Parking Authority ~~of the City and County of San~~
19 ~~Francisco~~, to adopt this ~~p~~Prevailing ~~w~~Wage and employee transition period policy.

20 (f) **Severability.** If any part or provision of this Section 102.3, or the application thereof
21 to any Person or circumstance, is held invalid, the remainder of this Section, including the
22 application of such part or provisions to other Persons or circumstances, shall not be affected
23 thereby and shall continue in full force and effect. To this end, the provisions of this Section
24 are severable.

1 **SEC. 102.4. ~~PREVAILING RATE OF WAGES REQUIRED FOR~~ THEATRICAL WORKERS.**

2 (a) **Prevailing Wage Requirement.** Every Contract, Lease, Franchise, Permit, or
3 Agreement awarded, let, issued, or granted by the City ~~and County of San Francisco~~ for the use
4 of property owned by the City ~~and County of San Francisco~~ must require that any Individual
5 engaged in theatrical or technical services related to the presentation of a show, including, but
6 not limited to, workers engaged in rigging, sound, projection, theatrical lighting, videos,
7 computers, draping, carpentry, special effects, and motion picture services be paid not less
8 than the Prevailing Rate of Wages, ~~including fringe benefits or the matching equivalents thereof,~~
9 ~~paid in private employment for similar work in the area in which the Contract, Lease, Franchise,~~
10 ~~Permit or Agreement is being performed.~~ All Contracts, Leases, Franchises, Permits or
11 Agreements subject to this Section 102.4 shall include a provision in which the Contractor
12 agrees to comply with, and to require Subcontractors to comply with, the obligations imposed
13 by this Section.

14 (b) **Definitions.** For purposes of this Section 102.4, the following definitions shall
15 apply to the terms used herein:

16 ~~(1)~~—“Contract, Lease, Franchise, Permit, or Agreement” shall mean an agreement
17 with the City ~~and County of San Francisco~~ for the use of property owned by the City ~~and County of~~
18 ~~San Francisco~~, but shall not include any contract, lease, franchise, permit, or agreement for any
19 of the following:

20 ~~A. (1)~~ Celebration of a marriage, domestic partnership, or similar civil union;

21 ~~B. (2)~~ The presentation of a show to which the public has free access when the
22 show is in a public park, on a public street, or on property under the jurisdiction of the Port
23 Commission;

1 ~~€. (3)~~ Any permit or agreement to engage in film production pursuant to Chapter
2 57 of the ~~San Francisco~~ Administrative Code or under the circumstances set forth in Section
3 57.7 of the Administrative Code;

4 ~~D. (4)~~ Any ~~s~~Show on property under the jurisdiction of the Arts Commission; ~~or;~~

5 ~~E. (5)~~ In any circumstance where application of this Section 102.4 would be
6 preempted by federal or ~~s~~State law; or

7 ~~F. (6)~~ Any ~~s~~Show for which the time required for the set-up is three hours or less
8 and the number of ~~i~~Individuals working on the set-up is no more than two.

9 ~~(2) “Prevailing Rate of Wages” shall mean that rate of compensation as determined in Section~~
10 ~~102.1.~~

11 ~~(3)~~ “Show” shall mean any live act, play, review, pantomime, scene, music, song,
12 dance act, song and dance act, or poetry recitation provided in front of a live audience or
13 recorded for the purpose of later presentation, but shall not include an event where a person
14 solely plays pre-recorded music or pre-recorded performances so long as no other live
15 performance is provided.

16 (c) **Preemption.** Nothing in this Section 102.4 shall be interpreted or applied so as to
17 create any power or duty in conflict with any federal or State law.

18 (d) ~~**Effective Date and Application**~~**Prospective Effect.** This Section 102.4 ~~shall become~~
19 ~~effective 30 days after it is enacted,~~ is intended to have prospective effect only, and shall not be
20 interpreted to impair the obligations of any pre-existing Contract, Lease, Franchise, Permit, or
21 Agreement issued or entered into by the City ~~and County of San Francisco.~~

22 (e) **Applicability to Existing Contracts, Leases, Franchises, Permits, or**
23 **Agreements.** This Section 102.4 shall only apply to Contracts, Leases, Franchises, Permits,
24 or Agreements entered into on or after the effective date of this Section.
25

1 (f) **Severability.** ~~If any severable provision or provisions of this Section or any application~~
2 ~~thereof is held invalid, such invalidity shall not affect any other provisions or applications of the~~
3 ~~Section. If any part or provision of this Section 102.4, or the application thereof to any Person or~~
4 ~~circumstance, is held invalid, the remainder of this Section, including the application of such part or~~
5 ~~provisions to other Persons or circumstances, shall not be affected thereby and shall continue in full~~
6 ~~force and effect. To this end, the provisions of this Section are severable.~~

7
8 **SEC. 102.5 ~~PREVAILING RATE OF WAGES AND WORKER RETENTION REQUIRED FOR~~**
9 **~~WORKERS ENGAGED IN~~ HAULING OF SOLID WASTE GENERATED BY THE CITY IN**
10 **THE COURSE OF CITY OPERATIONS.**

11 (a) **Prevailing Wage Requirement.** Every Contract awarded by the City for the
12 ~~h~~Hauling of ~~s~~Solid ~~w~~Waste generated by the City in the course of City operations must require
13 that any Individual engaged in the ~~h~~Hauling of ~~s~~Solid ~~w~~Waste be paid not less than the
14 Prevailing Rate of Wages, ~~including fringe benefits or the matching equivalents thereof, paid in~~
15 ~~private employment for similar work in the area in which the Contract is being performed.~~

16 (b) **Definitions.** For purposes of this Section 102.5 the following definitions shall apply
17 to the terms used herein.

18 ~~(1)~~ "Contract" shall mean an agreement with the City for the ~~h~~Hauling of ~~s~~Solid
19 ~~w~~Waste, generated by the City in the course of City operations, to be performed at the
20 expense of the City or to be paid out of moneys deposited in the treasury or out of trust
21 moneys under the control or collected by the City. For purposes of this Section 102.5,
22 "Contract" shall not include: ~~(1a)~~ a permit issued under the Refuse Collection and Disposal
23 Ordinance, Appendix 1 of the ~~San Francisco~~ Administrative Code, or; ~~(2b)~~ a contract governed
24 by the provisions of Chapter 6 of the ~~San Francisco~~ Administrative Code. Should the
25 Administrative Code be amended to change the permit process contained in Appendix 1 to a

franchise process, or any other process for authorizing refuse collection and disposal within the City, it shall be City policy to require refuse companies to pay the ~~p~~Prevailing ~~w~~Wage to any ~~i~~Individual engaged in the hauling of refuse, recyclables, compostables, and solid waste within the City.

~~(2)~~ "Hauling" of solid waste shall mean collection and transport of solid waste generated by the City in the course of City operations. For purposes of this Section 102.5, "~~H~~Hauling" shall not include "solid waste disposal" or "disposal" as defined in Section 40192 of the California Public Resources Code.

~~(3)~~ "~~Prevailing Rate of Wages~~" shall mean that rate of compensation as determined in Section ~~102.1~~.

~~(4)~~ "Solid Waste" shall mean "solid waste" as defined in Section 40191 of the California Public Resources Code and includes material collected for "recycling" as defined in Section 40180 of the California Public Resources Code.

(c) **Preemption.** Nothing in this Section 102.5 shall be interpreted or applied so as to create any power or duty in conflict with any federal or ~~s~~State law.

(d) **Prospective Application.** This Section 102.5 is intended to have prospective effect only, and shall not be interpreted to impair the obligations of any pre-existing Contract entered into by the City. This Section shall only apply to Contracts entered into on or after the effective date of this Section.

(e) **Severability.** If any part or provision of this Section 102.5, or the application thereof to any Person or circumstance, is held invalid, the remainder of this Section, including the application of such part or provisions to other Persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Section are severable.

1 **SEC. 102.6. ~~PREVAILING RATE OF WAGES REQUIRED IN CONTRACTS FOR MOVING~~**
2 **~~SERVICES; NONPROFIT ORGANIZATIONS EXCLUSION.~~**

3 (a) **Prevailing Wage Requirement.** Every Contract issued by the City ~~and County of~~
4 ~~San Francisco~~ for Moving Services to be performed at any facility owned or leased by the City
5 ~~and County of San Francisco~~, where such work is to be done directly under the eContract
6 awarded (a “prime contract”) must require that any Individual performing Moving Services
7 thereunder be paid not less than the Prevailing Rate of Wages, ~~including fringe benefits or the~~
8 ~~matching equivalents thereof, paid in private employment for similar work in the area in which the~~
9 ~~Contract is being performed.~~

10 (b) **Exclusions.** This Section 102.6 shall not apply to the following:

11 (1) **Non-profits.** This Section shall not apply to a Contract where the Moving
12 Services are to be performed by a non-profit organization that provides job training and work
13 experience for disadvantaged ~~i~~Individuals in need of such training.

14 (2) **Prior Agreements.** This Section shall not apply to agreements entered into
15 before the effective date of this Section.

16 (3) **Contracts for \$1000 or Less.** This Section shall not apply to contracts for
17 \$1000 or less per moving service provider. Contracts may not be split for purposes of evading
18 the requirements of this Section.

19 (4) **Modular Furniture Installers “Carpenters.”** This Section shall not apply to any
20 work covered by the California Department of Industrial Relations’ Modular Furniture Installers
21 (Carpenters) Classification.

22 (c) **Definitions.** For purposes of this Section 102.6, the following definitions shall apply
23 to the terms used herein:

24 ~~(1)~~—“Contract” shall mean an agreement for Moving Services to be performed at the
25 expense of the City ~~and County of San Francisco~~ or to be paid out of moneys deposited in the

1 treasury or out of trust moneys under the control or collected by the City ~~and County of San~~
2 ~~Francisco.~~

3 (2) "Moving Services" shall mean moving or handling of goods being relocated under
4 a contract for commercial moving services to relocate City offices, facilities, and/or institutions.

5 (3) "Non-profit" shall mean a non-profit corporation, duly organized, validly existing
6 and in good standing under the laws of the jurisdiction of its incorporation and (if a foreign
7 corporation) in good standing under the laws of the State of California, which corporation has
8 established and maintains a valid non-profit status under Section 501(c)(3) of the United
9 States Internal Revenue Code of 1986, as amended, and all rules and regulations
10 promulgated under such Section.

11 (4) ~~"Prevailing Rate of Wages" shall mean that rate of compensation as determined in Section~~
12 ~~102.1.~~

13 (d) **Preemption.** Nothing in this Section 102.6 shall be interpreted or applied so as to
14 create any power or duty in conflict with any federal or ~~s~~State law.

15 (e) ~~**Effective Date and Application**~~**Prospective Effect.** ~~This Section shall become effective 30~~
16 ~~days after it is enacted.~~ This Section 102.6 is intended to have prospective effect only, and shall
17 not be interpreted to impair the obligations of any pre-existing agreement to which the City is a
18 party, unless such pre-existing agreement has been amended after the effective date of this
19 Section.

20 (f) **Severability.** If any part or provision of this Section 102.6, or the application thereof
21 to any Person or circumstance, is held invalid, the remainder of this Section, including the
22 application of such part or provisions to other Persons or circumstances, shall not be affected
23 thereby and shall continue in full force and effect. To this end, the provisions of this Section
24 are severable.

1 **SEC. 102.7. ~~PREVAILING RATE OF WAGES IN~~ MOTOR BUS SERVICE CONTRACTS.**

2 ~~In the case of any~~Every contract for Services wherein motor bus service is to be rendered
3 to the general public on any facility owned by the City, ~~and every or in the case of any~~ contract
4 for the transportation within the boundaries of the City of any Commodities owned or in the
5 possession of the City, ~~the Purchaser, on recommendation of the department head concerned and~~
6 ~~approval of the Mayor or the Mayor's designee provided that the designee is not the department head~~
7 ~~of the department concerned or the board or commission in charge of such department upon the~~
8 ~~ground that the public interest would be best served by requiring the inclusion of such a provision in~~
9 ~~the contract, may~~ shall require that any person performing labor thereunder shall be paid not
10 less than the highest general ~~p~~Prevailing ~~r~~Rate of ~~w~~Wages, ~~including fringe benefits or the~~
11 ~~matching equivalents thereof, paid in private employment for similar work in the area in which the~~
12 ~~contract is being performed, as determined~~ in accordance with Section 103.2 of the Labor and
13 ~~Employment Code by the Civil Service Commission~~; provided, however, if such a provision is to be
14 included in the contract, the notice inviting offers under Section ~~102.2~~21.2 of ~~this the~~
15 ~~Administrative Code~~ must call attention of Offerors, ~~as defined in Section 21.02 of the~~
16 ~~Administrative Code~~, to the requirements of said provision.

17
18 **SEC. 102.8. ~~PREVAILING RATE OF WAGES REQUIRED FOR~~ TRADE SHOW AND**
19 **SPECIAL EVENT WORK.**

20 (a) **Prevailing Wage Requirement.** Every Contract, Lease, Franchise, Permit, or
21 Agreement awarded, let, issued, or granted by the City for the use of property owned by the
22 City must require that any Individual engaged in Exhibit, Display, or Trade Show Work at a
23 Special Event be paid not less than the Prevailing Rate of Wages, ~~including fringe benefits or~~
24 ~~the matching equivalents thereof, paid in private employment for similar work in the area in which the~~
25 ~~Contract, Lease, Franchise, Permit or Agreement is being performed.~~ All Contracts, Leases,

Franchises, Permits or Agreements subject to this Section 102.8 shall include a provision in which the Contractor agrees to comply with, and to require Subcontractors to comply with, the obligations imposed by this Section.

(b) **Definitions.** For purposes of this Section 102.8, the following definitions shall apply:

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

“Contract, Lease, Franchise, Permit, or Agreement” shall mean an agreement with the City for the use of property owned by the City, but shall not include any contract, lease, franchise, permit, or agreement for:

~~A.(1)~~ Celebration of a marriage, domestic partnership, or similar civil union;

~~B.(2)~~ The presentation of a Special Event to which the public has free access when the Special Event is in a public park, on a public street, or on property under the jurisdiction of the Port Commission, and the advertising and promotion for the Special Event is less than \$10,000;

~~C. Any permit or agreement to engage in film production pursuant to Chapter 57 of the San Francisco Administrative Code or under the circumstances set forth in Section 57.7 of the Administrative Code;~~

~~D.(3)~~ In any circumstance where application of this Section 102.8 would be preempted by federal or ~~s~~State law;

~~E.(4)~~ Any Special Event for which the time required for the set-up is three hours or less and the number of ~~i~~Individuals working on the set-up is no more than two;

~~F.(5)~~ Any Special Event where the Special Event itself takes five hours or less;

~~G.(6)~~ Any Special Event that requires the payment of the Prevailing Rates of Wages~~prevailing wage rates~~ applicable to ~~public works projects~~a Covered Local Project or a Covered State Project;

1 ~~H(7)~~: A street fair organized by and for which a permit has been issued to a
2 nonprofit entity, where the street fair is free and open to the public and does not have as a
3 primary purpose the advertising or promotion of a product or service.

4 “Convention” shall mean an organized association of persons with a common interest,
5 including but not limited to a professional, commercial, political, social, cultural, vocational,
6 recreational, or fraternal interest, who meet in a hotel, convention center, or other building to
7 discuss or act on matters affecting their common interest or to participate in activities related
8 to their common interest. Attendees at a “Convention” come mainly from places other than
9 San Francisco.

10 “Exhibit, Display, or Trade Show Work” shall mean the on-site installation, set-up,
11 assembly, and dismantling of temporary exhibits, displays, booths, modular systems,
12 enclosures, tenting, signage, drapery, furniture (including specialty furniture), floor coverings, or
13 decorative materials in connection with or related to a Special Event.

14 “Exposition” shall mean a large-scale public exhibition with a primary though not
15 necessarily exclusive purpose of promoting one or more products, services, or businesses.

16 “On-site” shall mean the site of the Special Event, which may occur in enclosed space
17 or open space or both. If the primary site of the Special Event is enclosed space, “On-site”
18 shall include open space within 150 feet of the enclosed space that is the primary site of the
19 Special Event. “On-site” shall also include public rights of way, including but not limited to a
20 street or sidewalk, as to which a City permit, including but not limited to an ISCOTT
21 (“Interdepartmental Staff Committee on Traffic and Transportation”) permit, has been issued
22 in connection with the Special Event.

23 ~~“Prevailing Rate of Wages” shall mean that rate of compensation as determined in Section~~
24 ~~102.1.~~

1 “Special Event” shall mean any Trade Show, Convention, Exposition, or other
2 Temporary Event with the characteristics of a Trade Show, Convention, or Exposition, that
3 involves Exhibit, Display, or Trade Show Work.

4 “Temporary Event” shall mean an event lasting no more than six months.

5 “Trade Show” shall mean a gathering in which one or more businesses or association
6 of businesses in one or more industries or professions show their products or services to
7 possible customers or patrons. A “Trade Show” may include but is not limited to a gathering in
8 which there are exhibits, displays, or demonstrations of specific products or services or that
9 highlight all or part of an industry or profession.

10 (c) **Preemption.** Nothing in this Section 102.8 shall be interpreted or applied so as to
11 create any power or duty in conflict with any federal or State law.

12 (d) ~~**Operative Date and Application**~~ **Prospective Effect.**

13 ~~(1) This Section 102.8 shall become operative upon the initial setting of a~~
14 ~~Prevailing Rate of Wages for Exhibit, Display, or Trade Show Work by the Board of Supervisors. This~~
15 ~~initial Prevailing Rate of Wages shall be set in accordance with the process established in Section~~
16 ~~102.1(e)(1), except the Civil Service Commission shall submit to the Board of Supervisors data as to~~
17 ~~the Prevailing Rate of Wages no later than the first week in August 2014. Thereafter, the Commission~~
18 ~~shall submit data as to the Prevailing Rate of Wages for Exhibit, Display, or Trade Show Work on or~~
19 ~~before the first Monday in November each year, including 2014, in accordance with Section~~
20 ~~102.1(e)(1).~~

21 ~~(2)~~ This Section 102.8 is intended to have prospective effect only, and shall not be
22 interpreted to impair the obligations of any pre-existing Contract, Lease, Franchise, Permit, or
23 Agreement issued or entered into by the City. This Section shall only apply to Contracts,
24 Leases, Franchises, Permits, or Agreements entered into on or after the operative date of this
25 Section.

1 (e) **Severability.** ~~If any provision or provisions of this Section 102.8 or any application~~
2 ~~thereof is held invalid, such invalidity shall not affect any other provisions or applications of the~~
3 ~~Section. If any part or provision of this Section 102.8, or the application thereof to any Person or~~
4 ~~circumstance, is held invalid, the remainder of this Section, including the application of such part or~~
5 ~~provisions to other Persons or circumstances, shall not be affected thereby and shall continue in full~~
6 ~~force and effect. To this end, the provisions of this Section are severable.~~

7
8 **SEC. 102.9. ~~PREVAILING RATE OF WAGES REQUIRED FOR BROADCAST SERVICES~~**
9 **WORKERS ON CITY PROPERTY.**

10 (a) **Prevailing Wage Requirement.** Every Contract, Lease, Franchise, Permit, or
11 Agreement awarded, let, issued, or granted by the City for the use of property owned by the
12 City must require that any Individual engaged in Broadcast Services on City property be paid
13 not less than the Prevailing Rate of Wages, ~~including fringe benefits or the matching equivalents~~
14 ~~thereof, paid in private employment for similar work in the area in which the Contract, Lease,~~
15 ~~Franchise, Permit, or Agreement is being performed.~~ All Contracts, Leases, Franchises, Permits,
16 or Agreements subject to this Section 102.9 shall include a provision in which the Contractor
17 agrees to comply with, and to require Subcontractors to comply with, the obligations imposed
18 by this Section.

19 (b) **Definitions.** For purposes of this Section 102.9, the following definitions shall
20 apply to the terms used herein:

21 “Broadcast Services” shall mean the electronic capture and/or live transmission on-site
22 of video, digital, and/or audio content for Commercial Purposes through the use of a remote
23 production or satellite truck on-site. An ~~i~~Individual engaged in Broadcast Services includes,
24 but is not limited to, a technical director, video controller, assistant director, and stage
25

1 manager, as well as ~~i~~ndividuals engaged in the following functions: audio; camera; capture
2 and playback; graphics; and utility.

3 "Commercial Purposes" shall mean an operation for profit and shall not include
4 instances where the capture and transmission of video, digital, and/or audio content is
5 performed by or on behalf of a governmental entity.

6 "Contract, Lease, Franchise, Permit, or Agreement" shall mean an agreement with the
7 City for the use of property owned by the City, but shall not include any contract, lease,
8 franchise, permit, or agreement:

9 (1) For any event where the total number of hours of Broadcast Services work
10 being performed for the set-up, the event itself, and the takedown is less than ten hours in the
11 aggregate;

12 (2) For celebration of a marriage, domestic partnership, or similar civil union,
13 except where the capture of video, digital and/or audio content of the celebration is for a
14 Commercial Purpose;

15 (3) To engage in film production pursuant to Chapter 57 of the ~~San Francisco~~
16 Administrative Code or under the circumstances set forth in Section 57.7 of the Administrative
17 Code; provided, however, that if the film production involves Broadcast Services, the
18 requirements of this Section 102.9 shall apply to those persons engaged in Broadcast
19 Services;

20 (4) In any circumstance where application of this Section 102.9 would be
21 preempted by federal or ~~s~~tate law;

22 (5) For a street fair, block party, parade, or festival, or any celebration directly
23 associated with such street fair, block party, parade, or festival, or any other expressive
24 activity such as a protest, demonstration, or similar public assembly, that is free and open to
25

1 the public and does not have as a primary purpose the advertising or promotion of a
2 commercial product or commercial service;

3 (6) For any event that requires the payment of ~~p~~Prevailing ~~w~~Wage rates
4 applicable to ~~public works projects~~ a Covered Local Project or a Covered State Project;

5 (7) In any circumstances where video and/or audio content is being captured
6 solely for personal use;

7 (8) For a concert in a public park to which the public has free access;

8 (9) For any event sponsored by a nonprofit entity where the primary purpose of
9 the event is fundraising for that nonprofit entity and/or other nonprofit entities; provided,
10 however, that this exemption shall not apply if the event is a collegiate sporting event or a
11 professional sporting event. For purposes of this subsection (b)(9), "professional sporting
12 event" means an event at which athletes receive compensation for their performance; or

13 ~~(10) In any circumstance where application of this Section 102.9 would apply to work~~
14 ~~covered by a collective bargaining agreement; or~~

15 ~~(H10)~~ For any event sponsored by a primary or secondary educational
16 institution.

17 (c) **Preemption.** Nothing in this Section 102.9 shall be interpreted or applied so as to
18 create any right, power, or duty in conflict with any federal or ~~s~~State law

19 (d) **Conflict with Other Sections.** In the event of a conflict between this Section
20 102.9 and any other section of this Article 102, the other section shall prevail.

21 (e) ~~**Operative Date and Application**~~ **Prospective Effect.**

22 ~~(1) This Section 102.9 shall become operative upon the initial setting of a Prevailing~~
23 ~~Rate of Wages for Broadcast Services Work by the Board of Supervisors. This initial Prevailing Rate of~~
24 ~~Wages shall be set in accordance with the process established in Section 102.1(e)(1), except the Civil~~
25 ~~Service Commission shall submit to the Board of Supervisors data as to the Prevailing Rate of Wages~~

1 ~~no later than 120 days after the effective date of this Section 102.9. Thereafter, the Commission shall~~
2 ~~submit data as to the Prevailing Rate of Wages for Broadcast Services Work on or before the first~~
3 ~~Monday in November each year in accordance with Section 102.1(c)(1).~~

4 (2)—This Section 102.9 is intended to have prospective effect only, and shall not be
5 interpreted to impair the obligations of any pre-existing Contract, Lease, Franchise, Permit, or
6 Agreement issued or entered into by the City. This Section shall only apply to Contracts,
7 Leases, Franchises, Permits, or Agreements issued or entered into on or after the operative
8 date of this Section.

9 (f) **Exemption.** This Section 102.9 shall not apply to Broadcast Services being
10 performed by a news service or similar entity engaged in on-the-spot broadcasting of news
11 events that does not require a Contract, Lease, Franchise, Permit, or Agreement.

12 (g) **Severability.** ~~If any provision or provisions of this Section 102.9 or any application~~
13 ~~thereof is held invalid, such invalidity shall not affect any other provisions or applications of the~~
14 ~~Section. If any part or provision of this Section 102.9, or the application thereof to any Person or~~
15 ~~circumstance, is held invalid, the remainder of this Section, including the application of such part or~~
16 ~~provisions to other Persons or circumstances, shall not be affected thereby and shall continue in full~~
17 ~~force and effect. To this end, the provisions of this Section are severable.~~

18
19 **SEC. 102.10. ~~PREVAILING RATE OF WAGES REQUIRED FOR~~ LOADING, UNLOADING,**
20 **AND DRIVING COMMERCIAL VEHICLES ON CITY PROPERTY.**

21 (a) **Prevailing Wage Requirement.** Every Contract, Lease, Franchise, Permit, or
22 Agreement awarded, let, issued, or granted by the City for the use of property owned by the
23 City must require that (1) any Individual engaged in loading or unloading on City property of
24 materials, goods, or products into or from a Commercial Vehicle in connection with the
25 presentation of a Show or for a Special Event be paid not less than the Prevailing Rate of

1 ~~Wages, including fringe benefits or the matching equivalents thereof, paid in private employment for~~
2 ~~similar work in the area in which the loading or unloading is being performed,~~ and (2) any Individual
3 driving a Commercial Vehicle from which materials, goods, or products are loaded or
4 unloaded on City property in connection with the presentation of a Show or for a Special
5 Event shall be paid not less than the Prevailing Rate of Wages for hours driven within the City
6 limits. All Contracts, Leases, Franchises, Permits, or Agreements subject to this Section
7 102.10 shall include a provision in which the Contractor agrees to comply with, and to require
8 Subcontractors to comply with, the obligations imposed by this Section.

9 (b) **Definitions.** For purposes of this Section 102.10, the following definitions shall
10 apply to the terms used herein:

11 "Commercial Vehicle" shall mean a vehicle that (1) is used or maintained primarily for
12 the transportation of materials, goods, or products; (2) has six wheels or more; and (3)
13 displays or is required to display a California Department of Motor Vehicles weight decal as
14 required by the Commercial Vehicle Registration Act, California Vehicle Code Section 9400 *et*
15 *seq.*, as amended. Notwithstanding the foregoing sentence, Commercial Vehicle shall not
16 include a vehicle used exclusively for food catering purposes, meaning its exclusive purpose
17 on a particular trip is for the transport of food and/or beverages to be served at a Show or
18 Special Event, the transport of equipment for the preparation and service of such food and/or
19 beverages at a Show or Special Event, or both.

20 "Contract, Lease, Franchise, Permit, or Agreement" shall have the meanings set forth
21 in Section 102.4(b) of this Code with regard to Shows, and in Section 102.8(b) of this Code
22 with regard to Special Events, including the exemptions stated therein.

23 "Mass Participation Sports Event" shall mean a participatory sporting event such as a
24 marathon, running race, or bicycle race or tour, with anticipated participation by 150
25 participants or more.

1 “Show” shall have the meaning set forth in Section 102.4**(b)** of this Code.

2 “Special Event” shall have the meaning set forth in Section 102.8**(b)** of this Code, and
3 shall also include a Mass Participation Sports Event.

4 (c) **Preemption.** Nothing in this Section 102.10 shall be interpreted or applied so as to
5 create any right, power, or duty in conflict with any federal or ~~s~~State law.

6 (d) **Conflict with Other Sections.** In the event of a conflict between this Section
7 102.10 and any other sections of this Article 102, the other section(s) shall prevail.

8 (e) ~~**Operative Date and Application**~~**Prospective Effect.**

9 ~~(1) This Section 102.10 shall become operative upon the initial setting by the~~
10 ~~Board of Supervisors of a Prevailing Rate of Wages for loading, unloading, and driving of Commercial~~
11 ~~Vehicles on City property. This initial Prevailing Rate of Wages shall be set in accordance with the~~
12 ~~process established in Section 102.1(c)(1), except the Civil Service Commission shall submit to the~~
13 ~~Board of Supervisors data as to the Prevailing Rate of Wages no later than 120 days after the effective~~
14 ~~date of this Section 102.10. Thereafter, the Commission shall submit data as to the Prevailing Rate of~~
15 ~~Wages for loading, unloading, and driving of Commercial Vehicles on City property, on or before the~~
16 ~~first Monday in November each year in accordance with Section 102.1(c)(1).~~

17 ~~(2)~~ This Section 102.10 is intended to have prospective effect only, and shall not be
18 interpreted to impair the obligations of any pre-existing Contract, Lease, Franchise, Permit, or
19 Agreement issued or entered into by the City. This Section shall only apply to Contracts,
20 Leases, Franchises, Permits, or Agreements entered into on or after the operative date of this
21 Section.

22 (f) **Exemptions.** In addition to the exemptions set forth in Section 102.4(b) of this
23 Code for certain Shows and set forth in Section 102.8(b) of this Code for certain Special
24 Events, this Section 102.10 shall not apply to the following:
25

1 (1) any Individual engaged in the loading or unloading of portable toilets,
2 temporary fencing, temporary barricades, or temporary tents or canopies of less than 700
3 square feet when erected, or any Individual driving a Commercial Vehicle from which portable
4 toilets, temporary fencing, temporary barricades, or temporary tents or canopies of less than
5 700 square feet when erected, are loaded or unloaded;

6 (2) individual vendors at a flea market or farmers market conducted on City
7 property; provided, however, that this Section shall apply to loading, unloading, or driving of
8 Commercial Vehicles for such events if these events would otherwise be covered by this
9 Section 102.10 and the loading, unloading or driving is performed by the operator or
10 management of the flea market or farmers market;

11 ~~(3) work that is covered under a collective bargaining agreement;~~

12 ~~(4)(3)~~ work that is performed by a City employee; or

13 ~~(5)(4)~~ a Mass Participation Sports Event that is sponsored by a non-profit entity
14 where the primary purpose of the Event is fundraising for that non-profit entity and/or other
15 non-profit entities.

16 (g) **Severability.** ~~If any provision or provisions of this Section 102.10 or any application~~
17 ~~thereof is held invalid, such invalidity shall not affect any other provisions or applications of the~~
18 ~~Section. If any part or provision of this Section 102.10, or the application thereof to any Person or~~
19 ~~circumstance, is held invalid, the remainder of this Section, including the application of such part or~~
20 ~~provisions to other Persons or circumstances, shall not be affected thereby and shall continue in full~~
21 ~~force and effect. To this end, the provisions of this Section are severable.~~

22
23 **SEC. 102.11. ~~PREVAILING RATE OF WAGES FOR SECURITY GUARD SERVICES IN CITY~~**
24 **CONTRACTS AND FOR EVENTS ON CITY PROPERTY.**

1 (a) **Definitions.** For purposes of this Section 102.11, the following definitions shall
2 apply:

3 "Event" means any organized gathering of people, including but not limited to a live
4 performance, dance, convention, conference, parade, or exposition on City property.

5 "Security Guard Services" means services to protect persons or property or prevent
6 theft, performed by nonsupervisory employees who are licensed by the California Bureau of
7 Security and Investigative Services (BSIS) or a successor agency to provide security guard or
8 proprietary security guard service, including but not limited to men and women serving as
9 security guards, watchmen, patrolmen, and security officers.

10 (b) **City Contracts.**

11 (1) **Prevailing Wage Requirement.** Every Contract issued by the City must
12 require that any individual performing Security Guard Services thereunder at any facility or on
13 any property owned or leased by the City be paid not less than the Prevailing Rate of Wages;
14 ~~including fringe benefits or the matching equivalents thereof, paid in private employment for similar~~
15 ~~work in the area in which the Contract is being performed.~~ All Contracts subject to this Section
16 102.11 shall include a provision in which the Contractor agrees to comply with, and to require
17 Subcontractors to comply with, the obligations imposed by this Section.

18 (2) **Exclusions.** For purposes of this subsection (b), "Contract" shall mean an
19 agreement to be performed at the expense of the City or to be paid out of moneys deposited
20 in the City treasury or out of trust moneys under the control of or collected by the City, but
21 shall not include the following:

22 (A) Contracts issued by the ~~San Francisco~~ Airport Commission or to be
23 performed at any facility owned, leased, or otherwise under the jurisdiction of the ~~San~~
24 ~~Francisco~~ Airport Commission.

1 (B) Contracts for a cumulative amount of \$10,000 or less per Security
2 Guard Services provider in each fiscal year. Contracts may not be split for purposes of
3 evading the requirements of this Section 102.11.

4 (c) **Events on City Property.**

5 (1) **Prevailing Wage Requirement.** Every Contract, Lease, Franchise, Permit,
6 or Agreement awarded, let, issued, or granted by the City for the use of property owned by the
7 City must require that any ~~i~~Individual engaged in Security Guard Services for an Event on City
8 property be paid not less than the Prevailing Rate of Wages, ~~including fringe benefits or the~~
9 ~~matching equivalents thereof, paid in private employment for similar work in the area in which the~~
10 ~~Contract, Lease, Franchise, Permit, or Agreement is being performed.~~ All Contracts, Leases,
11 Franchises, Permits, or Agreements subject to this Section 102.11 shall include a provision in
12 which the Contractor (including a lessee, franchisee, permittee, or other party to an
13 Agreement) agrees to comply with, and to require Subcontractors to comply with, the
14 obligations imposed by this Section.

15 (2) **Exclusions.** For purposes of this subsection (c), "Contract, Lease,
16 Franchise, Permit, or Agreement" shall mean an agreement with the City for the use of
17 property owned by the City, but shall not include any contract, lease, franchise, permit, or
18 agreement for:

19 (A) Celebration of a marriage, domestic partnership, or similar civil
20 union;

21 (B) The presentation of an Event to which the public has free access
22 when the Event is in a public park, on a public street, or on property under the jurisdiction of
23 the Port Commission, and the advertising and promotion for the Event is less than \$10,000;

1 (C) Any permit or agreement to engage in film production pursuant to
2 Chapter 57 of the ~~San Francisco~~ Administrative Code or under the circumstances set forth in
3 Section 57.7 of the Administrative Code,;

4 (D) In any circumstance where application of this Section 102.11 would
5 be preempted by federal or ~~s~~State law,;

6 (E) Any Event for which the total number of employees providing
7 Security Guard Services for the Event is less than 15 ~~fifteen~~ persons.

8 (d) **Preemption.** Nothing in this Section 102.11 shall be interpreted or applied so as to
9 create any right, power, or duty in conflict with any federal or ~~s~~State law.

10 (e) ~~Operative Date and Prospective Effect.~~

11 ~~(1) This Section 102.11 shall become operative upon the initial setting of a Prevailing~~
12 ~~Rate of Wages for Security Guard Services by the Board of Supervisors. This initial Prevailing Rate of~~
13 ~~Wages shall be set in accordance with the process established in Section 102.1(e)(1), except the Civil~~
14 ~~Service Commission shall submit to the Board of Supervisors data as to the Prevailing Rate of Wages~~
15 ~~no later than 120 days after the effective date of this Section 102.11. Thereafter, the Commission shall~~
16 ~~submit data as to the Prevailing Rate of Wages for Security Guard Services on or before the first~~
17 ~~Monday in November each year in accordance with Section 102.1(e)(1).~~

18 ~~(2)~~ This Section 102.11 is intended to have prospective effect only, and shall not be
19 interpreted to impair the obligations of any pre-existing Contract, Lease, Franchise, Permit, or
20 Agreement”² issued or entered into by the City, unless such pre-existing agreement is
21 amended after the effective date of this Section and such amendment extends the term of the
22 pre-existing agreement.

23 (f) **Severability.** If any part or provision of this Section 102.11, or the application
24 thereof to any Person or circumstance, is held invalid, the remainder of this Section, including
25 the application of such part or provisions to other Persons or circumstances, shall not be

1 affected thereby and shall continue in full force and effect. To this end, the provisions of this
2 Section are severable.

3
4 Section 9. The Labor and Employment Code is amended by adding Article 103, consisting of
5 Sections 103.1 through 103.3, to read as follows:

6 **ARTICLE 103: PREVAILING WAGES**

7 **SEC. 103.1. GENERAL REQUIREMENT.**

8 *All Contractors and Subcontractors performing work on a Covered Project or a Covered*
9 *Contract as defined in Article 101 shall pay their workers on such project or contract not less than the*
10 *Prevailing Rate of Wages as set under Section 103.2, or the rate required by the Minimum*
11 *Compensation Ordinance, Labor and Employment Code Article 111, whichever is higher.*
12

13 **SEC. 103.2. DETERMINATION OF THE PREVAILING WAGE.**

14 *It shall be the duty of the Board of Supervisors ("the Board"), from time to time and at least*
15 *once during each calendar year, to fix and determine the Prevailing Rate of Wages as follows:*

16 *(a) On or before the first Monday in November of each year, the Civil Service Commission*
17 *("the Commission") shall furnish to the Board data as to the highest general Prevailing Rate of Wages*
18 *of the various crafts and kinds of labor as paid in private employment in the City, plus "per diem*
19 *wages" and wages for overtime and holiday work. "Per diem wages" means "per diem wages" as*
20 *defined in California Labor Code Sections 1773.1 and 1773.9, as amended from time to time. Based on*
21 *the data, the Commission shall also recommend to the Board rates for the Prevailing Rate of Wages.*

22 *(b) The Board of Supervisors shall, upon receipt of such data, fix and determine the Prevailing*
23 *Rate of Wages no later than December 31 of that year. If the Board does not fix and determine the*
24 *Prevailing Rate of Wages by December 31, the Commission's recommended rates shall become the*
25 *effective Prevailing Rate of Wages for the coming calendar year.*

1 (c) The Prevailing Rate of Wages as so fixed and determined by the Board (or as described
2 above set by the Commission in the absence of Board action by December 31) shall remain in force and
3 be deemed to be the highest general Prevailing Rate of Wages paid in private employment for similar
4 work, until the same is changed for that calendar year by the Board.

5 (d) Unless the Board expressly states otherwise, the Prevailing Rate of Wages as set by the
6 Board (or as described above set by the Commission in the absence of Board action by December 31)
7 shall track and match future wage determinations issued by the California Department of Industrial
8 Relations.

9 (e) In determining the highest general Prevailing Rate of Wages, as provided for in this Section
10 103.2, the Board shall not be limited to the consideration of data furnished by the Commission, but may
11 consider such other evidence upon the subject as the Board shall deem proper and thereupon base its
12 determination upon any or all of the data or evidence considered.

13 (f) In the event that the highest general Prevailing Rate of Wages are not fixed and determined
14 under this Section 103.2 for any calendar year, the rates established by the California Department of
15 Industrial Relations for such year shall be deemed adopted; and if the Department of Industrial
16 Relations does not so establish a rate for a craft or kind of labor, the most recent rate set under Section
17 103.2 for that craft or kind of labor shall remain in effect.

18
19 **SEC. 103.3. ADDITIONAL REQUIREMENTS AND CONTRACTUAL PROVISIONS.**

20 (a) Contractual Prevailing Wage Requirements. The City shall include in each contract,
21 lease, or any other type of agreement that includes or contemplates a Covered Project or Covered
22 Contract, the requirement that Contractors and Subcontractors performing work on the Covered
23 Project or Covered Contract pay Prevailing Wages in accordance with the requirements of this Article
24 103. The failure of the City to comply with this subsection (a) shall not void or annul the requirements
25 imposed by this Article 103 on Contractors and Subcontractors.

1 **(b) Subcontractors Bound by Wage Provisions.** *Every contract, lease, or any other type of*
2 *agreement that includes or contemplates a Covered Project or Covered Contract shall contain a*
3 *provision requiring the Contractor and/or any Subcontractor to insert in every subcontract, sublease,*
4 *or any other arrangement the requirement that the Subcontractor shall pay to all persons performing*
5 *labor or work for a Covered Project, or rendering service for a Covered Contract, the highest general*
6 *Prevailing Rate of Wages as fixed and determined in accordance with Section 103.2. This requirement*
7 *shall apply to any subcontract, sublease, or other arrangement that the Contractor or Subcontractor*
8 *may make for the performance of any work or labor for a Covered Project, or services for a Covered*
9 *Contract. The failure of a Contractor or Subcontractor to comply with this subsection (b) shall not void*
10 *or annul the requirement that any work or labor performed under any subcontract, sublease, or other*
11 *arrangement made by the Contractor or Subcontractor for work or labor for a Covered Project or*
12 *services for a Covered Contract must be paid at the highest general Prevailing Rate of Wages as fixed*
13 *and determined in accordance with Section 103.2.*

14 **(c) Additional Required Contract Provisions.** *Every contract, lease, or any other type of*
15 *agreement for a Covered Project or Covered Contract shall contain provisions stating the following:*
16 **(1) the Contractor will cooperate fully with the Labor Standards Enforcement Officer**
17 **and other City employees and agents authorized to assist in the administration and enforcement of the**
18 **Prevailing Wage requirements and other labor standards imposed on the Contractor by the Charter or**
19 **the Municipal Code;**

20 **(2) the Contractor agrees that the Labor Standards Enforcement Officer, and the**
21 **Officer's designees, in the performance of their duties, shall have the right to engage in random**
22 **inspections of job sites and to have access to the employees of the Contractor, employee time sheets,**
23 **inspection logs, Contractor daily logs, payroll records, employee paychecks, employee paystubs, and**
24 **proof of payment documents;**
25

1 (3) the Contractor shall maintain a record in the format prescribed by OLSE of sign-in
2 and sign-out showing which employees have been present on the job site;

3 (4) the Contractor shall prominently post at each job site a sign informing employees
4 that the project is subject to the City's Prevailing Wage requirements and that these requirements are
5 enforced by the Labor Standards Enforcement Officer; and

6 (5) the Labor Standards Enforcement Officer may audit such records of the Contractor
7 or Subcontractor as the Labor Standards Enforcement Officer reasonably deems necessary to
8 determine compliance with the Prevailing Wage and other labor standards imposed by the Charter or
9 the Municipal Code.

10 Failure to comply with any of these requirements may result in penalties and forfeitures
11 consistent with analogous provisions of the California Labor Code, including Section 1776(h), as
12 amended from time to time.

13 (d) **Contract Documents to Include Wage Rate.** The Department Head shall include in the
14 contract specifications or other contract document, or make available in the offices of the department
15 or at the job site, a detailed statement of the Prevailing Rate of Wages as fixed and determined in
16 accordance with Section 103.2 as of the time the department issued the Advertisement For Bids or
17 Solicitation on the contract. The Contractor shall agree to pay to all persons performing covered work
18 or labor on or for the Covered Project or Covered Contract the highest general Prevailing Rate of
19 Wages as determined in accordance with Section 103.2. If the contract documents do not include the
20 Prevailing Rate of Wages, the specifications or contract documents shall include a statement that
21 copies of the Prevailing Rate of Wages as fixed and determined in accordance with Section 103.2 are
22 on file at the department's principal office or at the job site and shall be made available to any
23 interested party on request.

1 **(e) Records.**

2 **(1) Records to be Kept by Contractors and Subcontractors.** *In every instance where*
3 *the Municipal Code or a contractual arrangement – including, without limitation, any agreement,*
4 *contract, franchise, lease, or permit – with the City requires a Contractor or Subcontractor to pay*
5 *Prevailing Wages, the subject contract or subcontract shall contain a provision that the contractor or*
6 *subcontractor shall keep, or cause to be kept, for a period of four years from the date of completion of*
7 *the subject work, payrolls and basic records including time cards, trust fund reports, apprenticeship*
8 *agreements, accounting ledgers, tax forms, proof of payment, and superintendent and foreperson daily*
9 *logs for all trades workers performing work. For purposes of this subsection (e)(1), “completion of the*
10 *subject work” means substantial completion for Covered Projects and the last day of covered work for*
11 *Covered Contracts. Such records shall include the name, address, and social security number of each*
12 *worker who worked on the project or under the contract, including apprentices, worker classification, a*
13 *general description of the work each worker performed each day, the rate of pay (including rates of*
14 *contributions for, or costs assumed, to provide fringe benefits), daily and weekly number of hours*
15 *worked, deductions made, and actual wages paid. Every Subcontractor who shall undertake the*
16 *performance of any part of a project or contractual arrangement subject to this Article 103 shall keep a*
17 *like record of each person engaged in the execution of the subcontract.*

18 **(2) Maintenance and Submission of Certified Payroll Records.**

19 **(A)** *Each Contractor and Subcontractor subject to this Article 103 shall maintain*
20 *weekly certified payroll records, and shall submit those certified payroll records to the City using the*
21 *Office of Labor Standards Enforcement’s certified payroll reporting system. The awarding department*
22 *may provide by contract for additional payroll maintenance or payroll submission requirements. All*
23 *certified payroll records shall be accompanied by a statement of compliance signed by the Contractor*
24 *or Subcontractor indicating that the payroll records are correct and complete, that the wage rates*
25

1 contained therein are not less than those determined in accordance with Section 103.2, and that the
2 classifications set forth for each employee conform with the work performed.

3 **(B) Exemption.** Unless otherwise provided by contract, Covered Contracts that
4 do not qualify as a Covered Project are exempt from the requirement that the Contractor submit
5 certified payroll records to the City.

6 (3) All such records as described in this subsection (e) shall at all times be open to
7 inspection and examination of the duly authorized officers and agents of the City, including
8 representatives of the Office of Labor Standards Enforcement.

9 (4) Should the Department Head or the Labor Standards Enforcement Officer determine
10 that a Contractor or Subcontractor is not in compliance with the requirements of this subsection (e),
11 the Department Head or the Labor Standards Enforcement Officer shall issue written notification to the
12 Contractor or Subcontractor mandating compliance within not fewer than 10 calendar days from the
13 date of the notification. Should the Contractor or Subcontractor fail to comply as required in the
14 notification, the Department Head who executed the contract or the Labor Standards Enforcement
15 Officer may impose penalties consistent with analogous provisions of the California Labor Code,
16 including Section 1776, as amended from time to time, for each calendar day of noncompliance, or
17 portion thereof, for each worker. Upon the request of the responsible Department Head or the Labor
18 Standards Enforcement Officer, the Controller shall withhold these penalties from progress payments
19 then due or to become due.

20 **(f) City as Third Party Beneficiary.** The City shall in each contract, lease, or any other
21 type of agreement that includes or contemplates work qualifying as a Covered Real Estate Project: (1)
22 a provision naming the City, affected workers, and employee organizations formally representing
23 affected workers, as third party beneficiaries for the limited purpose of having the right to enforce the
24 Prevailing Wage requirements of Article 103 and apprenticeship requirements of Article 104, including
25 the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with

1 Articles 103 through 106 and (2) a provision requiring the Real Property Contracting Party to
2 reasonably cooperate with the City in any action or proceeding against a Contractor or Subcontractor
3 that fails to pay the Prevailing Rate of Wages or employ Apprentices as required. A Real Property
4 Contracting Party that requires the payment of Prevailing Wages and employment of Apprentices in the
5 Covered Project, and that reasonably cooperates with the City in any enforcement action, shall not be
6 in breach of the applicable sales contract or lease with the City due to a Contractor's or
7 Subcontractor's failure to pay the Prevailing Rate of Wages or employ Apprentices. So long as the Real
8 Property Contracting Party satisfies the requirements of the previous sentence, and has not directly
9 performed trade work on the Covered Project, any enforcement action by the City, through the City's
10 Labor Standards Enforcement Officer or otherwise, shall be directly against the Contractor or
11 Subcontractor that failed to pay Prevailing Wages or employ Apprentices as required. Nothing in this
12 Article 103 shall limit the remedies available to a City department, as set forth in the applicable sales
13 contract or lease, for a Real Property Contracting Party's failure to require the payment of the
14 Prevailing Rate of Wages or the employment of Apprentices in a Covered Project, or for a Real
15 Property Contracting Party's failure to reasonably cooperate with the City in any enforcement action
16 as set forth above.

17 (g) Where the Covered Project involves Housing Development on real property sold by the
18 City, the requirements of this Article 103 shall terminate upon issuance of a final certificate of
19 occupancy for the Covered Project, so long as future construction work and/or other future activities
20 do not fall within the meaning of Covered Contract or Covered Project.

21
22 Section 10. The Labor and Employment Code is amended by adding Article 104,
23 consisting of Sections 104.1 through 104.3, to read as follows:
24
25

1 **ARTICLE 104: APPRENTICESHIP REQUIREMENTS**

2 **SEC. 104.1. EMPLOYMENT OF APPRENTICES.**

3 *Each Contractor or Subcontractor performing work as part of a project qualifying as a Covered*
4 *Real Estate Project shall employ Apprentices in compliance with the requirements of the State*
5 *Apprenticeship Program as set forth in the California Labor Code, Division 3, Chapter 4 commencing*
6 *at Section 3070, and Section 1777.5 of the California Labor Code, as each may be amended from time*
7 *to time.*

8
9 **SEC. 104.2. CONTRACTUAL APPRENTICESHIP REQUIREMENTS.**

10 *The City shall in each contract, lease, or any other type of agreement that includes or*
11 *contemplates work qualifying as a Covered Real Estate Project require that each Contractor or*
12 *Subcontractor performing work on the Covered Project employ Apprentices in accordance with Section*
13 *104.1.*

14
15 **SEC. 104.3. SUBCONTRACTORS BOUND BY APPRENTICESHIP PROVISIONS.**

16 *In each contract, lease, and/or other type of agreement that includes or contemplates work*
17 *qualifying as a Covered Real Estate Project, the City shall require the Contractor to insert in every*
18 *subcontract or other arrangement, which the Contractor or Subcontractor may make for the*
19 *performance of any work or labor on the Covered Real Estate Project, the requirement that the*
20 *Subcontractor shall employ Apprentices in accordance with Section 104.1.*

21
22 Section 11. The Labor and Employment Code is amended by adding Article 105,
23 consisting of Sections 105.1 through 105.3, to read as follows:
24
25

1 **ARTICLE 105: HOURS AND DAYS OF LABOR**

2 **SEC. 105.1. GENERALLY.**

3 *For the purpose of meeting prevailing conditions and enabling employers to secure a sufficient*
4 *number of satisfactory workers and artisans, no person performing labor or rendering service in the*
5 *performance of any contract or subcontract for any Covered Project as defined in Article 101 shall*
6 *perform labor for a longer period than five days (Monday through Friday) of eight hours each, with*
7 *two 10-minute breaks per eight-hour day, except in those crafts in which a different work day or week*
8 *now prevails by agreement in private employment. Any person working hours in addition to the above*
9 *shall be compensated in accordance with the prevailing overtime standards and rates.*

10
11 **SEC. 105.2. NONCOMPLIANCE AND FORFEITURE.**

12 *Any Contractor or Subcontractor who violates any provision of this Article 105 shall be liable*
13 *for the same penalties and forfeits as those specified in Article 106; penalties and forfeits shall be*
14 *applicable for each laborer, mechanic, or artisan employed for each calendar day or portion thereof*
15 *whereon such laborer, mechanic, or artisan is compelled or permitted to work more than the days and*
16 *hours specified herein. The provisions of this Article 105 shall be made a part of all contracts and*
17 *subcontracts for any Covered Project.*

18
19 **SEC. 105.3. CONTRACTS OUTSIDE CITY AND COUNTY.**

20 *In the event that any Covered Project is to be constructed outside of the City and at such a*
21 *distance therefrom that those engaged in performing labor on the Covered Project must under ordinary*
22 *conditions remain at or near the site of the Covered Project when not actually engaged in the*
23 *performance of labor thereon, then the officer, board, or commission responsible for the construction*
24 *of the Covered Project may, in making specifications or letting contracts therefor, make provision*
25 *therein for days and hours of labor beyond the limitations provided for in Article 105; but not to exceed*

1 eight hours in any calendar day, or six days in any calendar week. In the event that emergency
2 conditions arise, making a change advisable during the performance of any such contract, or any
3 portion thereof, the hours and days of labor may be extended beyond the limits hereinabove expressed;
4 but not to exceed eight hours per day, upon the written authority of the officer, board, or commission
5 awarding such contract. Failure of the Contractor to perform such contract within the time provided
6 shall not constitute an emergency.

7
8 Section 12. The Labor and Employment Code is amended by adding Article 106,
9 consisting of Sections 106.1 through 106.7, to read as follows:

10 **ARTICLE 106: PENALTIES, FORFEITURE, AND ENFORCEMENT**

11 **SEC. 106.1. PENALTY AND FORFEITURE.**

12 Any Contractor or Subcontractor who fails or neglects to comply with the requirements of
13 Article 103, Article 104, and/or Article 105 shall forfeit to the City back wages due plus penalties.
14 Penalties shall be forfeited in amounts consistent with analogous provisions of the California Labor
15 Code as amended from time to time, including Sections 1775, 1777.7, and 1813, but not less than \$50
16 for each calendar day, or portion thereof, for each worker not paid or otherwise not employed in
17 compliance with the requirements of Article 103, Article 104, and/or Article 105. A Contractor shall be
18 jointly and severally liable for the forfeitures of its Subcontractor(s). In addition, any Contractor or
19 Subcontractor who fails or neglects to comply with the requirements of Article 103, Article 104, and/or
20 Article 105 shall be subject to the penalties set forth in Article V of Chapter 6 of the Administrative
21 Code, including debarment.

22
23 **SEC. 106.2. WITHHOLDING OF FUNDS.**

24 For any Covered Project or Covered Contract under which the City has the ability to withhold
25 funds, it shall be the duty of the officer, board, or commission under whose jurisdiction said Covered

1 Project or Covered Contract is being carried on, constructed, or performed, when certifying to the
2 Controller any payment which may become due under said Contract, to deduct from said payment or
3 payments the total amount of any forfeiture provided for in Section 106.1. In doing so, the Department
4 Head must also notify in writing the Labor Standards Enforcement Officer of the Department Head's
5 action. The Labor Standards Enforcement Officer may also, upon written notice to the Department
6 Head responsible for the project, certify to the Controller any forfeiture(s) to deduct from any payment
7 as provided for in this Section 106.2. Certification of forfeitures under this Section 106.2 shall be made
8 only upon an investigation and audit by the responsible Department Head or the Labor Standards
9 Enforcement Officer and upon service of written notice to the Contractor that includes identification of
10 the grounds for the forfeiture or forfeitures ("Certification of Forfeiture"). The audit supporting the
11 forfeiture shall be appended to the Certification of Forfeiture, but failure to append such
12 documentation shall not invalidate the Certification of Forfeiture. Service of the Certification of
13 Forfeiture shall be made by United States mail and the date of service shall be the date of mailing. The
14 Controller, in issuing any warrant for any such payment, shall deduct from the amount which would
15 otherwise be due on said payment or payments the amount of said forfeiture or forfeitures as so
16 certified. This Section 106.2 does not provide for the withholding of funds disbursed through a City
17 loan for a Covered Real Estate Project.

18
19 **SEC. 106.3. WHERE THE CITY DOES NOT HAVE THE ABILITY TO WITHHOLD FUNDS.**

20 A Covered Project or Covered Contract subject to the procedures and/or requirements of
21 Section 106.2 shall not be subject to the procedures and requirements of Section 106.3. For any
22 Covered Project or Covered Contract for which the City does not have the ability to withhold funds, the
23 Labor Standards Enforcement Officer shall determine whether a Contractor and/or a Subcontractor
24 has failed to comply with the Prevailing Wage Provisions. If after conducting an investigation, the
25 Labor Standards Enforcement Officer determines that a violation has occurred, the Labor Standards

1 Enforcement Officer shall issue to and serve a Determination of Violation on the Contractor and/or any
2 Subcontractor, which sets forth the basis of the determination and orders payment of back wages due
3 plus penalties in amounts consistent with Section 106.1. A Contractor shall be jointly and severally
4 liable for the violations and liabilities set forth in a Determination of Violation issued to its
5 Subcontractor(s). Service of the Determination of Violation shall be made by United States mail and
6 the date of service shall be the date of mailing.

7
8 **SEC. 106.4. TERMINATION.**

9 In addition to and without prejudice to any other remedy available, the Department Head may
10 terminate a Covered Contract unless within 30 days of service of the Certification of Forfeiture or
11 Determination of Violation, the Contractor has either: (i) cured the violation; or (ii) established by
12 documentary evidence, including but not limited to payroll records, the truth and accuracy of which is
13 attested to by affidavit, proof of compliance with the applicable sections of the Prevailing Wage
14 Provisions. Upon a termination under this Section 106.4, the Contractor shall not be entitled to any
15 additional payment under the Covered Contract.

16
17 **SEC. 106.5. RECOURSE PROCEDURE.**

18 A Contractor and/or a Subcontractor may appeal from a Certification of Forfeiture under
19 Section 106.2 or Determination of Violation under Section 106.3. The Controller shall adopt and
20 maintain rules for any appeal under this Section 106.5, which rules shall be consistent with the
21 following:

22 (a) Any appeal from a Certification of Forfeiture or a Determination of Violation (each type
23 of appeal referred to in this Section 106.5 as the "Appeal") shall be filed in writing by the Contractor
24 and/or Subcontractor (referred to in this Section 106.5, whether individually or together, as the
25 "Appellant") within 15 days of the date of service of the Certification of Forfeiture or the

1 Determination of Violation. Appellant shall file the Appeal with the Controller and serve a copy on the
2 Labor Standards Enforcement Officer. Failure by the Contractor or Subcontractor to submit a timely,
3 written Appeal shall constitute concession to the forfeiture or determination, and the forfeiture or
4 determination shall be deemed final upon expiration of the 15-day period.

5 (b) Upon being served with the Appeal, the Office of Labor Standards Enforcement shall
6 promptly afford Appellant an opportunity to meet and confer in good faith regarding possible
7 resolution of the Certification of Forfeiture or Determination of Violation in advance of further
8 proceedings under this Section 106.5, with the intention that such meeting occur within 30 days of the
9 date the Appeal is filed.

10 (c) After the expiration of 30 days following the date the Appeal is filed, any party may
11 request in writing, with concurrent notice to all other parties, that the Controller appoint a hearing
12 officer to hear and decide the Appeal ("Hearing Officer"). If no party requests appointment of a
13 Hearing Officer, the Certification of Forfeiture or Determination of Violation shall be deemed final on
14 the 60th day after the date the Appeal is filed.

15 (d) Within 15 days of receiving a written request for appointment of a Hearing Officer
16 under subsection (c), the Controller shall appoint an impartial hearing officer and promptly notify the
17 enforcing official and Appellant, and their respective counsel or authorized representative, if any, of
18 the appointment. The Hearing Officer shall be an Administrative Law Judge with at least 10 years of
19 experience with the City and not less than two years of experience in labor law, Prevailing Wage,
20 and/or wage and hour matters; or shall be an attorney with knowledge of and not less than five years of
21 experience in labor law, Prevailing Wage, and/or wage and hour matters.

22 (e) The Hearing Officer shall promptly set a date for a hearing. The hearing shall
23 commence within 45 days of the date of the notification of the Hearing Officer appointment, and
24 conclude within 75 days of such notice. The Hearing Officer shall conduct a fair and impartial
25 evidentiary hearing in conformance with the time limitations set forth in this Section 106.5 and in the

1 rules, so as to avoid undue delay in the resolution of any appeal. The Hearing Officer shall have the
2 discretion to extend the times under this Section 106.5, and any time requirements under the rules and
3 regulations, only upon a showing of good cause.

4 (f) Appellant has the burden of proving by a preponderance of the evidence that the basis
5 for the Certification of Forfeiture or Determination of Violation is incorrect, including any back wage
6 and penalty assessments that are at issue in the Appeal.

7 (g) Within 30 days of the conclusion of the hearing, the Hearing Officer shall issue a written
8 decision affirming, modifying, or dismissing the Certificate of Forfeiture or Determination of Violation.
9 The decision of the Hearing Officer shall consist of findings and a determination. The Hearing Officer's
10 findings and determination shall be the City's final determination.

11 (h) Appellant may appeal a final determination under this Section 106.5 only by filing in the
12 San Francisco Superior Court. The Appellant may appeal the final administrative decision only by
13 filing in San Francisco Superior Court a petition for a writ of mandate under California Code of Civil
14 Procedure, Section 1094.5 et seq., as applicable, and as may be amended from time to time.

15
16 **SEC. 106.6. DISTRIBUTION OF FORFEITURE AND DAMAGES.**

17 (a) The Controller shall withhold any forfeiture as provided in Section 106.2 until such time as
18 either the Contractor or Subcontractor has conceded to the forfeiture or, in the event of an Appeal,
19 there is a determination no longer subject to judicial review. The Controller shall then distribute the
20 amounts withheld in the following order:

21 (1) the Labor Standards Enforcement Officer shall make best efforts to distribute back
22 wages withheld to the individual workers identified as not having been paid the proper wage rate;

23 (2) the penalty sums provided for above shall inure to the benefit of the general fund of
24 the City;

1 (3) the Controller shall hold the balance of any back wages in escrow for workers who
2 the Labor Standards Enforcement Officer, despite best efforts, cannot locate. In the event back wages
3 are unclaimed for a period of three years, the Controller shall undertake administrative procedures for
4 unclaimed funds in conformance with California Government Code Section 50050, et seq., as may be
5 amended from time to time.

6 (b) The order of distribution set forth in subsection (a) also shall apply to damages obtained as
7 a result of a payment on a Determination of Violation under Section 106.3 or to an enforcement action
8 pursuant to Section 106.7, as applicable.

9
10 **SEC. 106.7. REMEDIES FOR NON-COMPLIANCE WITH DETERMINATION OF VIOLATION.**

11 No later than 30 days after receipt of a Determination of Violation or, in the case of an Appeal,
12 no later than 30 days after an adverse final determination by the Hearing Officer, the Contractor
13 and/or Subcontractor shall comply with the Determination of Violation by paying the amounts due for
14 back wages and any penalty amount as set forth in the Determination of Violation or final
15 determination. The Contractor and/or Subcontractor shall, in addition, be subject to the penalties set
16 forth in Section 106.1, including debarment. If any Contractor and/or Subcontractor fails to pay the
17 amounts required under this Section 106.7 within the required 30 days, the following shall apply:

18 (a) The City may bring a civil action in a court of competent jurisdiction against the non-
19 complying party and, upon prevailing, shall be entitled to such legal and equitable relief as may be
20 appropriate to remedy the violation including, without limitation: (i) damages in the amount of back
21 wages and any penalty amounts due to workers for violation of the Prevailing Wage requirement,
22 which amounts the City shall, on receipt, distribute to workers following the procedures in Section
23 106.6; and (ii) an award of reasonable attorney's fees and costs.

24 (b) For a Covered Real Estate Project, each worker entitled to back pay, as set forth in the
25 Determination of Violation or, where a Hearing Officer has decided the matter, as set forth in the

1 decision of the Hearing Officer, may bring a civil action in a court of competent jurisdiction against the
2 non-complying party and, upon prevailing, shall be entitled to such legal and equitable relief as may be
3 appropriate to remedy the violation including, without limitation: (i) damages in the amount of back
4 wages due to such workers for violation of the prevailing wage and/or penalties due for violation of the
5 apprenticeship requirements; and (ii) an award of reasonable attorney's fees and costs. An employee
6 organization that formally represents a worker or workers entitled to bring a civil action under this
7 subsection 106.7(b) may do so on behalf of the worker or workers, with the same range of possible
8 legal and equitable relief, including attorney's fees, as would be available in an action brought by the
9 worker or workers.

10
11 Section 13. The Labor and Employment Code is amended by adding Article 107,
12 consisting of Sections 107.1 through 107.3, to read as follows:

13 **ARTICLE 107: LABOR STANDARDS ENFORCEMENT OFFICER**

14 **SEC. 107.1. LABOR STANDARDS ENFORCEMENT OFFICER.**

15 (a) Subject to the approval of the Mayor and Director of the Department of Administrative
16 Services, the Labor Standards Enforcement Officer shall develop and administer a plan for the
17 enforcement of, and is authorized to enforce, the Prevailing Wage requirements and other labor
18 standards imposed by the Charter, the Prevailing Wage Provisions, and/or Chapter 6 of the
19 Administrative Code. The Labor Standards Enforcement Officer shall coordinate the Labor Standards
20 Enforcement Officer's activities with federal and State labor standards agencies. The Labor Standards
21 Enforcement Officer shall direct the City's enforcement of the Prevailing Wage requirements and other
22 labor standards imposed by the Charter, the Prevailing Wage Provisions, and Chapter 6 of the
23 Administrative Code on Contractors as directed by the Mayor, and to this end all City departments
24 shall cooperate with the Labor Standards Enforcement Officer.

1 **(b) The Labor Standards Enforcement Officer has the authority to seek for a violation of the**
2 **Prevailing Wage Provisions, working conditions, or apprenticeship requirements all of the penalties**
3 **imposed by the Prevailing Wage Provisions and/or Chapter 6 of the Administrative Code, including the**
4 **authority to file charges, in the same manner and to the same extent as a Department Head, which may**
5 **lead to the debarment of the Contractor under Article V of Chapter 6 and/or Chapter 28 of the**
6 **Administrative Code.**

7 **(c) The Labor Standards Enforcement Officer shall oversee the training of City personnel in**
8 **the area of labor standards enforcement. In accordance with applicable law, including the civil service**
9 **provisions of the Charter, the Mayor or the City Administrator may enter into a contract for**
10 **investigative and monitoring services to further the purposes of this Article 107. In evaluating the**
11 **qualifications of persons seeking that contract, the Mayor shall consider, among other relevant factors,**
12 **the experience of those persons in monitoring and investigating labor standards compliance.**

13 **(d) This Section 107.1 shall not limit the authority and duties of the Labor Standards**
14 **Enforcement Officer established elsewhere in City law, including without limitation Section 2A.23 of**
15 **the Administrative Code.**

16
17 **SEC. 107.2. FUNDING.**

18 **Subject to the fiscal and budgetary provisions of the Charter, the Office of Labor Standards**
19 **Enforcement is authorized to receive from departments awarding contracts the amount reasonably**
20 **calculated to pay for the costs, including litigation costs, of enforcing the City Prevailing Wage**
21 **requirements and other labor standards for contracts awarded by those departments. The Labor**
22 **Standards Enforcement Officer shall supervise the expenditure of all funds appropriated for**
23 **enforcement of Prevailing Wage requirements and other labor standards imposed by the Charter, the**
24 **Prevailing Wage Provisions, and Chapter 6 of the Administrative Code.**

1 **SEC. 107.3. ADMINISTRATIVE PROCEDURE.**

2 (a) The Labor Standards Enforcement Officer shall establish an administrative procedure to
3 address allegations of labor standards violations in connection with any contract under Chapter 6 of
4 the Administrative Code or any contract for a Covered Project or Covered Contract. The Labor
5 Standards Enforcement Officer shall have sole authority over the administration of this complaint
6 procedure. The complaint procedure shall include but need not be limited to the following:

7 (1) any person may file a complaint, written or oral, alleging one or more violations of
8 any labor standards requirement imposed by the Prevailing Wage Provisions or Chapter 6 of the
9 Administrative Code on Contractors;

10 (2) before beginning to investigate the complaint, the Labor Standards Enforcement
11 Officer shall determine if the allegations of the complaint are sufficient, and based on that assessment
12 shall determine to either dismiss it or proceed with an investigation;

13 (3) if the Labor Standards Enforcement Officer at any time determines that the
14 allegations in the complaint are without merit, the Labor Standards Enforcement Officer shall notify
15 the complainant; and

16 (4) if the Labor Standards Enforcement Officer finds that any allegations in a complaint
17 have merit, the Labor Standards Enforcement Officer shall proceed in accordance with the
18 enforcement procedures under Article 106.

19 (b) Notwithstanding the foregoing, the complaint procedure in subsection (a) is not applicable
20 to those matters under the administrative jurisdiction of the Human Rights Commission.

21 (c) The complaint procedure established in subsection (a) shall not preclude the Labor
22 Standards Enforcement Officer from initiating or proceeding with an investigation on the Labor
23 Standards Enforcement Officer's own authority.

24 (d) All Contractors and departments engaged in a Covered Project or Covered Contract shall
25 cooperate fully with the Office of Labor Standards Enforcement in connection with any investigation of

1 any complaint filed in accordance with the complaint procedure established in subsection (a). The
2 Labor Standards Enforcement Officer may interview, either at the worksite or elsewhere, any witness
3 who may have information relative to a complaint.
4

5 Section 14. The Labor and Employment Code is amended by adding Article 108,
6 consisting of Sections 108.1 through 108.4, to read as follows:

7 **ARTICLE 108: LOCAL HIRE REQUIREMENT**

8 **SEC. 108.1. LOCAL HIRE REQUIREMENT.**

9 The City shall include in all real property sales contracts for Housing Development, as that
10 term is defined in Article 101, and in all City-as-landlord leases that include or contemplate
11 construction of a Covered Project, the requirement that the purchaser or tenant of the real property
12 comply with the requirements of the City's Local Hiring Policy, as set forth in Administrative Code
13 Chapter 82 and under the standards set forth in subsection 82.4(b) of the Administrative Code.
14 Notwithstanding Article 101, for purposes of this Article 108, the terms "Covered Project,"
15 "Contractor," and "Subcontractor," shall have the same meaning as the definitions set forth in Section
16 82.3 of the Administrative Code.
17

18 **SEC. 108.2. MANDATORY PARTICIPATION LEVELS.**

19 In the performance of work or labor on a Covered Project, each purchaser or tenant shall
20 comply, and shall require its Contractors and Subcontractors to comply, with the mandatory
21 participation levels set forth in Section 82.5 of the Administrative Code.
22

23 **SEC. 108.3. CITY AS THIRD PARTY BENEFICIARY.**

24 Each applicable construction contract for a Covered Project shall:

25 (a) require compliance with the Local Hiring Policy, with reference to this Article 108;

1 (b) name the City as a third party beneficiary for the limited purpose of having the right to
2 enforce the Local Hiring Policy, including the right to file charges and seek penalties against any
3 Contractor or Subcontractor; and

4 (c) require the purchaser or tenant to reasonably cooperate with the City in any action or
5 proceeding against a Contractor or Subcontractor that fails to comply with the requirements of this
6 Article 108. A purchaser or tenant that requires compliance with this Section 108.3 in the construction
7 contract for the Covered Project and reasonably cooperates with the City in any enforcement action
8 shall not be in breach of the applicable sales contract or lease with the City due to a Contractor's or
9 Subcontractor's failure to comply or to meet the mandatory participation levels. So long as the
10 purchaser or tenant complies with the requirements of the previous sentence, any enforcement action
11 by the City, through the Office of Economic and Workforce Development ("OEWD") or otherwise,
12 shall be directly against the Contractor or Subcontractor that failed to meet the mandatory
13 participation levels. But nothing in this Section 108.3 shall limit the remedies available to a City
14 department, as set forth in the applicable sales contract or lease, for a purchaser's or tenant's failure to
15 require compliance with this Section in a construction contract for the Covered Project or to
16 reasonably cooperate with the City in any enforcement action as set forth above.

17
18 **SEC. 108.4. ENFORCEMENT.**

19 (a) Assessment of Penalties. OEWD shall have the authority to enforce this Article 108
20 against a Contractor or Subcontractor as set forth in Administrative Code Section 82.8. OEWD shall
21 determine whether a Contractor or Subcontractor has failed to comply with the local hiring
22 requirements. If after conducting an investigation, OEWD determines that a violation has occurred, it
23 shall issue and serve an assessment of penalties that sets forth the basis of the assessment and orders
24 payment of penalties under subsection 82.8(f) of the Administrative Code.

1 **(b) Remedies for Non-Compliance with Assessment of Penalties. Each Contractor and**
2 **Subcontractor shall comply with the final assessment of penalties by paying the amounts due for wages**
3 **as set forth in Administrative Code subsection 82.8(f)(3) no later than 30 days after the determination**
4 **or decision of the hearing officer is final. The Contractor or Subcontractor shall, in addition, be subject**
5 **to the penalties set forth in Article V of Chapter 6 of the Administrative Code, including debarment. If**
6 **any Contractor or Subcontractor fails to pay the amounts required under subsection 82.8(f) of the**
7 **Administrative Code within the required 30 days, the non-complying party shall be subject to the**
8 **enforcement actions set forth in subsection 82.8(f)(5) of the Administrative Code.**
9

10 Section 15. The Labor and Employment Code is amended by adding Article 109,
11 consisting of Sections 109.1 through 109.14, to read as follows:

12 **ARTICLE 109: TRANSITION EMPLOYMENT REQUIREMENTS**

13 **SEC. 109.1. PURPOSE AND SCOPE.**

14 **(a) The City has an important proprietary interest in maintaining the stability of the**
15 **workforce engaged by a Contractor or Subcontractor under a Covered Contract. Turnover of**
16 **experienced workers resulting from a change in the City's Contractor jeopardizes the quality,**
17 **efficiency, and cost-effectiveness of service provided to the City under the successor Contract.**
18 **Accordingly, all Covered Contracts shall impose the obligations of this Article 109 on the Contractor**
19 **and Subcontractor.**

20 **(b) Article 109 does not apply to any Covered Project, unless that Covered Project also**
21 **qualifies as a Covered Contract.**
22

23 **SEC. 109.2. SUBMISSION OF EMPLOYEE INFORMATION.**

24 **(a) Where the Contracting Officer has given notice that a Covered Contract will be bid, or**
25 **where a Contractor has given notice of termination, upon giving or receiving such notice, as the case**

1 may be, the Contractor ("ending Contractor") shall, within 10 days thereafter, provide to the
2 Contracting Officer and the Purchaser, for each Employee who worked at least 15 hours per week for
3 the ending Contractor, the name, date of hire, number of hours and months worked in total for the
4 employer, wage rate, and employment occupation classification. This provision shall also apply to the
5 subcontractors of the ending Contractor.

6 (b) Where a Subcontractor has been terminated prior to the termination or ending of the
7 Contract, the Subcontractor shall for the purposes of this Section 109.2 be deemed an ending
8 Contractor.

9 (c) All requests for bids for Covered Contracts shall include the information listed above for
10 Employees and shall notify prospective bidders about the Transition Employment requirements of this
11 Article 109.

12
13 **SEC. 109.3. EMPLOYEE RETENTION.**

14 A successor Contractor shall retain, for a six-month transition employment period, Employees
15 who have worked at least 15 hours per week for the ending Contractor or its Subcontractors for the
16 preceding 12 months and have been employed by the ending Contractor or its Subcontractors, if any,
17 for the preceding 12 months under the Covered Contract, providing that just cause does not exist to
18 terminate such Employee. The ending Contractor's Employees who worked at least 15 hours per week
19 shall be employed by the Successor Contractor in order of their seniority with the ending Contractor
20 within their job classification, and shall be paid the Prevailing Rate of Wages to which they were
21 entitled when employed by the ending Contractor. This requirement shall be stated by the City in all
22 initial bid packages involving a Covered Contract.

1 **SEC. 109.4. INSTANCES WHERE FEWER EMPLOYEES ARE REQUIRED.**

2 *If at any time a successor Contractor determines that fewer Employees are required to perform*
3 *the new Contract than were required by the ending Contractor (and Subcontractors, if any), the*
4 *successor Contractor shall retain Employees by seniority within job classification.*

6 **SEC. 109.5. PREFERENTIAL HIRING LIST.**

7 *During such six-month period the successor Contractor (or Subcontractor, where applicable)*
8 *shall maintain a preferential hiring list of eligible covered Employees not retained by the successor*
9 *Contractor (or Subcontractor) from which the successor Contractor (or Subcontractor) shall hire*
10 *additional Employees if the need arises.*

12 **SEC. 109.6. RESTRICTION ON DISCHARGING EMPLOYEES.**

13 *During the six-month transition employment period, the successor Contractor (or*
14 *Subcontractor, where applicable) shall not discharge without cause an Employee retained pursuant to*
15 *Article 109. "Cause," for this purpose, shall include, but not be limited to, the Employee's conduct*
16 *while in the employ of the ending Contractor or Subcontractor that contributed to any decision to*
17 *terminate the Contract or subcontract for fraud or poor performance, excluding permissible union-*
18 *related activity.*

20 **SEC. 109.7. PERFORMANCE REVIEWS.**

21 *At the end of the six-month transition employment period, a successor Contractor (or*
22 *Subcontractor, where applicable) shall perform a written performance evaluation for each Employee*
23 *retained pursuant to this Article 109. If the Employee's performance during such six-month period is*
24 *satisfactory, the successor Contractor (or Subcontractor) shall offer the Employee continued*

1 employment under the terms and conditions established by the successor Contractor (or Subcontractor)
2 or as required by law.

3
4 **SEC. 109.8. CONTRACTUAL PROVISIONS.**

5 All Covered Contracts subject to this Article 109 shall include a provision in which the
6 Contractor agrees to require any Subcontractor to comply with the obligation imposed by this Article
7 109.

8
9 **SEC. 109.9. SUCCESSOR'S PRIOR EMPLOYEES.**

10 Notwithstanding the provisions of this Article 109, a successor Contractor or Subcontractor
11 may replace an Employee otherwise entitled to be retained with a person employed by the Contractor
12 or Subcontractor continuously for 12 months prior to the commencement of the successor Contract or
13 Subcontract in a capacity similar to that proposed under the successor Contract or Subcontract. This
14 provision shall apply only where the existing Employee of the successor Contractor or Subcontractor
15 would otherwise be laid off work as a result of the award of the successor Contract.

16
17 **SEC. 109.10. NO SUCCESSOR.**

18 The retention requirements of this Article 109 shall not apply where there is no successor
19 Contractor or Subcontractor. For example, where a Contract is for services over a single day, week, or
20 month for a discrete, nonrepeating event, there is no successor and the retention requirements
21 described herein are inapplicable.

22
23 **SEC. 109.11. DEFINITION OF EMPLOYEE.**

24 For the purposes of this Article 109 on Transition Employment Requirements only, the term
25 "Employee" shall include any person who performs work under a Covered Contract, but shall not

1 include an individual who serves in a managerial, supervisory, or confidential capacity, including
2 those individuals who would be defined as such under the Fair Labor Standards Act, 29 U.S.C. § 201,
3 et seq., as may be amended from time to time.

4
5 **SEC. 109.12. ENFORCEMENT.**

6 (a) **Definitions.** For the purpose of Sections 109.12 and 109.13, “Agency” means the Office
7 of Labor Standards Enforcement or any successor department or office.

8 (b) **Implementation.** The Agency shall be authorized to coordinate implementation and
9 enforcement of this Article 109 and may promulgate appropriate rules for such purposes. Any rules
10 promulgated by the Agency shall have the force and effect of law and may be relied on by employers,
11 employees, and other persons to determine their rights and responsibilities under this Article. Any rules
12 may establish procedures for ensuring fair, efficient, and cost-effective implementation of this Article,
13 including supplementary procedures for helping to inform employees of their rights under this Article,
14 for monitoring contractor, subcontractor, and awarding authority compliance with this Article, and for
15 providing administrative hearings to determine whether a contractor, subcontractor, awarding
16 authority, or other person has violated the requirements of this Article.

17 (c) **Administrative Enforcement.**

18 (1) The Agency is authorized to take appropriate steps to enforce this Article 109. The
19 Agency may investigate any possible violations of this Article by an awarding authority, a successor
20 Contractor, or a successor Contractor’s Subcontractor. Where the Agency has reason to believe that a
21 violation has occurred, it may order any appropriate temporary or interim relief to mitigate the
22 violation or maintain the status quo pending completion of a full investigation or hearing.

23 (2) Where the Agency determines that a violation has occurred, it may issue a
24 Determination of Violation and order any appropriate relief including, but not limited to, back pay,
25

1 including the value of benefits, for each day during which the violation continues, which shall be
2 calculated at a rate of compensation not less than the higher of:

3 (A) The average regular rate of pay received by the Employee during the last
4 three years of the Employee's employment in the same job classification; or

5 (B) The final regular rate received by the Employee.

6 (3) Where the Agency determines that a violation has occurred, it may also authorize the
7 payment of an additional sum as an administrative penalty to each Employee or person whose rights
8 under this Article 109 were violated. If any backpay is ordered, the dollar amount of the backpay
9 multiplied by three, or \$250, whichever amount is greater, shall be included in the administrative
10 penalty paid to the Employee. In addition, if a violation of this Article 109 resulted in other harm to the
11 Employee or any other person, or otherwise violated the rights of Employees or other persons, this
12 administrative penalty shall also include \$50 to each Employee or person whose rights under this
13 Article were violated for each day or portion thereof that the violation occurred or continued.

14 (4) Where prompt compliance is not forthcoming, the Agency may take any appropriate
15 enforcement action to secure compliance, including initiating a civil action pursuant to Section
16 109.12(d) and/or, except where prohibited by State or federal law, requesting that City agencies or
17 departments revoke or suspend any registration certificates, permits, or licenses held or requested by
18 the violator until such time as the violation is remedied. In order to compensate the City for the costs of
19 investigating and remedying the violation, the Agency may also order the violator to pay to the City a
20 sum of not more than \$50 for each day or portion thereof and for each Employee or person as to whom
21 the violation occurred or continued. Such funds shall be allocated to the Agency and used to offset the
22 costs of implementing and enforcing this Article 109.

23 (5) The remedies and penalties provided under subsections (c)(2) through (c)(4) are
24 cumulative.

1 (6) An Employee or other person may report to the Agency any suspected violation of
2 this Article 109. The Agency shall encourage reporting pursuant to this subsection (c)(5) by keeping
3 confidential, to the maximum extent permitted by applicable laws, the name and other identifying
4 information of the Employee or person reporting the violation; provided, however, that with the
5 authorization of such person, the Agency may disclose their name and identifying information as
6 necessary to enforce this Article or for other appropriate purposes.

7 (7) The Determination of Violation shall provide notice of the right to appeal the
8 determination to the Controller in accordance with Section 109.13, and that failure to do so within 15
9 days shall result in the determination becoming a final administrative decision.

10 (8) The Determination of Violation shall specify a reasonable time period for payment of
11 any relief ordered. The Agency may award interest on all amounts due and unpaid at the expiration of
12 such time period at the rate of interest specified in subdivision (b) of Section 3289 of the California
13 Civil Code, as may be amended from time to time.

14 (9) The Agency may require that remedies and penalties due and owing to a person
15 whose rights under this Article 109 were violated be paid directly to the City for disbursement to the
16 person. The Controller shall hold these funds in escrow for the person. The Agency shall make best
17 efforts to distribute such funds. In the event such funds are unclaimed for a period of three years, the
18 Controller may undertake administrative procedures for escheat of unclaimed funds under California
19 Government Code Sections 50050 et seq., as may be amended from time to time. Subject to the
20 budgetary and fiscal provisions of the Charter, such escheated funds shall be dedicated to the
21 enforcement of this Article 109 or other laws the Agency enforces.

22 **(d) Civil Enforcement.**

23 (1) The City Attorney or an Employee who, in violation of this Article 109, was not
24 retained by a successor Contractor or its Subcontractor may bring an action in the Superior Court of
25 the State of California against the successor Contractor and, where applicable, the successor

1 Contractor's Subcontractor, and an Employee may be awarded back pay, including the value of
2 benefits, for each day during which the violation continues, which shall be calculated at a rate of
3 compensation not less than the higher of:

4 (A) The average regular rate of pay received by the Employee during the last
5 three years of the Employee's employment in the same occupation classification; or

6 (B) The final regular rate received by the Employee.

7 (2) If the City Attorney or the Employee is the prevailing party in any such legal action,
8 the Court shall award reasonable attorneys' fees and costs as part of the costs recoverable.

9 (e) **Interest.** In any administrative or civil action brought under this Article 109, the Agency
10 or court, as the case may be, shall award interest on all amounts due and unpaid at the rate of interest
11 specified in subdivision (b) of Section 3289 of the California Civil Code, as amended from time to time.

12
13 **SEC. 109.13. APPEAL PROCEDURE.**

14 (a) A person subject to a Determination of Violation of this Article 109 may file an appeal
15 ("Appeal") in accordance with the following procedures:

16 (1) The person ("Appellant") shall file the Appeal with the Controller and serve a copy
17 on the Agency. The Appeal shall be filed in writing within 15 days of the date of service of the
18 Determination of Violation, and shall specify the basis for the Appeal and shall request that the
19 Controller appoint a hearing officer to hear and decide the Appeal. Failure to submit a timely written
20 Appeal shall constitute concession, and the Determination of Violation shall be deemed the final
21 administrative decision upon expiration of the 15-day period. Further, failure to submit a timely,
22 written Appeal shall constitute a failure to exhaust administrative remedies, which shall serve as a
23 complete defense to any petition or claim brought against the City regarding the Determination of
24 Violation.

1 (2) Following the filing of the Appeal and service of a copy on the Agency, the Agency
2 shall promptly afford the Appellant an opportunity to meet and confer in good faith regarding possible
3 resolution of the Determination of Violation.

4 (3) Within 30 days of receiving an Appeal, the Controller shall appoint an impartial
5 hearing officer who is not part of the Agency and immediately notify the Agency and Appellant of the
6 appointment.

7 (4) The hearing officer shall promptly set a date for a hearing. The hearing shall
8 commence within 45 days of the date of the Controller's notice of appointment of the hearing officer,
9 and conclude within 75 days of such notice; provided, however, that the hearing officer may extend
10 these time limits for good cause.

11 (5) The hearing officer shall conduct a fair and impartial evidentiary hearing. The
12 Appellant shall have the burden of proving by a preponderance of the evidence that the Agency erred in
13 its Determination of Violation, and/or the relief ordered therein.

14 (6) Within 30 days of the conclusion of the hearing, the hearing officer shall issue a
15 written decision affirming, modifying, or dismissing the Determination of Violation. The hearing
16 officer's decision shall be the final administrative decision. The decision shall consist of findings, a
17 determination, any relief ordered, a reasonable time period for payment of any relief ordered, and
18 notice to the Appellant of the right to appeal by filing a petition for a writ of mandate as described in
19 subsection (a)(7), and that failure to file a timely Appeal shall result in the final administrative decision
20 becoming enforceable as a judgment by the Superior Court.

21 (7) The Appellant may appeal the final administrative decision only by filing in San
22 Francisco Superior Court a petition for a writ of mandate under California Code of Civil Procedure,
23 Section 1094.5 et seq., as applicable, and as may be amended from time to time.

24 (b) Where an Appellant fails to comply with a final administrative decision within the time
25 period required therein, the Agency may take any appropriate enforcement action to secure

1 compliance, including referring the action to the City Attorney to seek enforcement of the final
2 administrative decision in Superior Court and, except where prohibited by State or federal law,
3 requesting that City agencies or departments revoke or suspend any registration certificates, permits,
4 or licenses held or requested by the Appellant until such time as the violation is remedied.

5
6 **SEC. 109.14. NO PRIVATE RIGHT OF ACTION.**

7 This Article is not intended to create a private right of action against the City.
8

9 **Section 16. Effective Date and Operative Date.**

10 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs
11 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
12 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
13 Mayor's veto of the ordinance.

14 (b) This ordinance shall become operative 30 days after its effective date.
15

16 **Section 17. Scope of Ordinance.**

17 In enacting this ordinance, the Board of Supervisors intends to amend only those
18 words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks,
19 charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly
20 shown in this ordinance as additions, deletions, Board amendment additions, and Board
21 amendment deletions in accordance with the "Note" that appears under the official title of the
22 ordinance.

23 **Section 18. Prospective Effect.**

24 (a) Except as expressly stated herein, this ordinance is intended to have prospective
25 effect only, and shall not be interpreted to impair the obligations of any contract, grant

1 agreement, sales contract, lease, development agreement, or other agreement entered into
2 by the City prior to the Operative Date of this ordinance. Any contract, grant agreement, sales
3 contract, lease, development agreement, or other agreement entered into by the City prior to
4 the Effective Date of this ordinance shall be interpreted according to the provisions of the
5 Municipal Code effective at the time of the agreement, including any provisions specifying
6 prospective or retroactive effect.

7 (b) This ordinance shall not amend or repeal the prospective effect provision or
8 provisions of any ordinance or resolution enacted prior to the enactment of this ordinance.

9 (c) The foregoing notwithstanding, this ordinance shall apply to any contract, grant
10 agreement, sales contract, lease, development agreement, or other agreement entered into
11 by the City that is amended after the Effective Date of this ordinance.

12
13
14 APPROVED AS TO FORM:
15 DAVID CHIU, City Attorney

16 By:

17 /s/
18 DAVID R. HOBSTETTER
Deputy City Attorney

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LEGISLATIVE DIGEST

[Administrative, Labor and Employment Codes - Prevailing Wage and Other Labor Requirements]

Ordinance amending the Administrative Code and Labor and Employment Code to move certain employment-related provisions, including, among others, certain Prevailing Wage requirements, apprenticeship requirements, and hours and days of labor requirements, from the Administrative Code to the Labor and Employment Code; establish new defined terms encompassing the projects and contracts subject to Prevailing Wage requirements; revise penalty and enforcement requirements and procedures for Prevailing Wage and certain other labor requirements; change the process for fixing and determining Prevailing Wage rates; move and revise the Transition Employment requirements and create new enforcement procedures for those requirements; apply Notice of Forfeiture/Certification of Forfeiture procedures for violations of Prevailing Wage requirements on Covered Real Estate Projects; renumber certain Municipal Code sections or provisions; and make other substantive or technical amendments to the Administrative Code and Labor and Employment Code, including, among others; and eliminating certain exemptions from Prevailing Wage requirements for Broadcast Services work and the work of loading and unloading Commercial Vehicles on City property, while creating an exemption from Prevailing Wage requirements for work covered by the Modular Furniture Installers (Carpenters) classification.

Existing Law

The San Francisco Municipal Code has prevailing wage and other labor requirements located in the Labor and Employment Code (“LEC”), as well as Chapters 6 and 23 of the Administrative Code. Examples of these provisions include the following: Article 102 of the LEC requires the payment of prevailing wages for certain service work performed under, or arising from, City contracts, permits, or other types of agreement. Article 102 further requires successor contractors on certain City contracts comply with worker retention requirements. Chapter 6 of the Administrative Code requires contractors on Public Works or Improvements pay workers Prevailing Wages and comply with standards for hours and days of labor. Chapter 6 creates a definition of Public Work or Improvement for Prevailing Wage purposes alone, and this definition encompasses both Section 6.1 of the Administrative Code’s definition of Public Works or Improvements and projects qualifying as “public works” under Section 1720 of the State Labor Code. Chapter 23 of the Administrative Code requires certain construction work related to real estate transactions with the City comply with Prevailing Wage requirements and certain State requirements for the employment of apprentices. Each of LEC Article 102, Administrative Code Chapter 6, and Administrative Code Chapter 23 contains enforcement provisions.

Amendments to Current Law

This ordinance reorganizes the San Francisco Municipal Code to move labor provisions from Administrative Code Chapter 6 and Chapter 23 to the LEC, and makes substantive revisions to the labor provisions of the Administrative Code and the LEC. The ordinance creates LEC Articles 101, 103, 104, 105, 106, 107, 108, and 109, and amends LEC Article 102.

I. Reorganization

The following table provides a high-level summary of the ordinance's reorganization of some Municipal Code labor provisions. The table does not identify every change, or for each provision relocated, provide all details on the reorganization. For instance, where the ordinance takes language from a single provision and relocates the majority of that language to one location, but relocates other language to another location, the table may identify the primary relocation only.

General Description of Provision	Location of Provision in Existing Code	Location of Corresponding Provision in Amended Code
Administrative Code Chapter 6		
Definition of Prevailing Wage or Prevailing Rate of Wages	Admin. Code § 6.1	LEC § 101.1
Requirement to Pay Prevailing Wages	Admin. Code §§ 6.22(e)(1), (2)	LEC §§ 101.1, 103.1
Fixing and Determining the Prevailing Rate of Wages	Admin. Code § 6.22(e)(3)	LEC § 103.2
Contract Documents to Include Wage Rate	Admin. Code § 6.22(e)(4)	LEC § 103.3(d)
Subcontractors Bound by Wage Provisions	Admin. Code § 6.22(e)(5)	LEC § 103.3(b)
Records to be Kept by Contractors and Subcontractors	Admin. Code § 6.22(e)(6)	LEC § 103.3(e)
Additional Required Contract Provisions	Admin. Code § 6.22(e)(7)	LEC § 103.3(c)
Enforcement	Admin. Code § 6.22(e)(8)	LEC Art. 106
Hours and Days of Labor	Admin. Code § 6.22(f)	LEC Art. 105
Office of Labor Standards Enforcement	Admin. Code § 6.24	LEC Art. 107

Administrative Code Chapter 23		
Real Property Prevailing Wage and Apprenticeship Requirements	Admin. Code §§ 23.61(a), (b)	LEC Arts. 101, 103, 104
City as Third Party Beneficiary	Admin. Code § 23.61(c)	LEC § 103.3(f)
Enforcement for Real Property Prevailing Wage and Apprenticeship Requirements	Admin. Code § 23.61(d)	LEC Art. 106
Real Property Local Hire Requirements	Admin. Code § 23.62	LEC Art. 108
Labor and Employment Code Article 102		
Requirement to Pay Prevailing Wages for Covered Contracts	LEC § 102.1(a)	LEC Art. 103
Definitions for Prevailing Wage Requirements for Covered Contracts	LEC § 102.1(b)	LEC §§ 101.1, 102.1
Fixing and Determining the Prevailing Rate of Wages for Covered Contracts	LEC § 102.1(c)(1)	LEC § 103.2
Enforcement of Prevailing Wage Requirements for Covered Contracts	LEC § 102.1(c)(4)	LEC Art. 106
Transition Employment Requirements	LEC § 102.1(d)	LEC Art. 109

II. Substantive Amendments

The ordinance makes a number of substantive amendments to the City's Municipal Code. The following is a summary of some of the significant substantive amendments; however, the ordinance contains amendments – including substantive amendments and non-substantive or technical amendments – beyond those discussed in this Legislative Digest.

The ordinance relocates some existing definitions related to Prevailing Wages and certain other labor requirements to LEC Article 101, and creates new defined terms for the classes of projects subject to Prevailing Wage requirements. The ordinance defines Covered Project as a new umbrella term for construction projects subject to Prevailing Wage requirements, including, without limitation, contracts for construction, demolition, alteration,

repair, and/or maintenance. There are three sub-definitions within the broader definition of Covered Project:

- (1) Covered Local Project encompasses projects that are subject to Prevailing Wage requirements because they fall within Chapter 6 of the Administrative Code's definition of Public Work or Improvement; they qualify as residential projects required to comply with "City Contracting Requirements" pursuant to Chapter 43, Article IX of the Administrative Code; or they are projects required to pay Prevailing Wages pursuant to the City Loan program in Administrative Code Section 66.13;
- (2) Covered State Project encompasses projects that are subject to Prevailing Wage requirements through the City's Municipal Code incorporating, and adopting by reference – for Prevailing Wage purposes alone – certain state Prevailing Wage requirements, such as the California Labor Code's definition of "public works"; and
- (3) Covered Real Estate Project encompasses projects arising from a City property sale contract or lease that are subject to Prevailing Wage requirements.

Covered Contracts remains the defined term for service contracts and other service agreements for which LEC Article 102 requires the payment of Prevailing Wages.

The ordinance creates a new Article 103 of the LEC, which requires, among other things, the payment of Prevailing Wages on all Covered Projects and Covered Contracts. Some notable substantive changes located in Article 103 include the following:

- Section 103.1 clarifies that where the rate required by the Minimum Compensation Ordinance, Labor and Employment Code Article 111, exceeds the Prevailing Rate of Wages, the worker shall be entitled to the higher rate of the Minimum Compensation Ordinance.
- Section 103.2 provides the process by which the Board of Supervisors sets the Prevailing Rate of Wages under the City's Municipal Code. The ordinance sets a deadline of December 31st of each year for the Board of Supervisors to fix and determine the Prevailing Rate of Wages, and establishes that if the Board of Supervisors does not do so by the deadline, the Civil Service Commission's recommended rates shall become the Prevailing Rate of Wages. In addition, the ordinance expressly endorses and permits the Board of Supervisors to fix the Prevailing Rate of Wages to track and match future wage determinations issued by the California Department of Industrial Relations.

The ordinance creates LEC Article 106, which establishes consolidated penalty and enforcement provisions for Prevailing Wage, Apprenticeship, and Hours and Days of Labor requirements. The penalty and enforcement provisions are similar to the provisions that were

previously located in subsection 6.22(e) of the Administrative Code. Where the City can withhold funds under a contract, Article 106 provides for enforcement by the Office of Labor Standards Enforcement (“OLSE”) or the contracting Department Head through the issuance of a Notice of Forfeiture/Certification of Forfeiture (“NOF/COF”). Where the City is unable to withhold funds, Article 106 provides for OLSE’s or the Department Head’s enforcement through the issuance of a Determination of Violation (“DOV”). The amendments also make the following changes to the relevant penalty provisions:

- (1) For Covered Contracts, Article 106 provides for enforcement through the City’s issuance of a NOF/COF or DOV for violations, recourse procedures, and provisions detailing a party’s right to appeal. Also, Article 106 subjects Covered Contracts to penalties under Section 106.1, including penalties of not less than \$50 for each day or portion thereof during the violation. Article 102 of the LEC provided for penalties of not more than 10% of the contract value upon a finding of a willful violation.
- (2) Previously, Covered Real Estate Projects were subject to enforcement through the DOV process. Under Article 106, where the City has the ability to withhold funds, Covered Real Estate Projects are subject to enforcement through the NOF/COF process under Section 106.2. For the purposes of Section 106.2, funds disbursed through a City loan for a Covered Real Estate Project do not qualify as funds the City has the ability to withhold

The ordinance also amends Article 102 of the Labor and Employment Code. Amendments include:

- (1) The ordinance moves the LEC’s Transition Employment Requirements from subsection 102.1(d) to a new LEC Article 109, with Article 109 providing for OLSE enforcement or civil enforcement;
- (2) For Moving Services contracts as defined under Section 102.6, the amendments create an exemption for work covered by the California Department of Industrial Relations’ Modular Furniture Installers (Carpenters) classification;
- (3) For Motor Bus Service contracts as defined under Section 102.7, the amendments remove the Purchaser’s discretion to omit a contract from coverage where the contract would otherwise meet the requirements of the Section;
- (4) For Trade Show and Special Event Work on City property as defined under Section 102.8, the amendments strike the exemption from coverage for “[a]ny permit or agreement to engage in film production pursuant to Chapter 57 of this Code or under the circumstances set forth in Section 57.7 of this Code”; and clarify the definition of “Exhibit, Display, or Trade Show Work” to include enclosures, tenting, and furniture;

- (5) For Broadcast Services work as defined under Section 102.9, the amendments delete the exemption for work covered by a collective bargaining agreement; and
- (6) For loading and unloading of commercial vehicles on City property as defined under Section 102.10, the amendments delete the exemption for work covered by a collective bargaining agreement.

Background Information

The creation of the LEC provides an opportunity for the City to reorganize and consolidate the Municipal Code's Prevailing Wage requirements, as well as certain other labor requirements, in a more logical location. The ordinance achieves this by creating LEC Articles 101 and 103 through 109, and by amending the definitions encompassing projects or contracts subject to Prevailing Wage requirements.

As of 2024, the City's Municipal Code contained multiple provisions related to the payment of Prevailing Wages, including in Chapters 6 and 23 of the Administrative Code and Article 102 of the Labor and Employment Code. Prevailing Wage requirements have grown in complexity and length, with Chapter 6, Chapter 23, and Article 102 each having distinct requirements that differ from one another in significant ways. Locating such provisions across multiple codes, chapters, and articles can make it more difficult for City officials and employees and for the public (including, among others, employees, unions, and businesses) to find and understand the requirements, which is key to ensuring that workers receive legally required wage and fringe benefits.

The Municipal Code also currently has separate requirements and enforcement procedures for different types of projects or contracts subject to Prevailing Wage requirements. The ordinance amends the Municipal Code to consolidate and streamline the enforcement procedures and clarify OLSE's authority, making the requirements and procedures easier to find and more understandable to City officials and employees and the public.

In addition, a central purpose of the ordinance is to improve the process for the City to adopt wage rates for the various worker classifications. The wage rates the Board of Supervisors adopts are generally based on the rates of the California Department of Industrial Relations ("DIR"), which issues two rates per year for each classification: one takes effect in March, and the other takes effect in September. The ordinance confirms that the Board of Supervisors generally sets rates to track the DIR's rates. Also, the ordinance sets a December 31st deadline for the Board of Supervisors to fix and determine the Prevailing Rate of Wages, and makes the Civil Service Commission's recommended rates effective if the Board of Supervisors does not act. These changes will help the City's Prevailing Wage rates reasonably consistent with wage trends in private employment.

Introduction Form

(by a Member of the Board of Supervisors or the Mayor)

I hereby submit the following item for introduction (select only one):

- ☒ 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- ☐ 2. Request for next printed agenda (For Adoption Without Committee Reference)
(Routine, non-controversial and/or commendatory matters only)
- ☐ 3. Request for Hearing on a subject matter at Committee
- ☐ 4. Request for Letter beginning with "Supervisor _____ inquires..."
- ☐ 5. City Attorney Request
- ☐ 6. Call File No. _____ from Committee.
- ☐ 7. Budget and Legislative Analyst Request (attached written Motion)
- ☐ 8. Substitute Legislation File No. _____
- ☐ 9. Reactivate File No. _____
- ☐ 10. Topic submitted for Mayoral Appearance before the Board on _____

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- ☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission
- ☐ Planning Commission ☐ Building Inspection Commission ☐ Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- ☐ Yes ☒ No

(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)

Sponsor(s):

Safai

Subject:

[Administrative, Labor and Employment Codes - Prevailing Wage and Other Labor Requirements]

Long Title or text listed:

Ordinance amending the Administrative Code and Labor and Employment Code to move certain employment-related provisions, including, among others, certain Prevailing Wage requirements, apprenticeship requirements, and hours and days of labor requirements, from the Administrative Code to the Labor and Employment Code; establish new defined terms encompassing the projects and contracts subject to Prevailing Wage requirements; revise penalty and enforcement requirements and procedures for Prevailing Wage and certain other labor requirements; change the process for fixing and determining Prevailing Wage rates; move and revise the Transition Employment requirements and create new enforcement procedures for those requirements; apply Notice of Forfeiture/Certification of Forfeiture procedures for violations of Prevailing Wage requirements on Covered Real Estate Projects; renumber certain Municipal Code sections or provisions; and make other substantive or technical amendments to the Administrative Code and Labor and Employment Code, including, among others: eliminating certain exemptions from Prevailing Wage requirements for Broadcast Services work and the work of loading and unloading Commercial Vehicles on City property, while creating an exemption from Prevailing Wage requirements for work covered by the Modular Furniture Installers (Carpenters) classification.

Signature of Sponsoring Supervisor:



From: [Buckley, Jeff \(BOS\)](#)
To: [BOS Legislation, \(BOS\)](#); [CROWLEY, SARAH \(CAT\)](#); [GIVNER, JON \(CAT\)](#)
Cc: [HOBSTETTER, DAVID \(CAT\)](#); [Carrillo, Lila \(BOS\)](#); [RUSSI, BRAD \(CAT\)](#); [Safai, Ahsha \(BOS\)](#)
Subject: Prevailing Wage Ordinance
Date: Tuesday, October 8, 2024 4:30:11 PM
Attachments: [24 10 2 Legislative Digest Prevailing Wage Revisions Ordinance-FINAL.DOCX](#)
[24 10 2 Prevailing Wage Revisions Ordinance-FINAL.DOCX](#)
[Intro Form Labor and Employment Code.pdf](#)

Hello,

Please see the attached ordinance for introduction today. Below is confirmation from DCA Hobstetter. We respectfully request this ordinance be sent to Rules Committee.

Take care,

-Jeff

From: Hobstetter, David (CAT) <David.Hobstetter@sfcityatty.org>
Sent: Wednesday, October 02, 2024 2:45 PM
To: Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>
Cc: Buckley, Jeff (BOS) <jeff.buckley@sfgov.org>; GIVNER, JON (CAT) <Jon.Givner@sfcityatty.org>; CROWLEY, SARAH (CAT) <Sarah.Crowley@sfcityatty.org>; RUSSI, BRAD (CAT) <Brad.Russi@sfcityatty.org>; PRADHAN, MANU (CAT) <Manu.Pradhan@sfcityatty.org>; ZAREFSKY, PAUL (CAT) <Paul.Zarefsky@sfcityatty.org>; BUTA, ODAYA (CAT) <Odaya.Buta@sfcityatty.org>; GOLDBERG, MATTHEW (CAT) <Matthew.Goldberg@sfcityatty.org>; ALSCHULER, DONNA (CAT) <Donna.Alschuler@sfcityatty.org>; GIORGI, HANNAH (CAT) <Hannah.Giorgi@sfcityatty.org>
Subject: Prevailing Wage Ordinance

Supervisor Safai,

Attached is the ordinance reorganizing and amending Prevailing Wage and other labor requirements in the Administrative Code and the Labor and Employment Code. The /s/ on the signature line indicates my approval as to form. I have also attached the Legislative Digest. Please let me know if you have any questions.

David R. Hobstetter (he/him)

Deputy City Attorney
Office of City Attorney David Chiu
Construction and Public Contracting Team
1390 Market St., 4th Floor, San Francisco, CA 94102
(415) 554-3981 Direct

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[Administrative, Labor and Employment Codes - Prevailing Wage and Other Labor Requirements]

Ordinance amending the Administrative Code and Labor and Employment Code to move certain employment-related provisions, including, among others, certain Prevailing Wage requirements, apprenticeship requirements, and hours and days of labor requirements, from the Administrative Code to the Labor and Employment Code; establish new defined terms encompassing the projects and contracts subject to Prevailing Wage requirements; revise penalty and enforcement requirements and procedures for Prevailing Wage and certain other labor requirements; change the process for fixing and determining Prevailing Wage rates; move and revise the Transition Employment requirements and create new enforcement procedures for those requirements; apply Notice of Forfeiture/Certification of Forfeiture procedures for violations of Prevailing Wage requirements on Covered Real Estate Projects; renumber certain Municipal Code sections or provisions; and make other substantive or technical amendments to the Administrative Code and Labor and Employment Code, including, among others: and eliminating certain exemptions from Prevailing Wage requirements for Broadcast Services work and the work of loading and unloading Commercial Vehicles on City property, while creating an exemption from Prevailing Wage requirements for work covered by the Modular Furniture Installers (Carpenters) classification.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in single-underline italics Times New Roman font.
Deletions to Codes are in ~~strikethrough italics Times New Roman font~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

1
2 Be it ordained by the People of the City and County of San Francisco:

3
4 Section 1. Background and Findings.

5 (a) Overview. As of 2024, the City's Municipal Code contained multiple provisions
6 related to the payment of Prevailing Wages, including in Chapters 6 and 23 of the
7 Administrative Code and Article 102 of the Labor and Employment Code. Prevailing Wage
8 requirements have grown in complexity and length, with Chapter 6, Chapter 23, and Article
9 102 each having distinct requirements that differ from one another in significant ways.
10 Locating such provisions across multiple codes, chapters, and articles can make it more
11 difficult for City officials and employees and for the public (including, among others,
12 employees, unions, and businesses) to find and understand the requirements, which is key to
13 ensuring that workers receive legally required wage and fringe benefits. This ordinance moves
14 the Prevailing Wage requirements of Chapters 6 and 23, along with other City labor
15 requirements, to the Labor and Employment Code to consolidate them with the requirements
16 of Article 102, and improve and clarify Prevailing Wage requirements as a whole. In addition,
17 certain Prevailing Wage requirements – for instance, the penalty provisions of Labor and
18 Employment Code Article 102 – benefit from substantive amendments in this ordinance that
19 help to ensure compliance.

20 (b) Reorganization. As noted above, a key feature of this ordinance is to reorganize
21 and consolidate related legal provisions that have been scattered in the Municipal Code. In
22 particular:

23 (1) This ordinance creates Articles 101 and 103 through 109 in the Labor and
24 Employment Code. It moves the Prevailing Wage requirements and Hours and Days of Labor
25 requirements of Chapter 6 of the Administrative Code, and the Prevailing Wage,

1 Apprenticeship, and Local Hire requirements of Chapter 23 of the Administrative Code into the
2 newly created Articles 101 and 103 through 107 of the Labor and Employment Code.

3 (2) The ordinance moves many of the general provisions in Article 102 –
4 including, among others, provisions related to penalties, enforcement, and the keeping of
5 payroll records – out of Article 102 and into new articles addressing those topics.

6 (3) This ordinance consolidates the City's Prevailing Wage requirements, and
7 other labor requirements, and organizes the provisions as follows:

8 (A) Article 101 contains the general provisions for Articles 101 through
9 109, including definitions;

10 (B) Article 102 contains requirements for certain service contracts that are
11 subject to Prevailing Wage requirements;

12 (C) Article 103 includes the requirement to pay the Prevailing Rate of
13 Wages, procedures for the setting of the Prevailing Rate of Wages, and language the City
14 must include in contracts subject to Prevailing Wage requirements;

15 (D) Article 104 contains Apprenticeship requirements for real property
16 sales and leases subject to Prevailing Wage requirements;

17 (E) Article 105 contains Hours and Days of Labor requirements applicable
18 to certain Covered Projects subject to Prevailing Wage requirements;

19 (F) Article 106 contains consolidated penalty and enforcement provisions
20 for violations of the City's Prevailing Wage requirements;

21 (G) Article 107 authorizes the Office of Labor Standards Enforcement
22 ("OLSE") to administer and enforce Prevailing Wage requirements and other labor standards;

23 (H) Article 108 sets forth Local Hire requirements for real property sales
24 and leases subject to Prevailing Wage requirements; and
25

1 (I) Article 109 contains transition employment requirements for certain
2 City services contracts.

3 (c) Technical and Non-Substantive Amendments. The ordinance also makes technical
4 and non-substantive amendments to the text of the Administrative Code and the Labor and
5 Employment Code in order to correctly designate or reference the reorganized provisions.
6 These technical amendments include renumbered provisions and amended citations to reflect
7 the changed and/or relocated text, as well as deleted text that otherwise would be redundant
8 with another consolidated provision.

9 (d) Substantive Amendments. The ordinance makes a number of substantive
10 amendments to the City's Municipal Code. The following list is a summary of such
11 amendments, but it is not a comprehensive list or summary of those changes.

12 (1) Prior to this ordinance, Chapter 6 of the Administrative Code defined "Public
13 Work or Improvement" in multiple ways: Section 6.1 provided a general definition, and Section
14 6.22(e) provided a separate definition solely for the purpose of the Prevailing Wage
15 requirements and certain other labor standards that referenced Section 6.22(e). These
16 multiple definitions created a risk of misunderstanding. To address this problem, this
17 ordinance re-designates the classes of contracts and projects subject to Prevailing Wage
18 requirements into two categories, Covered Contracts and Covered Projects. Covered
19 Contracts is the term Article 102 of the Labor and Employment Code has used to identify
20 service contracts subject to the Prevailing Wage requirements of Article 102. Covered
21 Projects is a new term that encompasses projects that were subject to Prevailing Wage
22 requirements under Chapter 6 or Chapter 23 of the Administrative Code. There are three sub-
23 definitions within the broader definition of Covered Project:

24 (A) Covered Local Project encompasses projects that are subject to
25 Prevailing Wage requirements because they fall within Chapter 6 of the Administrative Code's

1 definition of Public Work or Improvement; they qualify as residential projects required to
2 comply with “City Contracting Requirements” pursuant to Chapter 43, Article IX of the
3 Administrative Code; or they are projects required to pay Prevailing Wages pursuant to the
4 City Loan program in Administrative Code Section 66.13;

5 (B) Covered State Project encompasses projects that are subject to
6 Prevailing Wage requirements as a result of the Municipal Code having incorporated and
7 adopted by reference certain State requirements for Prevailing Wages; this includes the
8 Municipal Code’s incorporating for Prevailing Wage purposes the California Labor Code’s
9 definition of “public works”; and

10 (C) Covered Real Estate Project encompasses projects subject to
11 Prevailing Wage requirements as a result of the work arising from a City property sale
12 contract or lease.

13 (2) The ordinance creates a new Article 103 of the Labor and Employment
14 Code.

15 (A) Section 103.1 requires that all Contractors and Subcontractors
16 performing work on a Covered Project or a Covered Contract shall pay their workers not less
17 than the Prevailing Rate of Wages. In addition, Section 103.1 clarifies that in situations where
18 the rate required by the Minimum Compensation Ordinance, Labor and Employment Code
19 Article 111, exceeds the Prevailing Rate of Wages, the worker is entitled to the higher rate of
20 the Minimum Compensation Ordinance.

21 (B) Section 103.2 establishes the process by which the Board of
22 Supervisors (the “Board”) sets the Prevailing Rate of Wages under the City’s Municipal Code.
23 The ordinance sets a deadline of December 31 of each year for the Board to fix and
24 determine the Prevailing Rate of Wages, and provides that if the Board does not do so by the
25 deadline, the Civil Service Commission’s recommended rates shall become the Prevailing

1 Rate of Wages. This provision will help keep rates under the Labor and Employment Code
2 reasonably in line with changes in private wage rates. In addition, because the California
3 Department of Industrial Relations generally issues two wage determinations per year for
4 recognized crafts and classifications – one determination taking effect in March, the other
5 taking effect in September – the ordinance endorses and permits the Board to update the
6 Prevailing Rate of Wages to track and match future wage determinations issued by the
7 California Department of Industrial Relations.

8 (C) Section 103.3 contains multiple requirements applicable to Covered
9 Contracts and Covered Projects. The City must generally require inclusion of these
10 requirements in its contracts; however, this ordinance confirms that a failure to do so does not
11 annul the applicability of Prevailing Wage requirements. The ordinance further specifies the
12 documentation related to the payment of wages which a Contractor must maintain and make
13 available for inspection. Covered Projects must submit certified payroll reports to OLSE;
14 however, any Covered Contract that does not also qualify as a Covered Project is exempt
15 from the certified payroll submission requirement, unless required by contract.

16 (3) This ordinance creates Articles 104 and 105 of the Labor and Employment
17 Code. Article 104 contains Apprenticeship requirements applicable to Covered Real Estate
18 Projects, and Article 105 contains Hours and Days of Labor requirements applicable to
19 Covered Local Projects and Covered Real Estate Projects. The ordinance amends the penalty
20 and enforcement provisions that apply to Articles 104 and 105, providing for enforcement
21 under Article 106. In addition, the ordinance amends Hours and Days of Labor requirements
22 to apply expressly to Covered State Projects and places the amended requirements in Article
23 105.

24 (4) This ordinance creates Article 106 of the Labor and Employment Code,
25 which establishes consolidated penalty and enforcement provisions for Prevailing Wage,

1 Apprenticeship, and Hours and Days of Labor requirements. The penalty and enforcement
2 provisions are similar to the provisions that were previously located in Section 6.22(e) of the
3 Administrative Code, with Article 106 providing for OLSE's or the contracting Department
4 Head's enforcement through issuance of a Notice of Forfeiture/Certification of Forfeiture
5 ("NOF/COF") in instances where the City can withhold funds, and OLSE's enforcement
6 through issuing a Determination of Violation ("DOV") where the City cannot withhold funds.

7 A significant substantive amendment of this ordinance in Article 106 is the
8 application of new penalties and enforcement procedures to Covered Contracts. For Covered
9 Contracts, Article 106 provides for expanded and more detailed enforcement and recourse
10 procedures, including the City's issuance of a NOF/COF or DOV for violations, recourse
11 procedures, and additional detail on a party's right to appeal.

12 (5) Under Administrative Code Chapter 23, which required Prevailing Wages on
13 certain projects related to City real estate transactions, Prevailing Wage violations were
14 subject to enforcement through the DOV process. With this ordinance, Covered Real Estate
15 Projects are now, under Section 106.2 of Article 106, subject to enforcement through the
16 NOF/COF process. However, a Covered Real Estate Project is exempt from enforcement
17 under Section 106.2 where the funds available for the City to withhold consist of funds the City
18 has agreed to disburse through a loan.

19 (6) This ordinance also amends Article 102 of the Labor and Employment
20 Code.

21 (A) The ordinance moves the Transition Employment Requirements of
22 Labor and Employment Code Section 102.1(d) to the new Article 109, and provides for OLSE
23 enforcement of the Transition Employment Requirements. The ordinance also enacts new
24 enforcement and resource provisions, incorporating the text of Sections 71.3 and 71.4 of
25 Article 71 of the Labor and Employment Code's Transition Employment Requirements, with

1 the exception of the provision allowing the City Attorney or an employee to bring an action for
2 an injunction against the award authority, which this ordinance omits.

3 (B) This ordinance makes certain other substantive amendments to
4 Article 102, including:

5 (i) For Moving Services contracts as defined under Section
6 102.6, this ordinance creates an exemption for work covered by the California Department of
7 Industrial Relations' Modular Furniture Installers (Carpenters) classification;

8 (ii) For Motor Bus Service contracts as defined under Section
9 102.7, the Purchaser no longer has discretion to omit a contract from coverage where the
10 contract would otherwise meet the requirements of the Section;

11 (iii) For Trade Show and Special Event Work on City property
12 as defined under Section 102.8, this ordinance removes the prior exemption from coverage
13 for "[a]ny permit or agreement to engage in film production pursuant to Chapter 57 of [the
14 Administrative] Code or under the circumstances set forth in Section 57.7 of [that] Code"; and
15 the ordinance clarifies the definition of "Exhibit, Display, or Trade Show Work" to include
16 enclosures, tenting, and furniture;

17 (iv) For Broadcast Services work as defined under Section
18 102.9, this ordinance deletes the exemption for work covered by a collective bargaining
19 agreement; and

20 (v) For loading and unloading of Commercial Vehicles on City
21 property as defined under Section 102.10, this ordinance deletes the prior exemption for work
22 covered by a collective bargaining agreement.

23
24 Section 2. Chapter 6, Article I, of the Administrative Code is hereby amended by
25 revising Section 6.1, to read as follows:

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1 **SEC. 6.1. DEFINITIONS.**

2 **Advertisement For Bid.** An Advertisement For Bid is a set of documents which
3 includes without limitation the published Advertisement for Bids on a construction Contract;
4 the forms to be submitted with a Bid, as required by the contracting department and CMD; the
5 construction Contract general and special conditions; and the plans and specifications for the
6 Public Work or Improvement.

7 **Award.** The action taken by the City in conformance with the Administrative Code and
8 the Charter to enter into a Contract pursuant to this Chapter 6.

9 (a) For Contracts in excess of the Threshold Amount, a Contract is awarded by the
10 City when the following events have occurred:

11 (1) For departments under the Mayor, ~~(a)~~ the Mayor has approved the Contract
12 for Award; and ~~(b)~~ the Department Head has then issued an order of Award;

13 (2) For departments empowered to contract for Public Works or Improvements
14 with boards or commissions, ~~(a)~~ the Department Head has recommended to the board or
15 commission concerned a Contract for Award; and ~~(b)~~ such board or commission has then
16 adopted a resolution awarding the Contract.

17 (b) For Contracts less than or equal to the Threshold Amount, a Contract is awarded
18 when the Department Head either signs the Contract or issues an order of Award, whichever
19 occurs first. Pursuant to Charter Section 3.105, all Contract Awards are subject to certification
20 by the Controller as to the availability of funds.

21 **Bid.** A sealed document submitted in response to an Advertisement For Bids. No Bid
22 shall be deemed accepted by the City until such time as the Contract is awarded in
23 accordance with this Chapter 6.

24 **Bidder.** One who submits a Bid in response to an Advertisement For Bids.

25 **City.** The City and County of San Francisco.

1 **Construction Manager.** Any individual, firm, partnership, corporation, association, joint
2 venture or other legal entity permitted by law to furnish construction management services to
3 the City.

4 **Contract.** For the purposes of this Chapter, a Contract is an agreement in writing
5 between the City and any party to perform professional design services, consultant services,
6 construction management services or construction services relative to a Public Work or
7 Improvement. No Contract shall be deemed awarded, effective or binding on the City until
8 such time as the requirements for Award are met, as provided in this Chapter 6.

9 **Contract Monitoring Division (“CMD”).** A division of the Office of the City
10 Administrator to which the City Administrator has delegated responsibility to implement
11 Administrative Code Chapter 14B.

12 **Contractor.** A party who contracts directly with the City to perform professional design
13 services, consultant services, construction management services or construction services
14 relevant to a Public Work or Improvement. A Contractor performing construction services may
15 also be referred to as a "General Contractor" or a "Prime Contractor."

16 **Core Trade Subcontractor.** A subcontractor identified by the City or the Contractor
17 that may provide key pre-construction services for a procurement under Section 6.61 or
18 Section 6.68.

19 **Department Head.** The duly appointed General Manager, Director, or Executive
20 Director of a City department authorized to perform Public Work or Improvements under
21 Section 6.2. For purposes of this Chapter 6 only, an authorized Department Head may
22 designate an individual to execute on the Department Head’s behalf any document referenced
23 in this Chapter 6, including but not limited to Contracts, change orders, modifications, service
24 orders, task orders, approvals, progress payments, and certificates of acceptance. Such
25

1 designation shall be in writing and shall identify the individual by name and title and the scope
2 and term of the designation.

3 **Integrated Furniture, Fixtures, and Equipment (“IFF&E”).** Furniture, fixtures, and/or
4 equipment that require integration that significantly affects the building design and/or the
5 design of interior renovation of a Public Work or Improvement due to physical dimension,
6 power connection, or data communication, and/or coordination with construction trades,
7 including but not limited to, electrical, plumbing, mechanical, or building controls.

8 **Mayor.** The Mayor of the City and County of San Francisco or the Mayor’s designee,
9 provided that the designee is not the Department Head of the department concerned in the
10 particular matter that the Mayor is responsible for reviewing.

11 ~~—Prevailing Wage or Prevailing Rate of Wage. For purposes of this Chapter 6, the highest~~
12 ~~general prevailing rate of wage plus "per diem wages" and wages paid for overtime and holiday work~~
13 ~~paid in private employment in the City for the various crafts and kinds of labor employed in the~~
14 ~~performance of any Public Work or Improvement. "Per diem wages" are defined pursuant to Labor~~
15 ~~Code Section 1773.1, as amended from time to time.~~

16 **Public Work or Improvement.** Any erection, construction, renovation, alteration,
17 improvement, demolition, excavation, installation, or repair of any public building, structure,
18 infrastructure, bridge, road, street, park, dam, tunnel, utility, or similar public facility performed
19 by or for the City, the cost of which is to be paid wholly or partially out of moneys deposited in
20 the Treasury of the City. A Public Work or Improvement may include IFF&E Integrated
21 ~~Furniture, Fixtures, and Equipment.~~

22 **Quote or Quotation.** A statement or proposal setting out the estimated cost for work or
23 services submitted in response to a request for a quote from a department for work or
24 services on a Public Work or Improvement.

1 **Responsible or Responsibility.** A Bidder General Contractor, or Prime Contractor for
2 a Public Work or Improvement, that:

3 (a) meets the qualifying criteria required for a particular project, including without
4 limitation the expertise, experience, record of prior timely performance, license, resources,
5 and bonding and insurance capability necessary to perform the work under the Contract; and

6 (b) at all times deals in good faith with the City and submits bids, estimates,
7 invoices, claims, requests for equitable adjustments, requests for change orders, requests for
8 Contract modifications, or requests of any kind seeking compensation on a City Contract only
9 upon a good faith honest evaluation of the underlying circumstances and a good faith, honest
10 calculation of the amount sought; and

11 (c) substantiates its record of safe performance on construction projects, including
12 but not limited to consideration of federal or state Occupational Safety and Health
13 Administration (“OSHA”) violations and work place fatalities, including OSHA citations under
14 appeal, in accordance with regulations issued by the City Administrator.

15 **Responsive.** A Bid or proposal that complies with the requirements of the subject
16 Advertisement For Bids or request for proposals and/or qualification without condition or
17 qualification.

18 **Threshold Amount.** The Threshold Amount, for the purposes of this Chapter 6, is
19 \$1,000,000. For every five-year period starting with January 1, 2020-December 31, 2024, the
20 Controller shall recalculate the Threshold Amount to reflect any proportional increase in the
21 Urban Regional Consumer Price Index from January 1, 2020, rounded to the nearest \$10,000.
22 The Threshold Amount as recalculated by the Controller shall take effect by operation of law
23 on January 1 of the first year of the next five-year period (thus, for example, on January 1,
24 2025 following the five-year period ending December 31, 2024).

Section 3. Chapter 6, Article II, of the Administrative Code is hereby amended by revising Section 6.22, to read as follows:

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

All construction Contracts awarded under this Chapter 6 by the City shall contain the following minimum terms and conditions:

* * * *

(e) Prevailing Wages.

~~—————(1) **Generally.** All Contractors and subcontractors performing a Public Work or Improvement for the City shall comply with the requirements of Articles 101 through 107 of the Labor and Employment Code, as applicable. pay its workers on such projects the Prevailing Rate of Wages as provided below. For the purpose of Prevailing Wage requirements only, the definition of a public work shall include Public Works or Improvements as defined in the Section 6.1, and shall also include (A) any trade work performed at any stage of construction (including preconstruction work) and (B) any public work paid for by the City with "the equivalent of money" under the meaning of California Labor Code Section 1720(b).~~

~~—————(2) **Additional Projects Considered as "Public Works or Improvements" for Purposes of Prevailing Wages.**~~

~~—————(A) **Property Leased or Sold by the City.** For construction work performed on real property leased by the City or sold by the City for Housing Development, as that term is defined in Administrative Code subsection 23.61(a), Contractors and subcontractors must pay prevailing wages in accordance with Article VII of Chapter 23 of the Administrative Code and this subsection 6.22(e) as applicable.~~

~~—————(B) **Public Works Under California Labor Code.** For the limited purposes of this subsection 6.22(e) and Section 6.24, a "public work or improvement" also means and includes all~~

1 ~~projects for "public works" as defined in California Labor Code Section 1720, and projects for which~~
2 ~~Prevailing Wages are required to be paid pursuant to California Labor Code Section 1782. This~~
3 ~~subsection 6.22(e)(2)(B) is intended to have prospective effect only, and shall not be interpreted to~~
4 ~~impair the obligations of any pre-existing grant agreement, lease, development agreement or other~~
5 ~~contract entered into by the City. Notwithstanding the prior sentence, this subsection shall apply to~~
6 ~~newly included work in pre-existing grant agreements, leases, development agreements, or other~~
7 ~~contracts amended on or after the operative date. The subsection shall apply to grant agreements,~~
8 ~~leases, development agreements and other contracts entered into by the City on or after the operative~~
9 ~~date. All grant agreements, leases, development agreements and other contracts which allow for such~~
10 ~~construction on property owned by the City that the City enters after the operative date of the~~
11 ~~subsection must contain a provision that such construction shall comply with this subsection.~~

12 ~~—(3) **Determination of the Prevailing Wage.** It shall be the duty of the Board of Supervisors,~~
13 ~~from time to time and at least once during each calendar year, to fix and determine the Prevailing Rate~~
14 ~~of Wages as follows:~~

15 ~~—On or before the first Monday in November of each year, the Civil Service Commission~~
16 ~~shall furnish to the Board of Supervisors data as to the highest general Prevailing Rate of Wages of the~~
17 ~~various crafts and kinds of labor as paid in private employment in the City and County of San~~
18 ~~Francisco, plus "per diem wages" and wages for overtime and holiday work. The Civil Service~~
19 ~~Commission shall provide the Board of Supervisors data for "per diem wages" pursuant to California~~
20 ~~Labor Code Sections 1773.1 and 1773.9, as amended from time to time. The Board of Supervisors~~
21 ~~shall, upon receipt of such data, fix and determine the Prevailing Rate of Wages. The Prevailing Rate~~
22 ~~of Wages as so fixed and determined by the Board of Supervisors shall remain in force and shall be~~
23 ~~deemed to be the highest general Prevailing Rate of Wages paid in private employment for similar~~
24 ~~work, until the same is changed by the Board of Supervisors. In determining the highest general~~
25 ~~Prevailing Rate of Wages per diem wages and wages for overtime and holiday work, as provided for in~~

1 ~~this section, the Board of Supervisors shall not be limited to the consideration of data furnished by the~~
2 ~~Civil Service Commission, but may consider such other evidence upon the subject as the Board shall~~
3 ~~deem proper and thereupon base its determination upon any or all of the data or evidence considered.~~

4 ~~—In the event that the Board of Supervisors does not fix or determine the highest general~~
5 ~~Prevailing Rate of Wages in any calendar year, the rates established by the California Department of~~
6 ~~Industrial Relations for such year shall be deemed adopted.~~

7 ~~—(4) **Specifications to Include Wage Rate.** The Department Head shall include in the~~
8 ~~contract specifications, or make available in the offices of the department or at the job site, a detailed~~
9 ~~statement of the Prevailing Rate of Wages as fixed and determined by the Board of Supervisors at the~~
10 ~~time the department issued the Advertisement For Bids on the contract. The Contractor shall agree to~~
11 ~~pay to all persons performing labor in and about the Public Work or Improvement the highest general~~
12 ~~Prevailing Rate of Wages as determined pursuant to this Chapter, including wages for holiday and~~
13 ~~overtime work. If the specifications do not include the Prevailing Rate of Wages, the specifications~~
14 ~~shall include a statement that copies of the Prevailing Rate of Wages as fixed and determined by the~~
15 ~~Board of Supervisors are on file at the department's principal office or at the job site and shall be made~~
16 ~~available to any interested party on request.~~

17 ~~—(5) **Subcontractors Bound by Wage Provisions.** Every contract for any Public Work or~~
18 ~~Improvement shall also contain a provision that the Contractor shall insert in every subcontract or~~
19 ~~other arrangement which he or she may make for the performance of any work or labor on a Public~~
20 ~~Work or Improvement. This provision shall be that the subcontractor shall pay to all persons~~
21 ~~performing labor or rendering service under said subcontract or other arrangement the highest general~~
22 ~~Prevailing Rate of Wages as fixed and determined by the Board of Supervisors for such labor or~~
23 ~~services.~~

24 ~~—(6) **Records to be Kept by Contractors and Subcontractors.** Every Public Works contract~~
25 ~~or subcontract for any Public Work or Improvement shall contain a provision that the Contractor shall~~

1 ~~keep, or cause to be kept, for a period of four years from the date of substantial completion of a public~~
2 ~~work, payrolls and basic records including time cards, trust fund forms, apprenticeship agreements,~~
3 ~~accounting ledgers, tax forms and superintendent and foreman daily logs for all trades workers~~
4 ~~performing work at or for a City Public Work or Improvement. Such records shall include the name,~~
5 ~~address and social security number of each worker who worked on the project, including apprentices,~~
6 ~~his or her classification, a general description of the work each worker performed each day, the rate of~~
7 ~~pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly~~
8 ~~number of hours worked, deductions made and actual wages paid. Every subcontractor who shall~~
9 ~~undertake the performance of any part of a Public Work or Improvement shall keep a like record of~~
10 ~~each person engaged in the execution of the 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 payroll~~
13 ~~records of its subcontractors. All certified payroll records shall be accompanied by a statement of~~
14 ~~compliance signed by the Contractor indicating that the payroll records are correct and complete, that~~
15 ~~the wage rates contained therein are not less than those determined by the Board of Supervisors and~~
16 ~~that the classifications set forth for each employee conform with the work performed.~~

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

20 ~~——Should the Department Head responsible for the public work or the Labor Standards~~
21 ~~Enforcement Officer determine that a Contractor or subcontractor is not in compliance with the~~
22 ~~requirements of this subsection, the Department Head or the Labor Standards Enforcement Officer~~
23 ~~shall issue written notification to the Contractor or subcontractor mandating compliance within not~~
24 ~~fewer than 10 calendar days from the date of the notification. Should the Contractor or subcontractor~~
25 ~~fail to comply as required in the notification, the Department Head who executed the Contract or the~~

1 ~~Labor Standards Enforcement Officer may impose penalties consistent with analogous provisions of the~~
2 ~~California Labor Code, including Section 1776, as amended from time to time, for each calendar day of~~
3 ~~noncompliance, or portion thereof, for each worker. Upon the request of the responsible Department~~
4 ~~Head or the Labor Standards Enforcement Officer, the Controller shall withhold these penalties from~~
5 ~~progress payments then due or to become due.~~

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

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

24 ~~—(A) **Penalty and Forfeiture.** Any Contractor or subcontractor who shall fail or neglect to~~
25 ~~pay to the several persons who shall perform labor under any contract, subcontract or other~~

1 ~~arrangement on any public work or Improvement as defined in this Chapter the highest general~~
2 ~~Prevailing Rate of Wages as fixed by the Board of Supervisors under authority of this Chapter, shall~~
3 ~~forfeit; and, in the case of any subcontractor so failing or neglecting to pay said wage, the original~~
4 ~~Contractor and the subcontractor shall jointly and severally forfeit to the City back wages due plus~~
5 ~~penalties in amounts consistent with analogous provisions of the California Labor Code as amended~~
6 ~~from time to time, including Sections 1775 and 1813, but not less than \$50 per day for each laborer,~~
7 ~~workman or mechanic employed for each calendar day or portion thereof, while they shall be so~~
8 ~~employed and not paid said highest general Prevailing Rate of Wages, and in addition shall be subject~~
9 ~~to the penalties set forth in Article V of this Chapter 6, including debarment.~~

10 ~~——(B) **Enforcement.**~~

11 ~~——(i) For a public work or improvement undertaken through a contract with the City and~~
12 ~~under which the City has the ability to withhold funds, it shall be the duty of the officer, board or~~
13 ~~commission under whose jurisdiction said Public Work or Improvement is being carried on, made or~~
14 ~~constructed, when certifying to the Controller any payment which may become due under said contract,~~
15 ~~to deduct from said payment or payments the total amount of said forfeiture provided for in this~~
16 ~~subsection. In doing so, the Department Head must also notify in writing the Labor Standards~~
17 ~~Enforcement Officer of his/her action. The Labor Standards Enforcement Officer may also upon written~~
18 ~~notice to the Department Head who is responsible for the project, certify to the Controller any~~
19 ~~forfeiture(s) to deduct from any payment as provided for in this subsection 6.22(e)(8). Certification of~~
20 ~~forfeitures under this subsection shall be made only upon an investigation and audit by the responsible~~
21 ~~Department Head or the Labor Standards Enforcement Officer and upon service of written notice to the~~
22 ~~Contractor that includes identification of the grounds for the forfeiture or forfeitures ("Certification of~~
23 ~~Forfeiture"). The audit supporting the forfeiture shall be appended to the Certification of Forfeiture,~~
24 ~~but failure to append such documentation shall not invalidate the Certification. Service of the~~
25 ~~Certification of Forfeiture shall be made by United States mail and the date of service shall be the date~~

1 of mailing. The Controller, in issuing any warrant for any such payment, shall deduct from the amount
2 which would otherwise be due on said payment or payments the amount of said forfeiture or forfeitures
3 as so certified.

4 ~~—— (ii) For any contract in which the City has required a third party to pay prevailing~~
5 ~~wages and for which the City does not have the ability to withhold funds, the Labor Standards~~
6 ~~Enforcement Officer shall determine whether a contractor and/or any subcontractor has failed to~~
7 ~~comply with the prevailing wage requirement. If after conducting an investigation, the Labor Standards~~
8 ~~Enforcement Officer determines that a violation has occurred, it shall issue to and serve a~~
9 ~~Determination of Violation on the contractor and/or any subcontractor, which sets forth the basis of the~~
10 ~~determination and orders payment of back wages due plus the penalty of at least \$50 per day for each~~
11 ~~laborer, workman, or mechanic employed for each calendar day or portion thereof. Service of the~~
12 ~~Determination of Violation shall be made by United States mail and the date of service shall be the date~~
13 ~~of mailing.~~

14 ~~—— (C) **Recourse Procedure.** A Contractor and/or a subcontractor may appeal from a~~
15 ~~Certification of Forfeiture under subsection 6.22(e)(8)(B)(i) or Determination of Violation under~~
16 ~~subsection 6.22(e)(8)(B)(ii). The Controller shall adopt and maintain rules and regulations for any~~
17 ~~appeal under this subsection 6.22(e)(8)(C), which rules shall be consistent with the following~~
18 ~~parameters:~~

19 ~~—— (i) Any Appeal from Certification of Forfeiture or Determination of Violation (referred~~
20 ~~to in this subsection 6.22(e)(8)(C) as the "Appeal") shall be filed in writing by the Contractor and/or~~
21 ~~subcontractor (referred to in this subsection 6.22(e)(8)(C), whether singular or plural, as the~~
22 ~~"Appellant") within 15 days of the date of service of the Certification of Forfeiture or Determination of~~
23 ~~Violation. Appellant shall file the Appeal with the City Controller and serve a copy on the Labor~~
24 ~~Standards Enforcement Officer. Failure by the Contractor or subcontractor to submit a timely, written~~
25

1 ~~Appeal shall constitute concession to the forfeiture or determination, and the forfeiture or~~
2 ~~determination shall be deemed final upon expiration of the 15-day period.~~

3 ~~—— (ii) The Office of Labor Standards Enforcement shall promptly afford Appellant an~~
4 ~~opportunity to meet and confer in good faith regarding possible resolution of the Certification of~~
5 ~~Forfeiture or Determination of Violation in advance of further proceedings under this subsection~~
6 ~~6.22(e)(8)(C), with the intention that such meeting occur within 30 days of the date the Appeal is filed.~~

7 ~~—— (iii) After the expiration of 30 days following the date the Appeal is filed, any party may~~
8 ~~request in writing, with concurrent notice to all other parties, that the Controller appoint a hearing~~
9 ~~officer to hear and decide the Appeal. If no party requests appointment of a hearing officer, the~~
10 ~~Certification of Forfeiture or Determination of Violation shall be deemed final on the 60th day after the~~
11 ~~date the Appeal is filed.~~

12 ~~—— (iv) Within 15 days of receiving a written request for appointment of a hearing officer~~
13 ~~under subsection 6.22(e)(8)(C)(iii), the Controller shall appoint an impartial hearing officer and~~
14 ~~immediately notify the enforcing official and Appellant, and their respective counsel or authorized~~
15 ~~representative if any, of the appointment. The appointed hearing officer shall be an Administrative Law~~
16 ~~Judge with at least 10 years' experience with the City and not less than two years experience in labor~~
17 ~~law, Prevailing Wage, and/or wage and hour matters; or shall be an attorney with knowledge and not~~
18 ~~less than five years' experience in labor law, Prevailing Wage, and/or wage and hour matters.~~

19 ~~—— (v) The hearing officer shall promptly set a date for a hearing. The hearing must~~
20 ~~commence within 45 days of the date of the notification of the hearing officer appointment, and~~
21 ~~conclude within 75 days of such notice. The hearing officer shall conduct a fair and impartial~~
22 ~~evidentiary hearing in conformance with the time limitations set forth in this subsection 6.22(e)(8)(C)~~
23 ~~and in the rules and regulations, so as to avoid undue delay in the resolution of any appeal. The~~
24 ~~hearing officer shall have the discretion to extend the times under this subsection 6.22(e)(8)(C), and~~
25 ~~any time requirements under the rules and regulations, only upon a showing of good cause.~~

1 ~~—— (vi) Appellant has the burden of proving by a preponderance of the evidence that the~~
2 ~~basis for the Certification of Forfeiture or Determination of Violation is incorrect, including any back~~
3 ~~wage and penalty assessments that are at issue in the appeal.~~

4 ~~—— (vii) Within 30 days of the conclusion of the hearing, the hearing officer shall issue a~~
5 ~~written decision affirming, modifying, or dismissing the Certificate of Forfeiture or Determination of~~
6 ~~Violation. The decision of the hearing officer shall consist of findings and a determination. The hearing~~
7 ~~officer's findings and determination shall be the final determination.~~

8 ~~—— (viii) Appellant may appeal a final determination under this subsection 6.22(e)(8) only~~
9 ~~by filing in the San Francisco Superior Court a petition for a writ of mandate under California Code of~~
10 ~~Civil Procedure, Section 1084, et seq., as applicable and as may be amended from time to time.~~

11 ~~—— (D) **Distribution of Forfeiture and Damages.** The Controller shall withhold any~~
12 ~~forfeiture as provided in the foregoing paragraphs until such time as either the Contractor or~~
13 ~~subcontractor has conceded to the forfeiture or, in the event of an Appeal, there is a determination no~~
14 ~~longer subject to judicial review. The Controller shall then distribute the amounts withheld in the~~
15 ~~following order: (1) the Labor Standards Enforcement Officer shall make best efforts to distribute back~~
16 ~~wages withheld to the individual workers identified as not having been paid the proper wage rate; (2)~~
17 ~~the penal sums provided for above shall inure to the benefit of the general fund of the City; (3) the~~
18 ~~Controller shall hold the balance of any back wages in escrow for workers who the Labor Standards~~
19 ~~Enforcement Officer, despite his or her best efforts, cannot locate. In the event back wages are~~
20 ~~unclaimed for a period of three years, the Controller shall undertake administrative procedures for~~
21 ~~unclaimed funds in conformance with California Government Code Section 50050, et seq., as may be~~
22 ~~amended from time to time. This subsection 6.22(e)(8)(D) also shall be applicable to damages obtained~~
23 ~~as a result of an enforcement action pursuant to subsection 6.22(e)(8)(E), as applicable.~~

24 ~~—— (E) **Remedies for Non-Compliance with Determination of Violation.** No later than 30~~
25 ~~days after receipt of a Notice of Determination or, in the case of an Appeal, after an adverse final~~

~~determination by a hearing officer, the contractor and/or subcontractor shall comply with the Notice of Determination of Violation by paying the amounts due for back wages and any penalty amount as set forth in the Determination of Violation or final determination. The contractor and/or subcontractor shall, in addition, be subject to the penalties set forth in Article V of this Chapter 6, including debarment. If any contractor and/or subcontractor fails to pay the amounts required under this subsection 6.22(e)(8)(E) within the required 30 days, the City may bring a civil action in a court of competent jurisdiction against the non-complying party and, upon prevailing, shall be entitled to such legal and equitable relief as may be appropriate to remedy the violation including, without limitation: (i) damages in the amount of back wages and any penalty amounts due to workers for violation of the prevailing wage requirement, which amounts the City shall, on receipt, distribute to workers following the procedures in subsection 6.22(e)(8)(D); and (ii) an award of reasonable attorney's fees and costs.~~

(f) Hours and Days of Labor.

Contractors and subcontractors performing a Public Work or Improvement for the City shall comply with the Hours and Days of Labor requirements of Labor and Employment Code Article 105.

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

~~—(2) **Noncompliance and Forfeiture.** Any Contractor or subcontractor who shall violate any of the provisions of this subsection 6.22(f) shall be liable for the same penalties and forfeits as those specified in subsection 6.22(e) of this Chapter; penalties and forfeits shall be applicable for each~~

1 ~~laborer, mechanic or artisan employed for each calendar day or portion thereof whereon such laborer,~~
2 ~~mechanic or artisan is compelled or permitted to work more than the days and hours specified herein.~~
3 ~~The provisions of this subsection 6.22(f) shall be made a part of all Contracts and subcontracts for the~~
4 ~~construction of any Public Work or Improvement.~~

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

18 * * * *

19
20 Section 4. Chapter 6, Article II, of the Administrative Code is hereby amended by
21 revising Section 6.24, to read as follows:

22 **SEC. 6.24. OFFICE OF LABOR STANDARDS ENFORCEMENT; PREVAILING WAGE**
23 **REQUIREMENTS.**

24 ~~—(a)—Subject to the approval of the Mayor and Director of the Department of Administrative~~
25 ~~Services, As set forth in Article 107 of the Labor and Employment Code, the Labor Standards~~

1 Enforcement Officer ~~shall~~ has, without limitation, the authority to administer, develop, and/or enforce
2 the labor standards imposed by the Charter and this Chapter 6. ~~develop and administer a plan for the~~
3 ~~enforcement of the Prevailing Wage requirements and other labor standards imposed by the Charter~~
4 ~~and this Chapter 6 on Public Work or Improvements as defined in subsection 6.22(e). The Labor~~
5 ~~Standards Enforcement Officer shall coordinate his or her activities with federal and state labor~~
6 ~~standards agencies. The Labor Standards Enforcement Officer shall direct the City's enforcement of the~~
7 ~~Prevailing Wage requirements and other labor standards imposed by the Charter and this Chapter 6 on~~
8 ~~Contractors as directed by the Mayor, and to this end all City departments shall cooperate with the~~
9 ~~Labor Standards Enforcement Officer. The Labor Standards Enforcement Officer has the authority to~~
10 ~~seek for violations of Prevailing Wage, working conditions and apprenticeship requirements all of the~~
11 ~~penalties imposed by this Chapter, including the authority to file charges, in the same manner and to~~
12 ~~the same extent as a Department Head, which may lead to the debarment of the Contractor under~~
13 ~~Article V of this Chapter 6. The Labor Standards Enforcement Officer shall oversee the training of City~~
14 ~~personnel in the area of labor standards enforcement. In accordance with applicable law, the Mayor~~
15 ~~may enter into a contract for investigative and monitoring services to further the purposes of this~~
16 ~~Section 6.24. In evaluating the qualifications of persons seeking that contract, the Mayor shall~~
17 ~~consider, among other relevant factors, the experience of those persons in monitoring and investigating~~
18 ~~labor standards compliance.~~

19 ~~—(b) Subject to the fiscal and budgetary provisions of the Charter, the Office of Labor~~
20 ~~Standards Enforcement is authorized to receive from departments awarding contracts the amount~~
21 ~~reasonably calculated to pay for the costs, including litigation costs, of enforcing the City Prevailing~~
22 ~~Wage requirements and other labor standards for contracts awarded by those departments. The Labor~~
23 ~~Standards Enforcement Officer shall supervise the expenditure of all funds appropriated for~~
24 ~~enforcement of Prevailing Wage requirements and other labor standards imposed by the Charter and~~
25 ~~this Chapter 6 on Contractors.~~

1 ~~—(c) The Labor Standards Enforcement Officer shall establish an administrative procedure to~~
2 ~~address allegations of labor standards violations in connection with any contract under this Chapter 6.~~
3 ~~The Labor Standards Enforcement Officer shall have sole authority over the administration of this~~
4 ~~complaint procedure. The complaint procedure shall include but need not be limited to the following:~~
5 ~~(1) any person may file a complaint, written or oral, alleging one or more violations of any labor~~
6 ~~standards requirement imposed by this Chapter 6 on Public Work Contractors; (2) before beginning to~~
7 ~~investigate the complaint, the Labor Standards Enforcement Officer shall determine if the allegations~~
8 ~~of the complaint are sufficient and based on that assessment shall determine to either dismiss it or~~
9 ~~proceed with an investigation; (3) if the Labor Standards Enforcement Officer at any time determines~~
10 ~~that the allegations contained in the complaint are without merit, the Labor Standards Enforcement~~
11 ~~Officer shall notify the complainant; and (4) if the Labor Standards Enforcement Officer finds that any~~
12 ~~allegations in a complaint have merit, the Labor Standards Enforcement Officer shall proceed in~~
13 ~~accordance with the enforcement procedures under Section 6.22. This complaint procedure is~~
14 ~~applicable to allegations of labor standards violations in connection with any Public Work contract~~
15 ~~under this Chapter 6, but is not applicable to those matters under the administrative jurisdiction of the~~
16 ~~San Francisco Human Rights Commission. This procedure shall not preclude the Labor Standards~~
17 ~~Enforcement Officer from initiating or proceeding with an investigation on his or her own authority.~~
18 ~~All Contractors and departments engaged in Public Work shall cooperate fully with the Office of Labor~~
19 ~~Standards Enforcement in connection with any investigation of any complaint filed in accordance with~~
20 ~~this complaint procedure. The Labor Standards Enforcement Officer may interview, either at the~~
21 ~~worksite or elsewhere, any witness who may have information relative to a complaint.~~

22
23 Section 5. Chapter 23, Article VII, of the Administrative Code is hereby amended by
24 revising Section 23.60, deleting Sections 23.61 and 23.62, and renumbering existing Sections
25

23.63, 23.64, 23.65, and 23.66 as new Sections 23.61, 23.62, 23.63, and 23.64 respectively, to read as follows:

SEC. 23.60. COMPLIANCE WITH THE LABOR AND EMPLOYMENT CODE SCOPE OF ARTICLE.

When the City sells real property for Housing Development or leases real property as a landlord or as a tenant, and the real property in each of these types of transactions is located within the jurisdictional boundaries of the City, the City, in the applicable sales contract or lease and all ~~contracts for a Covered Real Estate Project~~ *Construction Contracts* thereunder, shall require compliance with the ~~p~~Prevailing ~~w~~Wage, apprenticeship, and local hiring requirements as set forth in Articles 101 through 108 of the Labor and Employment Code, as applicable.

SEC. 23.61. PREVAILING WAGE AND APPRENTICESHIP REQUIREMENTS.

~~(a) Definitions. The following definitions shall apply to the terms used in this Article VII:~~

~~—Apprentice. Any worker who is indentured in a construction apprenticeship program that maintains current registration with the State of California's Division of Apprenticeship Standards.~~

~~—Construction Contract. The construction agreement entered into by the Contracting Party for Covered Construction.~~

~~—Contracting Party. Any entity or individual, or successor in interest to the rights of any entity or individual, who is (1) the buyer of real property intended for Housing Development under a City-as-seller contract, (2) the landlord under a City-as-tenant lease, or (3) the tenant under a City-as-landlord lease; provided, however, that public entities shall not be considered Contracting Parties.~~

~~—Contractor. Any person, firm, partnership, owner operator, limited liability company, corporation, joint venture, proprietorship, trust, association, or other entity that directly enters into a Construction Contract to perform Covered Construction work. A Contractor may also be referred to as a "Prime Contractor" or "General Contractor."~~

1 ~~—**Covered Construction**. Any project for any erection, construction, renovation, alteration,~~
2 ~~improvement, demolition, excavation, installation, or repair, including tenant improvements, that meets~~
3 ~~the following requirements: (1) the real property on which the project is located is within the~~
4 ~~jurisdictional boundaries of the City; (2) the estimated project cost exceeds the Threshold Amount; and~~
5 ~~(3) the project is performed on (A) any real property sold to the Contracting Party under a City-as-~~
6 ~~seller contract for Housing Development; or (B) real property leased by the City as a landlord or~~
7 ~~leased to the City as a tenant, where the construction is performed before or during the term of the~~
8 ~~lease in accordance with plans, specifications, or criteria approved by the City.~~

9 ~~—**Housing Development**. Any residential or mixed-use project that includes the construction,~~
10 ~~expansion, or rehabilitation of three or more residential units.~~

11 ~~—**Prevailing Rate of Wages**. The Prevailing Rate of Wages as defined in Section 6.1, and~~
12 ~~established under subsections 6.22(e)(3) and 6.22(f), of the Administrative Code.~~

13 ~~—**Subcontractor**. Any person, firm, partnership, owner operator, limited liability company,~~
14 ~~corporation, joint venture, proprietorship, trust, association, or other entity that contracts with a Prime~~
15 ~~Contractor or a subcontractor to provide construction work on Covered Construction.~~

16 ~~—**Threshold Amount**. The Threshold Amount as defined in Section 6.1 of the Administrative~~
17 ~~Code.~~

18 ~~—(b) **Prevailing Wage and Apprentice Requirements**. The City shall include in all real~~
19 ~~property sales contracts and leases that include or contemplate Covered Construction the requirement~~
20 ~~that the Contracting Party and each Contractor and Subcontractor performing work on Covered~~
21 ~~Construction pay prevailing wages and employ Apprentices in accordance with this Section 23.61.~~
22 ~~Each Contracting Party shall comply with such provisions as if the Covered Construction is a "public~~
23 ~~work and improvement" under subsection 6.22(e) of this Code and the California Labor Code, and as if~~
24 ~~the Contractors and Subcontractors are "Contractors" and "subcontractors" under subsection 6.22(e)~~
25 ~~of this Code.~~

1 ~~—The following requirements are in addition to any applicable requirements under state and~~
2 ~~federal law:~~

3 ~~—(1) **Prevailing Wage Rates.** Each Contracting Party shall (A) pay, and shall require its~~
4 ~~Contractors and Subcontractors to pay, all persons performing work on Covered Construction no less~~
5 ~~than the applicable Prevailing Rate of Wages, and (B) comply with, and require its Contractors and~~
6 ~~Subcontractors to comply with, the provisions of subsections 6.22(e)(5), (6), (7) and subsection 6.22(f)~~
7 ~~of this Code. If, under subsection 6.22(e)(6) of this Code, there is no department authorized to award a~~
8 ~~contract under Chapter 6 of this Code for whom the Contractor or Subcontractor shall maintain weekly~~
9 ~~certified payroll records for submission, then the Contractor or Subcontractor shall maintain weekly~~
10 ~~certified payroll records to be submitted to the Office of Labor Standards Enforcement upon request in~~
11 ~~order to comply with Section 6.22(e)(6) of this Code.~~

12 ~~—(2) **Employment of Apprentices.** Each Contracting Party shall require its Contractors and~~
13 ~~Subcontractors to employ Apprentices in compliance with the requirements of the State Apprenticeship~~
14 ~~Program as set forth in the California Labor Code, Division 3, Chapter 4 commencing at Section 3070,~~
15 ~~and Section 1777.5 of the Labor Code, as amended from time to time.~~

16 ~~—(c) **City as Third Party Beneficiary.** Each Construction Contract will (1) require the~~
17 ~~payment of the Prevailing Rate of Wages and employment of Apprentices in all contracts and~~
18 ~~subcontracts for the Covered Construction, with specific reference to this Section 23.61, (2) name the~~
19 ~~City and County of San Francisco, affected workers, and employee organizations formally representing~~
20 ~~affected workers, as third party beneficiaries for the limited purpose of having the right to enforce the~~
21 ~~prevailing wage and apprenticeship requirements, including the right to file charges and seek penalties~~
22 ~~against any Contractor or Subcontractor in accordance with this Article VII and (3) require the~~
23 ~~Contracting Party to reasonably cooperate with the City in any action or proceeding against a~~
24 ~~Contractor or Subcontractor that fails to pay the Prevailing Rate of Wages or employ Apprentices as~~
25 ~~required. A Contracting Party that requires the payment of prevailing wages and employment of~~

1 ~~Apprentices in the Construction Contract and reasonably cooperates with the City in any enforcement~~
2 ~~action shall not be in breach of the applicable sales contract or lease with the City due to a~~
3 ~~Contractor's or Subcontractor's failure to pay the Prevailing Rate of Wages or employ Apprentices. So~~
4 ~~long as the Contracting Party satisfies the requirements of the previous sentence, any enforcement~~
5 ~~action by the City, through the City's Labor Standards Enforcement Officer or otherwise, shall be~~
6 ~~directly against the Contractor or Subcontractor that failed to pay prevailing wages or employ~~
7 ~~Apprentices as required. Nothing in this Section 23.61 shall limit the remedies available to a City~~
8 ~~department, as set forth in the applicable sales contract or lease, for a Contracting Party's failure to~~
9 ~~require the payment of the Prevailing Rate of Wages or the employment of Apprentices in a~~
10 ~~Construction Contract, or for a Contracting Party's failure to reasonably cooperate with the City in~~
11 ~~any enforcement action as set forth above.~~

12 ~~—(d) **Enforcement.** The City's Labor Standards Enforcement Officer shall have the authority~~
13 ~~to enforce the prevailing wage and apprenticeship requirements against a Contractor or Subcontractor~~
14 ~~as set forth in this Section 23.61.~~

15 ~~—(1) **Penalty and Forfeiture.** Any Contractor or Subcontractor that fails to pay the~~
16 ~~Prevailing Rate of Wages or fails to employ Apprentices as required under this Section 23.61 shall (A)~~
17 ~~pay and, in the case of any Subcontractor so failing, the original Contractor and the Subcontractor~~
18 ~~shall be jointly and severally liable to pay the City back wages due plus penalties in amounts consistent~~
19 ~~with analogous provisions of the California Labor Code as amended from time to time, including~~
20 ~~Sections 1775, 1813 and 1777.7, but not less than the sum of \$50 for each day or portion thereof for~~
21 ~~each violation, and (B) be subject to the penalties set forth in Article V of this Chapter 6,1 including~~
22 ~~debarment.~~

23 ~~—(2) The Labor Standards Enforcement Officer shall determine whether a contractor or~~
24 ~~Subcontractor has failed to comply with the prevailing wage and apprenticeship requirements of this~~
25 ~~Section. If after conducting an investigation, the Labor Standards Enforcement Officer determines that~~

1 a violation has occurred, the Officer shall issue and serve a Determination of Violation on the
2 Contractor or Subcontractor that sets forth the basis of the determination and orders payment of back
3 wages due plus the penalty sum set forth in subsection 23.61(d)(1). Service of the Determination of
4 Violation shall be made by United States mail and the date of service shall be the date of mailing.

5 ~~—(3)—~~ **Recourse Procedure.** A Contractor and/or a Subcontractor may appeal from a
6 Determination of Violation. The Controller shall adopt and maintain rules and regulations for any
7 appeal under this subsection 23.61(d)(3), which rules shall be consistent with the following
8 parameters:

9 ~~—(A)—~~ Any Appeal from a Determination of Violation (referred to in this subsection
10 23.61(d)(3) as the "Appeal") shall be filed in writing by the Contractor and/or Subcontractor (referred
11 to in this subsection 23.61(d)(3), whether singular or plural, as the "Appellant") within 15 days of the
12 date of service of the Determination of Violation. Appellant shall serve the Appeal on the Controller
13 and the Labor Standards Enforcement Officer. Failure by the contractor or Subcontractor to serve a
14 timely, written Appeal shall constitute concession to the Determination of Violation, and that
15 determination shall be deemed final upon expiration of the 15-day period.

16 ~~—(B)—~~ The Office of Labor Standards Enforcement shall promptly afford Appellant an
17 opportunity to meet and confer in good faith regarding possible resolution of the Determination of
18 Violation in advance of further proceedings under this subsection 23.61(d)(3), with the intention that
19 such meeting occur within 30 days of the date the Appeal is filed.

20 ~~—(C)—~~ After the expiration of 30 days following the date the Appeal is filed, any party may
21 request in writing, with concurrent notice to all other parties, that the Controller appoint a hearing
22 officer to hear and decide the Appeal. If no party requests appointment of a hearing officer, the
23 Determination of Violation shall be deemed final on the 60th day after the date the Appeal is filed.

24 ~~—(D)—~~ Within 15 days of receiving a written request for appointment of a hearing officer
25 under subsection 23.61(d)(3)(C), the Controller shall appoint an impartial hearing officer and

1 ~~immediately notify the enforcing official and Appellant, and their respective counsel or authorized~~
2 ~~representative if any, of the appointment. The appointed hearing officer shall be an Administrative Law~~
3 ~~Judge with at least 10 years' experience with the City and not less than two years' experience in labor~~
4 ~~law, prevailing wage, and/or wage and hour matters, or shall be an attorney with knowledge of and not~~
5 ~~less than five years' experience in labor law, prevailing wage, and/or wage and hour matters.~~

6 ~~——(E) The hearing officer shall promptly set a date for a hearing. The hearing must~~
7 ~~commence within 45 days of the date of the notification of the hearing officer appointment, and~~
8 ~~conclude within 75 days of such notice. The hearing officer shall conduct a fair and impartial~~
9 ~~evidentiary hearing in conformance with the time limitations set forth in this subsection 23.61(d)(3) and~~
10 ~~in the rules and regulations, so as to avoid undue delay in the resolution of any appeal. The hearing~~
11 ~~officer shall have the discretion to extend the times under this subsection 23.61(d)(3), and any time~~
12 ~~requirements under the rules and regulations, only upon a showing of good cause.~~

13 ~~——(F) Appellant has the burden of proving by a preponderance of the evidence that the~~
14 ~~basis for the Determination of Violation is incorrect, including any back wage and penalty assessments~~
15 ~~that are at issue in the Appeal.~~

16 ~~——(G) Within 30 days of the conclusion of the hearing, the hearing officer shall issue a~~
17 ~~written decision affirming, modifying, or dismissing the Determination of Violation. The decision of the~~
18 ~~hearing officer shall consist of findings and a determination. The hearing officer's findings and~~
19 ~~determination shall be the final determination of the City.~~

20 ~~——(H) Appellant may appeal a final determination under this subsection 23.61(d)(3) only by~~
21 ~~filing in the San Francisco Superior Court a petition for a writ of mandate under California Code of~~
22 ~~Civil Procedure Section 1084 et seq., as applicable and as amended from time to time.~~

23 ~~**(4) Remedies for Non-Compliance with Determination of Violation.** No later than 30 days~~
24 ~~after receipt of a Determination of Violation or, in the case of an Appeal, after an adverse final~~
25 ~~determination by a hearing officer, the Contractor or Subcontractor shall comply with the~~

1 ~~Determination of Violation by paying the amounts due for back wages and any penalty amount as set~~
2 ~~forth therein. The Contractor or Subcontractor shall, in addition, be subject to the penalties set forth in~~
3 ~~Article V of Chapter 6 of this Code, including debarment. If any Contractor or Subcontractor fails to~~
4 ~~pay the amounts required under this Section 23.61 within the required 30 days, it shall be subject to~~
5 ~~enforcement actions, including the following:~~

6 ~~—— (A) The City may bring a civil action in a court of competent jurisdiction against the non-~~
7 ~~complying party and, upon prevailing, shall be entitled to such legal and equitable relief as may be~~
8 ~~appropriate to remedy the violation including, without limitation: (i) damages in the amount of back~~
9 ~~wages and any penalty amounts due to workers for violation of the prevailing wage and/or~~
10 ~~apprenticeship requirements, which amounts the City shall, on receipt, distribute to workers following~~
11 ~~the procedures in subsection 23.61(d)(5); and (ii) an award of reasonable attorney's fees and costs;~~

12 ~~(B) Each worker entitled to back pay as set forth in the Determination of Violation or,~~
13 ~~where a hearing officer has decided the matter, as set forth in the decision of the hearing officer, may~~
14 ~~bring a civil action in a court of competent jurisdiction against the non-complying party and, upon~~
15 ~~prevailing, shall be entitled to such legal and equitable relief as may be appropriate to remedy the~~
16 ~~violation including, without limitation: (i) damages in the amount of back wages due to such workers~~
17 ~~for violation of the prevailing wage and/or penalties due for violation of the apprenticeship~~
18 ~~requirements; and (ii) an award of reasonable attorney's fees and costs. An employee organization that~~
19 ~~formally represents a worker or workers entitled to bring a civil action under this subsection~~
20 ~~23.61(d)(4)(B) may do so on behalf of the worker or workers, with the same range of possible legal and~~
21 ~~equitable relief as would be available in an action brought by the worker or workers.~~

22 ~~(5) **Distribution of Damages.** Upon payment of back wages and/or penalties, as provided in~~
23 ~~the foregoing paragraphs, the City shall distribute the amounts in the following order: (A) the Labor~~
24 ~~Standards Enforcement Officer shall make reasonable best efforts to distribute back wages withheld to~~
25 ~~the individual workers identified as not having been paid the proper wage rate; (B) the assessed~~

1 ~~penalties shall inure to the benefit of the general fund of the City; (C) the Controller shall hold the~~
2 ~~balance of any back wages in escrow for workers whom the Labor Standards Enforcement Officer,~~
3 ~~despite his or her reasonable best efforts, cannot locate. In the event back wages are unclaimed for a~~
4 ~~period of three years, the Controller shall undertake administrative procedures for unclaimed funds in~~
5 ~~conformance with California Government Code Section 50050 et seq., as may be amended from time to~~
6 ~~time. This subsection 23.61(d)(5) also shall be applicable to damages obtained as a result of an~~
7 ~~enforcement action pursuant to subsection 23.61(d)(4), as applicable.~~

8
9 ***SEC. 23.62. LOCAL HIRE REQUIREMENTS.***

10 ~~(a) **Local Hire Requirement.** The City shall include in all real property sales contracts for~~
11 ~~Housing Development, as that term is defined in Section 23.61(a), and in all City as landlord leases~~
12 ~~that include or contemplate construction of a Covered Project, the requirement that the purchaser or~~
13 ~~tenant of the real property comply with the requirements of the City's Local Hiring Policy, as set forth~~
14 ~~in Administrative Code Chapter 82 and under the standards set forth in subsection 82.4(b). For~~
15 ~~purposes of this Section 23.62, the terms "Covered Project" and, notwithstanding Section 23.61,~~
16 ~~"Contractor" and "Subcontractor," shall have the same meaning as the definitions set forth in Section~~
17 ~~82.3.~~

18 ~~(b) **Mandatory Participation Levels.** In the performance of work or labor on a Covered~~
19 ~~Project, each purchaser or tenant shall comply, and shall require its Contractors and Subcontractors~~
20 ~~to comply, with the mandatory participation levels set forth in Section 82.5 of the Administrative Code.~~

21 ~~(c) **City as Third Party Beneficiary.** Each applicable construction contract for a Covered~~
22 ~~Project will (1) require compliance with the local hiring policy, with reference to this Section 23.62;~~
23 ~~(2) name the City and County of San Francisco as a third party beneficiary for the limited purpose of~~
24 ~~having the right to enforce the local hiring policy, including the right to file charges and seek penalties~~
25 ~~against any Contractor or Subcontractor; and (3) require the purchaser or tenant to reasonably~~

1 ~~cooperate with the City in any action or proceeding against a Contractor or Subcontractor that fails to~~
2 ~~comply with the requirements of this Section 23.62. A purchaser or tenant that requires compliance~~
3 ~~with this Section in the construction contract for the Covered Project and reasonably cooperates with~~
4 ~~the City in any enforcement action shall not be in breach of the applicable sales contract or lease with~~
5 ~~the City due to a Contractor's or Subcontractor's failure to comply or to meet the mandatory~~
6 ~~participation levels. So long as the purchaser or tenant complies with the requirements of the previous~~
7 ~~sentence, any enforcement action by the City, through the Office of Economic and Workforce~~
8 ~~Development ("OEWD") or otherwise, shall be directly against the Contractor or Subcontractor that~~
9 ~~failed to meet the mandatory participation levels. Nothing in this Section shall limit the remedies~~
10 ~~available to a City department, as set forth in the applicable sales contract or lease, for a purchaser's~~
11 ~~or tenant's failure to require compliance with this Section in a construction contract for the Covered~~
12 ~~Project or to reasonably cooperate with the City in any enforcement action as set forth above.~~

13 ~~(d) **Enforcement.**~~

14 ~~(1) **Assessment of Penalties.** OEWD shall have the authority to enforce this Section~~
15 ~~23.62 against a Contractor or Subcontractor as set forth in Administrative Code Section 82.8. OEWD~~
16 ~~shall determine whether a Contractor or Subcontractor has failed to comply with the local hiring~~
17 ~~requirements. If after conducting an investigation, OEWD determines that a violation has occurred, it~~
18 ~~shall issue and serve an assessment of penalties that sets forth the basis of the assessment and orders~~
19 ~~payment of penalties under subsection 82.8(f) of this Code.~~

20 ~~(2) **Remedies for Non-Compliance with Assessment of Penalties.** Each Contractor~~
21 ~~and Subcontractor shall comply with the final assessment of penalties by paying the amounts due for~~
22 ~~wages as set forth in Administrative Code subsection 82.8(f)(3) no later than 30 days after the~~
23 ~~determination or decision of the hearing officer is final. The Contractor or Subcontractor shall, in~~
24 ~~addition, be subject to the penalties set forth in Article V of Chapter 6 of the Administrative Code,~~
25 ~~including debarment. If any Contractor or Subcontractor fails to pay the amounts required under~~

1 ~~subsection 82.8(f) of this Code within the required 30 days, the non-complying party shall be subject to~~
2 ~~the enforcement actions set forth in subsection 82.8(f)(5).~~

3
4 **SEC. 23.613. APPLICATION.**

5 The requirements of this Article VII are intended to have prospective effect only, and
6 shall not be interpreted to impair the obligations of any existing sales contract, lease, or
7 amendment thereto entered into by the City before the operative date of this Article VII. Where
8 the Covered Construction or Covered Project involves Housing Development on real property
9 sold by the City, the requirements of this Article VII shall terminate upon issuance of a final
10 certificate of occupancy for the Covered Construction or Covered Project.

11
12 **SEC. 23.624. NO CAUSE OF ACTION AGAINST THE CITY.**

13 In no event shall any person or entity have the right to bring an action against the City
14 based on any alleged failure to enforce or negligent enforcement of the requirements of this
15 Article VII.

16
17 **SEC. 23.635. PREEMPTION.**

18 In contracts that involve the use of any funds furnished, given, or loaned by the
19 Government of the United States or the State of California, all laws, rules and regulations of
20 the Government of the United States or the State of California or of any federal or State
21 departments relative to the performance of such work and the conditions under which the
22 work is to be performed, shall prevail over the requirements of this Article VII when such laws,
23 rules or regulations are in conflict.

1 **SEC. 23.6~~46~~. SEVERABILITY.**

2 If any part or provision of this Article VII, or the application thereof to any person or
3 circumstance, is held invalid, the remainder of this Article, including the application of such
4 part or provisions to other persons or circumstances, shall not be affected thereby and shall
5 continue in full force and effect. To this end, the provisions of this Article are severable.

6
7 Section 6. Chapters 66, 82, and 83 of the Administrative Code are hereby amended by
8 revising Sections 66.13, 82.4, 82.8, and 83.4, to read as follows:

9 **SEC. 66.13. PREVAILING WAGES.**

10 All construction funded in whole or in part by a Loans shall be subject to the requirements of
11 the Prevailing Wage Provisions, Articles 101 through 107 of the Labor and Employment Code ~~are~~
12 ~~subject to the highest general prevailing rate of wages as determined in accordance with~~
13 ~~Administrative Code Section 6.22E or other applicable City laws regarding the determination of~~
14 ~~prevailing wages.~~

15
16 **SEC. 82.4. COVERAGE.**

17 (a) **Threshold for Public Work and Improvement Projects.** This Policy applies to
18 contracts issued by the City with Prime Contractors for Public Works or Improvements
19 estimated to cost in excess of the Threshold Amount set forth in Section 6.1 of the
20 Administrative Code, as that amount may be amended from time to time.

21 (b) **Threshold for Projects Constructed on Property Owned or Sold by the**
22 **City.**

23 (1) For purposes of this Chapter 82 only, this Policy applies to

24 (A) all construction projects on real property owned by the City; and
25

1 (B) all construction projects on City-owned real property located within
2 the jurisdictional boundaries of the City ~~and County of San Francisco~~ that is sold to private
3 parties, or their successor in interest, for the purpose of Housing Development, as defined in
4 Section ~~23.61(a)~~ 101.1 of the ~~Administrative~~ Labor and Employment Code;

5 provided that, under either subsection 82.4(b)(1)(A) or subsection 82.4(b)(1)(B),
6 the project is estimated to cost in excess of the Threshold Amount set forth in Section 6.1 of
7 the Administrative Code, as that amount may be amended from time to time, including
8 construction contracts that are issued by an entity or individual other than the City.

9 * * * *

11 **SEC. 82.8. ENFORCEMENT.**

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

19 * * * *

20 (f) **Compliance Procedures.**

21 (1) **Consequences of Noncompliance.** Awarding Departments and OEWD
22 have the authority to seek for violations of this Policy all of the consequences imposed by or
23 described in this Policy, in the contract for a Covered Project, or by statute, including the
24 authority to assess penalties as described herein, assess damages for other violations of
25

terms of this Policy, and/or seek penalties set forth in Article V of Chapter 6 of the Administrative Code, including debarment.

(2) **Penalties Amount.** Any Contractor or Subcontractor who fails to satisfy Local Hiring Requirements of this Policy applicable to Project Work Hours performed by Local Residents shall forfeit to the City, and, in the case of any Subcontractor so failing, the Contractor and Subcontractor shall jointly and severally forfeit to the City, an amount equal to the journeyman or Apprentice ~~p~~Prevailing ~~W~~age rate, as applicable, with such wage as established by the Board of Supervisors or the California Department of Industrial Relations under Section 103.2 of the Labor and Employment Codes~~subsection 6.22(e)(3) of the Administrative Code~~, for the primary trade used by the Contractor or Subcontractor on the Covered Project for each hour by which the Contractor or Subcontractor fell short of the Local Hiring Requirement. The assessment of penalties under this subsection 82.8(f) shall not preclude the City from exercising any other rights or remedies to which it is entitled.

* * * *

SEC. 83.4. DEFINITIONS.

When used in this Chapter 83, the following terms have the following meanings:

* * * *

"Prevailing Wage" shall mean "Prevailing Wage or Prevailing Rate of Wages" as defined in Labor and Employment Code Section 101.1~~the highest general prevailing rate of wage plus "per diem wages" and wages paid for overtime and holiday work paid in private employment in the county where the work is performed for the various crafts and kinds of labor employed in the performance of any public work or improvement under Chapter 6 of this Code as fixed by Board of Supervisors pursuant to Administrative Code Section 6.22(E)(3). "Per diem wages" are defined pursuant to Labor Code section 1773.1, as amended from time to time.~~

1 * * * *

2
3 Section 7. The Labor and Employment Code is amended by adding Article 101,
4 consisting of Sections 101.1 through 101.4, as follows:

5 **ARTICLE 101: GENERAL PROVISIONS**

6 **SEC. 101.1. GENERAL DEFINITIONS.**

7 *For the purposes of Articles 101 through 109, the following definitions apply.*

8 **Apprentice.** *Any worker who is indentured in a construction apprenticeship program that*
9 *maintains current registration with the State of California's Division of Apprenticeship Standards.*

10 **City.** *The City and County of San Francisco.*

11 **Contractor.** *Any person, firm, partnership, owner operator, limited liability company,*
12 *corporation, joint venture, proprietorship, trust, association, or other entity that directly enters into an*
13 *agreement, including, without limitation, any contract, franchise, lease, or permit, for a Covered*
14 *Contract or Covered Project. A Contractor may also be referred to as a "Prime Contractor" or*
15 *"General Contractor."*

16 **Contracting Officer.** *Any officer or employee of the City authorized to enter into a Covered*
17 *Contract on behalf of the City.*

18 **Covered Contract.** *Covered Contract shall mean an agreement, including, without limitation,*
19 *any contract, franchise, lease, or permit, between the City and a Contractor for the following services:*
20 *"Janitorial Services" as defined in Section 102.2; "Public Off-Street Parking Lots, Garages, or*
21 *Storage Facilities for Automobiles" as defined in Section 102.3; "Theatrical Services" as defined in*
22 *Section 102.4; "Hauling of Solid Waste Generated By The City In Course of City Operations" as*
23 *defined in Section 102.5; "Moving Services" as defined in Section 102.6; "Motor Bus Services" as*
24 *defined in Section 102.7, subject to the provisions of Section 102.7; "Trade Show and Special Event*
25 *Work" as defined in Section 102.8; "Broadcast Services" as defined in Section 102.9; "Loading,*

1 Unloading, and Driving of Commercial Vehicles” as defined in Section 102.10; or “Security Guard
2 Services” as defined in Section 102.11.

3 **Covered Project.** “Covered Project” shall mean a project satisfying one or more of the
4 following definitions:

5 **“Covered Local Project.”** Any Public Work or Improvement as defined in Section 6.1 of
6 the Administrative Code; any residential project required to comply with “City Contracting
7 Requirements” pursuant to Chapter 43, Article IX of the Administrative Code; and/or any project
8 required to pay prevailing wages pursuant to Administrative Code Section 66.13.

9 **“Covered State Project.”** Any “public works” as defined in California Labor Code
10 Section 1720; any project for which Prevailing Wages are required to be paid pursuant to California
11 Labor Code Section 1782; and/or any project subject to prevailing wage requirements under State law,
12 including, but not limited to, California Government Code Section 65913.4(a)(8)(A)(ii), where the City,
13 through its discretion or not, approves or permits plans, specification, or criteria for the project, and
14 State law does not bar City enforcement of the prevailing wage requirements.

15 **“Covered Real Estate Project.”** Any project for any erection, construction, renovation,
16 alteration, improvement, demolition, excavation, installation, or repair, including tenant improvements,
17 that meets the following requirements: (1) the real property on which the project is located is within the
18 jurisdictional boundaries of the City; (2) the estimated project cost exceeds the Threshold Amount; and
19 (3) the project is performed, in whole or in part, on (A) any real property sold to the Real Property
20 Contracting Party under a City-as-seller contract for Housing Development; or (B) real property
21 leased by the City as a landlord or leased to the City as a tenant, where the construction is performed
22 before or during the term of the lease in accordance with plans, specifications, or criteria approved by
23 the City.

24 The scope of the Covered Project shall include any trade work performed at any stage of
25 construction, including, without limitation, preconstruction work.

1 **Department Head.** *The term as defined under Section 6.1 of the Administrative Code; or the*
2 *Purchaser or any other officer authorized to award a Services contract under Chapter 21 of the*
3 *Administrative Code.*

4 **Housing Development.** *Any residential or mixed-use project that includes the construction,*
5 *expansion, or rehabilitation of three or more residential units.*

6 **Labor Standards Enforcement Officer.** *Labor Standards Enforcement Officer shall have the*
7 *meaning established in Section 2A.23(b) of the Administrative Code.*

8 **Prevailing Wage or Prevailing Rate of Wages.** *The highest general prevailing rate of wages*
9 *plus “per diem wages” and wages paid for overtime and holiday work paid in private employment for*
10 *similar work for the various crafts and kinds of labor employed in the performance of any Covered*
11 *Project or Covered Contract. “Per diem wages” are defined pursuant to California Labor Code*
12 *Section 1773.1, as amended from time to time, which includes benefits, as defined therein.*

13 **Prevailing Wage Provisions.** *“Prevailing Wage Provisions” refers collectively to Articles 101*
14 *through 107. Certain of these provisions include subjects other than Prevailing Wage, such as*
15 *apprenticeship requirements in Article 104 and the hours and days of labor requirements in Article*
16 *105.*

17 **Real Property Contracting Party.** *Any entity or individual, or successor in interest to the rights*
18 *of any entity or individual, who is: (1) the buyer of real property intended for Housing Development*
19 *under a City-as-seller contract, (2) the landlord under a City-as-tenant lease, or (3) the tenant under a*
20 *City-as-landlord lease; provided, however, that a public entity shall not be considered a Real Property*
21 *Contracting Party.*

22 **Subcontractor.** *Any person, firm, partnership, owner operator, limited liability company,*
23 *corporation, joint venture, proprietorship, trust, association, or other entity that contracts with a*
24 *Contractor or a Subcontractor to provide work on a Covered Contract or Covered Project.*

1 **Threshold Amount.** The Threshold Amount as defined in Section 6.1 of the Administrative
2 Code.

3
4 **SEC. 101.2. NO CAUSE OF ACTION AGAINST THE CITY.**

5 In no event shall any person or entity have the right to bring an action against the City based on
6 any alleged failure to enforce or negligent enforcement of the requirements of Articles 101 through
7 109.

8
9 **SEC. 101.3. PREEMPTION.**

10 For any contract that receives funds furnished, given, or loaned by the Government of the
11 United States or the State of California, any requirement of Articles 101 through 109 that conflicts with
12 a requirement of the funding source shall not apply to the contract. Nothing in Articles 101 through
13 109 shall be interpreted or applied so as to create any power or duty in conflict with any federal law.
14 Nothing in Articles 101 through 109 shall be interpreted or applied so as to create any power or duty in
15 conflict with any State law, except to the extent the City's home rule powers govern. For the purposes
16 of this Section 101.3, a conflict does not exist where the federal law or State law does not prohibit
17 standards exceeding those set by the federal law or State law.

18
19 **SEC. 101.4. SEVERABILITY.**

20 If any part or provision, including a section, subsection, sentence, or word, of Articles 101
21 through 109 or the application thereof to any person or circumstance, is held invalid, the remainder of
22 Articles 101 through 109, including the application of such part or provisions to other persons or
23 circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the
24 provisions of Articles 101 through 109 are severable.

1 Section 8. Article 102 of the Labor and Employment Code is hereby amended by
2 revising Sections 102.1 through 102.11, to read as follows:

3 **SEC. 102.1. STANDARD PROVISIONS GOVERNING THE PREVAILING RATE OF**
4 **WAGES FOR SERVICES CONTRACTS, WORKER RETENTION, AND USE OF EMPLOYEES**
5 **FOR WORK UNDER CITY CONTRACTS FOR CERTAIN SERVICES.**

6 (a) **Prevailing Wage Requirement.** Every Covered Contract issued by the City ~~and~~
7 ~~County of San Francisco~~ must require that any Individual performing services thereunder be
8 paid not less than the Prevailing Rate of Wages and must include a provision in which the
9 Contractor agrees to comply with, and to require Subcontractors to comply with, Prevailing Wage
10 requirements imposed by the applicable provisions of Article 103.

11 (b) **Definitions.** For purposes of this Article 102, the following definitions shall apply
12 to the terms used herein.

13 ~~—“City” shall mean the City and County of San Francisco.~~

14 ~~—“Contracting Officer” shall mean any officer or employee of the City authorized to enter into a~~
15 ~~Covered Contract on behalf of the City.~~

16 ~~—“Contractor” shall mean any Person who submits a bid or proposal and/or enters into a Covered~~
17 ~~Contract.~~

18 ~~—“Covered Contract” shall mean an agreement between the City and a Contractor for the following~~
19 ~~services: “Motor Bus Services” as defined in Section 102.7, subject to the provisions of Section 102.7;~~
20 ~~“Janitorial Services” as defined in Section 102.2; “Public Off-Street Parking Lots, Garages, or~~
21 ~~Storage Facilities for Automobiles” as defined in Section 102.3; “Theatrical Services” as defined in~~
22 ~~Section 102.4; “Solid Waste Generated By The City In Course of City Operations” as defined in~~
23 ~~Section 102.5; “Moving Services” as defined in Section 102.6; “Trade Show and Special Event Work”~~
24 ~~as defined in Section 102.8; “Broadcast Services” as defined in Section 102.9 and “Loading,~~
25

~~Unloading, and Driving of Commercial Vehicles” under Section 102.10 and “Security Guard Services” as defined in Section 102.11.~~

“Individual” shall mean any person who performs work under a Covered Contract.

~~—“Permit” shall mean a permit to use City property, and shall include a permit to use a public right of way, including a street or sidewalk encroachment permit or closure permit, including but not limited to an ISCOTT (Interdepartmental Staff Committee on Traffic and Transportation) permit.~~

“Person” shall mean any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ or hire individuals or enter into contracts.

~~—“Prevailing Rate of Wages” shall mean that rate of compensation, including fringe benefits or the matching equivalents thereof, being paid to a majority of workers engaged in the services for which a Covered Contract is entered into by the City and County of San Francisco, if a majority of such workers are paid at a single rate; if there is no single rate being paid to a majority, then the prevailing rate shall be that single rate being paid to the greatest number of workers.~~

~~—“Subcontract” shall mean any agreement under or subordinate to a prime Contract.~~

~~—“Subcontractor” shall mean any Person who enters into a Subcontract with a Contractor.~~

~~—(c) Prevailing Wage Rate Requirements.~~

~~—(1) Determination of Prevailing Rate of Wages. It shall be the duty of the Board of Supervisors, from time to time and at least once during each calendar year, to fix and determine the Prevailing Rate of Wages paid in private employment in the City for Individuals engaged in services under Covered Contracts including such rate of wages paid for overtime and holiday work, which said Prevailing Rate of Wages shall be fixed and determined as follows:~~

~~—The Civil Service Commission shall furnish to the Board of Supervisors on or before the first Monday in November of each year, data as to the Prevailing Rate of Wages for Individuals engaged in services under Covered Contracts including such rate of wages paid for overtime and holiday work,~~

1 ~~and the Board of Supervisors shall, upon receipt of such data, fix and determine the Prevailing Rate of~~
2 ~~overtime and holiday work, as paid for similar work in the City in private employment. Such Prevailing~~
3 ~~Rate of Wages as so fixed and determined by the Board of Supervisors shall remain in force and shall~~
4 ~~be deemed to be the Prevailing Rate of Wages paid in private employment for similar work, until the~~
5 ~~same is changed by the Board of Supervisors.~~

6 ~~———— In determining the Prevailing Rate of Wages, as provided for in this Section, the Board of~~
7 ~~Supervisors shall not be limited to the consideration of data furnished by the Civil Service Commission,~~
8 ~~but may consider such other evidence upon the subject as the Board of Supervisors shall deem proper~~
9 ~~and thereupon base its determination upon any or all of the data or evidence considered.~~

10 ~~———— For purposes of this Section, the Civil Service Commission shall provide data on and the Board~~
11 ~~shall certify two components for each craft, classification, and type of work, which together shall be~~
12 ~~deemed the “Prevailing Rate of Wages”: (1) the basic hourly wage rate and (2) the hourly rate of each~~
13 ~~fringe benefit, which together equal the hourly prevailing rate of wages. The Civil Service Commission~~
14 ~~shall provide this data to the Board of Supervisors within days of the effective date of this Section.~~

15 ~~(2)(c)~~ **Contracting Officers.** Each bid or proposal for a Covered Contract shall include,
16 on a form provided by the Contracting Officer, the following: (a) the basic hourly rate of wages
17 to be paid by the Contractor and Subcontractor, if any, for each craft, classification, or type of
18 work to be performed by eEmployees under the Covered Contract; and (b) for each required
19 fringe benefit, the hourly cost of each fringe benefit, or cash equivalent, the Contractor and
20 Subcontractor, if any, intend to provide. In meeting the Prevailing Rate of Wages, no amount
21 of fringe benefit credit shall be used to reduce the obligation to pay the basic hourly straight
22 time or overtime wage rate. The Contracting Officer shall reject any bid or proposal that does
23 not include payment of the Prevailing Rate of Wages as defined in this Section 102.1. ~~This~~
24 ~~provision shall become operative after the Board of Supervisors adopts a “Prevailing Rate of Wages”~~
25 ~~under Subsection (c)(1) that includes a wage rate and the hourly rate of each fringe benefit.~~

1 ~~—(3) Contractual Provision Concerning Prevailing Wage Rate Requirement. All Contracts subject~~
2 ~~to this Section shall include a provision in which the Contractor agrees to comply with, and to require~~
3 ~~Subcontractors to comply with, the prevailing wage rate requirement imposed by this Section.~~

4 ~~—(4) Enforcement of Prevailing Wage Rate Requirements. Where the Contracting Officer or the~~
5 ~~Labor Standards Enforcement Officer determines that a Contractor or a Subcontractor may have~~
6 ~~violated the prevailing wage rate requirements of this Section, the Contracting Officer or Labor~~
7 ~~Standards Enforcement Officer shall send written notice to the Contractor of the possible violation (a~~
8 ~~“violation notice”). In addition to and without prejudice to any other remedy available, the~~
9 ~~Contracting Officer may terminate the Contract, in which case the Contractor shall not be entitled to~~
10 ~~any additional payment thereon unless within thirty (30) days of receipt of the violation notice the~~
11 ~~Contractor has either (i) cured the violation or (ii) established by documentary evidence, including but~~
12 ~~not limited to payroll records, the truth and accuracy of which is attested to by affidavit, proof of~~
13 ~~compliance with the provisions of this Section. For purposes of this Section, where a Contractor or~~
14 ~~Subcontractor fails to pay at least the Prevailing Rate of Wages to Individuals as required by this~~
15 ~~Section, the Contractor shall have “cured the violation” once the Contractor or Subcontractor~~
16 ~~reimburses such Individuals by paying each individual the balance of what he or she should have~~
17 ~~earned in accordance with the requirements of this Section, plus an annualized rate of interest of ten~~
18 ~~percent (10%). In addition to, or instead of terminating the Contract, if the Contracting Officer or the~~
19 ~~Labor Standards Enforcement Officer finds that the Contractor has willfully violated the requirements~~
20 ~~of this Section, the Contracting Officer or the Labor Standards Enforcement Officer, shall assess a~~
21 ~~penalty (a “willful violation penalty”) of not more than ten (10%) percent of the dollar amount of the~~
22 ~~Contract, such sums to be deposited in the fund out of which the Contract is awarded or, if none exists,~~
23 ~~the General Fund. The Contracting Officer or Labor Standards Enforcement Officer may impose such~~
24 ~~willful violation penalty regardless of whether the Contractor has cured the violation.~~

1 ~~—(d) Transition Employment Requirements. The City has an important proprietary interest in~~
2 ~~maintaining the stability of the workforce engaged by a Contractor or Subcontractor under a Covered~~
3 ~~Contract. Turnover of experienced workers resulting from a change in the City's Contractor~~
4 ~~jeopardizes the quality, efficiency, and cost-effectiveness of service provided to the City under the~~
5 ~~successor Contract. All Covered Contracts shall impose the following obligations on the Contractor~~
6 ~~and Subcontractor.~~

7 ~~—(1) Where the Contracting Officer has given notice that a Covered Contract will be bid, or where~~
8 ~~a Contractor has given notice of termination, upon giving or receiving such notice, as the case may be,~~
9 ~~the Contractor ("ending Contractor") shall, within ten days thereafter, provide to the Contracting~~
10 ~~Officer and the Purchaser, for each Employee who worked at least 15 hours per week for the ending~~
11 ~~Contractor, the name, date of hire, number of hours and months worked in total for the employer, wage~~
12 ~~rate, and employment occupation classification. This provision shall also apply to the subcontractors of~~
13 ~~the ending Contractor.~~

14 ~~—Where a Subcontractor has been terminated prior to the termination or ending of the Contract,~~
15 ~~the Subcontractor shall for the purposes of this Section be deemed an ending Contractor.~~

16 ~~—All requests for bids for Covered Contracts shall include the information listed above for~~
17 ~~Employees and shall notify prospective bidders about the Transition Employment requirements of this~~
18 ~~Section.~~

19 ~~—(2) A successor Contractor shall retain, for a six-month transition employment period, Employees~~
20 ~~who have worked at least 15 hours per week and have been employed by the ending Contractor or its~~
21 ~~Subcontractors, if any, for the preceding twelve months under the Covered Contract, providing that just~~
22 ~~cause does not exist to terminate such Employee. The ending Contractor's Employees who worked at~~
23 ~~least 15 hours per week shall be employed in order of their seniority with the predecessor within job~~
24 ~~classification and shall be paid the Prevailing Rate of Wages to which they were entitled when~~
25

1 ~~employed by the ending Contractor. This requirement shall be stated by the City in all initial bid~~
2 ~~packages involving a Covered Contract.~~

3 ~~—(3) If at any time a successor Contractor determines that fewer Employees are required to perform~~
4 ~~the new Contract than were required by the ending Contractor (and Subcontractors, if any), the~~
5 ~~successor Contractor shall retain Employees by seniority within job classification.~~

6 ~~—(4) During such six-month period the successor Contractor (or Subcontractor, where applicable)~~
7 ~~shall maintain a preferential hiring list of eligible covered Employees not retained by the successor~~
8 ~~Contractor (or Subcontractor) from which the successor Contractor (or Subcontractor) shall hire~~
9 ~~additional Employees.~~

10 ~~—(5) During the six-month period, the successor Contractor (or Subcontractor, where applicable)~~
11 ~~shall not discharge without cause an Employee retained pursuant to this Subsection. “Cause,” for this~~
12 ~~purpose, shall include, but not be limited to, the Employee’s conduct while in the employ of the ending~~
13 ~~Contractor or Subcontractor that contributed to any decision to terminate the Contract or Subcontract~~
14 ~~for fraud or poor performance, excluding permissible union-related activity.~~

15 ~~—(6) At the end of the six-month period, a successor Contractor (or Subcontractor, where~~
16 ~~applicable) shall perform a written performance evaluation for each Employee retained pursuant to~~
17 ~~this Subsection. If the Employee’s performance during such six-month period is satisfactory, the~~
18 ~~successor Contractor (or Subcontractor) shall offer the Employee continued employment under the~~
19 ~~terms and conditions established by the successor Contractor (or Subcontractor) or as required by law.~~

20 ~~—(7) All Covered Contracts subject to this Section shall include a provision in which the Contractor~~
21 ~~agrees to require any Subcontractor to comply with the obligation imposed by this Subsection (d).~~

22 ~~—(8) Successor’s Prior Employees. Notwithstanding the provisions of this Subsection (d), a~~
23 ~~successor Contractor or Subcontractor may replace an Employee otherwise entitled to be retained with~~
24 ~~a person employed by the Contractor or Subcontractor continuously for twelve months prior to the~~
25 ~~commencement of the successor Contract or Subcontract in a capacity similar to that proposed under~~

1 ~~the successor Contract or Subcontract. This provision shall apply only where the existing Employee of~~
2 ~~the successor Contractor or Subcontractor would otherwise be laid off work as a result of the award of~~
3 ~~the successor Contract.~~

4 ~~—(9) The retention requirements of this Subsection (d) shall not apply where there is no successor~~
5 ~~Contractor or Subcontractor. For example, where a Contract is for services over a single day, week, or~~
6 ~~month for a discrete nonrepeating event there is no successor and the retention requirements described~~
7 ~~herein are inapplicable.~~

8 ~~—(10) For the purposes of this Subsection (d) on Transition Employment Requirements only, the~~
9 ~~term “Employee” shall include any person who performs work under a Covered Contract but shall not~~
10 ~~include an individual who serves in a managerial, supervisory, or confidential capacity, including~~
11 ~~those individuals who would be defined as such under the Fair Labor Standards Act.~~

12 ~~—(11) Enforcement. An Employee who has not been hired or has been discharged in violation of this~~
13 ~~Section by a successor Contractor or its Subcontractor may bring an action in the Superior Court of~~
14 ~~the State of California, as appropriate, against the successor Contractor and, where applicable, its~~
15 ~~Subcontractor, and shall be awarded back pay, including the value of benefits for each day during~~
16 ~~which the violation continues, which shall be calculated at a rate of compensation not less than the~~
17 ~~higher of:~~

18 ~~—(i) The average regular rate of pay received by the Employee during the last three years of the~~
19 ~~Employee’s employment in the same occupation classification; or~~

20 ~~—(ii) The final regular rate received by the Employee.~~

21 ~~—If the Employee is the prevailing party in any such legal action, the Court shall award reasonable~~
22 ~~attorney’s fees and costs as part of the costs recoverable.~~

23 ~~—(12) This Section is not intended to create a private right of action against the City and County of~~
24 ~~San Francisco.~~

1 ~~—(13) If during the term of a Covered Contract, a Contractor (or Subcontractor engaged by said~~
2 ~~Contractor) violates the worker transition requirements of this Subsection (d), the Contractor or~~
3 ~~Subcontractor shall be subject to the enforcement remedies as set forth in Subsection (c)(4), including~~
4 ~~termination of the Contract or Subcontract and penalties for willful violation.~~

5 ~~(de)~~ **Requirement of Employer-Employee Relationship.**

6 (1) The City has an important proprietary interest in maintaining the stability
7 of the workforce engaged by a Contractor for a Covered Contract by ensuring that individuals
8 working pursuant to City contracts have the protections afforded by ~~s~~State and municipal laws
9 governing employment. In order for the City to maintain the integrity of its contracting process,
10 the ~~e~~City's ~~p~~Prevailing ~~w~~Wage laws ensure contractors a level playing field on which to bid for
11 contracts. When contractors are allowed to classify workers as independent owner operators,
12 contractors can appear to pay the ~~p~~Prevailing ~~w~~Wage when in reality, after the owner
13 operator's operating costs are taken into account, the owner operator receives less than the
14 ~~p~~Prevailing ~~w~~Wage for the owner operator's ~~his or her~~ labor. This outcome contradicts one of the
15 goals of the ~~p~~Prevailing ~~w~~Wage law, which is to provide for fair competition among contractors,
16 all of whom must pay workers, at a minimum, the same ~~p~~Prevailing ~~r~~Rate of ~~w~~Wages and
17 benefits. The City's proprietary interest is such that employment of Employees in an
18 Employer-Employee relationship shall be required for all work done under any Covered
19 Contract.

20 (2) Every Covered Contract shall require the Contractor (and Subcontractors,
21 if any) to perform said Covered Contract, with Individuals employed by said Contractor or
22 Subcontractor in an Employer-Employee relationship as defined by California law.

23 (3) No Covered Contract shall be awarded by the City to a Contractor and/or
24 Subcontractor who proposes to perform the Covered Contract with self-employed persons or
25 independent contractors.

1 (4) If during the term of a Covered Contract, a Contractor (or Subcontractor
2 engaged by said Contractor) engages any self-employed persons or independent contractors
3 to perform the Contract for a period of three ~~(3)~~ days or more, the Contractor or Subcontractor
4 shall be subject to the enforcement remedies as set forth in ~~Subsection (e)(4), Article 106.~~
5 including termination of the Covered Contract or ~~Subcontract~~subcontract under Section 106.4, and
6 penalties ~~for willful violation.~~

7 (5) Contractors shall be fully responsible for the compliance of
8 Subcontractors with this ~~provision~~ subsection (d). Contractors shall be jointly and severally liable
9 for any penalties assessed against their Subcontractors in the event that the Subcontractor is
10 unable or unwilling to pay a penalty.

11 ~~(ef)~~ **Preemption.** Nothing in this Section 102.1 shall be interpreted or applied so as
12 to create any power or duty in conflict with any federal or ~~s~~State law.

13 ~~(fg)~~ **No Cause of Action Against City.** This Section 102.1 is not intended to create
14 a private right of action against the City.

15 ~~(gh)~~ **Prospective Application.** This Section 102.1 is intended to have prospective
16 effect only, and shall not be interpreted to impair the obligations of any pre-existing Contract
17 entered into by the City. This Section shall only apply to Contracts entered into on or after the
18 effective date of this Section.

19 ~~(hi)~~ **Severability.** If any part or provision of this Section 102.1, or the application
20 thereof to any Person or circumstance, is held invalid, the remainder of this Section, including
21 the application of such part or provisions to other Persons or circumstances, shall not be
22 affected thereby and shall continue in full force and effect. To this end, the provisions of this
23 Section are severable.

1 **SEC. 102.2. ~~PREVAILING RATE OF WAGES REQUIRED IN~~ CONTRACTS FOR**
2 **JANITORIAL SERVICES; NON-PROFIT ORGANIZATIONS EXCLUSION.**

3 (a) **Prevailing Wage Requirement.** Every Contract issued by the City ~~and County of~~
4 ~~San Francisco~~ for Janitorial Services to be performed at any facility owned or leased by the City
5 ~~and County of San Francisco~~, where such work is to be done directly under the ~~e~~Contract
6 awarded (a "~~P~~prime ~~C~~contract") must require that any Individual performing Janitorial Services
7 thereunder be paid not less than the Prevailing Rate of Wages, ~~including fringe benefits or the~~
8 ~~matching equivalents thereof, paid in private employment for similar work in the area in which the~~
9 ~~Contract is being performed, as determined by the Civil Service Commission in accordance with~~
10 ~~Section 103.2.~~ This Section 102.2 does not extend to contracts beyond those entered into by
11 the City specifically for ~~janitorial services~~ Janitorial Services on property owned or leased by the
12 City.

13 ~~(b) — Exclusions. This Section shall not apply to a Contract for Janitorial Services with a~~
14 ~~nonprofit organization to provide work experience for persons with disabilities.~~

15 ~~(e)~~(b) **Definitions.** For purposes of this Section 102.2, the following definitions shall
16 apply to the terms used herein:

17 "Contract" shall mean an agreement for Janitorial Services to be performed at the
18 expense of the City ~~and County of San Francisco~~ or to be paid out of moneys deposited in the
19 treasury or out of trust moneys under the control or collected by the City, ~~and County of San~~
20 ~~Francisco, and does not include contracts for the sale of goods, contracts issued by the San Francisco~~
21 ~~Airport Commission or to be performed at any facility owned, leased or otherwise under the~~
22 ~~jurisdiction of the San Francisco Airport Commission, agreements entered into before the effective date~~
23 ~~of this Section, or contracts for a cumulative amount of \$10,000 or less per janitorial service provider~~
24 ~~in each fiscal year.~~

1 “Janitorial Services” shall mean maintenance and cleaning services on property owned
2 or leased by the City ~~and County of San Francisco~~.

3 ~~“Prevailing Rate of Wages” shall mean that rate of compensation as determined under Section~~
4 ~~102.1.~~

5 (c) **Exclusions.** *This Section 102.2 shall not apply to:*

6 *(1) a Contract for Janitorial Services with a non-profit organization to provide work*
7 *experience for persons with disabilities;*

8 *(2) a Contract for the sale of goods;*

9 *(3) a contract issued by the Airport Commission or to be performed at any facility*
10 *owned, leased or otherwise under the jurisdiction of the Airport Commission, agreements entered into*
11 *before the effective date of this Section; or*

12 *(4) contracts for a cumulative amount of \$10,000 or less per janitorial service provider*
13 *in each fiscal year.*

14 (d) **Preemption.** Nothing in this Section 102.2 shall be interpreted or applied so as
15 to create any power or duty in conflict with any federal or ~~s~~State law.

16 (e) ~~**Effective Date and Application**~~**Prospective Effect.** This Section 102.2 ~~shall become~~
17 ~~effective 30 days after it is enacted,~~ is intended to have prospective effect only, and shall not be
18 interpreted to impair the obligations of any pre-existing agreement to which the City is a party,
19 unless such pre-existing agreement has been amended after the effective date of this Section.

20 (f) **Severability.** If any part or provision of this Section 102.2, or the application
21 thereof to any Person or circumstance, is held invalid, the remainder of this Section, including
22 the application of such part or provisions to other Persons or circumstances, shall not be
23 affected thereby and shall continue in full force and effect. To this end, the provisions of this
24 Section are severable.

1 **SEC. 102.3. ~~PREVAILING RATE OF WAGES AND DISPLACED WORK PROTECTION~~**
2 **~~REQUIRED FOR WORKERS IN~~ PUBLIC OFF-STREET PARKING LOTS, GARAGES, OR**
3 **STORAGE FACILITIES FOR AUTOMOBILES.**

4 (a) **Prevailing Wage Requirement.** Every Lease, Management Agreement, or Other
5 Contractual Arrangement for the operation of a ~~p~~Public ~~o~~ff-~~s~~treet ~~p~~Parking ~~l~~ot, ~~g~~Garage, or
6 ~~Automobile s~~Storage facility ~~for automobiles~~ on property owned or leased by the City ~~and~~
7 ~~County of San Francisco~~ must require that any Individual working in such ~~p~~Public ~~o~~ff-~~s~~treet
8 ~~p~~Parking ~~l~~ot, ~~g~~Garage, or ~~Automobile s~~Storage facility ~~for automobiles~~, including but not
9 limited to ~~i~~ndividuals engaged in ~~W~~washing, ~~P~~polishing, ~~L~~ubrication, ~~R~~rent-~~C~~car ~~S~~service,
10 ~~P~~parking ~~V~~vehicles, ~~C~~cashiers, ~~A~~attendants, ~~C~~checking ~~C~~coin ~~B~~boxes, ~~N~~non-~~A~~attendant
11 ~~P~~parking ~~L~~lot ~~C~~checking, ~~D~~daily ~~T~~ticket ~~A~~audit, ~~T~~traffic ~~D~~directors and ~~S~~shuttle ~~D~~drivers, shall
12 be paid not less than the Prevailing Rate of Wages, ~~including fringe benefits or the matching~~
13 ~~equivalents thereof, paid in private employment for similar work in the area in which the Lease,~~
14 ~~Management Agreement, or Other Contractual Arrangement is being performed,~~ as determined by
15 the ~~Civil Service Commission~~Board of Supervisors.

16 (b) **Definitions.** For purposes of this Section 102.3, the following definitions shall
17 apply to the terms used herein

18 ~~(1)~~ “Lease, Management Agreement, or Other Contractual Arrangement” shall mean
19 an agreement with the City ~~and County of San Francisco~~ for the operation of a ~~P~~Public ~~O~~ff-
20 ~~S~~treet ~~P~~Parking ~~L~~lot, ~~G~~Garage, or ~~Automobile S~~Storage facility ~~for automobiles~~ on property
21 owned or leased by the City ~~and County of San Francisco~~.

22 ~~—(2)—~~ “Prevailing Rate of Wages” shall mean that rate of compensation as determined in
23 ~~Section 102.1.~~

1 ~~(3)~~ “Public Off-Street Parking Lot, Garage, or Automobile Storage Facility” shall mean
2 any off-street parking lot, garage, or automobile storage facility that is operated on property
3 owned or leased by the City ~~and County of San Francisco~~.

4 (c) **Preemption.** Nothing in this Section 102.3 shall be interpreted or applied so as to
5 create any power or duty in conflict with any federal or ~~s~~State law.

6 (d) ~~Effective Date and Application~~**Prospective Effect.** This Section 102.3 ~~shall become~~
7 ~~effective 30 days after it is enacted~~, is intended to have, prospective effect only, and shall not be
8 interpreted to impair the obligations of any pre-existing Lease, Management Agreement, or
9 Other Contractual Arrangement to which the City ~~and County of San Francisco~~ is a party, unless
10 such pre-existing Lease, Management Agreement, or Other Contractual Arrangement has
11 been amended after the effective date of this Section.

12 (e) **Public Entities with Coterminous Boundaries with the City ~~and County of San~~**
13 ~~**Francisco.**~~ It is the policy of the City ~~and County of San Francisco~~ that all public entities with
14 coterminous boundaries with the City ~~and County of San Francisco~~, including but not limited to
15 the Parking Authority of the City ~~and County of San Francisco~~, adopt this ~~p~~Prevailing ~~w~~Wage and
16 employee transition period policy. The Board of Supervisors ~~of the City and County of San~~
17 ~~Francisco~~ urges all public entities with coterminous boundaries with the City ~~and County of San~~
18 ~~Francisco~~, including but not limited to the Parking Authority ~~of the City and County of San~~
19 ~~Francisco~~, to adopt this ~~p~~Prevailing ~~w~~Wage and employee transition period policy.

20 (f) **Severability.** If any part or provision of this Section 102.3, or the application thereof
21 to any Person or circumstance, is held invalid, the remainder of this Section, including the
22 application of such part or provisions to other Persons or circumstances, shall not be affected
23 thereby and shall continue in full force and effect. To this end, the provisions of this Section
24 are severable.

1 **SEC. 102.4. ~~PREVAILING RATE OF WAGES REQUIRED FOR~~ THEATRICAL WORKERS.**

2 **(a) Prevailing Wage Requirement.** Every Contract, Lease, Franchise, Permit, or
3 Agreement awarded, let, issued, or granted by the City ~~and County of San Francisco~~ for the use
4 of property owned by the City ~~and County of San Francisco~~ must require that any Individual
5 engaged in theatrical or technical services related to the presentation of a show, including, but
6 not limited to, workers engaged in rigging, sound, projection, theatrical lighting, videos,
7 computers, draping, carpentry, special effects, and motion picture services be paid not less
8 than the Prevailing Rate of Wages, ~~including fringe benefits or the matching equivalents thereof,~~
9 ~~paid in private employment for similar work in the area in which the Contract, Lease, Franchise,~~
10 ~~Permit or Agreement is being performed.~~ All Contracts, Leases, Franchises, Permits or
11 Agreements subject to this Section 102.4 shall include a provision in which the Contractor
12 agrees to comply with, and to require Subcontractors to comply with, the obligations imposed
13 by this Section.

14 **(b) Definitions.** For purposes of this Section 102.4, the following definitions shall
15 apply to the terms used herein:

16 ~~(1)~~—“Contract, Lease, Franchise, Permit, or Agreement” shall mean an agreement
17 with the City ~~and County of San Francisco~~ for the use of property owned by the City ~~and County of~~
18 ~~San Francisco~~, but shall not include any contract, lease, franchise, permit, or agreement for any
19 of the following:

20 ~~A. (1)~~ Celebration of a marriage, domestic partnership, or similar civil union;

21 ~~B. (2)~~ The presentation of a show to which the public has free access when the
22 show is in a public park, on a public street, or on property under the jurisdiction of the Port
23 Commission;

1 ~~€. (3)~~ Any permit or agreement to engage in film production pursuant to Chapter
2 57 of the ~~San Francisco~~ Administrative Code or under the circumstances set forth in Section
3 57.7 of the Administrative Code;

4 ~~D. (4)~~ Any ~~s~~Show on property under the jurisdiction of the Arts Commission; ~~or~~;

5 ~~E. (5)~~ In any circumstance where application of this Section 102.4 would be
6 preempted by federal or ~~s~~State law; or

7 ~~F. (6)~~ Any ~~s~~Show for which the time required for the set-up is three hours or less
8 and the number of ~~i~~Individuals working on the set-up is no more than two.

9 ~~(2) “Prevailing Rate of Wages” shall mean that rate of compensation as determined in Section~~
10 ~~102.1.~~

11 ~~(3)~~ “Show” shall mean any live act, play, review, pantomime, scene, music, song,
12 dance act, song and dance act, or poetry recitation provided in front of a live audience or
13 recorded for the purpose of later presentation, but shall not include an event where a person
14 solely plays pre-recorded music or pre-recorded performances so long as no other live
15 performance is provided.

16 (c) **Preemption.** Nothing in this Section 102.4 shall be interpreted or applied so as to
17 create any power or duty in conflict with any federal or State law.

18 (d) ~~**Effective Date and Application**~~**Prospective Effect.** This Section 102.4 ~~shall become~~
19 ~~effective 30 days after it is enacted,~~ is intended to have prospective effect only, and shall not be
20 interpreted to impair the obligations of any pre-existing Contract, Lease, Franchise, Permit, or
21 Agreement issued or entered into by the City ~~and County of San Francisco.~~

22 (e) **Applicability to Existing Contracts, Leases, Franchises, Permits, or**
23 **Agreements.** This Section 102.4 shall only apply to Contracts, Leases, Franchises, Permits,
24 or Agreements entered into on or after the effective date of this Section.
25

1 (f) **Severability.** ~~If any severable provision or provisions of this Section or any application~~
2 ~~thereof is held invalid, such invalidity shall not affect any other provisions or applications of the~~
3 ~~Section. If any part or provision of this Section 102.4, or the application thereof to any Person or~~
4 ~~circumstance, is held invalid, the remainder of this Section, including the application of such part or~~
5 ~~provisions to other Persons or circumstances, shall not be affected thereby and shall continue in full~~
6 ~~force and effect. To this end, the provisions of this Section are severable.~~

7
8 **SEC. 102.5 ~~PREVAILING RATE OF WAGES AND WORKER RETENTION REQUIRED FOR~~**
9 **~~WORKERS ENGAGED IN~~ HAULING OF SOLID WASTE GENERATED BY THE CITY IN**
10 **THE COURSE OF CITY OPERATIONS.**

11 (a) **Prevailing Wage Requirement.** Every Contract awarded by the City for the
12 ~~H~~Hauling of ~~s~~Solid ~~w~~Waste generated by the City in the course of City operations must require
13 that any Individual engaged in the ~~H~~Hauling of ~~s~~Solid ~~w~~Waste be paid not less than the
14 Prevailing Rate of Wages, ~~including fringe benefits or the matching equivalents thereof, paid in~~
15 ~~private employment for similar work in the area in which the Contract is being performed.~~

16 (b) **Definitions.** For purposes of this Section 102.5 the following definitions shall apply
17 to the terms used herein.

18 ~~(1)~~ "Contract" shall mean an agreement with the City for the ~~H~~Hauling of ~~s~~Solid
19 ~~w~~Waste, generated by the City in the course of City operations, to be performed at the
20 expense of the City or to be paid out of moneys deposited in the treasury or out of trust
21 moneys under the control or collected by the City. For purposes of this Section 102.5,
22 "Contract" shall not include: ~~(1a)~~ a permit issued under the Refuse Collection and Disposal
23 Ordinance, Appendix 1 of the ~~San Francisco~~ Administrative Code, or; ~~(2b)~~ a contract governed
24 by the provisions of Chapter 6 of the ~~San Francisco~~ Administrative Code. Should the
25 Administrative Code be amended to change the permit process contained in Appendix 1 to a

franchise process, or any other process for authorizing refuse collection and disposal within the City, it shall be City policy to require refuse companies to pay the ~~p~~Prevailing ~~w~~Wage to any ~~i~~Individual engaged in the hauling of refuse, recyclables, compostables, and solid waste within the City.

~~(2)~~ "Hauling" of solid waste shall mean collection and transport of solid waste generated by the City in the course of City operations. For purposes of this Section 102.5, "~~H~~Hauling" shall not include "solid waste disposal" or "disposal" as defined in Section 40192 of the California Public Resources Code.

~~(3)~~ "~~Prevailing Rate of Wages~~" shall mean that rate of compensation as determined in Section ~~102.1~~.

~~(4)~~ "Solid Waste" shall mean "solid waste" as defined in Section 40191 of the California Public Resources Code and includes material collected for "recycling" as defined in Section 40180 of the California Public Resources Code.

(c) **Preemption.** Nothing in this Section 102.5 shall be interpreted or applied so as to create any power or duty in conflict with any federal or ~~s~~State law.

(d) **Prospective Application.** This Section 102.5 is intended to have prospective effect only, and shall not be interpreted to impair the obligations of any pre-existing Contract entered into by the City. This Section shall only apply to Contracts entered into on or after the effective date of this Section.

(e) **Severability.** If any part or provision of this Section 102.5, or the application thereof to any Person or circumstance, is held invalid, the remainder of this Section, including the application of such part or provisions to other Persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Section are severable.

1 **SEC. 102.6. ~~PREVAILING RATE OF WAGES REQUIRED IN CONTRACTS FOR MOVING~~**
2 **~~SERVICES; NONPROFIT ORGANIZATIONS EXCLUSION.~~**

3 (a) **Prevailing Wage Requirement.** Every Contract issued by the City ~~and County of~~
4 ~~San Francisco~~ for Moving Services to be performed at any facility owned or leased by the City
5 ~~and County of San Francisco~~, where such work is to be done directly under the eContract
6 awarded (a “prime contract”) must require that any Individual performing Moving Services
7 thereunder be paid not less than the Prevailing Rate of Wages, ~~including fringe benefits or the~~
8 ~~matching equivalents thereof, paid in private employment for similar work in the area in which the~~
9 ~~Contract is being performed.~~

10 (b) **Exclusions.** This Section 102.6 shall not apply to the following:

11 (1) **Non-profits.** This Section shall not apply to a Contract where the Moving
12 Services are to be performed by a non-profit organization that provides job training and work
13 experience for disadvantaged ~~i~~Individuals in need of such training.

14 (2) **Prior Agreements.** This Section shall not apply to agreements entered into
15 before the effective date of this Section.

16 (3) **Contracts for \$1000 or Less.** This Section shall not apply to contracts for
17 \$1000 or less per moving service provider. Contracts may not be split for purposes of evading
18 the requirements of this Section.

19 (4) **Modular Furniture Installers “Carpenters.”** This Section shall not apply to any
20 work covered by the California Department of Industrial Relations’ Modular Furniture Installers
21 (Carpenters) Classification.

22 (c) **Definitions.** For purposes of this Section 102.6, the following definitions shall apply
23 to the terms used herein:

24 ~~(1)~~—“Contract” shall mean an agreement for Moving Services to be performed at the
25 expense of the City ~~and County of San Francisco~~ or to be paid out of moneys deposited in the

1 treasury or out of trust moneys under the control or collected by the City ~~and County of San~~
2 ~~Francisco.~~

3 (2) "Moving Services" shall mean moving or handling of goods being relocated under
4 a contract for commercial moving services to relocate City offices, facilities, and/or institutions.

5 (3) "Non-profit" shall mean a non-profit corporation, duly organized, validly existing
6 and in good standing under the laws of the jurisdiction of its incorporation and (if a foreign
7 corporation) in good standing under the laws of the State of California, which corporation has
8 established and maintains a valid non-profit status under Section 501(c)(3) of the United
9 States Internal Revenue Code of 1986, as amended, and all rules and regulations
10 promulgated under such Section.

11 (4) ~~"Prevailing Rate of Wages" shall mean that rate of compensation as determined in Section~~
12 ~~102.1.~~

13 (d) **Preemption.** Nothing in this Section 102.6 shall be interpreted or applied so as to
14 create any power or duty in conflict with any federal or ~~s~~State law.

15 (e) ~~**Effective Date and Application**~~**Prospective Effect.** ~~This Section shall become effective 30~~
16 ~~days after it is enacted.~~ This Section 102.6 is intended to have prospective effect only, and shall
17 not be interpreted to impair the obligations of any pre-existing agreement to which the City is a
18 party, unless such pre-existing agreement has been amended after the effective date of this
19 Section.

20 (f) **Severability.** If any part or provision of this Section 102.6, or the application thereof
21 to any Person or circumstance, is held invalid, the remainder of this Section, including the
22 application of such part or provisions to other Persons or circumstances, shall not be affected
23 thereby and shall continue in full force and effect. To this end, the provisions of this Section
24 are severable.

1 **SEC. 102.7. ~~PREVAILING RATE OF WAGES IN~~ MOTOR BUS SERVICE CONTRACTS.**

2 ~~In the case of any~~Every contract for Services wherein motor bus service is to be rendered
3 to the general public on any facility owned by the City, ~~and every~~ ~~or in the case of any~~ contract
4 for the transportation within the boundaries of the City of any Commodities owned or in the
5 possession of the City, ~~the Purchaser, on recommendation of the department head concerned and~~
6 ~~approval of the Mayor or the Mayor's designee provided that the designee is not the department head~~
7 ~~of the department concerned or the board or commission in charge of such department upon the~~
8 ~~ground that the public interest would be best served by requiring the inclusion of such a provision in~~
9 ~~the contract, may~~ shall require that any person performing labor thereunder shall be paid not
10 less than the highest general ~~p~~Prevailing ~~r~~Rate of ~~w~~Wages, ~~including fringe benefits or the~~
11 ~~matching equivalents thereof, paid in private employment for similar work in the area in which the~~
12 ~~contract is being performed, as determined~~ in accordance with Section 103.2 of the Labor and
13 ~~Employment Code~~by the Civil Service Commission; provided, however, if such a provision is to be
14 included in the contract, the notice inviting offers under Section ~~102.2~~21.2 of ~~this the~~
15 ~~Administrative~~ Code must call attention of Offerors, ~~as defined in Section 21.02 of the~~
16 ~~Administrative Code,~~ to the requirements of said provision.

17
18 **SEC. 102.8. ~~PREVAILING RATE OF WAGES REQUIRED FOR~~ TRADE SHOW AND**
19 **SPECIAL EVENT WORK.**

20 (a) **Prevailing Wage Requirement.** Every Contract, Lease, Franchise, Permit, or
21 Agreement awarded, let, issued, or granted by the City for the use of property owned by the
22 City must require that any Individual engaged in Exhibit, Display, or Trade Show Work at a
23 Special Event be paid not less than the Prevailing Rate of Wages, ~~including fringe benefits or~~
24 ~~the matching equivalents thereof, paid in private employment for similar work in the area in which the~~
25 ~~Contract, Lease, Franchise, Permit or Agreement is being performed.~~ All Contracts, Leases,

Franchises, Permits or Agreements subject to this Section 102.8 shall include a provision in which the Contractor agrees to comply with, and to require Subcontractors to comply with, the obligations imposed by this Section.

(b) **Definitions.** For purposes of this Section 102.8, the following definitions shall apply:

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

“Contract, Lease, Franchise, Permit, or Agreement” shall mean an agreement with the City for the use of property owned by the City, but shall not include any contract, lease, franchise, permit, or agreement for:

~~A.(1)~~ Celebration of a marriage, domestic partnership, or similar civil union;

~~B.(2)~~ The presentation of a Special Event to which the public has free access when the Special Event is in a public park, on a public street, or on property under the jurisdiction of the Port Commission, and the advertising and promotion for the Special Event is less than \$10,000;

~~C. Any permit or agreement to engage in film production pursuant to Chapter 57 of the San Francisco Administrative Code or under the circumstances set forth in Section 57.7 of the Administrative Code;~~

~~D.(3)~~ In any circumstance where application of this Section 102.8 would be preempted by federal or ~~s~~State law;

~~E.(4)~~ Any Special Event for which the time required for the set-up is three hours or less and the number of ~~i~~Individuals working on the set-up is no more than two;

~~F.(5)~~ Any Special Event where the Special Event itself takes five hours or less;

~~G.(6)~~ Any Special Event that requires the payment of the Prevailing Rates of Wages~~prevailing wage rates~~ applicable to ~~public works projects~~a Covered Local Project or a Covered State Project;

1 ~~H(7)~~: A street fair organized by and for which a permit has been issued to a
2 nonprofit entity, where the street fair is free and open to the public and does not have as a
3 primary purpose the advertising or promotion of a product or service.

4 “Convention” shall mean an organized association of persons with a common interest,
5 including but not limited to a professional, commercial, political, social, cultural, vocational,
6 recreational, or fraternal interest, who meet in a hotel, convention center, or other building to
7 discuss or act on matters affecting their common interest or to participate in activities related
8 to their common interest. Attendees at a “Convention” come mainly from places other than
9 San Francisco.

10 “Exhibit, Display, or Trade Show Work” shall mean the on-site installation, set-up,
11 assembly, and dismantling of temporary exhibits, displays, booths, modular systems,
12 enclosures, tenting, signage, drapery, furniture (including specialty furniture), floor coverings, or
13 decorative materials in connection with or related to a Special Event.

14 “Exposition” shall mean a large-scale public exhibition with a primary though not
15 necessarily exclusive purpose of promoting one or more products, services, or businesses.

16 “On-site” shall mean the site of the Special Event, which may occur in enclosed space
17 or open space or both. If the primary site of the Special Event is enclosed space, “On-site”
18 shall include open space within 150 feet of the enclosed space that is the primary site of the
19 Special Event. “On-site” shall also include public rights of way, including but not limited to a
20 street or sidewalk, as to which a City permit, including but not limited to an ISCOTT
21 (“Interdepartmental Staff Committee on Traffic and Transportation”) permit, has been issued
22 in connection with the Special Event.

23 ~~“Prevailing Rate of Wages” shall mean that rate of compensation as determined in Section~~
24 ~~102.1.~~

1 “Special Event” shall mean any Trade Show, Convention, Exposition, or other
2 Temporary Event with the characteristics of a Trade Show, Convention, or Exposition, that
3 involves Exhibit, Display, or Trade Show Work.

4 “Temporary Event” shall mean an event lasting no more than six months.

5 “Trade Show” shall mean a gathering in which one or more businesses or association
6 of businesses in one or more industries or professions show their products or services to
7 possible customers or patrons. A “Trade Show” may include but is not limited to a gathering in
8 which there are exhibits, displays, or demonstrations of specific products or services or that
9 highlight all or part of an industry or profession.

10 (c) **Preemption.** Nothing in this Section 102.8 shall be interpreted or applied so as to
11 create any power or duty in conflict with any federal or State law.

12 (d) ~~**Operative Date and Application**~~ **Prospective Effect.**

13 ~~(1) This Section 102.8 shall become operative upon the initial setting of a~~
14 ~~Prevailing Rate of Wages for Exhibit, Display, or Trade Show Work by the Board of Supervisors. This~~
15 ~~initial Prevailing Rate of Wages shall be set in accordance with the process established in Section~~
16 ~~102.1(c)(1), except the Civil Service Commission shall submit to the Board of Supervisors data as to~~
17 ~~the Prevailing Rate of Wages no later than the first week in August 2014. Thereafter, the Commission~~
18 ~~shall submit data as to the Prevailing Rate of Wages for Exhibit, Display, or Trade Show Work on or~~
19 ~~before the first Monday in November each year, including 2014, in accordance with Section~~
20 ~~102.1(c)(1).~~

21 (2) This Section 102.8 is intended to have prospective effect only, and shall not be
22 interpreted to impair the obligations of any pre-existing Contract, Lease, Franchise, Permit, or
23 Agreement issued or entered into by the City. This Section shall only apply to Contracts,
24 Leases, Franchises, Permits, or Agreements entered into on or after the operative date of this
25 Section.

1 (e) **Severability.** ~~If any provision or provisions of this Section 102.8 or any application~~
2 ~~thereof is held invalid, such invalidity shall not affect any other provisions or applications of the~~
3 ~~Section. If any part or provision of this Section 102.8, or the application thereof to any Person or~~
4 ~~circumstance, is held invalid, the remainder of this Section, including the application of such part or~~
5 ~~provisions to other Persons or circumstances, shall not be affected thereby and shall continue in full~~
6 ~~force and effect. To this end, the provisions of this Section are severable.~~

7
8 **SEC. 102.9. ~~PREVAILING RATE OF WAGES REQUIRED FOR BROADCAST SERVICES~~**
9 **WORKERS ON CITY PROPERTY.**

10 (a) **Prevailing Wage Requirement.** Every Contract, Lease, Franchise, Permit, or
11 Agreement awarded, let, issued, or granted by the City for the use of property owned by the
12 City must require that any Individual engaged in Broadcast Services on City property be paid
13 not less than the Prevailing Rate of Wages, ~~including fringe benefits or the matching equivalents~~
14 ~~thereof, paid in private employment for similar work in the area in which the Contract, Lease,~~
15 ~~Franchise, Permit, or Agreement is being performed.~~ All Contracts, Leases, Franchises, Permits,
16 or Agreements subject to this Section 102.9 shall include a provision in which the Contractor
17 agrees to comply with, and to require Subcontractors to comply with, the obligations imposed
18 by this Section.

19 (b) **Definitions.** For purposes of this Section 102.9, the following definitions shall
20 apply to the terms used herein:

21 “Broadcast Services” shall mean the electronic capture and/or live transmission on-site
22 of video, digital, and/or audio content for Commercial Purposes through the use of a remote
23 production or satellite truck on-site. An ~~i~~Individual engaged in Broadcast Services includes,
24 but is not limited to, a technical director, video controller, assistant director, and stage
25

1 manager, as well as ~~i~~ndividuals engaged in the following functions: audio; camera; capture
2 and playback; graphics; and utility.

3 "Commercial Purposes" shall mean an operation for profit and shall not include
4 instances where the capture and transmission of video, digital, and/or audio content is
5 performed by or on behalf of a governmental entity.

6 "Contract, Lease, Franchise, Permit, or Agreement" shall mean an agreement with the
7 City for the use of property owned by the City, but shall not include any contract, lease,
8 franchise, permit, or agreement:

9 (1) For any event where the total number of hours of Broadcast Services work
10 being performed for the set-up, the event itself, and the takedown is less than ten hours in the
11 aggregate;

12 (2) For celebration of a marriage, domestic partnership, or similar civil union,
13 except where the capture of video, digital and/or audio content of the celebration is for a
14 Commercial Purpose;

15 (3) To engage in film production pursuant to Chapter 57 of the ~~San Francisco~~
16 Administrative Code or under the circumstances set forth in Section 57.7 of the Administrative
17 Code; provided, however, that if the film production involves Broadcast Services, the
18 requirements of this Section 102.9 shall apply to those persons engaged in Broadcast
19 Services;

20 (4) In any circumstance where application of this Section 102.9 would be
21 preempted by federal or ~~s~~tate law;

22 (5) For a street fair, block party, parade, or festival, or any celebration directly
23 associated with such street fair, block party, parade, or festival, or any other expressive
24 activity such as a protest, demonstration, or similar public assembly, that is free and open to
25

1 the public and does not have as a primary purpose the advertising or promotion of a
2 commercial product or commercial service;

3 (6) For any event that requires the payment of ~~p~~Prevaling ~~W~~Wage rates
4 applicable to ~~public works projects~~ a Covered Local Project or a Covered State Project;

5 (7) In any circumstances where video and/or audio content is being captured
6 solely for personal use;

7 (8) For a concert in a public park to which the public has free access;

8 (9) For any event sponsored by a nonprofit entity where the primary purpose of
9 the event is fundraising for that nonprofit entity and/or other nonprofit entities; provided,
10 however, that this exemption shall not apply if the event is a collegiate sporting event or a
11 professional sporting event. For purposes of this subsection (b)(9), "professional sporting
12 event" means an event at which athletes receive compensation for their performance; or

13 ~~(10) In any circumstance where application of this Section 102.9 would apply to work~~
14 ~~covered by a collective bargaining agreement; or~~

15 ~~(11)~~ (10) For any event sponsored by a primary or secondary educational
16 institution.

17 (c) **Preemption.** Nothing in this Section 102.9 shall be interpreted or applied so as to
18 create any right, power, or duty in conflict with any federal or ~~s~~State law

19 (d) **Conflict with Other Sections.** In the event of a conflict between this Section
20 102.9 and any other section of this Article 102, the other section shall prevail.

21 (e) ~~**Operative Date and Application**~~ **Prospective Effect.**

22 ~~(1) This Section 102.9 shall become operative upon the initial setting of a Prevailing~~
23 ~~Rate of Wages for Broadcast Services Work by the Board of Supervisors. This initial Prevailing Rate of~~
24 ~~Wages shall be set in accordance with the process established in Section 102.1(e)(1), except the Civil~~
25 ~~Service Commission shall submit to the Board of Supervisors data as to the Prevailing Rate of Wages~~

1 ~~no later than 120 days after the effective date of this Section 102.9. Thereafter, the Commission shall~~
2 ~~submit data as to the Prevailing Rate of Wages for Broadcast Services Work on or before the first~~
3 ~~Monday in November each year in accordance with Section 102.1(c)(1).~~

4 (2)—This Section 102.9 is intended to have prospective effect only, and shall not be
5 interpreted to impair the obligations of any pre-existing Contract, Lease, Franchise, Permit, or
6 Agreement issued or entered into by the City. This Section shall only apply to Contracts,
7 Leases, Franchises, Permits, or Agreements issued or entered into on or after the operative
8 date of this Section.

9 (f) **Exemption.** This Section 102.9 shall not apply to Broadcast Services being
10 performed by a news service or similar entity engaged in on-the-spot broadcasting of news
11 events that does not require a Contract, Lease, Franchise, Permit, or Agreement.

12 (g) **Severability.** ~~If any provision or provisions of this Section 102.9 or any application~~
13 ~~thereof is held invalid, such invalidity shall not affect any other provisions or applications of the~~
14 ~~Section. If any part or provision of this Section 102.9, or the application thereof to any Person or~~
15 ~~circumstance, is held invalid, the remainder of this Section, including the application of such part or~~
16 ~~provisions to other Persons or circumstances, shall not be affected thereby and shall continue in full~~
17 ~~force and effect. To this end, the provisions of this Section are severable.~~

18
19 **SEC. 102.10. ~~PREVAILING RATE OF WAGES REQUIRED FOR~~ LOADING, UNLOADING,**
20 **AND DRIVING COMMERCIAL VEHICLES ON CITY PROPERTY.**

21 (a) **Prevailing Wage Requirement.** Every Contract, Lease, Franchise, Permit, or
22 Agreement awarded, let, issued, or granted by the City for the use of property owned by the
23 City must require that (1) any Individual engaged in loading or unloading on City property of
24 materials, goods, or products into or from a Commercial Vehicle in connection with the
25 presentation of a Show or for a Special Event be paid not less than the Prevailing Rate of

1 ~~Wages, including fringe benefits or the matching equivalents thereof, paid in private employment for~~
2 ~~similar work in the area in which the loading or unloading is being performed,~~ and (2) any Individual
3 driving a Commercial Vehicle from which materials, goods, or products are loaded or
4 unloaded on City property in connection with the presentation of a Show or for a Special
5 Event shall be paid not less than the Prevailing Rate of Wages for hours driven within the City
6 limits. All Contracts, Leases, Franchises, Permits, or Agreements subject to this Section
7 102.10 shall include a provision in which the Contractor agrees to comply with, and to require
8 Subcontractors to comply with, the obligations imposed by this Section.

9 (b) **Definitions.** For purposes of this Section 102.10, the following definitions shall
10 apply to the terms used herein:

11 "Commercial Vehicle" shall mean a vehicle that (1) is used or maintained primarily for
12 the transportation of materials, goods, or products; (2) has six wheels or more; and (3)
13 displays or is required to display a California Department of Motor Vehicles weight decal as
14 required by the Commercial Vehicle Registration Act, California Vehicle Code Section 9400 *et*
15 *seq.*, as amended. Notwithstanding the foregoing sentence, Commercial Vehicle shall not
16 include a vehicle used exclusively for food catering purposes, meaning its exclusive purpose
17 on a particular trip is for the transport of food and/or beverages to be served at a Show or
18 Special Event, the transport of equipment for the preparation and service of such food and/or
19 beverages at a Show or Special Event, or both.

20 "Contract, Lease, Franchise, Permit, or Agreement" shall have the meanings set forth
21 in Section 102.4(b) of this Code with regard to Shows, and in Section 102.8(b) of this Code
22 with regard to Special Events, including the exemptions stated therein.

23 "Mass Participation Sports Event" shall mean a participatory sporting event such as a
24 marathon, running race, or bicycle race or tour, with anticipated participation by 150
25 participants or more.

1 “Show” shall have the meaning set forth in Section 102.4**(b)** of this Code.

2 “Special Event” shall have the meaning set forth in Section 102.8**(b)** of this Code, and
3 shall also include a Mass Participation Sports Event.

4 (c) **Preemption.** Nothing in this Section 102.10 shall be interpreted or applied so as to
5 create any right, power, or duty in conflict with any federal or ~~s~~State law.

6 (d) **Conflict with Other Sections.** In the event of a conflict between this Section
7 102.10 and any other sections of this Article 102, the other section(s) shall prevail.

8 (e) ~~**Operative Date and Application**~~**Prospective Effect.**

9 ~~(1) This Section 102.10 shall become operative upon the initial setting by the~~
10 ~~Board of Supervisors of a Prevailing Rate of Wages for loading, unloading, and driving of Commercial~~
11 ~~Vehicles on City property. This initial Prevailing Rate of Wages shall be set in accordance with the~~
12 ~~process established in Section 102.1(c)(1), except the Civil Service Commission shall submit to the~~
13 ~~Board of Supervisors data as to the Prevailing Rate of Wages no later than 120 days after the effective~~
14 ~~date of this Section 102.10. Thereafter, the Commission shall submit data as to the Prevailing Rate of~~
15 ~~Wages for loading, unloading, and driving of Commercial Vehicles on City property, on or before the~~
16 ~~first Monday in November each year in accordance with Section 102.1(c)(1).~~

17 ~~(2)~~ This Section 102.10 is intended to have prospective effect only, and shall not be
18 interpreted to impair the obligations of any pre-existing Contract, Lease, Franchise, Permit, or
19 Agreement issued or entered into by the City. This Section shall only apply to Contracts,
20 Leases, Franchises, Permits, or Agreements entered into on or after the operative date of this
21 Section.

22 (f) **Exemptions.** In addition to the exemptions set forth in Section 102.4(b) of this
23 Code for certain Shows and set forth in Section 102.8(b) of this Code for certain Special
24 Events, this Section 102.10 shall not apply to the following:
25

1 (1) any Individual engaged in the loading or unloading of portable toilets,
2 temporary fencing, temporary barricades, or temporary tents or canopies of less than 700
3 square feet when erected, or any Individual driving a Commercial Vehicle from which portable
4 toilets, temporary fencing, temporary barricades, or temporary tents or canopies of less than
5 700 square feet when erected, are loaded or unloaded;

6 (2) individual vendors at a flea market or farmers market conducted on City
7 property; provided, however, that this Section shall apply to loading, unloading, or driving of
8 Commercial Vehicles for such events if these events would otherwise be covered by this
9 Section 102.10 and the loading, unloading or driving is performed by the operator or
10 management of the flea market or farmers market;

11 ~~(3) work that is covered under a collective bargaining agreement;~~

12 ~~(4)~~ (3) work that is performed by a City employee; or

13 ~~(5)~~ (4) a Mass Participation Sports Event that is sponsored by a non-profit entity
14 where the primary purpose of the Event is fundraising for that non-profit entity and/or other
15 non-profit entities.

16 (g) **Severability.** ~~If any provision or provisions of this Section 102.10 or any application~~
17 ~~thereof is held invalid, such invalidity shall not affect any other provisions or applications of the~~
18 ~~Section. If any part or provision of this Section 102.10, or the application thereof to any Person or~~
19 ~~circumstance, is held invalid, the remainder of this Section, including the application of such part or~~
20 ~~provisions to other Persons or circumstances, shall not be affected thereby and shall continue in full~~
21 ~~force and effect. To this end, the provisions of this Section are severable.~~

22
23 **SEC. 102.11. ~~PREVAILING RATE OF WAGES FOR SECURITY GUARD SERVICES IN CITY~~**
24 **CONTRACTS AND FOR EVENTS ON CITY PROPERTY.**

1 (a) **Definitions.** For purposes of this Section 102.11, the following definitions shall
2 apply:

3 "Event" means any organized gathering of people, including but not limited to a live
4 performance, dance, convention, conference, parade, or exposition on City property.

5 "Security Guard Services" means services to protect persons or property or prevent
6 theft, performed by nonsupervisory employees who are licensed by the California Bureau of
7 Security and Investigative Services (BSIS) or a successor agency to provide security guard or
8 proprietary security guard service, including but not limited to men and women serving as
9 security guards, watchmen, patrolmen, and security officers.

10 (b) **City Contracts.**

11 (1) **Prevailing Wage Requirement.** Every Contract issued by the City must
12 require that any individual performing Security Guard Services thereunder at any facility or on
13 any property owned or leased by the City be paid not less than the Prevailing Rate of Wages;
14 ~~including fringe benefits or the matching equivalents thereof, paid in private employment for similar~~
15 ~~work in the area in which the Contract is being performed.~~ All Contracts subject to this Section
16 102.11 shall include a provision in which the Contractor agrees to comply with, and to require
17 Subcontractors to comply with, the obligations imposed by this Section.

18 (2) **Exclusions.** For purposes of this subsection (b), "Contract" shall mean an
19 agreement to be performed at the expense of the City or to be paid out of moneys deposited
20 in the City treasury or out of trust moneys under the control of or collected by the City, but
21 shall not include the following:

22 (A) Contracts issued by the ~~San Francisco~~ Airport Commission or to be
23 performed at any facility owned, leased, or otherwise under the jurisdiction of the ~~San~~
24 ~~Francisco~~ Airport Commission.
25

1 (B) Contracts for a cumulative amount of \$10,000 or less per Security
2 Guard Services provider in each fiscal year. Contracts may not be split for purposes of
3 evading the requirements of this Section 102.11.

4 (c) **Events on City Property.**

5 (1) **Prevailing Wage Requirement.** Every Contract, Lease, Franchise, Permit,
6 or Agreement awarded, let, issued, or granted by the City for the use of property owned by the
7 City must require that any ~~i~~Individual engaged in Security Guard Services for an Event on City
8 property be paid not less than the Prevailing Rate of Wages, ~~including fringe benefits or the~~
9 ~~matching equivalents thereof, paid in private employment for similar work in the area in which the~~
10 ~~Contract, Lease, Franchise, Permit, or Agreement is being performed.~~ All Contracts, Leases,
11 Franchises, Permits, or Agreements subject to this Section 102.11 shall include a provision in
12 which the Contractor (including a lessee, franchisee, permittee, or other party to an
13 Agreement) agrees to comply with, and to require Subcontractors to comply with, the
14 obligations imposed by this Section.

15 (2) **Exclusions.** For purposes of this subsection (c), "Contract, Lease,
16 Franchise, Permit, or Agreement" shall mean an agreement with the City for the use of
17 property owned by the City, but shall not include any contract, lease, franchise, permit, or
18 agreement for:

19 (A) Celebration of a marriage, domestic partnership, or similar civil
20 union;

21 (B) The presentation of an Event to which the public has free access
22 when the Event is in a public park, on a public street, or on property under the jurisdiction of
23 the Port Commission, and the advertising and promotion for the Event is less than \$10,000;

1 (C) Any permit or agreement to engage in film production pursuant to
2 Chapter 57 of the ~~San Francisco~~ Administrative Code or under the circumstances set forth in
3 Section 57.7 of the Administrative Code,;

4 (D) In any circumstance where application of this Section 102.11 would
5 be preempted by federal or ~~s~~State law,;

6 (E) Any Event for which the total number of employees providing
7 Security Guard Services for the Event is less than 15 ~~fifteen~~ persons.

8 (d) **Preemption.** Nothing in this Section 102.11 shall be interpreted or applied so as to
9 create any right, power, or duty in conflict with any federal or ~~s~~State law.

10 (e) ~~Operative Date and Prospective Effect.~~

11 ~~(1) This Section 102.11 shall become operative upon the initial setting of a Prevailing~~
12 ~~Rate of Wages for Security Guard Services by the Board of Supervisors. This initial Prevailing Rate of~~
13 ~~Wages shall be set in accordance with the process established in Section 102.1(e)(1), except the Civil~~
14 ~~Service Commission shall submit to the Board of Supervisors data as to the Prevailing Rate of Wages~~
15 ~~no later than 120 days after the effective date of this Section 102.11. Thereafter, the Commission shall~~
16 ~~submit data as to the Prevailing Rate of Wages for Security Guard Services on or before the first~~
17 ~~Monday in November each year in accordance with Section 102.1(e)(1).~~

18 ~~(2)~~ This Section 102.11 is intended to have prospective effect only, and shall not be
19 interpreted to impair the obligations of any pre-existing Contract, Lease, Franchise, Permit, or
20 Agreement”² issued or entered into by the City, unless such pre-existing agreement is
21 amended after the effective date of this Section and such amendment extends the term of the
22 pre-existing agreement.

23 (f) **Severability.** If any part or provision of this Section 102.11, or the application
24 thereof to any Person or circumstance, is held invalid, the remainder of this Section, including
25 the application of such part or provisions to other Persons or circumstances, shall not be

1 affected thereby and shall continue in full force and effect. To this end, the provisions of this
2 Section are severable.

3
4 Section 9. The Labor and Employment Code is amended by adding Article 103, consisting of
5 Sections 103.1 through 103.3, to read as follows:

6 **ARTICLE 103: PREVAILING WAGES**

7 **SEC. 103.1. GENERAL REQUIREMENT.**

8 *All Contractors and Subcontractors performing work on a Covered Project or a Covered*
9 *Contract as defined in Article 101 shall pay their workers on such project or contract not less than the*
10 *Prevailing Rate of Wages as set under Section 103.2, or the rate required by the Minimum*
11 *Compensation Ordinance, Labor and Employment Code Article 111, whichever is higher.*
12

13 **SEC. 103.2. DETERMINATION OF THE PREVAILING WAGE.**

14 *It shall be the duty of the Board of Supervisors ("the Board"), from time to time and at least*
15 *once during each calendar year, to fix and determine the Prevailing Rate of Wages as follows:*

16 *(a) On or before the first Monday in November of each year, the Civil Service Commission*
17 *("the Commission") shall furnish to the Board data as to the highest general Prevailing Rate of Wages*
18 *of the various crafts and kinds of labor as paid in private employment in the City, plus "per diem*
19 *wages" and wages for overtime and holiday work. "Per diem wages" means "per diem wages" as*
20 *defined in California Labor Code Sections 1773.1 and 1773.9, as amended from time to time. Based on*
21 *the data, the Commission shall also recommend to the Board rates for the Prevailing Rate of Wages.*

22 *(b) The Board of Supervisors shall, upon receipt of such data, fix and determine the Prevailing*
23 *Rate of Wages no later than December 31 of that year. If the Board does not fix and determine the*
24 *Prevailing Rate of Wages by December 31, the Commission's recommended rates shall become the*
25 *effective Prevailing Rate of Wages for the coming calendar year.*

1 (c) The Prevailing Rate of Wages as so fixed and determined by the Board (or as described
2 above set by the Commission in the absence of Board action by December 31) shall remain in force and
3 be deemed to be the highest general Prevailing Rate of Wages paid in private employment for similar
4 work, until the same is changed for that calendar year by the Board.

5 (d) Unless the Board expressly states otherwise, the Prevailing Rate of Wages as set by the
6 Board (or as described above set by the Commission in the absence of Board action by December 31)
7 shall track and match future wage determinations issued by the California Department of Industrial
8 Relations.

9 (e) In determining the highest general Prevailing Rate of Wages, as provided for in this Section
10 103.2, the Board shall not be limited to the consideration of data furnished by the Commission, but may
11 consider such other evidence upon the subject as the Board shall deem proper and thereupon base its
12 determination upon any or all of the data or evidence considered.

13 (f) In the event that the highest general Prevailing Rate of Wages are not fixed and determined
14 under this Section 103.2 for any calendar year, the rates established by the California Department of
15 Industrial Relations for such year shall be deemed adopted; and if the Department of Industrial
16 Relations does not so establish a rate for a craft or kind of labor, the most recent rate set under Section
17 103.2 for that craft or kind of labor shall remain in effect.

18
19 **SEC. 103.3. ADDITIONAL REQUIREMENTS AND CONTRACTUAL PROVISIONS.**

20 (a) Contractual Prevailing Wage Requirements. The City shall include in each contract,
21 lease, or any other type of agreement that includes or contemplates a Covered Project or Covered
22 Contract, the requirement that Contractors and Subcontractors performing work on the Covered
23 Project or Covered Contract pay Prevailing Wages in accordance with the requirements of this Article
24 103. The failure of the City to comply with this subsection (a) shall not void or annul the requirements
25 imposed by this Article 103 on Contractors and Subcontractors.

1 **(b) Subcontractors Bound by Wage Provisions.** *Every contract, lease, or any other type of*
2 *agreement that includes or contemplates a Covered Project or Covered Contract shall contain a*
3 *provision requiring the Contractor and/or any Subcontractor to insert in every subcontract, sublease,*
4 *or any other arrangement the requirement that the Subcontractor shall pay to all persons performing*
5 *labor or work for a Covered Project, or rendering service for a Covered Contract, the highest general*
6 *Prevailing Rate of Wages as fixed and determined in accordance with Section 103.2. This requirement*
7 *shall apply to any subcontract, sublease, or other arrangement that the Contractor or Subcontractor*
8 *may make for the performance of any work or labor for a Covered Project, or services for a Covered*
9 *Contract. The failure of a Contractor or Subcontractor to comply with this subsection (b) shall not void*
10 *or annul the requirement that any work or labor performed under any subcontract, sublease, or other*
11 *arrangement made by the Contractor or Subcontractor for work or labor for a Covered Project or*
12 *services for a Covered Contract must be paid at the highest general Prevailing Rate of Wages as fixed*
13 *and determined in accordance with Section 103.2.*

14 **(c) Additional Required Contract Provisions.** *Every contract, lease, or any other type of*
15 *agreement for a Covered Project or Covered Contract shall contain provisions stating the following:*
16 **(1) the Contractor will cooperate fully with the Labor Standards Enforcement Officer**
17 **and other City employees and agents authorized to assist in the administration and enforcement of the**
18 **Prevailing Wage requirements and other labor standards imposed on the Contractor by the Charter or**
19 **the Municipal Code;**

20 **(2) the Contractor agrees that the Labor Standards Enforcement Officer, and the**
21 **Officer's designees, in the performance of their duties, shall have the right to engage in random**
22 **inspections of job sites and to have access to the employees of the Contractor, employee time sheets,**
23 **inspection logs, Contractor daily logs, payroll records, employee paychecks, employee paystubs, and**
24 **proof of payment documents;**
25

1 (3) the Contractor shall maintain a record in the format prescribed by OLSE of sign-in
2 and sign-out showing which employees have been present on the job site;

3 (4) the Contractor shall prominently post at each job site a sign informing employees
4 that the project is subject to the City's Prevailing Wage requirements and that these requirements are
5 enforced by the Labor Standards Enforcement Officer; and

6 (5) the Labor Standards Enforcement Officer may audit such records of the Contractor
7 or Subcontractor as the Labor Standards Enforcement Officer reasonably deems necessary to
8 determine compliance with the Prevailing Wage and other labor standards imposed by the Charter or
9 the Municipal Code.

10 Failure to comply with any of these requirements may result in penalties and forfeitures
11 consistent with analogous provisions of the California Labor Code, including Section 1776(h), as
12 amended from time to time.

13 (d) **Contract Documents to Include Wage Rate.** The Department Head shall include in the
14 contract specifications or other contract document, or make available in the offices of the department
15 or at the job site, a detailed statement of the Prevailing Rate of Wages as fixed and determined in
16 accordance with Section 103.2 as of the time the department issued the Advertisement For Bids or
17 Solicitation on the contract. The Contractor shall agree to pay to all persons performing covered work
18 or labor on or for the Covered Project or Covered Contract the highest general Prevailing Rate of
19 Wages as determined in accordance with Section 103.2. If the contract documents do not include the
20 Prevailing Rate of Wages, the specifications or contract documents shall include a statement that
21 copies of the Prevailing Rate of Wages as fixed and determined in accordance with Section 103.2 are
22 on file at the department's principal office or at the job site and shall be made available to any
23 interested party on request.

1 **(e) Records.**

2 **(1) Records to be Kept by Contractors and Subcontractors.** *In every instance where*
3 *the Municipal Code or a contractual arrangement – including, without limitation, any agreement,*
4 *contract, franchise, lease, or permit – with the City requires a Contractor or Subcontractor to pay*
5 *Prevailing Wages, the subject contract or subcontract shall contain a provision that the contractor or*
6 *subcontractor shall keep, or cause to be kept, for a period of four years from the date of completion of*
7 *the subject work, payrolls and basic records including time cards, trust fund reports, apprenticeship*
8 *agreements, accounting ledgers, tax forms, proof of payment, and superintendent and foreperson daily*
9 *logs for all trades workers performing work. For purposes of this subsection (e)(1), “completion of the*
10 *subject work” means substantial completion for Covered Projects and the last day of covered work for*
11 *Covered Contracts. Such records shall include the name, address, and social security number of each*
12 *worker who worked on the project or under the contract, including apprentices, worker classification, a*
13 *general description of the work each worker performed each day, the rate of pay (including rates of*
14 *contributions for, or costs assumed, to provide fringe benefits), daily and weekly number of hours*
15 *worked, deductions made, and actual wages paid. Every Subcontractor who shall undertake the*
16 *performance of any part of a project or contractual arrangement subject to this Article 103 shall keep a*
17 *like record of each person engaged in the execution of the subcontract.*

18 **(2) Maintenance and Submission of Certified Payroll Records.**

19 **(A)** *Each Contractor and Subcontractor subject to this Article 103 shall maintain*
20 *weekly certified payroll records, and shall submit those certified payroll records to the City using the*
21 *Office of Labor Standards Enforcement’s certified payroll reporting system. The awarding department*
22 *may provide by contract for additional payroll maintenance or payroll submission requirements. All*
23 *certified payroll records shall be accompanied by a statement of compliance signed by the Contractor*
24 *or Subcontractor indicating that the payroll records are correct and complete, that the wage rates*
25

1 contained therein are not less than those determined in accordance with Section 103.2, and that the
2 classifications set forth for each employee conform with the work performed.

3 **(B) Exemption.** Unless otherwise provided by contract, Covered Contracts that
4 do not qualify as a Covered Project are exempt from the requirement that the Contractor submit
5 certified payroll records to the City.

6 (3) All such records as described in this subsection (e) shall at all times be open to
7 inspection and examination of the duly authorized officers and agents of the City, including
8 representatives of the Office of Labor Standards Enforcement.

9 (4) Should the Department Head or the Labor Standards Enforcement Officer determine
10 that a Contractor or Subcontractor is not in compliance with the requirements of this subsection (e),
11 the Department Head or the Labor Standards Enforcement Officer shall issue written notification to the
12 Contractor or Subcontractor mandating compliance within not fewer than 10 calendar days from the
13 date of the notification. Should the Contractor or Subcontractor fail to comply as required in the
14 notification, the Department Head who executed the contract or the Labor Standards Enforcement
15 Officer may impose penalties consistent with analogous provisions of the California Labor Code,
16 including Section 1776, as amended from time to time, for each calendar day of noncompliance, or
17 portion thereof, for each worker. Upon the request of the responsible Department Head or the Labor
18 Standards Enforcement Officer, the Controller shall withhold these penalties from progress payments
19 then due or to become due.

20 **(f) City as Third Party Beneficiary.** The City shall in each contract, lease, or any other
21 type of agreement that includes or contemplates work qualifying as a Covered Real Estate Project: (1)
22 a provision naming the City, affected workers, and employee organizations formally representing
23 affected workers, as third party beneficiaries for the limited purpose of having the right to enforce the
24 Prevailing Wage requirements of Article 103 and apprenticeship requirements of Article 104, including
25 the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with

1 Articles 103 through 106 and (2) a provision requiring the Real Property Contracting Party to
2 reasonably cooperate with the City in any action or proceeding against a Contractor or Subcontractor
3 that fails to pay the Prevailing Rate of Wages or employ Apprentices as required. A Real Property
4 Contracting Party that requires the payment of Prevailing Wages and employment of Apprentices in the
5 Covered Project, and that reasonably cooperates with the City in any enforcement action, shall not be
6 in breach of the applicable sales contract or lease with the City due to a Contractor's or
7 Subcontractor's failure to pay the Prevailing Rate of Wages or employ Apprentices. So long as the Real
8 Property Contracting Party satisfies the requirements of the previous sentence, and has not directly
9 performed trade work on the Covered Project, any enforcement action by the City, through the City's
10 Labor Standards Enforcement Officer or otherwise, shall be directly against the Contractor or
11 Subcontractor that failed to pay Prevailing Wages or employ Apprentices as required. Nothing in this
12 Article 103 shall limit the remedies available to a City department, as set forth in the applicable sales
13 contract or lease, for a Real Property Contracting Party's failure to require the payment of the
14 Prevailing Rate of Wages or the employment of Apprentices in a Covered Project, or for a Real
15 Property Contracting Party's failure to reasonably cooperate with the City in any enforcement action
16 as set forth above.

17 (g) Where the Covered Project involves Housing Development on real property sold by the
18 City, the requirements of this Article 103 shall terminate upon issuance of a final certificate of
19 occupancy for the Covered Project, so long as future construction work and/or other future activities
20 do not fall within the meaning of Covered Contract or Covered Project.

21
22 Section 10. The Labor and Employment Code is amended by adding Article 104,
23 consisting of Sections 104.1 through 104.3, to read as follows:
24
25

1 **ARTICLE 104: APPRENTICESHIP REQUIREMENTS**

2 **SEC. 104.1. EMPLOYMENT OF APPRENTICES.**

3 *Each Contractor or Subcontractor performing work as part of a project qualifying as a Covered*
4 *Real Estate Project shall employ Apprentices in compliance with the requirements of the State*
5 *Apprenticeship Program as set forth in the California Labor Code, Division 3, Chapter 4 commencing*
6 *at Section 3070, and Section 1777.5 of the California Labor Code, as each may be amended from time*
7 *to time.*

8
9 **SEC. 104.2. CONTRACTUAL APPRENTICESHIP REQUIREMENTS.**

10 *The City shall in each contract, lease, or any other type of agreement that includes or*
11 *contemplates work qualifying as a Covered Real Estate Project require that each Contractor or*
12 *Subcontractor performing work on the Covered Project employ Apprentices in accordance with Section*
13 *104.1.*

14
15 **SEC. 104.3. SUBCONTRACTORS BOUND BY APPRENTICESHIP PROVISIONS.**

16 *In each contract, lease, and/or other type of agreement that includes or contemplates work*
17 *qualifying as a Covered Real Estate Project, the City shall require the Contractor to insert in every*
18 *subcontract or other arrangement, which the Contractor or Subcontractor may make for the*
19 *performance of any work or labor on the Covered Real Estate Project, the requirement that the*
20 *Subcontractor shall employ Apprentices in accordance with Section 104.1.*

21
22 Section 11. The Labor and Employment Code is amended by adding Article 105,
23 consisting of Sections 105.1 through 105.3, to read as follows:
24
25

1 **ARTICLE 105: HOURS AND DAYS OF LABOR**

2 **SEC. 105.1. GENERALLY.**

3 *For the purpose of meeting prevailing conditions and enabling employers to secure a sufficient*
4 *number of satisfactory workers and artisans, no person performing labor or rendering service in the*
5 *performance of any contract or subcontract for any Covered Project as defined in Article 101 shall*
6 *perform labor for a longer period than five days (Monday through Friday) of eight hours each, with*
7 *two 10-minute breaks per eight-hour day, except in those crafts in which a different work day or week*
8 *now prevails by agreement in private employment. Any person working hours in addition to the above*
9 *shall be compensated in accordance with the prevailing overtime standards and rates.*

10
11 **SEC. 105.2. NONCOMPLIANCE AND FORFEITURE.**

12 *Any Contractor or Subcontractor who violates any provision of this Article 105 shall be liable*
13 *for the same penalties and forfeits as those specified in Article 106; penalties and forfeits shall be*
14 *applicable for each laborer, mechanic, or artisan employed for each calendar day or portion thereof*
15 *whereon such laborer, mechanic, or artisan is compelled or permitted to work more than the days and*
16 *hours specified herein. The provisions of this Article 105 shall be made a part of all contracts and*
17 *subcontracts for any Covered Project.*

18
19 **SEC. 105.3. CONTRACTS OUTSIDE CITY AND COUNTY.**

20 *In the event that any Covered Project is to be constructed outside of the City and at such a*
21 *distance therefrom that those engaged in performing labor on the Covered Project must under ordinary*
22 *conditions remain at or near the site of the Covered Project when not actually engaged in the*
23 *performance of labor thereon, then the officer, board, or commission responsible for the construction*
24 *of the Covered Project may, in making specifications or letting contracts therefor, make provision*
25 *therein for days and hours of labor beyond the limitations provided for in Article 105; but not to exceed*

1 eight hours in any calendar day, or six days in any calendar week. In the event that emergency
2 conditions arise, making a change advisable during the performance of any such contract, or any
3 portion thereof, the hours and days of labor may be extended beyond the limits hereinabove expressed;
4 but not to exceed eight hours per day, upon the written authority of the officer, board, or commission
5 awarding such contract. Failure of the Contractor to perform such contract within the time provided
6 shall not constitute an emergency.

7
8 Section 12. The Labor and Employment Code is amended by adding Article 106,
9 consisting of Sections 106.1 through 106.7, to read as follows:

10 **ARTICLE 106: PENALTIES, FORFEITURE, AND ENFORCEMENT**

11 **SEC. 106.1. PENALTY AND FORFEITURE.**

12 Any Contractor or Subcontractor who fails or neglects to comply with the requirements of
13 Article 103, Article 104, and/or Article 105 shall forfeit to the City back wages due plus penalties.
14 Penalties shall be forfeited in amounts consistent with analogous provisions of the California Labor
15 Code as amended from time to time, including Sections 1775, 1777.7, and 1813, but not less than \$50
16 for each calendar day, or portion thereof, for each worker not paid or otherwise not employed in
17 compliance with the requirements of Article 103, Article 104, and/or Article 105. A Contractor shall be
18 jointly and severally liable for the forfeitures of its Subcontractor(s). In addition, any Contractor or
19 Subcontractor who fails or neglects to comply with the requirements of Article 103, Article 104, and/or
20 Article 105 shall be subject to the penalties set forth in Article V of Chapter 6 of the Administrative
21 Code, including debarment.

22
23 **SEC. 106.2. WITHHOLDING OF FUNDS.**

24 For any Covered Project or Covered Contract under which the City has the ability to withhold
25 funds, it shall be the duty of the officer, board, or commission under whose jurisdiction said Covered

1 Project or Covered Contract is being carried on, constructed, or performed, when certifying to the
2 Controller any payment which may become due under said Contract, to deduct from said payment or
3 payments the total amount of any forfeiture provided for in Section 106.1. In doing so, the Department
4 Head must also notify in writing the Labor Standards Enforcement Officer of the Department Head's
5 action. The Labor Standards Enforcement Officer may also, upon written notice to the Department
6 Head responsible for the project, certify to the Controller any forfeiture(s) to deduct from any payment
7 as provided for in this Section 106.2. Certification of forfeitures under this Section 106.2 shall be made
8 only upon an investigation and audit by the responsible Department Head or the Labor Standards
9 Enforcement Officer and upon service of written notice to the Contractor that includes identification of
10 the grounds for the forfeiture or forfeitures ("Certification of Forfeiture"). The audit supporting the
11 forfeiture shall be appended to the Certification of Forfeiture, but failure to append such
12 documentation shall not invalidate the Certification of Forfeiture. Service of the Certification of
13 Forfeiture shall be made by United States mail and the date of service shall be the date of mailing. The
14 Controller, in issuing any warrant for any such payment, shall deduct from the amount which would
15 otherwise be due on said payment or payments the amount of said forfeiture or forfeitures as so
16 certified. This Section 106.2 does not provide for the withholding of funds disbursed through a City
17 loan for a Covered Real Estate Project.

18
19 **SEC. 106.3. WHERE THE CITY DOES NOT HAVE THE ABILITY TO WITHHOLD FUNDS.**

20 A Covered Project or Covered Contract subject to the procedures and/or requirements of
21 Section 106.2 shall not be subject to the procedures and requirements of Section 106.3. For any
22 Covered Project or Covered Contract for which the City does not have the ability to withhold funds, the
23 Labor Standards Enforcement Officer shall determine whether a Contractor and/or a Subcontractor
24 has failed to comply with the Prevailing Wage Provisions. If after conducting an investigation, the
25 Labor Standards Enforcement Officer determines that a violation has occurred, the Labor Standards

1 Enforcement Officer shall issue to and serve a Determination of Violation on the Contractor and/or any
2 Subcontractor, which sets forth the basis of the determination and orders payment of back wages due
3 plus penalties in amounts consistent with Section 106.1. A Contractor shall be jointly and severally
4 liable for the violations and liabilities set forth in a Determination of Violation issued to its
5 Subcontractor(s). Service of the Determination of Violation shall be made by United States mail and
6 the date of service shall be the date of mailing.

7
8 **SEC. 106.4. TERMINATION.**

9 In addition to and without prejudice to any other remedy available, the Department Head may
10 terminate a Covered Contract unless within 30 days of service of the Certification of Forfeiture or
11 Determination of Violation, the Contractor has either: (i) cured the violation; or (ii) established by
12 documentary evidence, including but not limited to payroll records, the truth and accuracy of which is
13 attested to by affidavit, proof of compliance with the applicable sections of the Prevailing Wage
14 Provisions. Upon a termination under this Section 106.4, the Contractor shall not be entitled to any
15 additional payment under the Covered Contract.

16
17 **SEC. 106.5. RECOURSE PROCEDURE.**

18 A Contractor and/or a Subcontractor may appeal from a Certification of Forfeiture under
19 Section 106.2 or Determination of Violation under Section 106.3. The Controller shall adopt and
20 maintain rules for any appeal under this Section 106.5, which rules shall be consistent with the
21 following:

22 (a) Any appeal from a Certification of Forfeiture or a Determination of Violation (each type
23 of appeal referred to in this Section 106.5 as the "Appeal") shall be filed in writing by the Contractor
24 and/or Subcontractor (referred to in this Section 106.5, whether individually or together, as the
25 "Appellant") within 15 days of the date of service of the Certification of Forfeiture or the

1 Determination of Violation. Appellant shall file the Appeal with the Controller and serve a copy on the
2 Labor Standards Enforcement Officer. Failure by the Contractor or Subcontractor to submit a timely,
3 written Appeal shall constitute concession to the forfeiture or determination, and the forfeiture or
4 determination shall be deemed final upon expiration of the 15-day period.

5 (b) Upon being served with the Appeal, the Office of Labor Standards Enforcement shall
6 promptly afford Appellant an opportunity to meet and confer in good faith regarding possible
7 resolution of the Certification of Forfeiture or Determination of Violation in advance of further
8 proceedings under this Section 106.5, with the intention that such meeting occur within 30 days of the
9 date the Appeal is filed.

10 (c) After the expiration of 30 days following the date the Appeal is filed, any party may
11 request in writing, with concurrent notice to all other parties, that the Controller appoint a hearing
12 officer to hear and decide the Appeal ("Hearing Officer"). If no party requests appointment of a
13 Hearing Officer, the Certification of Forfeiture or Determination of Violation shall be deemed final on
14 the 60th day after the date the Appeal is filed.

15 (d) Within 15 days of receiving a written request for appointment of a Hearing Officer
16 under subsection (c), the Controller shall appoint an impartial hearing officer and promptly notify the
17 enforcing official and Appellant, and their respective counsel or authorized representative, if any, of
18 the appointment. The Hearing Officer shall be an Administrative Law Judge with at least 10 years of
19 experience with the City and not less than two years of experience in labor law, Prevailing Wage,
20 and/or wage and hour matters; or shall be an attorney with knowledge of and not less than five years of
21 experience in labor law, Prevailing Wage, and/or wage and hour matters.

22 (e) The Hearing Officer shall promptly set a date for a hearing. The hearing shall
23 commence within 45 days of the date of the notification of the Hearing Officer appointment, and
24 conclude within 75 days of such notice. The Hearing Officer shall conduct a fair and impartial
25 evidentiary hearing in conformance with the time limitations set forth in this Section 106.5 and in the

1 rules, so as to avoid undue delay in the resolution of any appeal. The Hearing Officer shall have the
2 discretion to extend the times under this Section 106.5, and any time requirements under the rules and
3 regulations, only upon a showing of good cause.

4 (f) Appellant has the burden of proving by a preponderance of the evidence that the basis
5 for the Certification of Forfeiture or Determination of Violation is incorrect, including any back wage
6 and penalty assessments that are at issue in the Appeal.

7 (g) Within 30 days of the conclusion of the hearing, the Hearing Officer shall issue a written
8 decision affirming, modifying, or dismissing the Certificate of Forfeiture or Determination of Violation.
9 The decision of the Hearing Officer shall consist of findings and a determination. The Hearing Officer's
10 findings and determination shall be the City's final determination.

11 (h) Appellant may appeal a final determination under this Section 106.5 only by filing in the
12 San Francisco Superior Court. The Appellant may appeal the final administrative decision only by
13 filing in San Francisco Superior Court a petition for a writ of mandate under California Code of Civil
14 Procedure, Section 1094.5 et seq., as applicable, and as may be amended from time to time.

15
16 **SEC. 106.6. DISTRIBUTION OF FORFEITURE AND DAMAGES.**

17 (a) The Controller shall withhold any forfeiture as provided in Section 106.2 until such time as
18 either the Contractor or Subcontractor has conceded to the forfeiture or, in the event of an Appeal,
19 there is a determination no longer subject to judicial review. The Controller shall then distribute the
20 amounts withheld in the following order:

21 (1) the Labor Standards Enforcement Officer shall make best efforts to distribute back
22 wages withheld to the individual workers identified as not having been paid the proper wage rate;

23 (2) the penalty sums provided for above shall inure to the benefit of the general fund of
24 the City;

1 (3) the Controller shall hold the balance of any back wages in escrow for workers who
2 the Labor Standards Enforcement Officer, despite best efforts, cannot locate. In the event back wages
3 are unclaimed for a period of three years, the Controller shall undertake administrative procedures for
4 unclaimed funds in conformance with California Government Code Section 50050, et seq., as may be
5 amended from time to time.

6 (b) The order of distribution set forth in subsection (a) also shall apply to damages obtained as
7 a result of a payment on a Determination of Violation under Section 106.3 or to an enforcement action
8 pursuant to Section 106.7, as applicable.

9
10 **SEC. 106.7. REMEDIES FOR NON-COMPLIANCE WITH DETERMINATION OF VIOLATION.**

11 No later than 30 days after receipt of a Determination of Violation or, in the case of an Appeal,
12 no later than 30 days after an adverse final determination by the Hearing Officer, the Contractor
13 and/or Subcontractor shall comply with the Determination of Violation by paying the amounts due for
14 back wages and any penalty amount as set forth in the Determination of Violation or final
15 determination. The Contractor and/or Subcontractor shall, in addition, be subject to the penalties set
16 forth in Section 106.1, including debarment. If any Contractor and/or Subcontractor fails to pay the
17 amounts required under this Section 106.7 within the required 30 days, the following shall apply:

18 (a) The City may bring a civil action in a court of competent jurisdiction against the non-
19 complying party and, upon prevailing, shall be entitled to such legal and equitable relief as may be
20 appropriate to remedy the violation including, without limitation: (i) damages in the amount of back
21 wages and any penalty amounts due to workers for violation of the Prevailing Wage requirement,
22 which amounts the City shall, on receipt, distribute to workers following the procedures in Section
23 106.6; and (ii) an award of reasonable attorney's fees and costs.

24 (b) For a Covered Real Estate Project, each worker entitled to back pay, as set forth in the
25 Determination of Violation or, where a Hearing Officer has decided the matter, as set forth in the

1 decision of the Hearing Officer, may bring a civil action in a court of competent jurisdiction against the
2 non-complying party and, upon prevailing, shall be entitled to such legal and equitable relief as may be
3 appropriate to remedy the violation including, without limitation: (i) damages in the amount of back
4 wages due to such workers for violation of the prevailing wage and/or penalties due for violation of the
5 apprenticeship requirements; and (ii) an award of reasonable attorney's fees and costs. An employee
6 organization that formally represents a worker or workers entitled to bring a civil action under this
7 subsection 106.7(b) may do so on behalf of the worker or workers, with the same range of possible
8 legal and equitable relief, including attorney's fees, as would be available in an action brought by the
9 worker or workers.

10
11 Section 13. The Labor and Employment Code is amended by adding Article 107,
12 consisting of Sections 107.1 through 107.3, to read as follows:

13 **ARTICLE 107: LABOR STANDARDS ENFORCEMENT OFFICER**

14 **SEC. 107.1. LABOR STANDARDS ENFORCEMENT OFFICER.**

15 (a) Subject to the approval of the Mayor and Director of the Department of Administrative
16 Services, the Labor Standards Enforcement Officer shall develop and administer a plan for the
17 enforcement of, and is authorized to enforce, the Prevailing Wage requirements and other labor
18 standards imposed by the Charter, the Prevailing Wage Provisions, and/or Chapter 6 of the
19 Administrative Code. The Labor Standards Enforcement Officer shall coordinate the Labor Standards
20 Enforcement Officer's activities with federal and State labor standards agencies. The Labor Standards
21 Enforcement Officer shall direct the City's enforcement of the Prevailing Wage requirements and other
22 labor standards imposed by the Charter, the Prevailing Wage Provisions, and Chapter 6 of the
23 Administrative Code on Contractors as directed by the Mayor, and to this end all City departments
24 shall cooperate with the Labor Standards Enforcement Officer.

1 **(b) The Labor Standards Enforcement Officer has the authority to seek for a violation of the**
2 **Prevailing Wage Provisions, working conditions, or apprenticeship requirements all of the penalties**
3 **imposed by the Prevailing Wage Provisions and/or Chapter 6 of the Administrative Code, including the**
4 **authority to file charges, in the same manner and to the same extent as a Department Head, which may**
5 **lead to the debarment of the Contractor under Article V of Chapter 6 and/or Chapter 28 of the**
6 **Administrative Code.**

7 **(c) The Labor Standards Enforcement Officer shall oversee the training of City personnel in**
8 **the area of labor standards enforcement. In accordance with applicable law, including the civil service**
9 **provisions of the Charter, the Mayor or the City Administrator may enter into a contract for**
10 **investigative and monitoring services to further the purposes of this Article 107. In evaluating the**
11 **qualifications of persons seeking that contract, the Mayor shall consider, among other relevant factors,**
12 **the experience of those persons in monitoring and investigating labor standards compliance.**

13 **(d) This Section 107.1 shall not limit the authority and duties of the Labor Standards**
14 **Enforcement Officer established elsewhere in City law, including without limitation Section 2A.23 of**
15 **the Administrative Code.**

16
17 **SEC. 107.2. FUNDING.**

18 **Subject to the fiscal and budgetary provisions of the Charter, the Office of Labor Standards**
19 **Enforcement is authorized to receive from departments awarding contracts the amount reasonably**
20 **calculated to pay for the costs, including litigation costs, of enforcing the City Prevailing Wage**
21 **requirements and other labor standards for contracts awarded by those departments. The Labor**
22 **Standards Enforcement Officer shall supervise the expenditure of all funds appropriated for**
23 **enforcement of Prevailing Wage requirements and other labor standards imposed by the Charter, the**
24 **Prevailing Wage Provisions, and Chapter 6 of the Administrative Code.**

1 **SEC. 107.3. ADMINISTRATIVE PROCEDURE.**

2 (a) The Labor Standards Enforcement Officer shall establish an administrative procedure to
3 address allegations of labor standards violations in connection with any contract under Chapter 6 of
4 the Administrative Code or any contract for a Covered Project or Covered Contract. The Labor
5 Standards Enforcement Officer shall have sole authority over the administration of this complaint
6 procedure. The complaint procedure shall include but need not be limited to the following:

7 (1) any person may file a complaint, written or oral, alleging one or more violations of
8 any labor standards requirement imposed by the Prevailing Wage Provisions or Chapter 6 of the
9 Administrative Code on Contractors;

10 (2) before beginning to investigate the complaint, the Labor Standards Enforcement
11 Officer shall determine if the allegations of the complaint are sufficient, and based on that assessment
12 shall determine to either dismiss it or proceed with an investigation;

13 (3) if the Labor Standards Enforcement Officer at any time determines that the
14 allegations in the complaint are without merit, the Labor Standards Enforcement Officer shall notify
15 the complainant; and

16 (4) if the Labor Standards Enforcement Officer finds that any allegations in a complaint
17 have merit, the Labor Standards Enforcement Officer shall proceed in accordance with the
18 enforcement procedures under Article 106.

19 (b) Notwithstanding the foregoing, the complaint procedure in subsection (a) is not applicable
20 to those matters under the administrative jurisdiction of the Human Rights Commission.

21 (c) The complaint procedure established in subsection (a) shall not preclude the Labor
22 Standards Enforcement Officer from initiating or proceeding with an investigation on the Labor
23 Standards Enforcement Officer's own authority.

24 (d) All Contractors and departments engaged in a Covered Project or Covered Contract shall
25 cooperate fully with the Office of Labor Standards Enforcement in connection with any investigation of

1 any complaint filed in accordance with the complaint procedure established in subsection (a). The
2 Labor Standards Enforcement Officer may interview, either at the worksite or elsewhere, any witness
3 who may have information relative to a complaint.
4

5 Section 14. The Labor and Employment Code is amended by adding Article 108,
6 consisting of Sections 108.1 through 108.4, to read as follows:

7 **ARTICLE 108: LOCAL HIRE REQUIREMENT**

8 **SEC. 108.1. LOCAL HIRE REQUIREMENT.**

9 The City shall include in all real property sales contracts for Housing Development, as that
10 term is defined in Article 101, and in all City-as-landlord leases that include or contemplate
11 construction of a Covered Project, the requirement that the purchaser or tenant of the real property
12 comply with the requirements of the City's Local Hiring Policy, as set forth in Administrative Code
13 Chapter 82 and under the standards set forth in subsection 82.4(b) of the Administrative Code.
14 Notwithstanding Article 101, for purposes of this Article 108, the terms "Covered Project,"
15 "Contractor," and "Subcontractor," shall have the same meaning as the definitions set forth in Section
16 82.3 of the Administrative Code.
17

18 **SEC. 108.2. MANDATORY PARTICIPATION LEVELS.**

19 In the performance of work or labor on a Covered Project, each purchaser or tenant shall
20 comply, and shall require its Contractors and Subcontractors to comply, with the mandatory
21 participation levels set forth in Section 82.5 of the Administrative Code.
22

23 **SEC. 108.3. CITY AS THIRD PARTY BENEFICIARY.**

24 Each applicable construction contract for a Covered Project shall:

25 (a) require compliance with the Local Hiring Policy, with reference to this Article 108;

1 **(b) name the City as a third party beneficiary for the limited purpose of having the right to**
2 **enforce the Local Hiring Policy, including the right to file charges and seek penalties against any**
3 **Contractor or Subcontractor; and**

4 **(c) require the purchaser or tenant to reasonably cooperate with the City in any action or**
5 **proceeding against a Contractor or Subcontractor that fails to comply with the requirements of this**
6 **Article 108. A purchaser or tenant that requires compliance with this Section 108.3 in the construction**
7 **contract for the Covered Project and reasonably cooperates with the City in any enforcement action**
8 **shall not be in breach of the applicable sales contract or lease with the City due to a Contractor's or**
9 **Subcontractor's failure to comply or to meet the mandatory participation levels. So long as the**
10 **purchaser or tenant complies with the requirements of the previous sentence, any enforcement action**
11 **by the City, through the Office of Economic and Workforce Development ("OEWD") or otherwise,**
12 **shall be directly against the Contractor or Subcontractor that failed to meet the mandatory**
13 **participation levels. But nothing in this Section 108.3 shall limit the remedies available to a City**
14 **department, as set forth in the applicable sales contract or lease, for a purchaser's or tenant's failure to**
15 **require compliance with this Section in a construction contract for the Covered Project or to**
16 **reasonably cooperate with the City in any enforcement action as set forth above.**

17
18 **SEC. 108.4. ENFORCEMENT.**

19 **(a) Assessment of Penalties. OEWD shall have the authority to enforce this Article 108**
20 **against a Contractor or Subcontractor as set forth in Administrative Code Section 82.8. OEWD shall**
21 **determine whether a Contractor or Subcontractor has failed to comply with the local hiring**
22 **requirements. If after conducting an investigation, OEWD determines that a violation has occurred, it**
23 **shall issue and serve an assessment of penalties that sets forth the basis of the assessment and orders**
24 **payment of penalties under subsection 82.8(f) of the Administrative Code.**

1 **(b) Remedies for Non-Compliance with Assessment of Penalties. Each Contractor and**
2 **Subcontractor shall comply with the final assessment of penalties by paying the amounts due for wages**
3 **as set forth in Administrative Code subsection 82.8(f)(3) no later than 30 days after the determination**
4 **or decision of the hearing officer is final. The Contractor or Subcontractor shall, in addition, be subject**
5 **to the penalties set forth in Article V of Chapter 6 of the Administrative Code, including debarment. If**
6 **any Contractor or Subcontractor fails to pay the amounts required under subsection 82.8(f) of the**
7 **Administrative Code within the required 30 days, the non-complying party shall be subject to the**
8 **enforcement actions set forth in subsection 82.8(f)(5) of the Administrative Code.**

9
10 Section 15. The Labor and Employment Code is amended by adding Article 109,
11 consisting of Sections 109.1 through 109.14, to read as follows:

12 **ARTICLE 109: TRANSITION EMPLOYMENT REQUIREMENTS**

13 **SEC. 109.1. PURPOSE AND SCOPE.**

14 **(a) The City has an important proprietary interest in maintaining the stability of the**
15 **workforce engaged by a Contractor or Subcontractor under a Covered Contract. Turnover of**
16 **experienced workers resulting from a change in the City's Contractor jeopardizes the quality,**
17 **efficiency, and cost-effectiveness of service provided to the City under the successor Contract.**
18 **Accordingly, all Covered Contracts shall impose the obligations of this Article 109 on the Contractor**
19 **and Subcontractor.**

20 **(b) Article 109 does not apply to any Covered Project, unless that Covered Project also**
21 **qualifies as a Covered Contract.**

22
23 **SEC. 109.2. SUBMISSION OF EMPLOYEE INFORMATION.**

24 **(a) Where the Contracting Officer has given notice that a Covered Contract will be bid, or**
25 **where a Contractor has given notice of termination, upon giving or receiving such notice, as the case**

1 may be, the Contractor ("ending Contractor") shall, within 10 days thereafter, provide to the
2 Contracting Officer and the Purchaser, for each Employee who worked at least 15 hours per week for
3 the ending Contractor, the name, date of hire, number of hours and months worked in total for the
4 employer, wage rate, and employment occupation classification. This provision shall also apply to the
5 subcontractors of the ending Contractor.

6 (b) Where a Subcontractor has been terminated prior to the termination or ending of the
7 Contract, the Subcontractor shall for the purposes of this Section 109.2 be deemed an ending
8 Contractor.

9 (c) All requests for bids for Covered Contracts shall include the information listed above for
10 Employees and shall notify prospective bidders about the Transition Employment requirements of this
11 Article 109.

12
13 **SEC. 109.3. EMPLOYEE RETENTION.**

14 A successor Contractor shall retain, for a six-month transition employment period, Employees
15 who have worked at least 15 hours per week for the ending Contractor or its Subcontractors for the
16 preceding 12 months and have been employed by the ending Contractor or its Subcontractors, if any,
17 for the preceding 12 months under the Covered Contract, providing that just cause does not exist to
18 terminate such Employee. The ending Contractor's Employees who worked at least 15 hours per week
19 shall be employed by the Successor Contractor in order of their seniority with the ending Contractor
20 within their job classification, and shall be paid the Prevailing Rate of Wages to which they were
21 entitled when employed by the ending Contractor. This requirement shall be stated by the City in all
22 initial bid packages involving a Covered Contract.

1 **SEC. 109.4. INSTANCES WHERE FEWER EMPLOYEES ARE REQUIRED.**

2 *If at any time a successor Contractor determines that fewer Employees are required to perform*
3 *the new Contract than were required by the ending Contractor (and Subcontractors, if any), the*
4 *successor Contractor shall retain Employees by seniority within job classification.*

6 **SEC. 109.5. PREFERENTIAL HIRING LIST.**

7 *During such six-month period the successor Contractor (or Subcontractor, where applicable)*
8 *shall maintain a preferential hiring list of eligible covered Employees not retained by the successor*
9 *Contractor (or Subcontractor) from which the successor Contractor (or Subcontractor) shall hire*
10 *additional Employees if the need arises.*

12 **SEC. 109.6. RESTRICTION ON DISCHARGING EMPLOYEES.**

13 *During the six-month transition employment period, the successor Contractor (or*
14 *Subcontractor, where applicable) shall not discharge without cause an Employee retained pursuant to*
15 *Article 109. "Cause," for this purpose, shall include, but not be limited to, the Employee's conduct*
16 *while in the employ of the ending Contractor or Subcontractor that contributed to any decision to*
17 *terminate the Contract or subcontract for fraud or poor performance, excluding permissible union-*
18 *related activity.*

20 **SEC. 109.7. PERFORMANCE REVIEWS.**

21 *At the end of the six-month transition employment period, a successor Contractor (or*
22 *Subcontractor, where applicable) shall perform a written performance evaluation for each Employee*
23 *retained pursuant to this Article 109. If the Employee's performance during such six-month period is*
24 *satisfactory, the successor Contractor (or Subcontractor) shall offer the Employee continued*

1 employment under the terms and conditions established by the successor Contractor (or Subcontractor)
2 or as required by law.

3
4 **SEC. 109.8. CONTRACTUAL PROVISIONS.**

5 All Covered Contracts subject to this Article 109 shall include a provision in which the
6 Contractor agrees to require any Subcontractor to comply with the obligation imposed by this Article
7 109.

8
9 **SEC. 109.9. SUCCESSOR'S PRIOR EMPLOYEES.**

10 Notwithstanding the provisions of this Article 109, a successor Contractor or Subcontractor
11 may replace an Employee otherwise entitled to be retained with a person employed by the Contractor
12 or Subcontractor continuously for 12 months prior to the commencement of the successor Contract or
13 Subcontract in a capacity similar to that proposed under the successor Contract or Subcontract. This
14 provision shall apply only where the existing Employee of the successor Contractor or Subcontractor
15 would otherwise be laid off work as a result of the award of the successor Contract.

16
17 **SEC. 109.10. NO SUCCESSOR.**

18 The retention requirements of this Article 109 shall not apply where there is no successor
19 Contractor or Subcontractor. For example, where a Contract is for services over a single day, week, or
20 month for a discrete, nonrepeating event, there is no successor and the retention requirements
21 described herein are inapplicable.

22
23 **SEC. 109.11. DEFINITION OF EMPLOYEE.**

24 For the purposes of this Article 109 on Transition Employment Requirements only, the term
25 "Employee" shall include any person who performs work under a Covered Contract, but shall not

1 include an individual who serves in a managerial, supervisory, or confidential capacity, including
2 those individuals who would be defined as such under the Fair Labor Standards Act, 29 U.S.C. § 201,
3 et seq., as may be amended from time to time.

4
5 **SEC. 109.12. ENFORCEMENT.**

6 (a) **Definitions.** For the purpose of Sections 109.12 and 109.13, “Agency” means the Office
7 of Labor Standards Enforcement or any successor department or office.

8 (b) **Implementation.** The Agency shall be authorized to coordinate implementation and
9 enforcement of this Article 109 and may promulgate appropriate rules for such purposes. Any rules
10 promulgated by the Agency shall have the force and effect of law and may be relied on by employers,
11 employees, and other persons to determine their rights and responsibilities under this Article. Any rules
12 may establish procedures for ensuring fair, efficient, and cost-effective implementation of this Article,
13 including supplementary procedures for helping to inform employees of their rights under this Article,
14 for monitoring contractor, subcontractor, and awarding authority compliance with this Article, and for
15 providing administrative hearings to determine whether a contractor, subcontractor, awarding
16 authority, or other person has violated the requirements of this Article.

17 (c) **Administrative Enforcement.**

18 (1) The Agency is authorized to take appropriate steps to enforce this Article 109. The
19 Agency may investigate any possible violations of this Article by an awarding authority, a successor
20 Contractor, or a successor Contractor’s Subcontractor. Where the Agency has reason to believe that a
21 violation has occurred, it may order any appropriate temporary or interim relief to mitigate the
22 violation or maintain the status quo pending completion of a full investigation or hearing.

23 (2) Where the Agency determines that a violation has occurred, it may issue a
24 Determination of Violation and order any appropriate relief including, but not limited to, back pay,
25

1 including the value of benefits, for each day during which the violation continues, which shall be
2 calculated at a rate of compensation not less than the higher of:

3 (A) The average regular rate of pay received by the Employee during the last
4 three years of the Employee's employment in the same job classification; or

5 (B) The final regular rate received by the Employee.

6 (3) Where the Agency determines that a violation has occurred, it may also authorize the
7 payment of an additional sum as an administrative penalty to each Employee or person whose rights
8 under this Article 109 were violated. If any backpay is ordered, the dollar amount of the backpay
9 multiplied by three, or \$250, whichever amount is greater, shall be included in the administrative
10 penalty paid to the Employee. In addition, if a violation of this Article 109 resulted in other harm to the
11 Employee or any other person, or otherwise violated the rights of Employees or other persons, this
12 administrative penalty shall also include \$50 to each Employee or person whose rights under this
13 Article were violated for each day or portion thereof that the violation occurred or continued.

14 (4) Where prompt compliance is not forthcoming, the Agency may take any appropriate
15 enforcement action to secure compliance, including initiating a civil action pursuant to Section
16 109.12(d) and/or, except where prohibited by State or federal law, requesting that City agencies or
17 departments revoke or suspend any registration certificates, permits, or licenses held or requested by
18 the violator until such time as the violation is remedied. In order to compensate the City for the costs of
19 investigating and remedying the violation, the Agency may also order the violator to pay to the City a
20 sum of not more than \$50 for each day or portion thereof and for each Employee or person as to whom
21 the violation occurred or continued. Such funds shall be allocated to the Agency and used to offset the
22 costs of implementing and enforcing this Article 109.

23 (5) The remedies and penalties provided under subsections (c)(2) through (c)(4) are
24 cumulative.

1 (6) An Employee or other person may report to the Agency any suspected violation of
2 this Article 109. The Agency shall encourage reporting pursuant to this subsection (c)(5) by keeping
3 confidential, to the maximum extent permitted by applicable laws, the name and other identifying
4 information of the Employee or person reporting the violation; provided, however, that with the
5 authorization of such person, the Agency may disclose their name and identifying information as
6 necessary to enforce this Article or for other appropriate purposes.

7 (7) The Determination of Violation shall provide notice of the right to appeal the
8 determination to the Controller in accordance with Section 109.13, and that failure to do so within 15
9 days shall result in the determination becoming a final administrative decision.

10 (8) The Determination of Violation shall specify a reasonable time period for payment of
11 any relief ordered. The Agency may award interest on all amounts due and unpaid at the expiration of
12 such time period at the rate of interest specified in subdivision (b) of Section 3289 of the California
13 Civil Code, as may be amended from time to time.

14 (9) The Agency may require that remedies and penalties due and owing to a person
15 whose rights under this Article 109 were violated be paid directly to the City for disbursement to the
16 person. The Controller shall hold these funds in escrow for the person. The Agency shall make best
17 efforts to distribute such funds. In the event such funds are unclaimed for a period of three years, the
18 Controller may undertake administrative procedures for escheat of unclaimed funds under California
19 Government Code Sections 50050 et seq., as may be amended from time to time. Subject to the
20 budgetary and fiscal provisions of the Charter, such escheated funds shall be dedicated to the
21 enforcement of this Article 109 or other laws the Agency enforces.

22 **(d) Civil Enforcement.**

23 (1) The City Attorney or an Employee who, in violation of this Article 109, was not
24 retained by a successor Contractor or its Subcontractor may bring an action in the Superior Court of
25 the State of California against the successor Contractor and, where applicable, the successor

1 Contractor's Subcontractor, and an Employee may be awarded back pay, including the value of
2 benefits, for each day during which the violation continues, which shall be calculated at a rate of
3 compensation not less than the higher of:

4 (A) The average regular rate of pay received by the Employee during the last
5 three years of the Employee's employment in the same occupation classification; or

6 (B) The final regular rate received by the Employee.

7 (2) If the City Attorney or the Employee is the prevailing party in any such legal action,
8 the Court shall award reasonable attorneys' fees and costs as part of the costs recoverable.

9 (e) **Interest.** In any administrative or civil action brought under this Article 109, the Agency
10 or court, as the case may be, shall award interest on all amounts due and unpaid at the rate of interest
11 specified in subdivision (b) of Section 3289 of the California Civil Code, as amended from time to time.

12
13 **SEC. 109.13. APPEAL PROCEDURE.**

14 (a) A person subject to a Determination of Violation of this Article 109 may file an appeal
15 ("Appeal") in accordance with the following procedures:

16 (1) The person ("Appellant") shall file the Appeal with the Controller and serve a copy
17 on the Agency. The Appeal shall be filed in writing within 15 days of the date of service of the
18 Determination of Violation, and shall specify the basis for the Appeal and shall request that the
19 Controller appoint a hearing officer to hear and decide the Appeal. Failure to submit a timely written
20 Appeal shall constitute concession, and the Determination of Violation shall be deemed the final
21 administrative decision upon expiration of the 15-day period. Further, failure to submit a timely,
22 written Appeal shall constitute a failure to exhaust administrative remedies, which shall serve as a
23 complete defense to any petition or claim brought against the City regarding the Determination of
24 Violation.

1 (2) Following the filing of the Appeal and service of a copy on the Agency, the Agency
2 shall promptly afford the Appellant an opportunity to meet and confer in good faith regarding possible
3 resolution of the Determination of Violation.

4 (3) Within 30 days of receiving an Appeal, the Controller shall appoint an impartial
5 hearing officer who is not part of the Agency and immediately notify the Agency and Appellant of the
6 appointment.

7 (4) The hearing officer shall promptly set a date for a hearing. The hearing shall
8 commence within 45 days of the date of the Controller's notice of appointment of the hearing officer,
9 and conclude within 75 days of such notice; provided, however, that the hearing officer may extend
10 these time limits for good cause.

11 (5) The hearing officer shall conduct a fair and impartial evidentiary hearing. The
12 Appellant shall have the burden of proving by a preponderance of the evidence that the Agency erred in
13 its Determination of Violation, and/or the relief ordered therein.

14 (6) Within 30 days of the conclusion of the hearing, the hearing officer shall issue a
15 written decision affirming, modifying, or dismissing the Determination of Violation. The hearing
16 officer's decision shall be the final administrative decision. The decision shall consist of findings, a
17 determination, any relief ordered, a reasonable time period for payment of any relief ordered, and
18 notice to the Appellant of the right to appeal by filing a petition for a writ of mandate as described in
19 subsection (a)(7), and that failure to file a timely Appeal shall result in the final administrative decision
20 becoming enforceable as a judgment by the Superior Court.

21 (7) The Appellant may appeal the final administrative decision only by filing in San
22 Francisco Superior Court a petition for a writ of mandate under California Code of Civil Procedure,
23 Section 1094.5 et seq., as applicable, and as may be amended from time to time.

24 (b) Where an Appellant fails to comply with a final administrative decision within the time
25 period required therein, the Agency may take any appropriate enforcement action to secure

1 compliance, including referring the action to the City Attorney to seek enforcement of the final
2 administrative decision in Superior Court and, except where prohibited by State or federal law,
3 requesting that City agencies or departments revoke or suspend any registration certificates, permits,
4 or licenses held or requested by the Appellant until such time as the violation is remedied.

5
6 **SEC. 109.14. NO PRIVATE RIGHT OF ACTION.**

7 This Article is not intended to create a private right of action against the City.
8

9 **Section 16. Effective Date and Operative Date.**

10 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs
11 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
12 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
13 Mayor's veto of the ordinance.

14 (b) This ordinance shall become operative 30 days after its effective date.
15

16 **Section 17. Scope of Ordinance.**

17 In enacting this ordinance, the Board of Supervisors intends to amend only those
18 words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks,
19 charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly
20 shown in this ordinance as additions, deletions, Board amendment additions, and Board
21 amendment deletions in accordance with the "Note" that appears under the official title of the
22 ordinance.

23 **Section 18. Prospective Effect.**

24 (a) Except as expressly stated herein, this ordinance is intended to have prospective
25 effect only, and shall not be interpreted to impair the obligations of any contract, grant

1 agreement, sales contract, lease, development agreement, or other agreement entered into
2 by the City prior to the Operative Date of this ordinance. Any contract, grant agreement, sales
3 contract, lease, development agreement, or other agreement entered into by the City prior to
4 the Effective Date of this ordinance shall be interpreted according to the provisions of the
5 Municipal Code effective at the time of the agreement, including any provisions specifying
6 prospective or retroactive effect.

7 (b) This ordinance shall not amend or repeal the prospective effect provision or
8 provisions of any ordinance or resolution enacted prior to the enactment of this ordinance.

9 (c) The foregoing notwithstanding, this ordinance shall apply to any contract, grant
10 agreement, sales contract, lease, development agreement, or other agreement entered into
11 by the City that is amended after the Effective Date of this ordinance.

12
13
14 APPROVED AS TO FORM:
15 DAVID CHIU, City Attorney

16 By:

17 /s/
18 DAVID R. HOBSTETTER
19 Deputy City Attorney

20 n:\LEGAN\IAS2023\200019\01789922