

1 [Administrative Code Amendment - San Francisco Local Hiring Policy for Construction]

2

3 **Ordinance amending the San Francisco Administrative Code Chapter 6, Public Works**

4 **Contracting Policies and Procedures, Subsection 6.22(G) to: (1) establish a local hiring**

5 **policy for City public work or improvement projects requiring contractors and their**

6 **subcontractors to perform certain percentages of project work hours using San**

7 **Francisco residents and disadvantaged San Francisco residents; (2) making findings in**

8 **support of the policy; (3) providing incentives for contractors and subcontractors who**

9 **exceed local hiring requirements; (4) mandating assessment of liquidated damages**

10 **against contractors and subcontractors who fail to meet minimum local hiring**

11 **requirements; and (5) establishing monitoring, enforcement, and administrative**

12 **procedures in support of the policy.**

13 NOTE: Additions are *single-underline italics Times New Roman*;

14 deletions are ~~*strike-through italics Times New Roman*~~.

15 Board amendment additions are double-underlined;

Board amendment deletions are ~~strikethrough normal~~.

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

17 Section 1. The San Francisco Administrative Code is hereby amended by amending

18 Section 6.22, to read as follows:

19 **SEC. 6.22. PUBLIC WORK CONSTRUCTION CONTRACT TERMS AND WORKING**

20 **CONDITIONS.**

21 All construction contracts awarded by the City and County of San Francisco shall

22 contain the following minimum terms and conditions:

23 (A) **Bonds.** Before the execution of any contract for public works or improvements

24 in excess of \$25,000, the department head authorized to execute such contracts shall require

25 the successful bidder to file corporate surety bonds for the faithful performance thereof and to

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

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

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

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

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

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

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

8 (E) **Prevailing Wages.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 ~~(G) — **Local Hiring.**~~

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

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

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

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

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

14 (2) — **Definitions.**

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

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

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

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

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

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

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

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

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

24 ~~(d) The Office of Economic and Workforce Development and San Francisco Public Utilities~~
25 ~~Commission funded the August 2010 report from Chinese for Affirmative Action and Brightline Defense~~

1 Project entitled, "The Failure of Good Faith," which found that the City has historically failed to meet
2 its local hiring goals.

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

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

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

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

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

18 (j) City spending on public work and improvement projects over the next 10 years will
19 generate approximately 60,000 job opportunities.

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

24 (l) Although approximately 40% of construction workers employed in San Francisco are
25 San Francisco residents, from 2002 to 2010 San Francisco residents worked only approximately 24%

1 of the work-hours on publicly-funded construction projects in the City, and only 20% of work-hours
2 since July 2009.

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

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

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

19 (p) The City has made substantial public investments in its workforce development system,
20 including CityBuild and the City's community-based partners, to create job opportunities in industries
21 such as construction, which are vital to the economic health of the local economy, have a capacity to
22 generate a significant number of jobs, are accessible to low- and middle-skilled individuals, have
23 career ladder opportunities where workers can move up with additional training and skill development,
24 and provide access to living wage and family-sustaining jobs.

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

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

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

13 (t) The Board seeks terms and conditions that advance the City's workforce and community
14 development goals, removing obstacles that may have historically limited the full employment of local
15 residents on the wide array of opportunities created by public works projects, curbing spiraling
16 unemployment, population decline, and reduction in the number of local businesses located in the City,
17 eroding property values and depleting San Francisco's tax base.

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

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

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

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

4 **(c) “Awarding department” means a department or commission empowered on behalf of**
5 **the City to contract for a covered project.**

6 **(d) “City” means the City and County of San Francisco, California.**

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

11 **(f) “Covered project” means a public work or improvement project or part thereof to which**
12 **this subsection 6.22(G) applies, under standards set forth in subsection 6.22(G)(3).**

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

17 **(h) “Local hiring incentives” means the incentives set forth in subsection 6.22(G)(5) of this**
18 **Policy.**

19 **(i) “Local hiring requirements” means the requirements set forth in subsection 6.22(G)(4)**
20 **of this Policy.**

21 **(j) “Local resident” means an individual who is domiciled, as defined by Section 349(b) of**
22 **the California Election Code, within the City at the time the individual begins performance of project**
23 **work.**

24 **(k) “OEWD” means the City’s Office of Economic and Workforce Development.**

25 **(l) “Policy” means this subsection 6.22(G).**

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

2 (n) "Project work hours" means the total hours worked on a construction contract by all
3 apprentices, journeylevel workers, and work site foremen, whether those workers are employed by the
4 contractor or any subcontractor.

5 (o) "Subcontractor" means any person, firm, partnership, owner operator, limited liability
6 company, corporation, joint venture, proprietorship, trust, association, or other entity providing
7 services to a contractor or other subcontractor in fulfillment of the contractor's or other
8 subcontractor's obligations arising from a contract with the City for construction work on a covered
9 project.

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

11 (3) Coverage.

12 (a) Threshold for Public Work and Improvement Projects. This Policy applies to contracts
13 with prime contractors for public works or improvements estimated to cost more than \$350,000.

14 (b) Projects Constructed Outside the City. City projects constructed outside of the City and
15 County of San Francisco shall be governed by the terms of this Policy, with percentage requirements
16 proportional to the share of the City's investment in the project.

17 (c) Projects Utilizing Federal or State Funds.

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

24 (ii) Alternative Terms in Case of Conflict. Where the provisions of this Policy would be
25 prohibited by federal or state law, or where the application of this Policy would violate or be

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

10 (d) **Out-of-State Workers.** Project work hours performed by residents of states other than
11 California shall not be considered in calculation of the number of project work hours to which the local
12 hiring requirements apply. Contractors and subcontractors shall report to awarding departments and
13 OEWD the number of project work hours performed by residents of states other than California.
14 OEWD shall track such hours and report to the Board on an annual basis the percentage of total
15 project work hours on all covered projects that have been performed by residents of states other than
16 California.

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

18 (a) For each covered project, the following requirements shall apply to each prime
19 contractor and subcontractor that performs more than \$100,000 of project work, with regard to project
20 work performed by that prime contractor or subcontractor:

21 (b) For project work performed on a covered project during the first year after the effective
22 date of this Policy: At least 30% of project work hours by trade shall be performed by local residents,
23 with no less than 15% of project work hours by trade performed by disadvantaged workers.

1 (c) For project work performed on a covered project during the second year after the
2 effective date of this Policy: At least 40% of project work hours by trade shall be performed by local
3 residents, with no less than 20% of project work hours by trade performed by disadvantaged workers.

4 (d) For project work performed on a covered project during the third year after the effective
5 date of this Policy and thereafter: At least 50% of project work hours by trade shall be performed by
6 local residents, with no less than 25% of project work hours by trade performed by disadvantaged
7 workers.

8 (e) For project work performed on a covered project advertised after the effective date of
9 this Policy: At least 50% of the project work hours performed by apprentices shall be performed by
10 local residents, with no less than 25% of project work hours performed by apprentices to be performed
11 by disadvantaged workers.

12 (5) **Local Hiring Incentives.**

13 (a) Incentive Criteria. Contractors and subcontractors shall receive financial and non-
14 financial incentives for exceeding the local hiring requirements on a covered project.

15 (b) Administration. The OEWD shall establish the operation and amounts of the incentives
16 described herein.

17 (i) Financial incentives provided on a covered project shall not exceed two percent of the
18 estimated cost of the project. Awarding departments shall pay financial incentives after a contractor or
19 subcontractor has completed work on the project and OEWD has approved the contractor's or
20 subcontractor's request for incentive payment. Subcontractors requesting incentive payments shall
21 submit requests to the awarding department and OEWD through the prime contractor, not directly to
22 the awarding department or OEWD. Payment of subcontractor incentives shall be paid to the prime
23 contractor for the benefit of the appropriate subcontractor(s). Prime contractor must pay
24 subcontractor(s) within 10 days of receipt of financial incentives from the City.

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

3 **(6) Additional Contractor Rights and Responsibilities.**

4 (a) Local Hiring Plan for Large Projects. For covered projects estimated to cost more than
5 \$1,000,000, the prime contractor shall prepare and submit to OEWD for approval a local hiring plan
6 for the project. The local hiring plan shall be a written plan for implementation of the requirements of
7 this Policy, including an approximate timeframe for hiring decisions of subcontractors, a description of
8 the hiring processes to be utilized by subcontractors, an estimate of numbers of targeted workers
9 needed from various referral sources, and qualifications needed for such targeted workers. The prime
10 contractor must receive OEWD approval of the local hiring plan prior to commencement of
11 construction work on the project.

12 (b) Referral Sources. Where a contractor's or subcontractor's preferred or preexisting
13 hiring or staffing procedures for a covered project do not enable that contractor or subcontractor to
14 satisfy the local hiring requirements of this Policy, the contractor or subcontractor shall use other
15 procedures to identify and retain targeted workers. These procedures shall include requesting workers
16 from referral sources identified by OEWD, and considering targeted workers who are referred by such
17 sources within three business days of the request and who meet the qualifications described in the
18 request. Such consideration shall include in-person interviews. Qualifications described in the request
19 shall be limited to skills directly related to performance of job duties.

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

24 (d) Subcontractor Compliance. Each contractor and subcontractor shall ensure that all
25 subcontractors agree to comply with applicable requirements of this Policy. All subcontractors agree

1 as a term of participation on a covered project that the City shall have third party beneficiary rights
2 under all contracts under which subcontractors are performing project work. Such third party
3 beneficiary rights shall be limited to the right to enforce the requirements of this Policy directly against
4 the subcontractors.

5 (7) **Enforcement.**

6 (a) **Role of OEWD.** OEWD is authorized to enforce all terms of this Policy. Awarding
7 departments shall work cooperatively with OEWD to implement requirements of this Policy, to include
8 the provisions of the Policy in every contract for which inclusion is required, to assist contractors and
9 subcontractors in complying with the Policy, and to assist OEWD in furthering the purposes of the
10 Policy through monitoring and enforcement activities. OEWD shall determine the records required to
11 be verified and/or provided by contractors and subcontractors to establish workers' qualifications and
12 statuses relevant to this Policy.

13 (b) **Role of Community-Based Partners.** OEWD shall be authorized to engage its
14 community-based partners in the City's workforce development system to assist in attaining compliance
15 with this Policy and the recruitment and retention of targeted workers. OEWD shall develop a central
16 forum for community members and representatives of all stakeholders affected by or interested in this
17 Policy to exchange information and ideas and to advise OEWD staff concerning the operation and
18 results of the Policy.

19 (c) **Recordkeeping.** Each contractor and subcontractor shall keep, or cause to be kept, for a
20 period of four years from the date of substantial completion of project work on a covered project,
21 certified payroll and basic records, including time cards, tax forms, and superintendent and foreman
22 daily logs, for all workers within each trade performing work on the covered project. Such records
23 shall include the name, address and social security number of each worker who worked on the covered
24 project, his or her classification, a general description of the work each worker performed each day,
25 the apprentice or journey-level status of each worker, daily and weekly number of hours worked, the

1 self-identified race, gender, and ethnicity of each worker, whether or not the worker was a local
2 resident or disadvantaged worker, and the referral source or method through which the contractor or
3 subcontractor hired or retained that worker for work on the covered project (e.g., core workforce,
4 name call, union hiring hall, City-designated referral source, or recruitment or hiring method).
5 Contractors and subcontractors may verify that a worker is a local resident through the worker's
6 possession of a valid SF City ID Card, which may be obtained at the County Clerk's Office. OEWD
7 and awarding departments may require additional records to be kept with regard to contractor or
8 subcontractor compliance with this Policy. All records described in this section shall at all times be
9 open to inspection and examination by the duly authorized officers and agents of the City, including
10 representatives of the awarding department and the OEWD.

11 (d) Reporting. The OEWD shall establish requirements for reporting to OEWD and the
12 awarding department the records described above, for purposes of monitoring compliance with and
13 effectiveness of this Policy and monitoring operation of the City's public construction sector for other
14 valid purposes, including prevention of race and gender discrimination. All records submitted shall be
15 accompanied by a statement of compliance signed by the contractor or subcontractor indicating that
16 the records are correct and complete.

17 (e) Monitoring. From time to time and in its sole discretion, either OEWD or the awarding
18 department may monitor and investigate compliance of contractor and subcontractors working on
19 covered projects with requirements of this Policy. Each contractor and subcontractor shall allow
20 representatives of OEWD and the awarding department, in the performance of their duties, to engage
21 in random inspections of job sites and to have access to the employees of the contractor and
22 subcontractor and the records required to be kept by this Policy. The OEWD shall establish an
23 administrative procedure for OEWD monitoring of compliance with this Policy and to address
24 allegations of noncompliance. The OEWD shall have sole authority over the administration of this
25 procedure. Except as prohibited by law, OEWD will make data collected under subsections 7(c) and

1 (d) of this Policy available on-line to the public in real-time and create a process for members of the
2 public to submit complaints regarding alleged violations of this Policy. The OEWD shall investigate
3 all complaints filed by members of the public; the scope, methods, and conclusions of all such
4 complaint-driven investigations shall be within the discretion of OEWD, with no right of the
5 complaining party to determine the scope or methods of the investigation. All contractors,
6 subcontractors and awarding departments shall cooperate fully with the OEWD in monitoring and
7 compliance activities. The OEWD may interview, either at the worksite or elsewhere, any witness who
8 may have information related to a complaint.

9 (f) **Compliance Procedures.**

10 (i) **Consequences of Noncompliance.** Awarding departments and OEWD have the authority
11 to seek for violations of this Policy all of the consequences imposed by or described in this Policy, in
12 the contract for a covered project, or by statute, including the authority to assess liquidated damages
13 as described herein, assess damages for other violations of terms of this Policy, and/or seek penalties
14 set forth in Article V of this Chapter, including debarment.

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

24 (iii) **Assessment of Liquidated Damages.** It shall be the duty of the awarding department,
25 when certifying to the Controller any payment which may become due under a contract, to deduct from

1 said payment or payments the total amount of liquidated damages due under this subsection. In doing
2 so, the department head must also notify the OEWD of his or her action. OEWD may also upon written
3 notice to the awarding department, certify to the Controller any assessment of liquidated damages to
4 deduct from any payment as provided for in this subsection. Certification of assessments under this
5 subsection shall be made only upon an investigation by the awarding department or OEWD and upon
6 written notice to the contractor or subcontractor identifying the grounds for the assessment or
7 assessments, and providing the contractor or subcontractor with the opportunity to respond. The
8 Controller, in issuing any warrant for any such payment, shall deduct from the amount which would
9 otherwise be due on said payment or payments the amount of said assessment or assessments as so
10 certified. Any retainage to cover contract performance that may become due to contractor under
11 subsection 6.22(J) may be withheld by the City pending a determination by the awarding department or
12 OEWD as to whether a contractor or subcontractor must pay liquidated damages.

13 (iv) A contractor or subcontractor may avoid the assessment of liquidated damages
14 described in this subsection by agreeing before project commencement to sponsor an OEWD-specified
15 number of targeted workers as apprentices in each of the trades for which damages for noncompliance
16 would otherwise be in effect. The OEWD-specified number shall not be fewer than one targeted worker
17 for each \$250,000 of project work performed by that contractor or subcontractor, and those
18 apprentices shall be retained throughout the duration of the applicable trade work on the project.
19 OEWD will verify with the California Department of Industrial Relations Division of Apprenticeship
20 Standards that the OEWD-specified number of new apprentices are newly registered and active
21 apprentices, and have actually been retained through the duration of the contractor's or
22 subcontractor's work on the project, prior to issuing a release from liquidated damages. Contractors
23 and subcontractors seeking this waiver from liquidated damages may only do so once per calendar
24 year.

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

3 (a) The contractor or subcontractor may request a hearing in writing within 15 days of the
4 date of the final notification of assessment. The request shall be directed to the City Controller.
5 Failure by the contractor or subcontractor to submit a timely, written request for a hearing shall
6 constitute concession to the assessment and the assessment shall be deemed final upon expiration of the
7 15-day period. The contractor or subcontractor must exhaust this administrative remedy prior to
8 commencing further legal action.

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

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

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

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

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

24 (vi) Distribution of Liquidated Damages. The Controller shall withhold any liquidated
25 damages assessed as provided in the foregoing subparagraphs until such time as either the contractor

1 or subcontractor has conceded to the liquidated damages or, in the event of an objection, there is a
2 determination no longer subject to judicial review. The Controller shall then deposit the amounts
3 withheld into a special account which shall be created for the sole purpose or receiving said funds.
4 The funds deposited into this account shall be used to support the enforcement of this Policy and the
5 further development of workforce development initiatives to train and prepare local residents for
6 careers in construction.

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

12 (viii) Release of Final Payment for Large Contracts. For projects on which a local hiring
13 plan is required, the awarding department may not accept final work and the Controller not may not
14 issue final payment until OEWD certifies compliance with the local hiring plan and the terms of this
15 Policy.

16 (8) **Miscellaneous.**

17 (a) Regulations and Administrative Guidance. OEWD shall be the primary department
18 authorized to implement and enforce this Policy. OEWD shall issue regulations and/or administrative
19 guidance regarding implementation of the Policy, including (i) documentation and recordkeeping
20 requirements, (ii) incentive payments, (iii) monitoring and compliance activities, (iv) project and/or
21 contract coverage determinations, (v) designated referral sources, (vi) bid and contract documents
22 implementing the Policy, (vii) procedures for application of the Policy to alternative competitive
23 bidding processes set forth in Article IV of this Chapter, and (viii) other matters related to
24 implementation of this Policy. Awarding departments shall cooperate with and assist in
25 implementation of OEWD actions and determinations regarding this Policy.

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

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

10 (d) Effective Date. This Policy shall become effective upon the date of its enactment and
11 shall apply to covered projects advertised for bids by awarding departments more than thirty (30) days
12 after such date.

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

22 (f) Periodic Review. This subsection 6.22(G) shall remain in full force and effect, subject to
23 periodic review by the Board of Supervisors. The Board of Supervisors will regularly, but at a
24 minimum of once every five years, determine whether there is a continuing need to ensure adequate
25

1 local resident hiring, make relevant findings in support of its determination, and, if necessary, amend
2 this subsection as appropriate.

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

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

16 (i) Conflicting Agreements. In case of conflict between terms of this Policy and a
17 contractual agreement entered into by a contractor, subcontractor or awarding department, terms of
18 this Policy shall govern. Each party to a contract incorporating terms of this Policy agrees through
19 that contract that either it is not a party to such a conflicting agreements, or that it will comply with
20 terms of this Policy as incorporated into the contract, rather than with any conflicting agreements.
21 After the effective date of this Policy, no awarding department may enter into a project labor
22 agreement or other contract relating to or applying to the performance of project work on a covered
23 project that conflicts with or precludes contractor and subcontractor compliance with terms of this
24 Policy.

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

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

21 (1) **Increasing or Decreasing Price.** Alterations, modifications or extras in any
22 contract, which will increase or decrease the contract cost or scope, may be made or allowed
23 only on the written recommendation of the department head responsible for the supervision of
24 the contract stating the amount and basis for such increase or decrease. For any cumulative
25 increase or decrease in price in excess of ten percent of the original contract price or scope,

1 the department head shall obtain the approval of the Mayor or Mayor's designee or the board
2 or commission as appropriate and also the approval of the Controller notwithstanding any
3 delegation provided for above.

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

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

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

23 (c) **Avoidable and Unavoidable Delay; Limitation of Damages for Delay.** The
24 department head administering the public work shall have the authority to specify in the
25 contract the delays that shall be deemed avoidable or unavoidable. The City and County shall

1 not pay damages or compensation of any kind to a contractor because of delays in the
2 progress of the work, whether such delays be avoidable or unavoidable; provided, however,
3 the City and County may pay for (1) delays caused to the contractor by the City and County;
4 and (2) such unavoidable delays as may be specifically stated in the contract. Such latter
5 delays will be compensated for only under the conditions specified in the contract.

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

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

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

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

23 (2) If the department head responsible for the public work determines that the
24 contract is 50 percent or more complete, that the contractor is making satisfactory progress,
25 and that there is no specific cause for greater withholding, the department head, upon the

1 written request of contractor, may authorize one of the following two options: (a) the City shall
2 release part of the retention to the contractor so that the amount held in retention by the City,
3 after release to the contractor, is reduced to an amount not less than 5 percent of the total
4 value of the labor and materials furnished, and the City shall proceed to retain 5 percent of
5 any subsequent progress payment under the contract; or (b) the City shall continue to hold the
6 already withheld retention amount, up to 5 percent of the total contract price, and shall not
7 deduct further retention from progress payments.

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

21 (4) The department head shall authorize the release of retention, in whole or in part,
22 for work completed by subcontractors under any public work contract awarded under this
23 Chapter with a construction duration of more than two years. The department head shall do
24 so only upon a written request by the contractor certifying (i) the work by the subcontractor is
25 completed and satisfactory (ii) the total final amount paid to the subcontractor and (iii) the

1 amount of retention associated with the work performed by the subcontractor. The City may
2 issue the retention within six months of the date of the request. Following a release of such
3 retention, and in order to calculate retention and retention withholding from further progress
4 payments, the City will reduce the total retention required under the foregoing paragraphs (1)
5 and (2) by the amount paid to the subcontractor(s) for whom the City released retention. The
6 release of retention under this subparagraph shall not reduce the responsibilities or liabilities
7 of the contractor or its surety under the contract or applicable law. For any contract awarded
8 under this Chapter prior to the enactment of this subparagraph with a construction duration of
9 more than two years, a department head may in his or her sole discretion incorporate this
10 subparagraph by change order.

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

12 (6) The City shall release retention to the contractor upon the following conditions:
13 (a) the contractor has reached final completion under the contract terms and conditions and
14 (b) the contract is free of offsets by the City for liquidated damages, defective work and the
15 like, and is free of stop notices, forfeitures, and other charges. When the department head
16 responsible for the public work or his/her designee determines that the contract is 98 percent
17 or more complete, the department head or his/her designee may reduce retention funds to an
18 amount equal to 200 percent of the estimated value of work yet to be completed, provided that
19 the contract is free of offsets by the City and is free of stop notices, forfeitures, and other
20 charges.

21 (7) In no event shall the City be liable for interest or charges arising out of or
22 relating to the date the City issues any progress payment or the date the City releases all or
23 part of the retention, except that the City will pay interest at the legal rate, as set forth in
24 section 685.010(a) of the California Code of Civil Procedure as that section may be amended
25 from time to time, on any improperly withheld amounts commencing no earlier than 90 days

1 after the date the City should have made any progress payment or released all or part of the
2 retention. Under no circumstances shall the legal rate of interest paid by the City under this
3 provision exceed 10 percent per annum. The payment of interest under this provision is the
4 limit of the City's liability with respect to any claim for interest on improperly withheld amounts.

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

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

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

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

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

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

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

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

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

6 APPROVED AS TO FORM:
7 DENNIS J. HERRERA, City Attorney

8 By: _____
9 JOHN G. WHITE
 Deputy City Attorney

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