

1 [Administrative Code - Amending Local Hiring Policy to Set Percentages]

2

3 **Ordinance amending the Administrative Code to move the Local Hiring Policy from**
4 **Chapter 6 to a new Chapter 82, set mandatory participation levels for project work**
5 **hours permanently at 30% for all projects covered by the policy, clarify language**
6 **regarding application of the policy to projects outside of San Francisco, change the**
7 **due date for annual reports regarding the policy from March 1 to April 1, and make**
8 **other clarifications to the policy.**

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

18

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

20

21 Section 1. The Administrative Code is hereby amended by revising Section 6.22 to
22 read as follows:

23 **SEC. 6.22. PUBLIC WORK CONSTRUCTION CONTRACT TERMS AND WORKING**
24 **CONDITIONS.**

25

* * * *

26 (g) Local Hiring *Policy. All Contracts and subcontracts for performance of Public Works*
27 *or Improvements that exceed the Threshold Amount are subject to the requirements of the San*
28 *Francisco Local Hiring Policy for Construction as set forth in Chapter 82 of the Administrative Code*

1 (“Local Hiring Policy”) and shall include compliance with the Local Hiring Policy as a material term
2 of the Contract, directly enforceable by the City as described therein. As a condition of performance of
3 Project Work, as that term is defined in Administrative Code Section 82.3, each Contractor and
4 subcontractor agrees: to comply with all provisions of the Local Hiring Policy; that provisions of the
5 Local Hiring Policy are reasonable and are achievable by the Contractor or subcontractor, including
6 the reporting requirements and consequences for noncompliance described in Chapter 82 of the
7 Administrative Code; and that the Contractor or subcontractor had a full and fair opportunity to
8 review and understand terms of the Local Hiring Policy, in consultation with counsel if so desired.
9 ~~This subsection 6.22(g) shall be known as and may be cited as the San Francisco Local Hiring Policy~~
10 ~~for Construction (“Policy”).~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 ~~—— (U) The Board seeks terms and conditions that advance the City's workforce and~~
24 ~~community development goals, removing obstacles that may have historically limited the full~~
25 ~~employment of local residents on the wide array of opportunities created by public works projects,~~

1 ~~curbing spiraling unemployment, population decline, and reduction in the number of local businesses~~
2 ~~located in the City, eroding property values and depleting San Francisco's tax base.~~

3 ~~—— (V) A local hiring policy is necessary to counteract these grave economic and social~~
4 ~~ills.~~

5 ~~—— (W) The San Francisco Local Hiring Policy for Construction 2012-2013 Annual Report~~
6 ~~and the San Francisco Local Hiring Policy for Construction 2013-2014 Annual Report show that the~~
7 ~~Policy has proven to be a highly effective tool in guaranteeing good-paying jobs for Local Residents on~~
8 ~~Covered Projects, which includes public work construction projects completed under City contracts.~~

9 ~~—— (X) The 2012-2013 and 2013-2014 Annual Reports are evidence that a true partnership~~
10 ~~between the City, CityBuild and its community-based partners, contractors, labor organizations, and~~
11 ~~state-certified apprenticeship programs has increased local hiring on projects covered by the Policy by~~
12 ~~an average of 35% as of 2014. This compares to an average of 20% under the "good faith efforts"~~
13 ~~policy it replaced.~~

14 ~~—— (Y) The City has a proprietary interest in the construction contracts it issues, and also~~
15 ~~has a proprietary interest in the leases and development agreements that it enters that all allow for~~
16 ~~construction on city-owned property.~~

17 ~~—— (Z) Expanding the Policy to include construction projects on City-owned property and~~
18 ~~on City-owned property sold for Housing Development as defined in Section 23.61 of the~~
19 ~~Administrative Code promotes an equitable share of job opportunities for San Francisco residents to~~
20 ~~pursue a career in construction; and provides the opportunity for the use of state-certified~~
21 ~~apprenticeships that expands the local construction workforce pipeline to support the continued~~
22 ~~success of local hiring on public works projects.~~

23 ~~(2) Definitions. For purposes of this subsection 6.22(g), the following terms shall have the~~
24 ~~following meanings:~~

25

1 ~~"Apprentice" means any worker who is indentured in a construction apprenticeship program~~
2 ~~that maintains current registration with the State of California's Division of Apprenticeship Standards.~~

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

6 ~~"Awarding department" means a department or commission empowered on behalf of the City~~
7 ~~to contract for a covered project.~~

8 ~~"City" means the City and County of San Francisco, California.~~

9 ~~"Contractor" means any person, firm, partnership, owner operator, limited liability company,~~
10 ~~corporation, joint venture, proprietorship, trust, association, or other entity that contracts directly to~~
11 ~~perform construction work on a covered project. A contractor may also be referred to as a "prime~~
12 ~~contractor" or "general contractor."~~

13 ~~"Covered project" means a Public Work or Improvement project, construction project, or part~~
14 ~~thereof to which this subsection 6.22(g) applies, under standards set forth in subsection 6.22(g)(3).~~

15 ~~"Disadvantaged worker" means a local resident, as defined below, who (i) resides in a census~~
16 ~~tract within the City with a rate of unemployment in excess of 150% of the City unemployment rate, as~~
17 ~~reported by the State of California Employment Development Department; or (ii) at the time of~~
18 ~~commencing work on a covered project has a household income of less than 80% of the AMI, or (iii)~~
19 ~~faces or has overcome at least one of the following barriers to employment: being homeless; being a~~
20 ~~custodial single parent; receiving public assistance; lacking a GED or high school diploma;~~
21 ~~participating in a vocational English as a second language program; or having a criminal record or~~
22 ~~other involvement with the criminal justice system.~~

23 ~~"Local hiring incentives" means the incentives set forth in subsection 6.22(g)(5) of this Policy.~~

24 ~~"Local hiring requirements" means the requirements set forth in subsection 6.22(g)(4) of this~~
25 ~~Policy.~~

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

4 ~~"OEWD" means the City's Office of Economic and Workforce Development.~~

5 ~~"Policy" means this subsection 6.22(g).~~

6 ~~"Project work" means construction work performed as part of a covered project.~~

7 ~~"Project work hours" means the total hours worked on a construction contract by all~~
8 ~~apprentices and journey level workers, whether those workers are employed by the contractor or any~~
9 ~~subcontractor.~~

10 ~~"Subcontractor" means any person, firm, partnership, owner operator, limited liability~~
11 ~~company, corporation, joint venture, proprietorship, trust, association, or other entity that contracts~~
12 ~~with a prime contractor or another subcontractor to provide services to a prime contractor or another~~
13 ~~subcontractor in fulfillment of the prime contractor's or that other subcontractor's obligations arising~~
14 ~~from a contract for construction work on a covered project.~~

15 ~~"Targeted worker" means any local resident or disadvantaged worker.~~

16 ~~"New hire" means any employee of a contractor who is not listed on the contractor's quarterly~~
17 ~~tax statements for the tax period and has been hired prior to the commencement of work.~~

18 ~~"Core employee or worker" means an apprentice or journey level employee, who possesses~~
19 ~~any license required by state or federal law for the project work to be performed, of a contractor or~~
20 ~~subcontractor who appears on that contractor or subcontractor's certified payroll sixty (60) of the~~
21 ~~previous one hundred calendar (100) days prior to date of award of a city contract.~~

22 ~~(3) Coverage.~~

23 ~~—— (A) Threshold for Public Work and Improvement Projects. This Policy applies to~~
24 ~~Contracts issued by the City with Prime Contractors for Public Works or Improvements estimated to~~
25 ~~cost in excess of the Threshold Amount set forth in Section 6.1, as that amount may be amended.~~

1 ~~—— (B) Threshold for Projects Constructed on Property Owned or Sold by the City.~~

2 ~~(i) For purposes of subsection 6.22(g) only, this Policy applies to~~

3 ~~—— a. all construction projects on real property owned by the City; and~~

4 ~~—— b. all construction projects on City-owned real property located within~~
5 ~~the jurisdictional boundaries of the City and County of San Francisco that is sold to private parties, or~~
6 ~~their successor in interest, for the purpose of Housing Development, as defined in Section 23.61(a) of~~
7 ~~the Administrative Code;~~

8 ~~provided that, under either subsection (g)(3)(B)(i)a or subsection (g)(3)(B)(i)b, the project is~~
9 ~~estimated to cost in excess of the Threshold Amount set forth in Section 6.1, as that amount may be~~
10 ~~amended, including construction contracts that are issued by an entity or individual other than the City.~~

11 ~~—— (ii) The following construction projects are exempt from this subsection~~
12 ~~6.22(g)(3)(B):~~

13 ~~—— a. tenant improvement projects estimated to cost less than \$750,000 per~~
14 ~~building permit, where the project is undertaken and contracted for by the tenant;~~

15 ~~—— b. projects for special events where the special event is three or fewer~~
16 ~~consecutive or non-consecutive days within a two week period;~~

17 ~~—— c. construction projects for which the construction work is fully funded~~
18 ~~and performed by a donor or donor's agent as a gift-in-place donation, where the gift agreement does~~
19 ~~not require City funds to be used for the construction and where the gift agreement includes a~~
20 ~~requirement that workers be paid the same Prevailing Rate of Wages as would be required on a public~~
21 ~~work project; and~~

22 ~~—— d. projects that as of the effective date of this subsection 6.22(g)(3)(B)~~
23 ~~have a term sheet that has been endorsed by the Board of Supervisors and have findings of fiscal~~
24 ~~feasibility, to the extent that such projects agree to be bound by a legally enforceable document,~~
25 ~~enforceable by OEWD, committing the project to Local Hire mandatory participation level of 30% per~~

1 ~~trade. All grant agreements, leases, development agreements and other contracts that the City enters~~
2 ~~that allow for such non-exempt construction projects on property owned by the City must contain a~~
3 ~~provision that such construction shall comply with this Policy.~~

4 ~~———(C) Projects Constructed Outside the City. Covered Projects constructed within 70~~
5 ~~miles from the jurisdictional boundary of the City and County of San Francisco shall be governed by~~
6 ~~the terms of this Policy, except that percentage requirements shall apply in proportion to the City's~~
7 ~~actual cost after reimbursement from non-City sources compared to the total cost of the project, and,~~
8 ~~unless a reciprocity agreement exists, the "local" requirement shall include San Francisco residents,~~
9 ~~workers local to the area where the work is located, and workers residing within the San Francisco~~
10 ~~Public Utilities Commission service area. If a reciprocity agreement with another local agency exists,~~
11 ~~the terms of that reciprocity agreement shall govern. Covered City projects constructed 70 miles or~~
12 ~~more beyond the jurisdictional boundary of the City and County of San Francisco shall be subject to~~
13 ~~this Policy, except the "local" requirement shall include San Francisco residents, workers local to the~~
14 ~~area where the work is located, and workers residing within the region where the work is located.~~
15 ~~Awarding departments shall work with OEWD and regional local hiring programs to comply.~~

16 ~~———(D) Projects Utilizing Federal or State Funds.~~

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

23 ~~———(ii) Alternative Terms in Case of Conflict. Where the provisions of this Policy would~~
24 ~~be prohibited by Federal or State law, or where the application of this Policy would violate or be~~
25 ~~inconsistent with the terms or conditions of a grant or a contract with an agency of the United States or~~

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

9 ~~———(E) Out of State Workers. Project work hours performed by residents of states other~~
10 ~~than California shall not be considered in calculation of the number of project work hours to which the~~
11 ~~local hiring requirements apply. Contractors and subcontractors shall report to awarding departments~~
12 ~~and OEWD the number of project work hours performed by residents of states other than California.~~

13 ~~——(4) Local Hiring Requirements.~~

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

19 ~~——(i) The initial mandatory participation level is 20% of all project work hours within~~
20 ~~each trade performed by local residents, with no less than 10% of all project work hours within each~~
21 ~~trade performed by disadvantaged workers. Subject to the periodic review process set forth in~~
22 ~~subsection 6.22(g)(4)(B), below, the mandatory participation level for project work hours shall~~
23 ~~increase annually up to a mandatory participation level of 50% of project work hours within each trade~~
24 ~~performed by local residents, with no less than 25% of all project work hours within each trade~~
25 ~~performed by disadvantaged workers. For each mandatory participation percentage specified below,~~

1 *one-half of the specified percentage of project work hours within each trade shall be performed by*
 2 *disadvantaged workers.*

<i>Year After Effective Date* That Contract Is Advertised for Bids</i>	<i>Mandatory Participation Level For Project Work Hours</i>
0	20%
1	25%
2	30%
<i>Periodic Review</i>	<i>Periodic Review</i>
3	30%
4	30%
5	30%
<i>Periodic Review</i>	<i>Periodic Review</i>
6	35%
7	40%
8	45%
<i>Periodic Review</i>	<i>Periodic Review</i>
9	50%

20 **The effective Date is March 25, 2010.*

21
 22 ~~(ii) At least 50% of the project work hours performed by apprentices within each~~
 23 ~~trade shall be performed by local residents, with no less than 25% of project work hours performed by~~
 24 ~~apprentices within each trade to be performed by disadvantaged workers.~~

1 — (B) ~~Periodic Review By OEWD and Controller. OEWD, in coordination with the~~
2 ~~Controller's Office, shall every three years from the end of the prior Periodic Review, evaluate the~~
3 ~~impact of existing mandatory participation levels and the continued need for financial incentives as set~~
4 ~~forth in subsection 6.22(g)(5). The OEWD/Controller review shall (i) determine whether there is a~~
5 ~~sufficient supply of qualified unemployed resident workers to meet the escalation rate set forth in~~
6 ~~subsection 6.22(g)(4)(A)(i), above; (ii) assess the length of time required for each trade to develop a~~
7 ~~pool of qualified resident workers sufficient to support a 50% mandatory participation target; and (iii)~~
8 ~~make relevant findings in support of those determinations, and, if necessary, propose amendments to~~
9 ~~the mandatory participation level by trade. OEWD and the Controller's Office shall further report on~~
10 ~~the financial incentive program and make relevant findings and, if necessary, propose reducing or~~
11 ~~eliminating financial incentives. During the periodic review process, OEWD and the Controller's~~
12 ~~Office shall consult with a broad spectrum of relevant stakeholders (including the community, the~~
13 ~~California Department of Industrial Relations Division of Apprenticeship Standards, contractors,~~
14 ~~building trades, and City departments and agencies). Promptly upon completion of a periodic review,~~
15 ~~OEWD and the Controller's Office shall furnish to the Board of Supervisors a report setting forth their~~
16 ~~findings, determinations and proposed amendments to the mandatory participation level by trade~~
17 ~~and/or the financial incentive program, if any. The Board shall, by resolution, fix and determine the~~
18 ~~mandatory participation levels by trade and available financial incentives, if any. The mandatory~~
19 ~~participation levels by trade and financial incentives as so fixed and determined by the Board shall~~
20 ~~supplant the mandatory participation levels and financial incentives that this Policy sets and shall~~
21 ~~remain in force until the same are changed by the Board. In determining the mandatory participation~~
22 ~~levels by trade and available financial incentives, as so provided for in this subsection, the Board shall~~
23 ~~not be limited to consideration of the periodic review report furnished by OEWD and the Controller's~~
24 ~~Office, but may consider other such evidence upon the subject as the Board shall deem proper and base~~
25 ~~its determination upon any or all of the evidence considered.~~

1 ~~—— (C) Pipeline and Retention Compliance. Contractors and subcontractors may use one~~
2 ~~or more of the following pipeline and retention compliance mechanisms to receive a conditional waiver~~
3 ~~from the local hiring requirements on a project-specific basis:~~

4 ~~—— (i) Specialized Trades. Every two calendar years, OEWD shall publish a list of trades~~
5 ~~designated as "Specialized Trades," for which the local hiring requirements of this Policy shall not be~~
6 ~~applicable. Prior to designating a trade as a Specialized Trade, OEWD shall have made findings that:~~
7 ~~(a) considering all referral sources and best estimates of workers residing in the City, there will be~~
8 ~~insufficient numbers of qualified and available local residents and disadvantaged workers to enable~~
9 ~~contractors and subcontractors to satisfy the local hiring requirements for such trade; and (b) best~~
10 ~~estimates indicate that on all covered projects during those calendar years, in the aggregate, demand~~
11 ~~for work hours in such trade will not exceed a maximum number of hours as determined by OEWD~~
12 ~~through the regulatory process set forth in subsection 6.22(g)(8)(A). All contractors and subcontractors~~
13 ~~shall report to OEWD the project work hours utilized in each designated Specialized Trade.~~

14 ~~—— (ii) Credit for Hiring on Non-covered Projects. Contractors and subcontractors may~~
15 ~~accumulate credit hours for hiring San Francisco disadvantaged workers on non-covered projects in~~
16 ~~the nine-county San Francisco Bay Area and apply those credit hours to contracts for covered projects~~
17 ~~to meet the applicable minimum mandatory hiring requirements set forth above or to work off penalties~~
18 ~~assessed under subsection 6.22(g)(7)(F). OEWD shall establish criteria for credit hours and their~~
19 ~~application to meet the minimum participation requirements. OEWD shall consider credit hours to be~~
20 ~~accumulated for work on non-covered projects performed by San Francisco disadvantaged workers~~
21 ~~only if (a) the San Francisco disadvantaged worker performing work on the non-covered project is paid~~
22 ~~prevailing wages for such work; and, in the case of non-covered projects in the City and County of San~~
23 ~~Francisco, (b) the number of hours to be credited for the non-covered project in question exceed one-~~
24 ~~half of the number of disadvantaged worker hours that would be required if the project were a covered~~
25 ~~project.~~

1 ~~——(iii) Sponsoring Apprentices. A contractor or subcontractor may avoid the~~
2 ~~assessment of penalties under subsection 6.22(g)(7)(F) for failing to meet applicable hiring~~
3 ~~requirements by demonstrating the high impracticality of complying with the mandatory participation~~
4 ~~level for a particular contract or classes of employees before project commencement by agreeing to~~
5 ~~sponsor an OEWD-specified number of new apprentices in trades in which noncompliance is likely and~~
6 ~~retaining those apprentices for the entire period of a contractor's or subcontractor's work on the~~
7 ~~project. OEWD will verify with the California Department of Industrial Relations Division of~~
8 ~~Apprenticeship Standards that the OEWD-specified number of new apprentices are registered and~~
9 ~~active apprentices prior to issuing a release from penalties.~~

10 ~~——(iv) Direct Entry Agreements. OEWD is authorized to negotiate and enter into direct~~
11 ~~entry agreements with apprenticeship programs that are registered with California Department of~~
12 ~~Industrial Relations' Division of Apprenticeship Standards, and, if OEWD is successful in such~~
13 ~~negotiations, to develop standards and procedures through which contractors and subcontractors may~~
14 ~~avoid assessments of penalties by hiring and retaining apprentices who enrolled through such direct~~
15 ~~entry agreements. Such standards and procedures shall allow avoidance of penalty assessments only~~
16 ~~where OEWD has made a project-specific determination that compliance with local hiring~~
17 ~~requirements would be impractical for that contractor or subcontractor. Direct entry agreements~~
18 ~~negotiated pursuant to this section shall: (a) be enforceable contracts; (b) require apprenticeship~~
19 ~~programs to enroll a class of apprentices no less frequently than every 365 days; (c) specify all~~
20 ~~admissions standards related to applicants' training and skills; (d) specify a minimum number of local~~
21 ~~residents and disadvantaged workers meeting those standards who shall be admitted in each class of~~
22 ~~apprentices; and (e) be on file with and deemed permissible by the Division of Apprenticeship~~
23 ~~Standards. OEWD's annual report to the Board as required by subsection 6.22(g)(8)(F) shall include~~
24 ~~the number of releases from penalties granted based on this subsection, the number of local residents~~
25

1 ~~enrolled as apprentices based on direct entry agreements, and the number of direct entry agreements in~~
2 ~~effect, and shall identify the trades in question.~~

3 ~~—(5) Local Hiring Incentives.~~

4 ~~—(a) Incentive Criteria. Contractors and subcontractors may receive financial and non-~~
5 ~~financial incentives for exceeding the local hiring requirements on a covered project. Project work~~
6 ~~hours credited under subsection 6.22(g)(4)(C) shall not be the basis for any financial or non-financial~~
7 ~~incentive payment or entitlement.~~

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

10 ~~—(i) Any financial incentives provided on a covered project shall comply with~~
11 ~~applicable law and shall not exceed one percent of the estimated cost of the project. If financial~~
12 ~~incentives are made available for a covered project, awarding departments shall pay such incentives, if~~
13 ~~earned by a contractor or subcontractor, only after a contractor or subcontractor has completed work~~
14 ~~on the project and OEWD has approved the contractor's or subcontractor's request for incentive~~
15 ~~payment. Subcontractors requesting incentive payments shall submit requests to the awarding~~
16 ~~department and OEWD through the prime contractor, not directly to the awarding department or~~
17 ~~OEWD. Payment of subcontractor incentives shall be paid to the prime contractor for the benefit of the~~
18 ~~appropriate subcontractor(s). Prime contractor must pay subcontractor(s) within 10 days of receipt of~~
19 ~~financial incentives from the City.~~

20 ~~—(ii) OEWD shall, by regulation, develop non-financial incentives such as expedited~~
21 ~~permitting and reduced administrative burden.~~

22 ~~—(6) Additional Contractor Rights and Responsibilities.~~

23 ~~—(A) Local Hiring Plan for Large Projects. For covered projects estimated to cost more~~
24 ~~than \$1,000,000, the prime contractor shall prepare and submit to the awarding department and~~
25 ~~OEWD for approval a local hiring plan for the project. The local hiring plan shall be a written plan for~~

1 ~~implementation of the requirements of this Policy, including an approximate timeframe for hiring~~
2 ~~decisions of subcontractors, a description of the hiring processes to be utilized by subcontractors, an~~
3 ~~estimate of numbers of targeted workers needed from various referral sources, qualifications needed~~
4 ~~for such targeted workers, and a recruitment plan detailing an outreach strategy for candidates~~
5 ~~representative of local demographics. An awarding department shall not issue a Notice to Proceed~~
6 ~~(NTP) without receiving the Local Hiring Plan. The awarding department may issue an NTP upon~~
7 ~~submission of the Plan, but in no case may any payment be made until such time as it has verified in~~
8 ~~writing that OEWD has approved the prime contractor's local hiring plan.~~

9 ~~—— (B) Referral Sources. Where a contractor's or subcontractor's preferred hiring or~~
10 ~~staffing procedures for a covered project do not enable that contractor or subcontractor to satisfy the~~
11 ~~local hiring requirements of this Policy, the contractor or subcontractor shall use other procedures to~~
12 ~~identify and retain targeted workers. These procedures shall include requesting workers from~~
13 ~~CityBuild, San Francisco's centralized referral program, and considering targeted workers who are~~
14 ~~referred by CityBuild within three business days of the request and who meet the qualifications~~
15 ~~described in the request. Such consideration shall include in-person interviews. Qualifications~~
16 ~~described in the request shall be limited to skills directly related to performance of job duties. When a~~
17 ~~contractor or subcontractor has taken these steps and a local resident or disadvantaged worker is not~~
18 ~~available, contractor or subcontractor may request a conditional waiver as described in subsection~~
19 ~~6.22(g)(4)(C).~~

20 ~~—— (C) Hiring Discretion. This Policy does not limit contractors' or subcontractors' ability~~
21 ~~to 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~~
25 ~~all subcontractors agree to comply with applicable requirements of this Policy. All subcontractors~~

1 ~~agree as a term of participation on a covered project that the City shall have third party beneficiary~~
2 ~~rights 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. All subcontractors on a covered project shall be responsible for complying with the~~
5 ~~recordkeeping and reporting requirements set forth in this Policy. Subcontractors with work in excess~~
6 ~~of the Threshold Amount shall be responsible for ensuring compliance with the local hiring~~
7 ~~requirements set forth in subsection 6.22(g)(4) based on project work hours performed under their~~
8 ~~subcontracts, including project work hours performed by lower tier subcontractors with work less than~~
9 ~~the Threshold Amount.~~

10 ~~—(7) Enforcement.~~

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

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

24 ~~—(C) Recordkeeping. Each contractor and subcontractor shall keep, or cause to be kept,~~
25 ~~for a period of four years from the date of substantial completion of project work on a covered project,~~

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

16 ~~—— (D) Reporting. The OEWD shall establish reporting procedures for contractors and~~
17 ~~subcontractors to submit to OEWD and the awarding department the records described above, for~~
18 ~~purposes of monitoring compliance with and effectiveness of this Policy and monitoring operation of~~
19 ~~the City's public construction sector for other valid purposes. All records submitted by contractor or~~
20 ~~subcontractor shall be accompanied by a statement of compliance signed by an authorized~~
21 ~~representative of contractor or subcontractor indicating that the records are correct and complete.~~

22 ~~—— (E) Monitoring. From time to time and in its sole discretion, OEWD and/or the~~
23 ~~awarding department may monitor and investigate compliance of contractor and subcontractors~~
24 ~~working on covered projects with requirements of this Policy. OEWD and awarding departments shall~~
25 ~~have the right to engage in random inspections of job sites, subject to construction schedule and safety~~

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

15 ~~—— (F) Compliance Procedures.~~

16 ~~—— (i) Consequences of Noncompliance. Awarding departments and OEWD have the~~
17 ~~authority to seek for violations of this Policy all of the consequences imposed by or described in this~~
18 ~~Policy, in the contract for a covered project, or by statute, including the authority to assess penalties as~~
19 ~~described herein, assess damages for other violations of terms of this Policy, and/or seek penalties set~~
20 ~~forth in Article V of this Chapter 6, including debarment.~~

21 ~~—— (ii) Penalties Amount. Any contractor or subcontractor who fails to satisfy local~~
22 ~~hiring requirements of this Policy applicable to project work hours performed by local residents shall~~
23 ~~forfeit ; and, in the case of any subcontractor so failing, the contractor and subcontractor shall jointly~~
24 ~~and severally forfeit to the City an amount equal to the journeyman or apprentice prevailing wage rate,~~
25 ~~as applicable, with such wage as established by the Board of Supervisors or the California Department~~

1 ~~of Industrial Relations under subsection 6.22(e)(3), for the primary trade used by the contractor or~~
2 ~~subcontractor on the covered project for each hour by which the contractor or subcontractor fell short~~
3 ~~of the local hiring requirement. The assessment of penalties under this subsection shall not preclude the~~
4 ~~City from exercising any other rights or remedies to which it is entitled.~~

5 ~~———(iii) Assessment of Penalties.~~

6 ~~——— a. For a covered project undertaken by a contractor with the City where the City~~
7 ~~makes payments directly to the contractor(s) using City funds, it shall be the duty of the awarding~~
8 ~~department, when certifying to the Controller any payment which may become due under a contract, to~~
9 ~~deduct from said payment or payments the total amount of penalties due under this subsection~~
10 ~~6.22(g)(7)(F). In doing so, the Department Head must also notify the OEWD of his or her action.~~
11 ~~OEWD may also upon written notice to the awarding department, certify to the Controller any~~
12 ~~forfeiture to deduct from any payment as provided for in this subsection 6.22(g)(7)(F). Certification of~~
13 ~~forfeitures under this subsection 6.22(g)(7)(F) shall be made only upon an investigation by the~~
14 ~~awarding department or OEWD and upon written notice to the contractor or subcontractor identifying~~
15 ~~the grounds for the forfeiture or forfeitures, and providing the contractor or subcontractor with the~~
16 ~~opportunity to respond according to the procedures prescribed in subsection 6.22(g)(7)(F)(iv). The~~
17 ~~Controller, in issuing any warrant for any such payment, shall deduct from the amount which would~~
18 ~~otherwise be due on said payment or payments the amount of said forfeiture or forfeitures as so~~
19 ~~certified. Any retainage to cover contract performance that may become due to contractor under~~
20 ~~subsection 6.22(j) may be withheld by the City pending a determination by the awarding department or~~
21 ~~OEWD as to whether a contractor or subcontractor must pay a penalty or penalties.~~

22 ~~——— b. For any other Covered project for which local hiring requirements are~~
23 ~~required under this subsection 6.22(g), OEWD shall determine whether a contractor and/or any~~
24 ~~subcontractor has failed to comply with the local hire requirement. If after conducting an~~
25 ~~investigation, OEWD determines that a violation has occurred, it shall issue and serve an assessment of~~

1 ~~penalties to the contractor and/or any subcontractor that sets forth the basis of the assessment and~~
2 ~~orders payment of penalties in the amounts equal to the journeyman or apprentice prevailing wage~~
3 ~~rates, as applicable, for the primary trade used by the contractor or subcontractor on the Covered~~
4 ~~project for each hour by which the contractor or subcontractor fell short of the local hiring~~
5 ~~requirement. Assessment of penalties under this subsection 6.22(g)(7)(F)(iii)b shall be made only upon~~
6 ~~an investigation by OEWD and upon written notice to the contractor or subcontractor identifying the~~
7 ~~grounds for the penalty and providing the contractor or subcontractor with the opportunity to respond~~
8 ~~pursuant to the procedures prescribed in subsection 6.22(g)(7)(F)(iv).~~

9 ~~————— c. ——— For Covered projects under subsection 6.22(g)(3)(B) where the~~
10 ~~construction contract is issued by an entity or individual other than the City, and that entity or~~
11 ~~individual includes such requirements in a construction contract for a Covered project and reasonably~~
12 ~~cooperates with the City in any enforcement action of such requirements, the entity or individual shall~~
13 ~~not be in breach of its contract with the City due to the failure of a contractor or subcontractor to~~
14 ~~comply. Provided that the entity or individual who issues the construction contract complies with the~~
15 ~~provisions in the previous sentence, any enforcement action by the City, through OEWD or otherwise,~~
16 ~~shall be directly against the contractor or subcontractor that failed to apply the local hire~~
17 ~~requirements. Nothing in this Section 6.22(g) shall limit the remedies available to a City department, as~~
18 ~~set forth in the applicable sales contract or lease, for a purchaser's or tenant's failure to require~~
19 ~~compliance with this Section 6.22(g) in a construction contract for a Covered project or to reasonably~~
20 ~~cooperate with the City in any enforcement action as set forth above.~~

21 ~~————— (iv) ——— Recourse Procedure. If the contractor or subcontractor disagrees with the~~
22 ~~assessment of penalties as so provided in this subsection, then the following procedure applies:~~

23 ~~————— (a) ——— The contractor or subcontractor may request a hearing in writing within 15~~
24 ~~days of the date of the final notification of assessment. The request shall be directed to the City~~
25 ~~Controller. Failure by the contractor or subcontractor to submit a timely, written request for a hearing~~

1 ~~shall constitute concession to the assessment and the forfeiture shall be deemed final upon expiration of~~
2 ~~the 15-day period. The contractor or subcontractor must exhaust this administrative remedy prior to~~
3 ~~commencing further legal action.~~

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

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

11 ~~———— (d) Within 30 days of the conclusion of the hearing, the hearing officer shall issue a~~
12 ~~written decision affirming, modifying, or dismissing the assessment. The decision of the hearing officer~~
13 ~~shall consist of findings and a determination. The hearing officer's findings and determination shall be~~
14 ~~final.~~

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

19 ~~———— (v) Remedies for Non-Compliance with Penalty Assessments. No later than 30 days~~
20 ~~after receipt of a final assessment of penalties by OEWD or, in the case of an appeal, after an adverse~~
21 ~~final determination by a hearing officer, the contractor and/or subcontractor shall comply with the~~
22 ~~assessment by paying the amounts due. The contractor and/or subcontractor shall, in addition, be~~
23 ~~subject to the penalties set forth in Article V of this Chapter 6, including debarment. If any contractor~~
24 ~~and/or subcontractor fails to pay the amounts required under this subsection 6.22(g)(7)(F)(v) within~~
25 ~~the required 30 days, the City may bring a civil action in a court of competent jurisdiction against the~~

1 ~~non-complying party and, upon prevailing, shall be entitled to such legal and equitable relief as may be~~
2 ~~appropriate to remedy the violation including, without limitation:~~

3 ~~————— a. damages in the amount of wages due for violation of the local hiring~~
4 ~~requirement as calculated under subsection 6.22(g)(7)(F)(iii), and~~

5 ~~————— b. an award of reasonable attorney's fees and costs.~~

6 ~~———— (vi) Distribution of Penalties. The Controller shall withhold any penalties assessed as~~
7 ~~provided in the foregoing subparagraphs until such time as either the contractor or subcontractor has~~
8 ~~conceded to the penalties or, in the event of an objection, there is a determination no longer subject to~~
9 ~~judicial review. The Controller shall then deposit the amounts withheld into a special account which~~
10 ~~shall be created for the sole purpose of receiving said funds. The funds deposited into this account shall~~
11 ~~be used to support the enforcement of this Policy and the further development of workforce~~
12 ~~development initiatives to train and prepare local residents for careers in construction. This subsection~~
13 ~~6.22(g)(7)(F)(vi) also shall be applicable to damages obtained as a result of an enforcement action~~
14 ~~pursuant to subsection 6.22(g)(7)(F)(v).~~

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

21 ~~———— (8) Miscellaneous.~~

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

1 ~~contract coverage determinations, (v) designated referral sources, (vi) bid and contract documents~~
2 ~~implementing the Policy, (vii) procedures for application of the Policy to alternative competitive~~
3 ~~bidding processes set forth in Article IV of this Chapter, (viii) procedures for monitoring and~~
4 ~~enforcement of the Policy where the construction contract is issued by an entity or individual other~~
5 ~~than the City, and (ix) other matters related to implementation of this Policy. Awarding departments~~
6 ~~shall cooperate with and assist in implementation of OEWD actions and determinations regarding this~~
7 ~~Policy. For projects where the construction contract is issued by an entity or individual other than the~~
8 ~~City, OEWD may grant conditional waivers on a project specific basis if it finds that the contractor has~~
9 ~~participated to the extent feasible in available pipeline and retention mechanisms, the contractor has~~
10 ~~undertaken all corrective actions issued by OEWD, and considering all referral sources and estimates~~
11 ~~of workers residing in the City, there will be insufficient numbers of qualified and available local~~
12 ~~residents and/or disadvantaged workers to enable the contractor or subcontractor to satisfy the local~~
13 ~~hiring requirements.~~

14 ~~—— (B) Assistance in Monitoring, Investigations, and Implementation. In accordance with~~
15 ~~applicable law, the City may enter into one or more contracts for investigative and monitoring services~~
16 ~~to further the purposes of this Policy, or to assist OEWD or awarding departments in developing and~~
17 ~~implementing systems needed to advance the purposes of this Policy.~~

18 ~~—— (C) Departmental Assistance with Monitoring and Enforcement Costs. Subject to the~~
19 ~~fiscal and budgetary provisions of the City Charter and applicable federal and state laws and~~
20 ~~regulations, OEWD is authorized to receive from awarding departments the amount reasonably~~
21 ~~calculated to pay for the costs, including litigation costs, of monitoring and enforcing requirements of~~
22 ~~this Policy. OEWD shall supervise the expenditure of all funds appropriated for these purposes.~~

23 ~~—— (D) Effective Date, Operative Date, and Prospective Application. This Policy shall~~
24 ~~become effective upon the date of its enactment and shall apply to covered projects first advertised for~~
25 ~~bids by awarding departments more than sixty (60) days after such date. The amendment to the Policy~~

1 ~~in subsection 6.22(g)(3)(B) shall become operative sixty (60) days after the effective date of the~~
2 ~~ordinance enacting the amendment. The amendment in subsection 6.22(g)(3)(B) is intended to have~~
3 ~~prospective effect only, and shall not be interpreted to impair the obligations of any pre-existing grant~~
4 ~~agreement, lease, development agreement or other contract entered into by the City. Notwithstanding~~
5 ~~the prior sentence, the amendment in subsection 6.22(g)(3)(B) shall apply to newly included work in~~
6 ~~pre-existing grant agreements, leases, development agreements, or other contracts amended on or after~~
7 ~~the operative date. The amendment in subsection 6.22(g)(3)(B) shall apply to grant agreements, leases,~~
8 ~~development agreements and other contracts entered into by the City on or after the operative date.~~

9 ~~—— (E) Existing Project Labor Agreements. This Policy shall not apply to project labor~~
10 ~~agreements entered into by awarding departments prior to the effective date of this Policy ("Existing~~
11 ~~PLAs") or to Public Work or Improvement contracts advertised for Bids after the effective date of this~~
12 ~~Policy that are covered by Existing PLAs, where the terms of the Existing PLAs and this Policy are in~~
13 ~~conflict. Notwithstanding the foregoing, this Policy shall apply to (i) any material amendment to an~~
14 ~~Existing PLA executed by an awarding department after the effective date of this Policy; (ii) any new~~
15 ~~Public Work or Improvement contract over the Threshold Amount set forth in subsection 6.22(g)(3)(A)~~
16 ~~that is added to the scope of an Existing PLA based on a discretionary decision by the awarding~~
17 ~~department after the effective date of this Policy.~~

18 ~~—— (F) Annual Report To Board. Commencing on March 1, 2012, and annually thereafter,~~
19 ~~the Director of OEWD shall submit a written report to the Board of Supervisors. That report shall~~
20 ~~document each awarding department's performance under the terms of this Policy, including, among~~
21 ~~other things, the compliance of each department's contractors and subcontractors with the~~
22 ~~requirements of this Policy, any significant challenges experienced by OEWD or awarding departments~~
23 ~~in implementing or enforcing this Policy, and proposed remedies to address any such challenges. That~~
24 ~~report shall include documentation, organized by awarding department, of the overall percentage of~~
25 ~~project work hours on covered projects performed by local residents, disadvantaged workers, local~~

1 *resident apprentices, and residents of states other than California. The report shall also compare the*
2 *demographics of workers performing work on covered projects, using data collected under the Policy,*
3 *to the demographics of the qualified labor pool. Awarding departments shall cooperate with requests*
4 *by OEWD for information needed by the Director to make such reports to the Board.*

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

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

18 *—— (I) ~~Conflicting Agreements.~~ In case of conflict between terms of this Policy and a*
19 *contractual agreement entered into by a contractor, subcontractor or awarding department, terms of*
20 *this Policy shall govern. Each party to a contract incorporating terms of this Policy agrees through*
21 *that contract that either it is not a party to such a conflicting agreements, or that it will comply with*
22 *terms of this Policy as incorporated into the contract, rather than with any conflicting agreements.*
23 *After the effective date of this Policy, no awarding department may enter into a project labor*
24 *agreement or other contract relating to or applying to the performance of project work on a covered*
25

1 ~~project that conflicts with or precludes contractor and subcontractor compliance with terms of this~~
2 ~~Policy.~~

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

12 * * * *

13 Section 2. The Administrative Code is hereby amended by adding a new Chapter 82 to
14 read as follows:

15 **SEC. 82.1. TITLE.**

16 This Chapter 82 shall be known as and may be cited as the San Francisco Local Hiring Policy
17 for Construction ("Policy").

18 **SEC. 82.2. FINDINGS AND PURPOSE.**

19 (a) Recognizing that the construction industry is one of the few industries providing a path to
20 middle-class careers for individuals facing barriers to quality employment, the City has supported local
21 hiring requirements since at least 1994 when the Board of Supervisors passed Ordinance No. 286-94.
22 In 2010, after engaging in extensive fact-finding studies and hearings regarding the benefits of
23 supporting hiring of disadvantaged local residents, the City enacted Ordinance No. 311-10, the Local
24 Hiring Policy for Construction, to create mandatory local hiring requirements for its public work
25 contracts. In the years following, the City extended the Policy to apply to construction projects on

1 City-owned property and on City-owned property sold for Housing Development, as defined in Section
2 23.61 of the Administrative Code, by enacting Ordinance No. 85-14 and Ordinance No. 224-15,
3 respectively. The City has a proprietary interest in the construction contracts it issues, and also has a
4 proprietary interest in the leases and development agreements that it enters that all allow for
5 construction on City-owned property.

6 (b) The Policy is necessary to counteract the loss of middle-income jobs and disproportionate
7 concentration of high unemployment in several San Francisco neighborhoods, which face concentrated
8 poverty. San Francisco's job growth rate and changing job base has had major impacts on patterns of
9 income inequality and disparity in the City, with distinctive, adverse, neighborhood-specific effects. The
10 loss of middle-income jobs has been associated with a diminishing middle class in San Francisco, as
11 indicated by rising income inequality. San Francisco's unequal income distribution threatens the City's
12 future competitiveness and overall economic stability, and the City's anti-poverty strategy aims to
13 ensure that the City and its partners are marshaling limited resources in an effective and coordinated
14 way to create economic opportunities in San Francisco's low-income communities.

15 (c) The Policy advances the City's workforce and community development goals, removing
16 obstacles that may have historically limited the full employment of local residents on the opportunities
17 created by covered projects, curbing unemployment, population decline, and reduction in the number
18 of businesses located in certain neighborhoods in the City. Reports show that the Policy has proven to
19 be a highly effective tool in guaranteeing good-paying jobs for local residents.

20 (d) The Board of Supervisors desires to ensure that employment and training opportunities
21 created by such projects provide consistent and high-quality opportunities to the San Francisco labor
22 pool, especially low-income residents of San Francisco and other disadvantaged residents. The City
23 has made substantial public investments in its workforce development system to create job
24 opportunities in industries such as construction, which are vital to the economic health of the local
25 economy, are accessible to low- and middle-skilled individuals, have career ladder opportunities where

1 workers can move up with additional training and skill development, and provide access to living wage
2 and family-sustaining jobs. Construction projects subject to the Policy provide a crucial opportunity to
3 connect participants to these workforce development programs and to sustained employment and
4 training opportunities.

5 (e) Although the Policy initially established a 20% local hiring requirement, with an annual
6 5% increase towards a 50% requirement, the Board of Supervisors desires to set the local hiring
7 requirement permanently at 30% in order to sustain the Policy's goals.

8 **SEC. 82.3. DEFINITIONS.**

9 For purposes of this Chapter 82, the following terms shall have the following meanings:

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

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

15 Awarding Department. A department or commission empowered on behalf of the City to
16 contract for a Covered Project.

17 City. The City and County of San Francisco, California.

18 Contractor. Any person, firm, partnership, owner operator, limited liability company,
19 corporation, joint venture, proprietorship, trust, association, or other entity that contracts directly to
20 perform construction work on a Covered Project. A Contractor may also be referred to as a "Prime
21 Contractor" or "General Contractor."

22 Core Employee or Worker. An Apprentice or journey level employee, who possesses any
23 license required by Federal or State law for the Project Work to be performed, of a Contractor or
24 Subcontractor, who appears on that Contractor or Subcontractor's certified payroll 60 of the previous
25 100 calendar days prior to date of award of a City contract.

1 Covered Project. A Public Work or Improvement project, construction project, or part
2 thereof, to which this Chapter 82 applies, under standards set forth in Section 82.4.

3 Disadvantaged Worker. A Local Resident who (a) resides in a census tract within the City
4 with a rate of unemployment in excess of 150% of the City unemployment rate, as reported by the State
5 of California Employment Development Department; or (b) at the time of commencing work on a
6 Covered Project has a household income of less than 80% of the AMI, or (c) faces or has overcome at
7 least one of the following barriers to employment: being homeless; being a custodial single parent;
8 receiving public assistance; lacking a GED or high school diploma; participating in a vocational
9 English as a second language program; or having a criminal record or other involvement with the
10 criminal justice system.

11 Local Hiring Incentives. The incentives set forth in Section 82.5 of this Policy.

12 Local Hiring Requirements. The requirements set forth in Section 82.6 of this Policy.

13 Local Resident. An individual who is domiciled, as defined by Section 349(b) of the California
14 Election Code, within the City for at least seven days immediately prior to commencing work on the
15 project.

16 New Hire. Any employee of a Contractor who is not listed on the Contractor's quarterly tax
17 statements for the tax period and has been hired prior to the commencement of work.

18 OEWD. The City's Office of Economic and Workforce Development.

19 Policy. The Local Hiring Policy set forth in this Chapter 82.

20 Project Work. Construction work performed as part of a Covered Project.

21 Project Work Hours. The total hours worked on a construction contract by all Apprentices
22 and journey level workers, whether those workers are employed by the Contractor or any
23 Subcontractor.

24 Public Work or Improvement. A Public Work or Improvement as that term is defined in
25 Chapter 6.1 of the Administrative Code as amended from time to time.

1 Subcontractor. Any person, firm, partnership, owner operator, limited liability company,
2 corporation, joint venture, proprietorship, trust, association, or other entity that contracts with a Prime
3 Contractor or another subcontractor to provide services to a Prime Contractor or another
4 subcontractor in fulfillment of the Prime Contractor's or that other subcontractor's obligations arising
5 from a contract for construction work on a Covered Project.

6 Targeted Worker. A Local Resident or Disadvantaged Worker.

7 **SEC. 82.4. COVERAGE.**

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

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

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

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

15 (B) all construction projects on City-owned real property located within the
16 jurisdictional boundaries of the City and County of San Francisco that is sold to private parties, or
17 their successor in interest, for the purpose of Housing Development, as defined in Section 23.61(a) of
18 the Administrative Code;

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

23 (2) The following construction projects are exempt from this subsection 82.4(b):

24 (A) tenant improvement projects estimated to cost less than \$750,000 per
25 building permit, where the project is undertaken and contracted for by the tenant;

1 (B) projects for special events where the special event is three or fewer
2 consecutive or non-consecutive days within a two-week period;

3 (C) construction projects for which the construction work is fully funded and
4 performed by a donor or donor's agent as a gift-in-place donation, where the gift agreement does not
5 require City funds to be used for the construction and where the gift agreement includes a requirement
6 that workers be paid the same prevailing rate of wages as would be required for a Public Work project;
7 and

8 (D) projects that as of July 19, 2014, the effective date of a prior amendment to
9 the Policy, have a term sheet that has been endorsed by the Board of Supervisors and have findings of
10 fiscal feasibility, to the extent that such projects agree to be bound by a legally enforceable document,
11 enforceable by OEWD, committing the project to Local Hire mandatory participation level of 30% per
12 trade. All grant agreements, leases, development agreements, and other contracts that the City enters
13 into that allow for such non-exempt construction projects on property owned by the City must contain a
14 provision that such construction shall comply with this Policy.

15 (c) Projects Constructed Outside the City. Covered Projects constructed outside the
16 jurisdictional boundaries of the City and County of San Francisco shall be governed by the terms of
17 this Policy, except that percentage requirements shall apply in proportion to the City's actual cost after
18 reimbursement from non-City sources compared to the total cost of the project, and, unless a
19 reciprocity agreement exists, the "local" requirement shall include San Francisco residents, and
20 workers residing within the San Francisco Public Utilities Commission service territory. If a
21 reciprocity agreement with another local agency exists, the terms of that reciprocity agreement shall
22 govern. Awarding Departments shall work with OEWD and regional local hiring programs to comply.

23 (d) Projects Utilizing Federal or State Funds.

24 (1) Segregation of Funds and Contract Awards. Where the application of this Policy
25 would violate Federal or State law, or would be inconsistent with the terms or conditions of a grant or

1 a contract with an agency of the United States or the State of California, the City department or agency
2 receiving the grant or contract shall, where administratively feasible, segregate Federal or State funds
3 from City funds, and/or segregate project administration and contracts, so as to maximize application
4 of this Policy to City-funded construction work.

5 (2) Alternative Terms in Case of Conflict. Where the provisions of this Policy would be
6 prohibited by Federal or State law, or where the application of this Policy would violate or be
7 inconsistent with the terms or conditions of a grant or a contract with an agency of the United States or
8 the State of California, and where segregation of funds pursuant to subsection 82.4(d)(1) is not
9 administratively feasible with regard to some or all of the project in question, then OEWD, in
10 consultation with the Awarding Department, shall adapt requirements of this Policy into a set of
11 contract provisions that advance the purposes of this Policy to the maximum extent feasible without
12 conflicting with Federal or State law or with terms or conditions of the State or Federal grant or
13 contract in question. The Awarding Department shall include this set of contract provisions in the
14 contract for the Covered Project with regard to the project or portions of the project for which this
15 Policy would conflict with Federal or State requirements.

16 (e) Out-of-State Workers. Project Work Hours performed by residents of states other than
17 California shall not be considered in calculation of the number of Project Work Hours to which the
18 Local Hiring Requirements apply. Contractors and Subcontractors shall report to Awarding
19 Departments and OEWD the number of Project Work Hours performed by residents of states other than
20 California.

21 **SEC. 82.5. LOCAL HIRING REQUIREMENTS.**

22 (a) For each Covered Project, the following requirements shall apply to each Prime
23 Contractor and Subcontractor that performs Project Work in excess of the Threshold Amount set forth
24 in Section 6.1 of the Administrative Code, as that amount may be amended from time to time, with
25 regard to Project Work actually performed by the Prime Contractor and work included under any

1 subcontract, including all work performed by a Subcontractor and all lower-tier Subcontractors under
2 the subcontract:

3 _____ (1) The mandatory participation level shall be 30% of all Project Work Hours within
4 each trade performed by Local Residents, with no less than 15% of all Project Work Hours within each
5 trade performed by Disadvantaged Workers.

6 _____ (2) At least 50% of the Project Work Hours performed by Apprentices within each
7 trade shall be performed by Local Residents, with no less than 25% of Project Work Hours performed
8 by Apprentices within each trade to be performed by Disadvantaged Workers.

9 (b) Pipeline and Retention Compliance. Contractors and Subcontractors may use one or
10 more of the following pipeline and retention compliance mechanisms to receive a conditional waiver
11 from the Local Hiring Requirements on a project-specific basis:

12 _____ (1) Specialized Trades. Every two calendar years, OEWD shall publish a list of
13 trades designated as "Specialized Trades," for which the Local Hiring Requirements of this Policy shall
14 not be applicable. Prior to designating a trade as a Specialized Trade, OEWD shall have made findings
15 that: (A) considering all referral sources and best estimates of workers residing in the City, there will
16 be insufficient numbers of qualified and available Local Residents and Disadvantaged Workers to
17 enable Contractors and Subcontractors to satisfy the Local Hiring Requirements for such trade; and
18 (B) best estimates indicate that on all Covered Projects during those calendar years, in the aggregate,
19 demand for work hours in such trade will not exceed a maximum number of hours as determined by
20 OEWD through the regulatory process set forth in subsection 82.9(a). All Contractors and
21 Subcontractors shall report to OEWD the Project Work Hours utilized in each designated Specialized
22 Trade.

23 _____ (2) Credit for Hiring on Non-covered Projects. Contractors and Subcontractors may
24 accumulate credit hours for hiring San Francisco Disadvantaged Workers on non-covered projects in
25 the nine-county San Francisco Bay Area and apply those credit hours to contracts for Covered Projects

1 to meet the applicable minimum mandatory hiring requirements set forth above or to work off penalties
2 assessed under subsection 82.8(f). OEWD shall establish criteria for credit hours and their application
3 to meet the minimum participation requirements. OEWD shall consider credit hours to be accumulated
4 for work on non-covered projects performed by San Francisco Disadvantaged Workers only if (A) the
5 San Francisco Disadvantaged Worker performing work on the non-covered project is paid prevailing
6 wages for such work; and, (B) in the case of non-covered projects in the City, the number of hours to be
7 credited for the non-covered project in question exceeds one-half of the number of Disadvantaged
8 Worker hours that would be required if the project were a Covered Project.

9 (3) Sponsoring Apprentices. A Contractor or Subcontractor may avoid the
10 assessment of penalties under subsection 82.8(f) for failing to meet applicable hiring requirements by
11 demonstrating the high impracticality of complying with the mandatory participation level for a
12 particular contract or classes of employees before project commencement by agreeing to sponsor an
13 OEWD-specified number of new Apprentices in trades in which noncompliance is likely and retaining
14 those Apprentices for the entire period of a Contractor's or Subcontractor's work on the project.
15 OEWD will verify with the California Department of Industrial Relations Division of Apprenticeship
16 Standards that the OEWD-specified number of new Apprentices are registered and active Apprentices
17 prior to issuing a release from penalties.

18 (4) Direct Entry Agreements. OEWD is authorized to negotiate and enter into direct
19 entry agreements with apprenticeship programs that are registered with California Department of
20 Industrial Relations' Division of Apprenticeship Standards, and, if OEWD is successful in such
21 negotiations, to develop standards and procedures through which Contractors and Subcontractors may
22 avoid assessments of penalties by hiring and retaining Apprentices who enrolled through such direct
23 entry agreements. Such standards and procedures shall allow avoidance of penalty assessments only
24 where OEWD has made a project-specific determination that compliance with Local Hiring
25 Requirements would be impractical for that Contractor or Subcontractor. Direct entry agreements

1 negotiated pursuant to this subsection 82.5(b)(4) shall: (A) be enforceable contracts; (B) require
2 apprenticeship programs to enroll a class of Apprentices no less frequently than every 365 days; (C)
3 specify all admissions standards related to applicants' training and skills; (D) specify a minimum
4 number of Local Residents and Disadvantaged Workers meeting those standards who shall be admitted
5 in each class of Apprentices; and (E) be on file with and deemed permissible by the Division of
6 Apprenticeship Standards. OEWD's annual report to the Board of Supervisors as required by
7 subsection 82.9(f) shall include the number of releases from penalties granted based on this subsection
8 82.5(c)(4), the number of Local Residents enrolled as Apprentices based on direct entry agreements,
9 and the number of direct entry agreements in effect, and shall identify the trades in question.

10 **SEC. 82.6. LOCAL HIRING INCENTIVES.**

11 (a) Incentive Criteria. Contractors and Subcontractors may receive financial and non-
12 financial incentives for exceeding the Local Hiring Requirements on a Covered Project. Project Work
13 Hours credited under subsection 82.5(b) shall not be the basis for any financial or non-financial
14 incentive payment or entitlement.

15 (b) Administration. Awarding Departments will work in consultation with OEWD to establish
16 the operation and amounts of the incentives, if any.

17 (1) Any financial incentives provided on a Covered Project shall comply with
18 applicable law and shall not exceed 1% of the estimated cost of the project. If financial incentives are
19 made available for a Covered Project, Awarding Departments shall pay such incentives, if earned by a
20 Contractor or Subcontractor, only after a Contractor or Subcontractor has completed work on the
21 project and OEWD has approved the Contractor's or Subcontractor's request for incentive payment.
22 Subcontractors requesting incentive payments shall submit requests to the Awarding Department and
23 OEWD through the Prime Contractor, not directly to the Awarding Department or OEWD. Payment of
24 Subcontractor incentives shall be paid to the Prime Contractor for the benefit of the appropriate
25

1 Subcontractor(s). The Prime Contractor must pay Subcontractor(s) within 10 days of receipt of
2 financial incentives from the City.

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

5 **SEC. 82.7. ADDITIONAL CONTRACTOR RIGHTS AND RESPONSIBILITIES.**

6 (a) Local Hiring Plan for Large Projects. For Covered Projects estimated to cost more than
7 \$1,000,000, the Prime Contractor shall prepare and submit to the Awarding Department and OEWD
8 for approval a local hiring plan for the project. The local hiring plan shall be a written plan for
9 implementation of the requirements of this Policy, including an approximate time frame for hiring
10 decisions of Subcontractors, a description of the hiring processes to be utilized by Subcontractors, an
11 estimate of numbers of Targeted Workers needed from various referral sources, qualifications needed
12 for such Targeted Workers, and a recruitment plan detailing an outreach strategy for candidates
13 representative of local demographics. An Awarding Department shall not issue a Notice to Proceed
14 (NTP) without receiving the local hiring plan. The Awarding Department may issue a NTP upon
15 submittal of the plan, but in no case may any payment be made until such time as it has verified in
16 writing that OEWD has approved the Prime Contractor's local hiring plan.

17 (b) Referral Sources. Where a Contractor's or Subcontractor's preferred hiring or staffing
18 procedures for a Covered Project do not enable that Contractor or Subcontractor to satisfy the Local
19 Hiring Requirements of this Policy, the Contractor or Subcontractor shall use other procedures to
20 identify and retain Targeted Workers. These procedures shall include requesting workers from
21 CityBuild, San Francisco's centralized referral program, and considering Targeted Workers who are
22 referred by CityBuild within three business days of the request and who meet the qualifications
23 described in the request. Such consideration shall include in-person interviews. Qualifications
24 described in the request shall be limited to skills directly related to performance of job duties. When a
25 Contractor or Subcontractor has taken these steps and a Local Resident or Disadvantaged Worker is

1 not available, Contractor or Subcontractor may request a conditional waiver as described in
2 subsection 82.5(b).

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

7 (d) Subcontractor Compliance. Each Contractor and Subcontractor shall ensure that all
8 Subcontractors agree to comply with applicable requirements of this Policy. All Subcontractors agree
9 as a term of participation on a Covered Project that the City shall have third party beneficiary rights
10 under all contracts under which Subcontractors are performing Project Work. Such third party
11 beneficiary rights shall be limited to the right to enforce the requirements of this Policy directly against
12 the Subcontractors. All Subcontractors on a Covered Project shall be responsible for complying with
13 the recordkeeping and reporting requirements set forth in this Policy. Subcontractors with work in
14 excess of the Threshold Amount shall be responsible for ensuring compliance with the Local Hiring
15 Requirements set forth in Section 82.5 based on Project Work Hours performed under their
16 Subcontracts, including Project Work Hours performed by lower tier Subcontractors with work less
17 than the Threshold Amount.

18 **SEC. 82.8. ENFORCEMENT.**

19 (a) Role of OEWD. OEWD is authorized to enforce all terms of this Policy. Awarding
20 Departments shall work cooperatively with OEWD to implement requirements of this Policy, to include
21 the provisions of the Policy in every contract for which inclusion is required, to assist Contractors and
22 Subcontractors in complying with the Policy, and to assist OEWD in furthering the purposes of the
23 Policy through monitoring and enforcement activities. OEWD shall determine the records required to
24 be verified and/or provided by Contractors and Subcontractors to establish workers' qualifications and
25 status relevant to this Policy.

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

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

24 (d) Reporting. The OEWD shall establish reporting procedures for Contractors and
25 Subcontractors to submit to OEWD and the Awarding Department the records described above, for

1 purposes of monitoring compliance with and effectiveness of this Policy and monitoring operation of
2 the City's public construction sector for other valid purposes. All records submitted by Contractor or
3 Subcontractor shall be accompanied by a statement of compliance signed by an authorized
4 representative of Contractor or Subcontractor indicating that the records are correct and complete.

5 (e) Monitoring. From time to time and in its sole discretion, OEWD and/or the Awarding
6 Department may monitor and investigate compliance of Contractor and Subcontractors working on
7 Covered Projects with requirements of this Policy. OEWD and Awarding Departments shall have the
8 right to engage in random inspections of job sites, subject to construction schedule and safety concerns.
9 Each Contractor and Subcontractor shall allow representatives of OEWD and the Awarding
10 Department, in the performance of their duties, to engage in random inspections of job sites and to
11 have access to the employees of the Contractor and Subcontractor and the records required to be kept
12 by this Policy. The OEWD shall establish an administrative procedure for OEWD monitoring of
13 compliance with this Policy and to address allegations of noncompliance. The OEWD shall have sole
14 authority over the administration of this procedure. Except as prohibited by law, OEWD will make data
15 collected under subsections 82.8(c) and (d) of this Policy available on-line to the public in real-time
16 and create a process for members of the public to submit complaints regarding alleged violations of
17 this Policy. The OEWD shall investigate all complaints filed by members of the public; the scope,
18 methods, and conclusions of all such complaint-driven investigations shall be within the discretion of
19 OEWD, with no right of the complaining party to determine the scope or methods of the investigation.
20 All Contractors, Subcontractors, and Awarding Departments shall cooperate fully with OEWD in
21 monitoring and compliance activities. OEWD may interview, either at the worksite or elsewhere, any
22 witness who may have information related to a complaint.

23 (f) Compliance Procedures.

24 (1) Consequences of Noncompliance. Awarding Departments and OEWD have the
25 authority to seek for violations of this Policy all of the consequences imposed by or described in this

1 Policy, in the contract for a Covered Project, or by statute, including the authority to assess penalties
2 as described herein, assess damages for other violations of terms of this Policy, and/or seek penalties
3 set forth in Article V of Chapter 6 of the Administrative Code, including debarment.

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

14 (3) Assessment of Penalties.

15 (A) For a Covered Project undertaken by a Contractor with the City where the
16 City makes payments directly to the Contractor(s) using City funds, it shall be the duty of the Awarding
17 Department, when certifying to the Controller any payment which may become due under a contract, to
18 deduct from said payment or payments the total amount of penalties due under this subsection 82.8(f).
19 In doing so, the department head must also notify OEWD of his or her action. OEWD may also upon
20 written notice to the Awarding Department, certify to the Controller any forfeiture to deduct from any
21 payment as provided for in this subsection 82.8(f). Certification of forfeitures under this subsection
22 82.8(f) shall be made only upon an investigation by the Awarding Department or OEWD and upon
23 written notice to the Contractor or Subcontractor identifying the grounds for the forfeiture or
24 forfeitures, and providing the Contractor or Subcontractor with the opportunity to respond according
25 to the procedures prescribed in subsection 82.8(f)(4). The Controller, in issuing any warrant for any

1 such payment, shall deduct from the amount which would otherwise be due on said payment or
2 payments the amount of said forfeiture or forfeitures as so certified. Any retainage to cover contract
3 performance that may become due to Contractor under subsection 6.22(j) of the Administrative Code
4 may be withheld by the City pending a determination by the Awarding Department or OEWD as to
5 whether a Contractor or Subcontractor must pay a penalty or penalties.

6 (B) For any other Covered Project for which Local Hiring Requirements are
7 required under this Chapter 82, OEWD shall determine whether a Contractor and/or any
8 Subcontractor has failed to comply with the Local Hire Requirement. If after conducting an
9 investigation, OEWD determines that a violation has occurred, it shall issue and serve an assessment of
10 penalties to the Contractor and/or any Subcontractor that sets forth the basis of the assessment and
11 orders payment of penalties in the amounts equal to the journeyman or apprentice prevailing wage
12 rates, as applicable, for the primary trade used by the Contractor or Subcontractor on the Covered
13 Project for each hour by which the Contractor or Subcontractor fell short of the Local Hiring
14 Requirement. Assessment of penalties under this subsection 82.8(f)(3)(B) shall be made only upon an
15 investigation by OEWD and upon written notice to the Contractor or Subcontractor identifying the
16 grounds for the penalty and providing the Contractor or Subcontractor with the opportunity to respond
17 pursuant to the procedures prescribed in subsection 82.8(f)(4).

18 (C) For Covered Projects under subsection 82.4(b) where the construction
19 contract is issued by an entity or individual other than the City, and that entity or individual includes
20 such requirements in a construction contract for a Covered Project and reasonably cooperates with the
21 City in any enforcement action of such requirements, the entity or individual shall not be in breach of
22 its contract with the City due to the failure of a Contractor or Subcontractor to comply. Provided that
23 the entity or individual who issues the construction contract complies with the provisions in the
24 previous sentence, any enforcement action by the City, through OEWD or otherwise, shall be directly
25 against the Contractor or Subcontractor that failed to apply the Local Hire Requirements. Nothing in

1 this Chapter 82 shall limit the remedies available to a City department, as set forth in the applicable
2 sales contract or lease, for a purchaser's or tenant's failure to require compliance with this Chapter 82
3 in a construction contract for a Covered Project or to reasonably cooperate with the City in any
4 enforcement action as set forth above.

5 (4) Recourse Procedure. If the Contractor or Subcontractor disagrees with the
6 assessment of penalties as so provided in this subsection 82.8(f), then the following procedure applies:

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

13 (B) Within 15 days of receiving a proper request, the Controller shall appoint a
14 hearing officer with knowledge and not less than five years' experience in labor law, and shall so
15 advise the enforcing official and the Contractor or Subcontractor, and/or their respective counsel or
16 authorized representative.

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

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

24 (E) The Contractor or Subcontractor may appeal a final determination under this
25 Section 82.8 only by filing in the San Francisco Superior Court a petition for a writ of mandate under

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

3 (5) Remedies for Non-Compliance with Penalty Assessments. No later than 30 days
4 after receipt of a final assessment of penalties by OEWD or, in the case of an appeal, after an adverse
5 final determination by a hearing officer, the Contractor and/or Subcontractor shall comply with the
6 assessment by paying the amounts due. The Contractor and/or Subcontractor shall, in addition, be
7 subject to the penalties set forth in Article V of Chapter 6, including debarment. If any Contractor
8 and/or Subcontractor fails to pay the amounts required under this subsection 82.8(f)(5) within the
9 required 30 days, the City may bring a civil action in a court of competent jurisdiction against the non-
10 complying party and, upon prevailing, shall be entitled to such legal and equitable relief as may be
11 appropriate to remedy the violation including, without limitation:

12 (A) damages in the amount of wages due for violation of the Local Hiring
13 Requirement as calculated under subsection 82.8(f)(3), and

14 (B) an award of reasonable attorney's fees and costs.

15 (6) Distribution of Penalties. The Controller shall withhold any penalties assessed as
16 provided in the foregoing subparagraphs until such time as either the Contractor or Subcontractor has
17 conceded to the penalties or, in the event of an objection, there is a determination no longer subject to
18 judicial review. The Controller shall then deposit the amounts withheld into a special account which
19 shall be created for the sole purpose of receiving said funds. The funds deposited into this account shall
20 be used to support the enforcement of this Policy and the further development of workforce
21 development initiatives to train and prepare Local Residents for careers in construction. This
22 subsection 82.8(f)(6) also shall be applicable to damages obtained as a result of an enforcement action
23 pursuant to subsection 82.8(f)(5).

24 (7) Other Violations; Repeated Violations. Violations of this Policy for which
25 penalties or other remedies are not specified above constitute violations of contract terms, for which

1 the full range of remedies under the contract may be invoked, including but not limited to withholding
2 of progress payments in amounts deemed proportional to the violation. Awarding Departments shall
3 comply with and implement damages claims and other noncompliance consequences assessed or
4 required by OEWD.

5 **SEC. 82.9. MISCELLANEOUS PROVISIONS.**

6 (a) Regulations and Administrative Guidance. OEWD shall be the primary department
7 authorized to implement and enforce this Policy. OEWD shall issue regulations and/or administrative
8 guidance regarding implementation of the Policy, including (1) documentation and recordkeeping
9 requirements, (2) incentive payments, (3) monitoring and compliance activities, (4) project and/or
10 contract coverage determinations, (5) designated referral sources, (6) bid and contract documents
11 implementing the Policy, (7) procedures for application of the Policy to alternative competitive bidding
12 processes set forth in Article IV of Chapter 6 of the Administrative Code, (8) procedures for monitoring
13 and enforcement of the Policy where the construction contract is issued by an entity or individual other
14 than the City, and (9) other matters related to implementation of this Policy. Awarding Departments
15 shall cooperate with and assist in implementation of OEWD actions and determinations regarding this
16 Policy. For projects where the construction contract is issued by an entity or individual other than the
17 City, OEWD may grant conditional waivers on a project specific basis if it finds that the Contractor
18 has participated to the extent feasible in available pipeline and retention mechanisms, the Contractor
19 has undertaken all corrective actions issued by OEWD, and considering all referral sources and
20 estimates of workers residing in the City, there will be insufficient numbers of qualified and available
21 Local Residents and/or Disadvantaged Workers to enable the Contractor or Subcontractor to satisfy
22 the Local Hiring Requirements.

23 (b) Assistance in Monitoring, Investigations, and Implementation. In accordance with
24 applicable law, the City may enter into one or more contracts for investigative and monitoring services
25

1 to further the purposes of this Policy, or to assist OEWD or Awarding Departments in developing and
2 implementing systems needed to advance the purposes of this Policy.

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

8 (d) Effective Date, Operative Date, and Prospective Application. This Policy initially became
9 effective on January 23, 2011 and applied to Covered Projects first advertised for bids by Awarding
10 Departments on or after March 25, 2011. The amendment to the Policy in subsection 82.4(b), enacted
11 in Ordinance No. 85-14, became operative on September 17, 2014. The amendment of subsection
12 82.4(b) in Ordinance No. 85-14 was intended to have prospective effect only, and shall not be
13 interpreted to impair the obligations of any pre-existing grant agreement, lease, development
14 agreement, or other contract entered into by the City before September 17, 2014. Notwithstanding the
15 prior sentence, the amendment in subsection 82.4(b), enacted in Ordinance No. 85-14, shall apply to
16 newly included work in pre-existing grant agreements, leases, development agreements, or other
17 contracts amended on or after September 17, 2014. The amendment in subsection 82.4(b), enacted in
18 Ordinance No. 85-14, shall apply to grant agreements, leases, development agreements, and other
19 contracts entered into by the City on or after September 17, 2014.

20 (e) Existing Project Labor Agreements. This Policy shall not apply to project labor
21 agreements entered into by Awarding Departments prior to the effective date of the Policy, January 23,
22 2011, ("Existing PLAs"). This Policy shall not apply to Public Work or Improvement contracts
23 advertised for bids after March 25, 2011, that are covered by Existing PLAs, where the terms of the
24 Existing PLAs and this Policy are in conflict. Notwithstanding the foregoing sentence, this Policy shall
25 apply to (1) any material amendment to an Existing PLA if that amendment is executed by an Awarding

1 Department on or after January 23, 2011; (2) any new Public Work or Improvement contract over the
2 Threshold Amount set forth in subsection 82.4(a) that is added to the scope of an Existing PLA based
3 on a discretionary decision by the Awarding Department on or after January 23, 2011.

4 (f) Annual Report To Board of Supervisors. Annually on April 1, the Director of OEWD shall
5 submit a written report to the Board of Supervisors. That report shall document each Awarding
6 Department's performance under the terms of this Policy, including, among other things, the
7 compliance of each department's Contractors and Subcontractors with the requirements of this Policy,
8 any significant challenges experienced by OEWD or Awarding Departments in implementing or
9 enforcing this Policy, and proposed remedies to address any such challenges. That report shall include
10 documentation, organized by Awarding Department, of the overall percentage of Project Work Hours
11 on Covered Projects performed by Local Residents, Disadvantaged Workers, Local Resident
12 Apprentices, and residents of states other than California. The report shall also compare the
13 demographics of workers performing work on Covered Projects, using data collected under the Policy,
14 to the demographics of the qualified labor pool. Awarding Departments shall cooperate with requests
15 by OEWD for information needed by the Director to make such reports to the Board.

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

24 (h) Severability. If any provision of this Policy or any application thereof to any person or
25 circumstances is held invalid by final judgment of any court of competent jurisdiction, such invalidity

1 shall not affect other provisions or application of this Policy which can be given effect without the
2 invalid provision or application, and to this end the provisions of this Policy are declared to be
3 severable.

4 (i) Conflicting Agreements. In case of conflict between terms of this Policy and a contractual
5 agreement entered into by a Contractor, Subcontractor, or Awarding Department, terms of this Policy
6 shall govern. Each party to a contract incorporating terms of this Policy agrees through that contract
7 that either it is not a party to such a conflicting agreement, or that it will comply with terms of this
8 Policy as incorporated into the contract, rather than with any conflicting agreements. On or after
9 January 23, 2011, no Awarding Department may enter into a project labor agreement or other contract
10 relating to or applying to the performance of Project Work on a Covered Project that conflicts with or
11 precludes Contractor and Subcontractor compliance with terms of this Policy.

12 (j) Reciprocity. An Awarding Department or OEWD may negotiate reciprocity agreements
13 with other local jurisdictions that maintain local hiring programs, provided that such agreements
14 advance the policy goals of this Chapter 82. Any such reciprocity agreement shall allow Targeted
15 Workers residing in each jurisdiction to utilize and benefit from Local Hiring Requirements and
16 referral systems in the other jurisdiction on the same terms as do the workers residing in that
17 jurisdiction. When such a reciprocity agreement is in effect, residents of another jurisdiction may be
18 counted toward satisfaction of the Local Hiring Requirements of this Policy. Any reciprocity agreement
19 negotiated by an Awarding Department or OEWD shall be subject to the approval of the Board of
20 Supervisors by resolution.

21 * * * *

22 Section 3. The Administrative Code is hereby amended by revising Section 23.62 to
23 read as follows

24 **SEC. 23.62. LOCAL HIRE REQUIREMENTS.**

1 (a) Local Hire Requirement. The City shall include in all real property sales
2 contracts for Housing Development, as that term is defined in Section 23.61(a), and in all City-
3 as-landlord leases that include or contemplate construction of a Covered Project, the
4 requirement that the purchaser or tenant of the real property comply with the requirements of
5 the City’s Local Hiring Policy, as set forth in Administrative Code ~~subsection 6.22(g)~~ Chapter 82
6 and under the standards set forth in subsection ~~82.4(b)-6.22(g)(3)(B)~~. For purposes of this
7 Section 23.62, the terms “Covered Project” and, notwithstanding Section 23.61, “Contractor”
8 and “Subcontractor,” shall have the same meaning as the definitions set forth in ~~subsection~~
9 ~~6.22(g)(2)~~ Section 82.3.

10 (b) Mandatory Participation Levels. In the performance of work or labor on a
11 Covered Project, each purchaser or tenant shall comply, and shall require its Contractors and
12 Subcontractors to comply, with the mandatory participation levels set forth in ~~subsection~~
13 ~~6.22(g)(4)~~ Section 82.5 of the Administrative Code.

14 * * * *

15 (d) Enforcement.

16 (1) Assessment of Penalties. OEWD shall have the authority to enforce this
17 Section 23.62 against a Contractor or Subcontractor as set forth in Administrative Code
18 Section 82.8 ~~subsection 6.22(g)(7)~~. OEWD shall determine whether a Contractor or
19 Subcontractor has failed to comply with the local hiring requirements. If after conducting an
20 investigation, OEWD determines that a violation has occurred, it shall issue and serve an
21 assessment of penalties that sets forth the basis of the assessment and orders payment of
22 penalties under subsection ~~82.8(f)-6.22(g)(7)(F)~~ of this Code.

23 (2) Remedies for Non-Compliance with Assessment of Penalties. Each
24 Contractor and Subcontractor shall comply with the final assessment of penalties by paying
25 the amounts due for wages as set forth in Administrative Code subsection

1 ~~82.8(f)(3)6.22(g)(7)(F)(iii)~~ no later than 30 days after the determination or decision of the
2 hearing officer is final. The Contractor or Subcontractor shall, in addition, be subject to the
3 penalties set forth in Article V of Chapter 6 of the Administrative Code, including debarment.
4 If any Contractor or Subcontractor fails to pay the amounts required under subsection
5 ~~82.8(f)6.22(g)(7)(F)~~ of this Code within the required 30 days, the non-complying party shall be
6 subject to the enforcement actions set forth in subsection ~~82.8(f)(5)6.22(g)(7)(F)(v)~~.

7 * * * *

8 Section 4. Effective Date; Retroactivity.

9 This ordinance shall become effective 30 days after enactment. Enactment occurs
10 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
11 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
12 Mayor’s veto of the ordinance. If the effective date of this ordinance is after March 25, 2017,
13 this ordinance shall be retroactive to March 25, 2017.

14 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
15 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
16 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
17 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
18 additions, and Board amendment deletions in accordance with the “Note” that appears under
19 the official title of the ordinance.

20

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

23 By: _____
24 JULIA H. VEIT
25 Deputy City Attorney

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