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

NOTE: Additions are single-underline italics Times New Roman; deletions are strike-through italics Times New Roman. Board amendment additions are double-underlined; Board amendment deletions are strikethrough normal.

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

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

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

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

(A) Bonds. Before the execution of any contract for public works or improvements in excess of $25,000, the department head authorized to execute such contracts shall require the successful bidder to file corporate surety bonds for the faithful performance thereof and to
guarantee the payment of wages for services engaged and of bills contracted for material,
supplies and equipment used in the performance of the contract. The bond shall be for a sum
not less than 100 percent of the award.

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

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

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

(C) Indemnification. All construction contracts awarded under this Chapter shall
require that the contractor fully indemnify the City and County to the maximum extent provided
by law, such that each contractor must save, keep, bear harmless and fully indemnify the City
and County and any of its officers or agents from any and all liability, damages, claims,
judgments or demands for damages, costs or expenses in law or equity that may at any time
arise.
This indemnification requirement may not be waived or abrogated in any way for any contract without the recommendation of the City's Risk Manager and the express permission and approval of the Board of Supervisors.

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

(E) **Prevailing Wages.**

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

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

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

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

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

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

On or before the first Monday in November of each year, the Civil Service Commission shall furnish to the Board of Supervisors data as to the highest general prevailing rate of wages of the various crafts and kinds of labor as paid in private employment in the City and County of San Francisco, plus "per diem wages" and wages for overtime and holiday work. The Civil Service Commission shall provide the Board of Supervisors data for "per diem wages" pursuant to California Labor Code sections 1773.1 and 1773.9, as amended from time to time. The Board of Supervisors shall, upon receipt of such data, fix and determine the prevailing rate of wages. The prevailing rate of wages as so fixed and determined by the Board of Supervisors shall remain in force and shall be deemed to be the highest general prevailing rate of wages paid in private employment for similar work, until the same is changed by the Board of Supervisors. In determining the highest general prevailing rate of wages per diem wages and wages for overtime and holiday work, as provided for in this section, the Board of Supervisors shall not be limited to the consideration of data furnished by the Civil Service Commission, but may consider such other evidence upon the subject as the Board shall deem proper and thereupon base its determination upon any or all of the data or evidence considered.
In the event that the Board of Supervisors does not fix or determine the highest general
prevailing rate of wages in any calendar year, the rates established by the California
Department of Industrial Relations for such year shall be deemed adopted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(G) **Local Hiring.**

(1) **Contract Requirements.** All construction contracts for public works or improvements to
be performed within the boundaries of the City and County of San Francisco shall contain the
following provisions:
Contractor agrees to make a good-faith effort, with the assistance of community organizations designated by the City or local labor union hiring halls, to hire qualified individuals who are residents of the City and County of San Francisco to comprise not less than 50% of each contractor's total construction work force, measured in labor work hours, and contractor promises to give special preference to minorities, women and economically disadvantaged individuals.

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

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

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

(2) Definitions.

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

"Resident of the City and County of San Francisco" shall mean an individual who is domiciled, as defined by Section 200(b) of the California Election Code, within the boundaries of the City and County during the entire time of the performance of the contract and who can verify his or her domicile, upon request of the contractor or City, by producing documentation such as a rent/lease agreement, telephone and utility bills or payment receipts, a valid California driver's license or identification card, and/or any other similar, reliable evidence that verifies that the individual is domiciled within the City and County of San Francisco.
“Economically disadvantaged” shall mean an individual who has been unable to secure employment in his or her trade for more than 20 working days in the past six months, or whose annual maximum income falls within the income limits established by the Mayor’s Office of Community Development for the Community Development Block Grant (CDBG) programs.

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

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

(1) Findings and Purpose.

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

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

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

(d) The Office of Economic and Workforce Development and San Francisco Public Utilities Commission funded the August 2010 report from Chinese for Affirmative Action and Brightline Defense
Project entitled, "The Failure of Good Faith," which found that the City has historically failed to meet its local hiring goals.

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

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

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

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

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

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

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

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

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

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

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

(p) The City has made substantial public investments in its workforce development system, including CityBuild and the City’s community-based partners, to create job opportunities in industries such as construction, which are vital to the economic health of the local economy, have a capacity to generate a significant number of jobs, are accessible to low- and middle-skilled individuals, have career ladder opportunities where workers can move up with additional training and skill development, and provide access to living wage and family-sustaining jobs.
(q) City-funded construction projects provide a crucial opportunity to connect participants in these City-funded or City-operated workforce development programs with employment and training opportunities, and to direct employment and training opportunities created by the City's public expenditures.

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

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

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

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

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

(a) “Apprentice” means any worker who is indentured in a construction apprenticeship program that maintains current registration with the State of California's Division of Apprenticeship Standards.
(b) “Area Median Income” or “AMI” means unadjusted median income levels derived from the Department of Housing and Urban Development ("HUD") on an annual basis for the San Francisco area, adjusted solely for household size, but not high housing cost area.

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

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

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

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

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

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

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

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

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

(l) “Policy” means this subsection 6.22(G).
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(m) “Project work” means construction work performed as part of a covered project.

(n) “Project work hours” means the total hours worked on a construction contract by all apprentices, journey-level workers, and work site foremen, whether those workers are employed by the contractor or any subcontractor.

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

(p) “Targeted worker” means any local resident or disadvantaged worker.

(3) Coverage.

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

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

(c) Projects Utilizing Federal or State Funds.

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

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

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

(4) **Local Hiring Requirements.**

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

(b) For project work performed on a covered project during the first year after the effective
date of this Policy: At least 30% of project work hours by trade shall be performed by local residents,
with no less than 15% of project work hours by trade performed by disadvantaged workers.
(c) For project work performed on a covered project during the second year after the
effective date of this Policy: At least 40% of project work hours by trade shall be performed by local
residents, with no less than 20% of project work hours by trade performed by disadvantaged workers.

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

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

(5) Local Hiring Incentives.

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

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

(i) Financial incentives provided on a covered project shall not exceed two percent of the
estimated cost of the project. Awarding departments shall pay financial incentives after a contractor or
subcontractor has completed work on the project and OEWD has approved the contractor's or
subcontractor's request for incentive payment. Subcontractors requesting incentive payments shall
submit requests to the awarding department and OEWD through the prime contractor, not directly to
the awarding department or OEWD. Payment of subcontractor incentives shall be paid to the prime
contractor for the benefit of the appropriate subcontractor(s). Prime contractor must pay
subcontractor(s) within 10 days of receipt of financial incentives from the City.
(ii) OEWD shall, by regulation, develop non-financial incentives such as expedited permitting and reduced administrative burden.

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

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

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

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

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

(7) Enforcement.

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

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

(c) Recordkeeping. Each contractor and subcontractor shall keep, or cause to be kept, for a period of four years from the date of substantial completion of project work on a covered project, certified payroll and basic records, including time cards, tax forms, and superintendent and foreman daily logs, for all workers within each trade performing work on the covered project. Such records shall include the name, address and social security number of each worker who worked on the covered project, his or her classification, a general description of the work each worker performed each day, the apprentice or journey-level status of each worker, daily and weekly number of hours worked, the
self-identified race, gender, and ethnicity of each worker, whether or not the worker was a local resident or disadvantaged worker, and the referral source or method through which the contractor or subcontractor hired or retained that worker for work on the covered project (e.g., core workforce, name call, union hiring hall, City-designated referral source, or recruitment or hiring method).

Contractors and subcontractors may verify that a worker is a local resident through the worker's possession of a valid SF City ID Card, which may be obtained at the County Clerk's Office. OEWD and awarding departments may require additional records to be kept with regard to contractor or subcontractor compliance with this Policy. All records described in this section shall at all times be open to inspection and examination by the duly authorized officers and agents of the City, including representatives of the awarding department and the OEWD.

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

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

(f) Compliance Procedures.

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) Miscellaneous.

(a) Regulations and Administrative Guidance. OEWD shall be the primary department authorized to implement and enforce this Policy. OEWD shall issue regulations and/or administrative guidance regarding implementation of the Policy, including (i) documentation and recordkeeping requirements, (ii) incentive payments, (iii) monitoring and compliance activities, (iv) project and/or contract coverage determinations, (v) designated referral sources, (vi) bid and contract documents implementing the Policy, (vii) procedures for application of the Policy to alternative competitive bidding processes set forth in Article IV of this Chapter, and (viii) other matters related to implementation of this Policy. Awarding departments shall cooperate with and assist in implementation of OEWD actions and determinations regarding this Policy.
(b) Assistance in Monitoring, Investigations, and Implementation. In accordance with applicable law, the City may enter into one or more contracts for investigative and monitoring services to further the purposes of this Policy, or to assist OEWD or awarding departments in developing and implementing systems needed to advance the purposes of this Policy.

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

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

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

(f) Periodic Review. This subsection 6.22(G) shall remain in full force and effect, subject to periodic review by the Board of Supervisors. The Board of Supervisors will regularly, but at a minimum of once every five years, determine whether there is a continuing need to ensure adequate
local resident hiring, make relevant findings in support of its determination, and, if necessary, amend
this subsection as appropriate.

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

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

(i) Conflicting Agreements. In case of conflict between terms of this Policy and a
contractual agreement entered into by a contractor, subcontractor or awarding department, terms of
this Policy shall govern. Each party to a contract incorporating terms of this Policy agrees through
that contract that either it is not a party to such a conflicting agreements, or that it will comply with
terms of this Policy as incorporated into the contract, rather than with any conflicting agreements.

After the effective date of this Policy, no awarding department may enter into a project labor
agreement or other contract relating to or applying to the performance of project work on a covered
project that conflicts with or precludes contractor and subcontractor compliance with terms of this
Policy.
(j) **Reciprocity.** An awarding department or OEWD may negotiate reciprocity agreements with other local jurisdictions that maintain local hiring programs, provided that such agreements advance the policy goals of this subsection. Any such reciprocity agreement shall allow targeted workers in each jurisdiction to utilize and benefit from local hiring requirements and referral systems in the other jurisdiction on the same terms as do the workers residing in that jurisdiction. When such a reciprocity agreement is in effect, residents of another jurisdiction may be counted toward satisfaction of the local hiring requirements of this Policy. Any reciprocity agreement negotiated by an awarding department or OEWD shall be subject to the approval of the Board of Supervisors by resolution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(L) Termination for Convenience. In all contracts for the construction of any
public work or improvement, the department head authorized to execute any contract for any
public work or improvement may include in the specifications setting forth the terms and
conditions for the performance of the contract a provision that the City and County may
terminate the performance of work under the contract whenever the department head shall
determine, with the approval of the Mayor, the Mayor's designee or the board or commission
concerned, that such termination is in the best interest of the City and County. Any such
termination shall be effected by delivery to the contractor of a notice of termination specifying
the extent to which performance of work under the contract is terminated and the date upon
which such termination becomes effective. The department head is hereby authorized to
include within such construction contract the appropriate language to implement this
subsection.
(M) **Articles Not to be Prison Made.** No article furnished under any contract awarded under the provisions of this Chapter shall have been made in a prison or by convict labor except for articles made in prisons or by convicts under the supervision and control of the California Department of Corrections and limited to articles for use by the City and County's detention facilities.

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

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

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

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

(1) **Claims by Contractors.** The contractor shall certify under penalty of perjury that (a) the claim is made in good faith; (b) the supporting data are accurate and complete to the best of Contractor's knowledge and belief; and (c) the amount request accurately reflects the Contract adjustment for which the Contractor believes the City is liable. An individual or officer authorized to act on behalf of the Contractor shall execute the certification.
(2) Claims by Subcontractors. Subcontractors at any tier are not third-party beneficiaries of any Contract awarded under this Chapter. The City shall not consider a direct claim by any subcontractor. A Contractor presenting to the City any claim on behalf of a subcontractor must certify the subcontractor's claim in the same manner the Contractor would certify its own claim under the foregoing paragraph (1).

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

By: 

JOHN G. WHITE
Deputy City Attorney