

**OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE**  
**(SUCCESSOR TO THE SAN FRANCISCO REDEVELOPMENT AGENCY)**  
**AMENDED HEALTH CARE ACCOUNTABILITY POLICY**

**SECTION 1. FINDINGS AND DECLARATIONS**

1.1 The Office of Community Investment and Infrastructure (successor agency to the Redevelopment Agency of the City and County of San Francisco) (the “**Agency**”) enters into many contracts, including, but not limited to, service contracts, loan and grant agreements and property agreements, in furtherance of the objectives of the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq., the “**Law**”) in the interest of the health, safety and general welfare of the City of San Francisco’s (“**City**”) residents.

1.2 These contracts and agreements have at times involved compensation to the contracting parties’ or their subcontractors’ employees that does not include health benefits or does not provide a high enough level of compensation that would allow an employee to acquire their own health insurance. Uninsured persons seeking medical assistance place an immediate burden on the City’s limited public health resources and place the uninsured at a far greater level of health risk. Requiring these contracting parties and their subcontractors to offer health benefits to their employees, or to make payments to the City’s Department of Public Health to provide for the care of such persons, or to participate in a health benefits program developed by the City’s Director of Health, will improve the health, safety and general welfare of San Francisco’s residents by ensuring health benefits for many more of the City’s residents who are now uninsured.

**SECTION 2. DEFINITIONS**

As used in this Policy the following capitalized terms shall have the following meanings:

2.1 “**Agency**” shall mean the Office of Community Investment and Infrastructure (successor agency to the Redevelopment Agency of the City and County of San Francisco).

2.2 “**Agency Property**” means real property that is owned by the Agency or which the Agency has exclusive use. “Exclusive use” means the right to use or occupy real property to the exclusion of all others, subject to the rights reserved by the party granting such exclusive use.

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

2.4 “**Contract**” shall mean an agreement or portion of an agreement that provides for services to be purchased at the expense of the Agency or out of funds established by ordinance or MOU, or otherwise controlled by the Agency. The term "Contract" shall include, without limitation, Property Agreements, Included Subcontracts and agreements such as grant agreements, pursuant to which agreements the Agency grants funds to a Contractor for services (including, without limitation, cultural activities, performances or exhibitions) to be rendered to all or any portion of the public rather than to Agency. Notwithstanding the foregoing, the term "Contract" shall exclude:

(a) Agreements for a duration of less than one (1) year. Contractors are prohibited from entering into multiple contracts of short duration order to evade the requirements of this Policy;

(b) Agreements for the purchase or lease of goods, or for guarantees, warranties, shipping, delivery, installation or maintenance of such goods. Where an agreement is for the purchase or lease of both goods and other services, the agreement shall not be deemed a "Contract" if a preponderance of the contract amount is for goods;

(c) Agreements entered into pursuant to settlement of legal proceedings;

(d) Agreements for urgent or specialized advice, consultation or litigation services for the Agency where the General Counsel finds that it would be in the best interests of the Agency not to include the requirements of this Policy;

(e) Agreements with any person or entity if the amount of the agreement is less than \$25,000 (in the case of a for-profit entity or person) or less than \$50,000 (in the case of a Nonprofit Corporation). However, if the Contracting Party has multiple agreements with the Agency in a given fiscal year (which agreements would be considered "Contracts" under this Policy except that the individual dollar amounts are below the thresholds set forth in the preceding sentence) and the cumulative amount of such agreements is \$75,000 or more, the provisions of this Policy shall apply to each such agreement from the date on which the triggering Contract is executed;

(f) Agreements for the investment, management or use of trust assets where compliance would violate the fiduciary duties of the trustee;

(g) Agreements executed prior to the Effective Date (unless and until a Contract Amendment is executed);

(h) Agreements executed after the Effective Date (unless and until a Contract Amendment is entered into) pursuant to, and within the scope of, bid packages or requests for proposals advertised and made available to the public prior to the Effective Date, unless the bid packages or requests for proposals are materially amended on or after the Effective Date;

(i) Agreements that require the expenditure of grant funds awarded to the Agency by another entity. If a Contract is funded both by grant funds and non-grant funds, the entire Contract is exempt; provided that, if the use of the grant funds is severable from the non-grant funds, the Contract is exempt only with respect to the use of the grant funds;

(j) Agreements pursuant to which the Agency awards a grant to a Nonprofit Corporation;

(k) Agreements with a public entity;

(l) Agreements for employee benefits to be provided to Agency employees, where the Executive Director finds that no person or entity is willing to comply with this Policy and is capable of providing the required employee benefits;

(m) Agreements for the investment, management or use of Agency monies where the Executive Director finds that requiring compliance with this Policy will violate the Agency's fiduciary duties and for the investment of retirement, health or other funds held in trust pursuant to Charter, statute, ordinance or MOU where the official or officials responsible for investing or managing such funds find that requiring compliance with this Policy will violate their fiduciary duties;

(n) Loan agreements and agreements made in connection with loans or grants under which the Agency, as creditor or grantor, is providing funds to be used by the debtor or grantee to:

i. Acquire an interest in real property on which residential improvements for low- or moderate-income households will be constructed;

ii. Construct improvements owned or leased by the debtor or grantee, on condition that residents of the improvements qualify as low- or moderate-income households; or

iii. Rehabilitate improvements owned or leased by the debtor or grantee;

(o) Disposition and development or groundlease agreements of Agency Property on which residential improvements for low-or-moderate income households will be constructed or existing improvements will be operated for low-or-moderate income households; provided, however, that any leases for commercial space in such properties shall be considered Included Leases and shall be subject to the requirements of this Policy;

(p) Agreements between a Tenant or Subtenant and a Contractor to perform services on property covered by a Lease if the Contractor does not provide such services on a regular and on-going basis. For purposes of this exemption, if employees of the Contractor and any Subcontractors cumulatively work on the Lease property less than 130 days within a 12-month period, the agreement shall not be considered regular and on-going.

(q) Agreements with an owner (such as owner participation agreements) where such agreement is granted in the exercise of the Agency's regulatory or police powers.

2.5 “**Contract Amendment**” shall mean a modification to an agreement which extends the term, increases the total amount of payments due from the Agency (except where such increase is due solely to cost of living adjustments), or modifies the scope of services to be performed by the Contractor; provided that the resulting agreement falls within the definition of “Contract.”

(a) Notwithstanding the foregoing, “Contract Amendment” does not include a one-time extension of the term of a Contract for up to 6 months, or a construction change order, modification or amendment to a Contract executed by the Agency for its benefit (as determined by the Executive Director).

2.6 “**Contractor**” shall mean the person or entity that enters into a Contract with the Agency. The term “Contractor” also means any person or entity that enters into a Contract with a Tenant or Subtenant to perform services on property covered by a Lease.

2.7 “Covered Employee” shall mean:

(a) An Employee of a Contractor or Subcontractor who works on an Agency Contract or Subcontract for 15 hours or more per Week.

- i. Within the geographic boundaries of the City of San Francisco; or
- ii. Elsewhere in the United States.

(b) An Employee of a Tenant or Subtenant who works 20 hours or more per Week on property that is covered by a Lease or Sublease; and

(c) An Employee of a Contractor or Subcontractor that has a Contract or Subcontract to perform services on property covered by a Lease or Sublease if the Employee works 15 hours or more per Week on the property.

(d) A Contractor or Subcontractor may not divide an employee’s time between working on an Agency contract and working on other duties with the intent of reducing the number of Covered Employees working on the Contract to evade compliance with this policy. Such action shall constitute a violation of this policy.

**Notwithstanding the foregoing, the term “Covered Employee” does not include the following:**

(1) Any Employee under the age of eighteen (18) who is a student, provided that the Employee does not replace, displace or lower the wage or benefits of any existing position or Employee; or

(2) Any Employee who is (i) a temporary Employee hired for a time-limited period, and (ii) for that period is receiving academic credit or completing mandatory hours for professional licensure or certification, and (iii) the Employee does not replace, displace or lower the wages or benefits of an existing position or Employee; or

(3) Any Employee employed as a trainee in a bona fide training program consistent with Federal law, which training program enables the Employee to advance into a permanent position, provided that the Employee does not replace, displace or lower the wage or benefits of any existing position or Employee; or

(4) Any Employee that the Contracting Party is required to pay no less than the “prevailing rate of wage” in accordance with the Agency’s Prevailing Wage Policy; or

(5) Any disabled Employee who is covered by a current sub-minimum wage certificate issued to the employer by the U.S. Department of Labor or would be covered by such a certificate but for the fact that the employer is paying a wage equal to or higher than the minimum wage; or

(6) Any Employee of a Nonprofit Corporation who is a temporary employee, hired on an hourly or per diem basis to replace a regular employee during a temporary absence from the workplace.

2.8 “**Effective Date**” shall mean April 7, 2009, the date the Agency Commission approves this Policy.

2.9 “**Employee**” shall mean any person who is employed by a Contractor, including part-time and temporary employees.

2.10 “**Included Lease**” shall mean a lease, sublease or other agreement with any person or entity for the exclusive right to occupy or use all or any portion of real property owned, leased or otherwise controlled by the Agency in which the Agency has a Proprietary Interest.

2.11 “**Lease**” shall mean a written agreement (including, without limitation, any lease, concession or license) in which:

(a) The Agency gives to another party the exclusive use of Agency Property for a term exceeding one year, whether by single or cumulative instruments. If cumulative instruments cause the term of the agreement to exceed one year, the agreement shall be subject to this Policy only on or after the effective date of the instrument which causes the term to exceed one year. “Lease” includes “Lease Amendment”.

(b) The Contractor gives to another party the exclusive use of property in which the Agency has a Proprietary Interest for a term exceeding one year, whether by single or cumulative instruments. If cumulative instruments cause the term of the agreement to exceed one year, the agreement shall be subject to this Policy only on or after the effective date of the instrument which causes the term to exceed one year.

2.12 “**Lease Amendment**” shall mean a modification to a Lease that extends the term or materially changes any other provision of the Lease.

(a) Notwithstanding the foregoing, “Lease Amendment” does not include a one-time extension of the term of a Lease for up to 6 months, or relocation of the leased premises at the request of the Agency for its benefit or convenience (as determined by the Agency Executive Director).

2.13 “**Nonprofit Corporation**” shall mean a nonprofit corporation, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and (if a foreign corporation) in good standing under the laws of the State of California, which corporation has established and maintains valid nonprofit status under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and all rules and regulations promulgated under such Section.

2.14 “**Policy**” shall mean this Amended Health Care Accountability Policy adopted by the Agency Commission on April 7, 2009.

2.15 “**Property Agreements**” shall mean Disposition and Development Agreements (DDAs), Groundleases, and any other agreements with the Agency (other than Excluded Subcontracts) in which the Agency has a Proprietary Interest.

2.16 “**Proprietary Interest**” shall mean any nonregulatory arrangement or circumstance in which the financial or other nonregulatory interests of the Agency in a Contract could be adversely affected, in the following circumstances:

(a) The Agency receives significant ongoing revenue (such as rent payments) under a lease or ground lease of real property owned by the Agency for the development of a project pursuant to a Contract, excluding government fees or tax or assessment revenues, or the like (except for tax revenues under the circumstances specified in Section 2.16(b));

(b) The Agency receives ongoing revenue from a project pursuant to a Contract to pay debt service on bonds or loans provided by the Agency to assist the development of such project (including incremental tax revenues generated by the project or the development project in which it is located and used, directly or indirectly, to pay debt service on bonds or to repay a loan by the Agency where the proceeds are used for development of that project or the development project in which it is located;

(c) The Agency has agreed in a Contract to underwrite or guarantee the development or operation of a development project, or loans related thereto;

(d) The Agency pursuant to a Contract receives a continuing financial payment that is specific to that project, which is not a tax or other charge of general applicability or a one-time payment for the land;

(e) The Agency receives a share in the profits of a project in a negotiated economic participation agreement pursuant to a Contract; or

(f) In addition to the circumstances described above, the Agency shall be deemed to have a Proprietary Interest in a Contract for a project if the Agency determines or an interested party demonstrates prior to the effective date of the Contract pursuant to which a project will be operated that there is a significant risk that the Agency's financial or other nonregulatory interest in the project could be adversely affected, except that no circumstance or arrangement shall be considered “financial or non-regulatory” under this definition if it arises from the exercise of regulatory or police powers such as taxation or the receipt of tax increment funds as provided in Article 16, section 16 of the California Constitution (except as provided in Section 2.16(b)) above), zoning or the issuance of regulatory permits.

2.17 “**Week**” shall mean a consecutive seven-day period. If the Contractor's regular pay period is other than a seven-day period, the number of hours worked by an employee during a seven-day Week, for purposes of this Policy, shall be calculated by adjusting the number of hours actually worked during the Contractor's regular pay period to determine the average over a seven-day Week. However, such period of averaging shall not exceed a duration of one month.

2.18 “**Subcontract**” shall mean an agreement between a Contractor and a person or entity pursuant to which the person or entity agrees to perform all or a portion of the services covered by a Contract.

(a) Notwithstanding the foregoing, the term “Subcontract” does not include:

i. Agreements for the purchase or lease of goods, or for guarantees, warranties, shipping, delivery, installation or maintenance of such goods. When an agreement is for the purchase or lease of both goods and other services, the agreement shall not be deemed a “Subcontract” if a preponderance of the Contract amount is for goods; or

ii. Agreements with a public entity.

2.19 “**Subcontractor**” shall mean a person or entity that enters into a Subcontract.

2.20 “**Sublease**” shall mean any agreement with any person or entity for the exclusive right to occupy or use all or any portion of Agency Property covered by a Lease or Property Agreement. Notwithstanding the foregoing, the term “Sublease” does not include each of the circumstances set forth in Section 2.12(a) that constitutes an exclusion from the definition of “Lease” or “Property Agreement.”

2.21 “**Subtenant**” shall mean a person or entity that enters into a Sublease.

2.22 “**Tenant**” shall mean the person or entity that enters into a Lease or Property Agreement with the City.

### **SECTION 3. HEALTH CARE ACCOUNTABILITY COMPONENTS**

3.1 With respect to each Covered Employee who either resides in San Francisco (regardless of where the Covered Employee provides services) or provides services covered by this Policy in San Francisco, each Contractor shall do one of the following, at the Contractor’s option:

(a) Offer to the Covered Employee health plan benefits that meet minimum standards prepared by the City’s Health Director and approved by the City’s Health Commission. The minimum standards shall provide for a maximum period for each Covered Employee’s health benefits to become effective, no later than the first of the month that begins after 30 days from the start of employment on a covered Contract, Subcontract, Lease or Sublease. The Health Commission shall review such standards every two years to ensure that the standards stay current with State and Federal regulations and existing health benefits practices; or

(b) For each Week in which the Covered Employee works the applicable minimum number of hours set forth in Section 2.7 (definition of “Covered Employee”), pay to the City \$2.00 per hour (“fee option payment”) for each hour the Covered Employee is employed by the Contracting Party on the Contract or Subcontract or on property covered by a Lease, but not to exceed \$80 in any Week. The City shall appropriate money received pursuant to this Subsection 3.1(b) for the use of the Department of Public Health. The Department of Public Health shall use the monies appropriated for staffing and other resources to provide medical care for the uninsured. The Health Commission may increase this hourly rate and Weekly maximum in

accordance with either the Bureau of Labor Statistics Consumer Price Index for Medical Care in the San Francisco Bay Area or the increase in average Health Maintenance Organization (“HMO”) premiums in California depending on which the Health Commission determines better reflects the cost of providing health care in the Bay Area; provided, however, the Health Commission shall take this action no more than once a year and any adjustments in such hourly rate or Weekly maximum must be approved by the Board of Supervisors by resolution; or

(c) Participate in a health benefits program developed by the Health Director in consultation with the City’s Purchasing Department. The Health Director shall obtain Health Commission approval of the program before implementing it. The Health Director shall seek such approval within twelve (12) months after this Policy is finally approved. Prior to implementation of the health benefits program provided in this Subsection 3.1(c), each Contractor shall comply with Subsection 3.1(a) or 3.1(b). After the Health Director implements the program, in addition to the options provided in Subsections 3.1(a) or 3.1(b), Contractors may satisfy their obligations under this Policy by complying with the requirements of the health benefits program. In developing the program, the Health Director shall (i) attempt to make health coverage available for uninsured Covered Employees and, if feasible, any other person employed by a Contracting Party who works less than 20 hours per week on an Agency contract, or other uninsured City residents; (ii) use public health facilities to the maximum extent practicable; (iii) make the program economically viable; and (iv) provide a mechanism for funding which relies, as much as possible, on contributions by participating employers and employees.

(d) With respect to each Covered Employee who does not reside in San Francisco, but who provides services covered by this Policy each Contractor shall do one of the options set forth in Subsection 3.1(a), (b) or (c), at the Contractor’s option.

(e) With respect to each Covered Employee who does not reside in San Francisco, and does not provide services covered by this Policy in San Francisco, each Contractor shall do one of the following, at the Contractor’s option:

i. Offer to the Covered Employee health plan benefits that meet minimum standards prepared by the Health Director and approved by the Health Commission pursuant to Subsection 3.1(a) above; or

ii. For each Week in which the Covered Employee works the applicable minimum number of hours set forth in Section 2.7 (definition of “Covered Employee”), pay to the Covered Employee an additional \$2.00 per hour for each hour the Covered Employee is employed by the Contracting Party on the Contract or Subcontract or on property covered by a Lease, but not to exceed \$80 in any Week, to enable the employee to obtain health insurance coverage. This represents the City’s current estimate of the average cost of obtaining individual health insurance benefits. The Health Commission may increase this hourly rate and Weekly maximum in accordance with either the Bureau of Labor Statistics Consumer Price Index for Medical Care in the San Francisco Bay Area or the increase in average HMO premiums in California depending on which the Health Commission determines better reflects the cost of providing health care in the Bay Area; provided, however, the Health Commission shall take this action no more than once a year and any adjustments in such hourly rate or Weekly maximum must be approved by the City’s Board of Supervisors by resolution.



(f) Notwithstanding the above, if, at the time a Contract, Subcontract, Lease, or Sublease is executed, the Contractor has 20 or fewer employees (or, in the case of a Nonprofit Corporation, 50 or fewer employees), including any employees the Contractor plans to hire to implement the Contract, Subcontract, Lease or Sublease, the Contractor shall not be obligated to provide the Health Care Accountability Components set forth in this Section 3 to its Covered Employees. In determining the number of employees a Contractor has, all employees of all entities that own or control the Contractor and that the Contractor owns or controls, shall be included.

(g) Notwithstanding anything in this Policy to the contrary and without the need of further action by the Agency Commission, (i) the minimum number of hours required to be considered a “Covered Employee”, (ii) the Minimum Standards for Health Care Benefits required to be provided to Covered Employees and (iii) the fee option payments required to be paid to the City under Section 3 of this Policy shall automatically increase to match the levels required by the City’s health care accountability ordinance (San Francisco Administrative Code, Chapter 12Q) as amended from time to time. Notwithstanding anything in this Policy to the contrary, fee option payments and Minimum Standards for Health Care Benefits increases under this provision shall apply to new contracts entered into after the effective date of any such increase and shall not apply to existing contracts or amendments to existing contracts, in order to provide predictability in budgeting.

(h) The fee option payment and current Minimum Standards for Health Care Benefits required by the City and required under this Policy is currently posted by the City’s Office of Labor Standards on its website at [http://www.sfgov.org/site/olse\\_index.asp?id=27461](http://www.sfgov.org/site/olse_index.asp?id=27461). However, any future increases shall apply whether or not posted on the City’s website.

(i) Amendments to the City’s health care accountability ordinance (San Francisco Administrative Code, Chapter 12Q) other than changes to the (i) the minimum number of hours required to be considered a “Covered Employee”, (ii) the Minimum Standards for Health Care Benefits required to be provided to Covered Employees and (iii) the fee option payments required to be paid to the City under Section 3 of this Policy shall not apply to this Policy unless expressly adopted by the Agency Commission.

#### **SECTION 4. CONTRACTUAL OBLIGATIONS**

4.1 Each Contractor that enters into a Contract, Subcontract, Lease, or Sublease shall agree:

(a) To comply with the requirements of this Policy, including the requirement to choose and perform one of the Health Care Accountability Components set forth in Section 3;

(b) To comply with regulations adopted by the Agency pursuant to this Policy;

(c) To maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the Agency Contract or Subcontract. If the Contractor fails to maintain records that accurately reflect the number of hours each employee has worked on the Agency Contract or Subcontract, it shall be presumed that any employee who has worked on an Agency Contract or Subcontract is a Covered Employee as herein defined.

(d) To provide information and reports to the Agency in accordance with any reporting standards promulgated by the Agency in consultation with the City's Director of Health;

(e) To provide the Agency with access to pertinent payroll records relating to the number of employees employed and terms of medical coverage as allowed by law after receiving a written request to do so and being provided at least ten (10) business days to respond;

(f) To allow the Agency to inspect the Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with this Policy;

(g) To cooperate with the Agency when it conducts audits;

(h) To include in every Contract, Subcontract, Lease, or Sublease subject to this Policy provisions requiring compliance with this Policy, consistent with any directives or standards adopted by the Agency;

(i) To notify the Agency promptly of any Subcontractors performing services covered by this Policy and certify to the Agency that it has notified the Subcontractors of their obligations under this Policy; and

(j) To represent and warrant that it is not an entity that was set up, or is being used, for the purpose of evading the intent of this Policy.

4.2 A Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any Employee for notifying the City regarding the Contractor's noncompliance or anticipated noncompliance with this Policy, for opposing any practice proscribed by this Policy, for participating in proceedings related to this Policy, or for seeking to assert or enforce any rights under this Policy by any lawful means.

## **SECTION 5. ADMINISTRATION AND ENFORCEMENT**

5.1 The Agency, shall implement the City's Department of Public Health regulations for the interpretation and administration of this Policy, to the extent such regulations are consistent with adopted Agency Policy.

5.2 The Agency shall monitor Contractors for compliance and investigate complaints of violations of this Policy. The Agency's General Counsel shall develop contractual provisions for use by Agency staff designed to enable the Agency to pursue the remedies set forth in this Section against every person or entity required to comply with this Policy.

5.3 The Agency, or at its request, the City's Department of Public Health, may conduct audits of Contractors, although such audits shall be conducted at a mutually agreed upon time and location within ten (10) days of written notice.

5.4 The Agency's Contract Compliance Division shall provide an annual joint report to the Agency Commission on compliance with this Policy. Such report shall include cumulative information regarding the number of waivers granted pursuant to this Policy.

5.5 A Covered Employee may report to the Agency's Contract Compliance Division in writing any alleged violation of this Policy by a Contractor or other person or entity subject to this Policy. The Agency shall investigate any such report. If the Agency determines that any person or entity has violated this Policy, the Agency shall notify the Contractor of its findings. In order to ensure compliance with this Policy and to enhance the monitoring activities of the Agency, the Agency encourages reporting by Covered Employees pursuant to this Subsection. The Agency shall keep confidential the Covered Employee's name and other identifying information, to the maximum extent permitted by applicable law.

5.6 The Agency has the right to assign the enforcement provisions of this Section 5, to the appropriate City department to act on behalf of the Agency;

5.7 In addition to any other rights or remedies available to the Agency under the terms of any agreement of a Contractor or under applicable law, the Agency, or the City acting on behalf of the Agency, shall have the following rights:

(a) The right, at the discretion of the Agency, to charge the Contractor for any amounts that the Contractor should have paid to the City for hours worked by Covered Employees together with simple annual interest of 10% on such amount from the date payment was due;

(b) The right, at the discretion of the Agency, to assess liquidated damages as provided in Section 6;

(c) The right, at the discretion of the Agency, to set off all or any portion of the amount that a Contractor is required to pay to the City pursuant to preceding Subsections 5.7(a) and 5.7(b) against amounts due to a Contractor;

(d) The right, at the discretion of the Agency, to terminate the Contract or Lease in whole or in part; or

(e) The right, at the discretion of the Agency, to bar a Contractor from entering into future Contracts or Leases with the Agency for three (3) years.

(f) The right to bring a civil action against the Contractor to pursue the remedies provided in this Policy, at law or in equity. The prevailing party shall be entitled to its costs and all reasonable attorneys' fees.

5.8 Each Contractor shall be responsible for its Subcontractors with respect to compliance with this Policy. If a Subcontractor fails to comply, the Agency, or the City acting on behalf of the Agency, may pursue the remedies set forth in this Section against the Contractor based on the Subcontractor's failure to comply, provided that the Agency has first provided the Contractor with notice and an opportunity to obtain a cure of the violation.

5.9 Each Tenant shall be responsible for each Subtenant, Contractor and Subcontractor performing services on property covered by the Tenant's Lease, with respect to compliance with this Policy. If any Subtenant, Contractor or Subcontractor fails to comply, the Agency, or the City acting on behalf of the Agency, may pursue the remedies set forth in this Section against the

Tenant based on the Subtenant's, Contractor's or Subcontractor's failure to comply, provided that the Agency has first provided the Tenant with notice and an opportunity to obtain a cure of the violation.

5.10 Each of the rights set forth in this Section 5 shall be exercisable individually or in combination with any other rights or remedies available to the Agency. Any amounts realized by the Agency pursuant to this Section shall be used first to cover the costs of enforcing this Policy and thereafter appropriated for the use of the Department of Public Health.

5.11 The Agency may compromise and settle unlitigated claims against Contractors for violations of contractual provisions required by this Policy.

5.12 All Contractors are required to cooperate fully with the Agency in connection with any investigation of an alleged violation of this Policy or with any inspection conducted by the Agency.

5.13 When the Agency is authorized to charge interest (not to exceed 10%), in determining whether to charge the interest, the Agency shall give due consideration to the size of the Contractor's business, the Contractor's good faith (or lack thereof), the gravity of the violation and the history of previous violations.

## **SECTION 6. ADDITIONAL CONTRACT REQUIREMENTS: LIQUIDATED DAMAGE**

6.1 Every Contract, Contract Amendment, Lease and Lease Amendment entered after April 7, 2009 shall contain provisions in which the Contractor agrees:

- (a) To be liable to the Agency for liquidated damages as provided in this Section 6.
- (b) To be subject to the procedures governing enforcement of a breach of the terms of a Contract, Contract Amendment, Lease and Lease Amendment which terms are required by this Policy.
- (c) That the commitment of Contractor to comply with the requirements of this Policy is a material element of the Agency's consideration for the agreement and that the failure of a Contractor to comply will cause significant and substantial harm to the Agency and the public, which is extremely difficult to determine or quantify, and that the liquidated damages set forth in this Section 6 are reasonable amounts to pay for the harm caused by the Contractor's non-compliance.
- (d) That for failure to comply with the requirements of this Policy, the Agency may require the Contractor to pay to the Agency (or the City if the Agency has delegated enforcement to the City) liquidated damages of up to one hundred dollars (\$100) for each one-week pay period for each Covered Employee for whom the Contractor has either not offered health plan benefits or made fee option payments as required by Section 3. The Agency shall adjust this amount proportionately for Contractors that use a pay period other than once per week.
- (e) That for any failure to provide reports to the Agency or access to pertinent records, or any failure to cooperate with any audit, inspection or investigation conducted by the

Agency (or the City, if the Agency has delegated enforcement to the City), the Agency may require the Contractor to pay the Agency liquidated damages of up to one thousand dollars (\$1,000).

(f) That while liquidated damages in the maximum amounts set forth in this Section 6 are a reasonable estimate of the harm caused by the Contractor's non-compliance with contractual provisions required by this Policy, the Agency may determine that less than the full amount is warranted depending on the circumstances of each case. The Agency shall give due consideration to the following factors in determining the amount of liquidated damages: the size of the Contractor's business, the Contractor's good faith (or lack thereof), the gravity of the violation, the history of previous violations, the failure to comply with record-keeping, reporting and anti-retaliation requirements, and the extent to which the imposition of liquidated damages would undermine the purpose of this Policy by imposing unreasonable financial burdens on the Contractor, thereby restricting its ability to fulfill its obligations under this Policy.

## **SECTION 7. INVESTIGATION AND DETERMINATION OF VIOLATIONS**

7.1 Determination of Violation. Upon determining that a Contractor may have violated the terms of a Contract, Contract Amendment, Lease or Lease Amendment required under this Policy, the Agency Executive Director shall send written notice to the Contractor of the possible violation and of the Contractor's right to respond to the Agency's initial determination by submitting pertinent documents and other information. The written notice shall also notify the Contractor that the Agency Executive Director is authorized to withhold payment otherwise due to the Contractor pursuant to the provisions of Subsection 7.5. If after providing the Contractor with a reasonable opportunity to respond to the allegations, the Agency Executive Director makes a final determination that a violation has occurred, the Agency Executive Director shall provide a written notice of violation to the Contractor.

7.2 Right of Appeal. The Contractor may appeal the Agency Executive Director's final determination. The Contractor must file an appeal with the Agency in writing, specifying the basis for contesting the determination, no later than 15 days after the date of the notice of determination. Failure to file an appeal in writing to the Agency Executive Director within 15 days shall cause the Agency Executive Director's determination to be deemed a final administrative decision by the Agency.

7.3 Administrative Hearing.

(a) Within 15 days after the Agency receives an appeal, the Executive Director shall appoint a hearing officer and shall notify the Contractor. The Agency reserves the right to delegate any and all enforcement actions under this Section 7 to the City's Office of Labor Standards and Enforcement.

(b) The hearing officer shall promptly set a date for a hearing. The hearing shall 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.

(c) The Agency shall have the burden of producing evidence that the Contractor has violated the requirements of this Policy and the burden of proving the violation .

#### 7.4 Hearing Officer's Decision.

(a) Within 30 days of the conclusion of the hearing, the hearing officer shall issue a written decision affirming, modifying, or vacating the Agency Executive Director's determination. If the hearing officer vacates the Agency's determination in its entirety, that decision shall also vacate any assessment of liquidated damages. If the hearing officer affirms the Agency's determination, the hearing officer shall issue a decision upholding the Agency's determination, including the amount of the liquidated damages assessed by the Agency. With respect to liquidated damages, the hearing officer's jurisdiction to modify the Agency's assessment is limited and the following procedures apply. If the hearing officer modifies the Agency Executive Director's determination, the hearing officer shall transmit the decision to the Agency Executive Director, who shall within five business days modify the assessment of liquidated damages consistent with the hearing officer's decision based on the criteria set forth in Section 6.1(f) and transmit the modified assessment to the hearing officer. Upon receiving the modified assessment from the Agency, the hearing officer shall within three business days issue a final decision, which shall include the amount of the liquidated damages assessment as modified by the Agency.

(b) The hearing officer's decision shall consist of findings and a determination, which shall be final. The Contractor may seek review of the hearing officer's decision only by filing in the San Francisco Superior Court a petition for a writ of mandate under California Code of Civil Procedure Section 1094.5, as it may be amended from time to time.

(c) The failure of the hearing officer to comply with the time requirements of this Section 7 shall not cause the hearing officer to lose jurisdiction over an appeal from the Agency Executive Director's determination filed under this Section 7.

(d) Upon the hearing officer's decision affirming or modifying the Agency Executive Director's determination, the Contractor shall take the corrective action, including the payment of liquidated damages, if any, within 14 days of receiving the hearing officer's decision. When a Contractor fails to take corrective action within the time required by the provisions of this Subsection, the Agency may immediately pursue all available remedies against the Contractor.

#### 7.5 Withholding of Payment

(a) When the Agency sends notice to a Contractor of the Executive Director's final determination that the Contractor has violated the requirements of this Policy and of the Contractor's right of appeal, the Agency may deduct from the payments otherwise due to the Contractor the amounts that the Agency has determined the Contractor must pay to the City (fee option payments) and to the Agency as liquidated damages.

(b) The Agency may withhold these funds until: (i) the hearing officer issues a decision finding that the Contractor does not owe all or a portion of the amount withheld, in which case the Agency shall release the funds to the Contractor consistent with the hearing officer's decision; or (ii) the Contractor consents to the use of the funds to pay the Agency or City as applicable the amounts that the Agency or hearing officer found due. As to any funds being withheld for which neither Subsection 7.5(b)(i) nor 7.5(b)(ii) applies, the Agency shall

retain the funds until the hearing officer's decision is no longer subject to judicial review, at which time the funds become the property of the Agency, provided that this action is consistent with any final determination of a court of competent jurisdiction. Notwithstanding the provisions of this Subsection 7.5(b), the Agency Executive Director may authorize the release of payments withheld from the Contractor under this Section if the Agency Executive Director determines that the continued withholding of funds imposes a substantial risk of endangering public health or safety, interfering with a service or project that is essential to the Agency (as determined by the Agency Executive Director) or having an unreasonable adverse financial impact on the Agency.

## **SECTION 8. WAIVERS BY THE AGENCY EXECUTIVE DIRECTOR**

8.1 The Agency Executive Director or designee, shall waive the requirements of this Policy when the relevant Agency staff has provided justification to the Agency Executive Director, and the Agency Executive Director has found that one of the following circumstances exists:

(a) The needed service, project or property arrangement under the Contract or Lease is available only from a sole source;

(b) The Contract or Lease is necessary to respond to an emergency that endangers the public health or safety;

(c) There are no qualified responsive bidders or prospective vendors or tenants that comply with the requirements of this Policy and the agreement is for a service, lease or project that is essential to the Agency, City or the public;

(d) The public interest warrants the granting of a waiver because application of this Policy would constitute an adverse impact on services or an unreasonable adverse financial impact on the Agency or City; or

(e) The services to be purchased are available under a bulk purchasing arrangement with a federal, state or local governmental entity; and under such arrangement will substantially reduce the Agency's cost of purchasing such services; and such an arrangement is in the best interest of the Agency or the public.

8.2 Each waiver shall be effective for the duration of the Contract or Lease. Subsequent waivers may be requested and either granted or denied.

## **SECTION 9. SPECIAL WAIVER BY THE AGENCY COMMISSION**

9.1 Upon receipt of an application from the Contractor, stating fully the grounds of the request and the facts pertaining thereto, the Agency finds following its own further investigation that the application of the Policy would result in an adverse impact on services or an unreasonable financial impact on the Contract. In order to permit any such waiver, the Agency must determine that:

(a) The application of the Policy would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the applicable Redevelopment Plan;

(b) There are exceptional circumstances or conditions applicable to the property, the intended development of the property, or the services proposed through a contract, which do not apply generally to other properties or contracts having the same standards, restrictions and controls;

(c) Permitting a waiver, for a specified period of time, will not be materially detrimental to the public welfare or injurious to property or improvement in the area; and,

(d) Permitting a waiver, for a specified period of time, will not be contrary to the objectives of the applicable redevelopment plan.

9.2 Waivers shall only be granted for a limited time period as determined to be needed to promote the general purpose and intent of the applicable redevelopment plan. Subsequent waivers may be requested and either granted or denied. The Agency anticipates the all covered Projects and Contracts will eventually transition to achieving a viability that will allow for covered Contractors to comply with the Policy.

#### **SECTION 10. WAIVER BY COLLECTIVE BARGAINING**

10.1 All or any portion of the applicable requirements of this Policy may be waived in a bona fide collective bargaining agreement, provided that such waiver is explicitly set forth in such agreement in clear and unambiguous terms.

#### **SECTION 11. PREEMPTION**

11.1 Nothing in this Policy shall be interpreted or applied so as to create any power or duty in conflict with any federal or state law.

#### **SECTION 12. EFFECTIVE DATE**

12.1 This Amended Health Care Accountability Policy shall become effective on April 7, 2009, the date of Agency Commission approval.

#### **SECTION 13. SEVERABILITY**

13.1 If any part or provision of this Policy, or the application of this Policy to any person, location or circumstance, is enjoined or held invalid by a court of law, the remainder of this Policy, including the application of such part or provisions to other persons, locations or circumstances, shall not be affected by such action and shall continue in full force and effect. To this end, the provisions of this Policy are severable. Further, to the extent Section 3(b) may be enjoined or held invalid by a court of law, the Contracting Party may alternatively comply in accordance with Section 3(e)(ii).