

## ATTACHMENT 15

### MINIMUM COMPENSATION POLICY

This Minimum Compensation Policy (the “Policy”) is attached to and made a part of the Disposition and Development Agreement (the “Agreement”) for Hunters Point, Phase 1 (“Phase 1”). Developer is bound by this Attachment as part of the obligations it assumes and benefits it receives under the Agreement.

#### **Section 1. Findings and Declarations.**

**1.1** 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 §§ 33000 *et seq.*) in the interest of the health, safety and general welfare of the City of San Francisco’s (the “City”) residents.

**1.2** These contracts and agreements have at times involved compensation to the contracting parties’ or their subcontractors’ employees that is at or only slightly above the minimum wage levels required by federal and state laws. The compensation paid by some Agency contractors and their subcontractors fails to provide employees with sufficient resources to afford life in the City. Requiring these contracting parties and their subcontractors to provide a minimum level of compensation to their employees will improve the health, safety and general welfare of San Francisco’s residents, by, among other things, decreasing poverty and invigorating neighborhood businesses through increased consumer income.

#### **Section 2. Definitions.**

Terms not defined in this Attachment have the meanings given to them in the Agreement.

**Agency** means the Redevelopment Agency of the City and County of San Francisco.

**Agency Property** means real property that is owned by the Agency or over 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.

**Agreement** has the meaning set forth in the Preamble.

**Business Day** means a day other than Saturday, Sunday or a state or federal holiday.

**City** means the City and County of San Francisco, California, a municipal corporation.

**Contract** means 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, Memorandum of Understanding (MOU) or otherwise controlled by the Agency. The term Contract includes, 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 excludes:

- (a) Excluded Subcontracts;
- (b) any agreement with a Contractor that, together with the Employees of any Included Subcontractor and of any entity that is owned or controlled by the Contractor or which owns or controls the Contractor, would have twenty (20) or fewer Employees;
- (c) agreements for the purchase or lease of goods or for guarantees, warranties, shipping, delivery or initial installation of such goods;
- (d) agreements entered into pursuant to settlement of legal proceedings;
- (e) agreements for urgent or specialized litigation requirements where the Agency General Counsel finds that it would be in the best interests of the Agency not to include the requirements of this Policy;
- (f) agreements with any person or entity in which the cumulative amount of compensation payable to such person or entity under all agreements with the Agency is less than twenty-five thousand dollars (\$25,000.00), or fifty thousand dollars (\$50,000.00) in the case of Nonprofit Corporations, in any fiscal year, provided that the agreement in question shall be deemed a Contract on and after the effective date of any instrument which causes such cumulative compensation under all agreements with the Agency to exceed twenty-five thousand dollars (\$25,000.00), or fifty thousand dollars (\$50,000.00) in the case of Nonprofit Corporations;
- (g) agreements for the investment, management or use of trust assets where compliance with this Policy would violate the fiduciary duties of the trustee;
- (h) agreements entered into prior to the Effective Date (unless and until a Contract Amendment is entered into);
- (i) agreements entered into 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, which bid packages or requests for proposals were not amended on or after the Effective Date;

(j) agreements involving the expenditure by the Agency of grant or special funds to the extent the application of this Policy would violate or be inconsistent with the terms or conditions of the applicable grant agreement, or with the rules, regulations or instructions of the public agency administering such grant agreement, which terms or conditions or rules, regulations or instructions provide for compensation lower than the Minimum Compensation and/or to the extent that application of this Policy would require the Agency to use Agency monies to supplement the grants, special funds or other non-General Fund revenues to maintain the current level of services;

(k) agreements with a Contractor that is a public entity;

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

(m) agreements that require the Contractor to pay no less than the "prevailing rate of wage" in accordance with state or federal law or Agency policy, but only to the extent (A) each Covered Employee is covered by such requirement, and (B) such prevailing rate of wage is not less than the gross hourly compensation required under Section 3 of this Policy;

(n) agreements for the investment 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 federal, state or local law, or MOU where the official or officials responsible for investing or managing such funds finds that requiring compliance with this Policy will violate their fiduciary duties;

(o) 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: (A) acquire an interest in real property on which residential improvements for low- or moderate-income households will be constructed; (B) 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 (C) rehabilitate improvements owned or leased by the debtor or grantee;

(p) disposition and development or ground lease 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;

(q) agreements with an owner (such as an owner participation agreements) where such agreement is granted from the exercise of the Agency's regulatory or police powers not requiring any discretionary approvals by the Agency.

**Contract Amendment** means an agreement entered into on or after the Effective Date, pursuant to which a Contract entered into prior to the Effective Date is modified or supplemented in order to: (a) extend the term; (b) modify the total amount of payments due from the Agency under a Contract; or (c) modify the scope of services to be performed by a Contractor. The term does not include construction change orders.

**Contractor** means either: (a) the person or entity that enters into a Contract with the Agency; (b) in the case of an Included Subcontract, the subcontractor who enters into the Included Subcontract with the Contractor; or (c) in the case of an Included Tenant, the Tenant who enters into the Included Lease with the Contractor.

**Covered Employee** means:

(a) An Employee of a Contractor who, during the applicable Pay Period, performs at least four (4) hours per week during the Pay Period work funded (in whole or in part) under the applicable Contract or to the project funded under the applicable Contract:

(i) within the geographic boundaries of the City;

(ii) on real property owned or controlled by the Agency, but outside the geographic boundaries of the Agency; or

(iii) elsewhere in the United States, but only if such related work performed elsewhere within the United States consists of at least ten (10) hours per each work week during the Pay Period in question.

(b) Notwithstanding the foregoing, the term Covered Employee excludes the following Employees of a Contractor that is a Nonprofit Corporation:

(i) Any Employee who is:

(A) under the age of eighteen (18) and is claimed as a dependent for federal income tax purposes and is employed as an after-school or summer Employee; or

(B) 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, however, these exemptions only apply when the Employee does not replace, displace or lower the wage or benefits of any existing position or Employee; and

(ii) Any disabled Employee of a Contractor, which disabled Employee:

(A) is covered by a current sub-minimum wage certificate issued to the

Contractor by the U.S. Department of Labor; or

(B) would be covered by such a certificate but for the fact that the Contractor is paying a wage equal to or higher than the minimum wage.

**Effective Date** means the date the Agency Commission approves this Policy.

**Employee** means any person who is employed by a Contractor, including part-time and temporary employees.

**Excluded Subcontract** means any agreement or portion of an agreement between a Contractor and a person or entity that is not an Employee of such Contractor, which agreement or portion of an agreement relates to a Contract but is not an Included Subcontract. The term Excluded Contract includes, without limitation, an agreement pursuant to which a Contractor obtains from such a person or entity goods to be used in the fulfillment of the Contractor's duties under the applicable Contract. The term also includes agreements (including, without limitation, any permit to enter or license for a term of less than one hundred and twenty (120) days or any easement agreement) for the exclusive use of real property owned by the Agency or of which the Agency has exclusive use, other than Property Agreements.

**Included Lease** means 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 or real property in which the Agency has a Proprietary Interest.

**Included Subcontract** means an Included Lease or an agreement or portion of an agreement between a Contractor and a person or entity who is not an Employee of such Contractor, pursuant to which such person or entity:

- (a) agrees to assist a Contractor in performing a Contract; or
- (b) agrees to assist a Contractor with a project funded by grant monies conveyed to the Contractor under the applicable Contract. An agreement to assist a Contractor means an agreement to perform all or a portion of a component of the services covered by the Contract with the Agency.

**Included Subcontractor** means a Subcontractor who enters into an Included Subcontract.

**Lease** means 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 hundred and twenty (120) consecutive days in any calendar year,

whether by single or cumulative instruments. If cumulative instruments cause the term of the agreement to exceed one hundred and twenty (120) consecutive days, 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 hundred and twenty (120) consecutive days. The term 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 hundred and twenty (120) consecutive days in any calendar year, whether by single or cumulative instruments. If cumulative instruments cause the term of the agreement to exceed one hundred and twenty (120) consecutive days, 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 hundred and twenty (120) consecutive days.

**Lease Amendment** means a modification to a Lease that extends the term or materially changes any other provision of the Lease. Notwithstanding the foregoing, “Lease Amendment” does not include a one-time extension of the term of a Lease for up to six (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).

**Minimum Compensation** means each of the components required under Section 3 of this Policy.

**Nonprofit Corporation** means 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.

**Policy** has the meaning set forth in the Preamble.

**Property Agreements** means Disposition and Development Agreements (DDAs), ground leases, and any other agreements with the Agency (other than Excluded Subcontracts) in which the Agency has a Proprietary Interest.

**Proprietary Interest** means 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 (b) below); or

(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;

(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 nonregulatory" 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 (b) above), zoning or the issuance of regulatory permits.

**Pay Period** means the applicable Contractor's regular pay period.

**Sublease** means any agreement with any person or entity for the exclusive right to occupy or use all or any portion of City Property covered by a Lease. Notwithstanding the foregoing, the term Sublease does not include each of the circumstances that constitute an exclusion from the definition of "Lease."

**Subtenant** means a person or entity that enters into a Sublease.

**Tenant** means the person or entity that enters into a Lease with the City.

**Section 3. Minimum Compensation Components.** Minimum Compensation shall consist of each of the following:

(a)(i) Hourly gross compensation in the amount of nine dollars (\$9.00) per hour.

(ii) On January 1, 2002, the Agency shall increase the hourly gross compensation to ten dollars (\$10.00) per hour; provided, however, that in the case that an increase in the gross compensation under the City's Minimum Compensation Ordinance

does not take effect on January 1, 2002, the Agency's increase shall become effective on the later date imposed by the City ordinance; provided, further, however, that in the case of Nonprofit Corporations, the Agency may approve this adjustment only upon the Executive Director's review of the Joint Report issued by the Controller, Mayor's Budget Office, and Budget Analyst, pursuant to the City's ordinance and finds that the Agency has sufficient funds to pay the anticipated costs of the adjustment. A finding of "sufficient funds" shall mean that the Agency will not be required to reduce services in order to pay the anticipated costs of the adjustment.

(iii) For each of the next three (3) years after the adjustment provided in Section 3.1(a)(ii) is made, at annual intervals, the Agency shall make an additional adjustment of two and one-half percent (2.5%).

(b) Compensated time off (at the compensation rates specified in Section 3.1(a)) in an hourly amount that, on an annualized basis for a full-time employee, equals twelve (12) days per year. Such time off shall vest with the Covered Employee at the end of the applicable Pay Period and may be used, for sick leave, vacation or personal necessity. Notwithstanding the foregoing, if a Contractor reasonably determines, in good faith, that the Contractor cannot comply with this requirement for compensated time off, the Contractor shall provide the Covered Employee with a cash equivalent of such compensated time off.

(c) Uncompensated time off in an hourly amount that, on an annualized basis for a full-time employee, equals ten (10) days per year. Such time off shall vest with the Covered Employee at the end of the applicable Pay Period and may be used, at the option of the Covered Employee, for sick leave for the illness of the Covered Employee or such Covered Employee's spouse, domestic partner, child, parent, sibling, grandparent or grandchild.

**Section 4. Contract Requirements.** Every Contract or Contract Amendment entered into on or after the Effective Date shall provide as follows:

**4.1** For each hour worked by a Covered Employee during each Pay Period during the term of the Contract (as such term may be extended from time to time), Contractor shall provide to such Covered Employee no less than the Minimum Compensation as required in this Policy.

**4.2** Failure to comply with the foregoing requirement shall constitute a material breach by Contractor of the terms of the Contract. Such failure shall be determined by the Agency in its sole discretion.

**4.3** If, within thirty (30) days after the Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the Agency shall have the right to pursue any rights or remedies available under the terms of the Contract or under applicable law.

**4.4** The Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any Employee for complaining to the Agency with regard to the employer's compliance or anticipated compliance 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.

**4.5** The Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of this Policy.

**4.6** The Contractor shall keep itself informed of the current Minimum Compensation, and shall provide prompt written notice to all Covered Employees of annual adjustments to the Minimum Compensation, as well as any written communications received by the Contractor from the Agency, which communications are marked to indicate that they are to be distributed to Covered Employees.

**4.7** The Contractor shall provide reports to the Agency in accordance with any reporting standards promulgated by the Agency's Contract Compliance Division.

**4.8** The Contractor shall provide the Agency with access to pertinent records after receiving a written request to do so and being provided at least five (5) Business Days to respond.

**4.9** The Contract Compliance Division may conduct random audits of Contractors. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by this Policy; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten (10) Business Days of the written notice; and (iv) limited to one (1) audit per Contractor every two (2) years for the duration of the Contract. Nothing in this Section shall be deemed to interfere with the authority of the Contract Compliance Division to investigate any report of an alleged breach of contract as provided in Section 6.2.

**4.10** Any Contractor subject to the provisions of this Policy shall promptly notify the Contract Compliance Division of any subcontractors performing services covered by this Policy and shall certify to the Contract Compliance Division that it has notified the subcontractors of their obligations under this Policy.

## **Section 5. Administration and Enforcement.**

**5.1** The Contract Compliance Division shall adopt the guidelines or rules adopted by the City and County of San Francisco for implementation of the City's Minimum Compensation Ordinance. At the option of the Contract Compliance Division, additional or revised guidelines or rules for the administration of this Policy may be adopted to facilitate the Agency's implementation of this Policy. Such guidelines and rules shall not be adopted finally until the Contract Compliance Division has held at least one (1) public community meeting and a workshop at a regularly scheduled Agency Commission meeting on the proposed guidelines. The guidelines and rules shall establish procedures for providing administrative hearings requested by Covered Employees to

determine whether a Contractor has breached a Contract based on the Minimum Compensation requirements of this Policy. The guidelines and rules shall also establish procedures permitting Contractors to provide payroll information in confidence to the Agency for purposes of monitoring compliance under this Policy and authorizing disclosure of the information by the Agency only when necessary for enforcement purposes. The Contract Compliance Division shall also issue a determination as to whether a particular instrument constitutes a Contract or agreement subject to the requirements of this Policy. The Contract Compliance Division shall report annually on compliance with this Policy to the Agency Commission. Such report shall include cumulative information regarding the number of waivers granted by the Executive Director or Agency Commission pursuant to Sections 6, 7, 8 and 9 of this Policy and statistical data regarding such waivers.

**5.2** A Covered Employee may report to the Contract Compliance Division in writing any alleged breach by a Contractor of the terms required to be contained in the applicable Contract under this Policy. The Contract Compliance Division shall investigate any such report. If the Contract Compliance Division determines that a Contractor is in breach of any such term, the Contract Compliance Division shall notify the Executive Director of its findings and of any action that the Contract Compliance Division requests that the Executive Director take with respect to such breach. In order to ensure compliance with this Policy and to enhance the monitoring activities of the Contract Compliance Division, the Agency desires to encourage reporting by Covered Employees pursuant to this subsection. The Contract Compliance Division shall keep confidential, to the maximum extent permitted by applicable laws, the Covered Employee's name and other identifying information.

**5.3** In addition to any other rights or remedies available to the Agency under the terms of the Contract or under applicable law, the Agency shall have the following rights, in the event of such failure by the Contractor:

(a) the right to charge the Contractor an amount equal to the difference between the Minimum Compensation levels required by this Policy and any compensation actually provided to each Covered Employee who was not paid in accordance with the terms of this Policy, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

(b) the right to set off all or any portion of the amount described in Section 5.3(a) against amounts due to Contractor under the Contract;

(c) the right to terminate the Contract in whole or in part;

(d) in the event of a breach by Contractor of the covenant referred to in Section 4.4, the right to seek reinstatement of the affected Covered Employee or to obtain other appropriate equitable relief; and

(e) the right to bar a Contractor from entering into future contracts with the Agency for three (3) years. Each of these rights 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 subsection shall be paid to each applicable Covered Employee.

**5.4** Each Covered Employee shall be a third-party beneficiary under the Contract as set forth in this Section 5.4 and in Section 5.5, and may pursue the following remedies in the event of a breach by the Contractor of any contractual covenant described in Section 3 or Section 4, but only after the Covered Employee has provided the notice and participated in the administrative review hearing provided in this Section 5.4. The Covered Employee shall give written notice of a breach to the Contractor and to the Contract Compliance Division. If the Contract Compliance Division determines that no breach has occurred, or if the Agency fails to obtain the cure of a breach by the Contractor within sixty (60) days after receipt of notice by the Covered Employee, the Covered Employee may request an administrative review hearing. The Covered Employee must request such a hearing within ninety (90) days after giving written notice of the breach. Unless the Covered Employee withdraws the request for a hearing, the Contract Compliance Division shall conduct, or arrange to have conducted, a hearing. The Employee shall have the right to attend the hearing personally or through a designated representative. The Contract Compliance Division shall notify the Contractor of the hearing so that the Contractor may attend and present evidence. After the hearing is completed, the person conducting the hearing shall determine whether the Contractor has breached the Contract. Upon the issuance of a written decision finding a breach, and after a waiting period of twenty-one (21) days, the Covered Employee may bring an action against the Contractor for such breach in the Superior Court of the State of California, as appropriate, unless the Agency has commenced an action against the Contractor based on the breach, or obtained compliance, within the twenty-one (21)-day waiting period and provided notice to the Covered Employee of that action. If the Covered Employee prevails in such action, the Covered Employee may be awarded: (A) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; and (B) in the event of a breach by Contractor of the covenant referred to in Section 4.4, the right to seek reinstatement or to obtain other appropriate equitable relief.

**5.5** In the event of any legal action or proceeding between Contractor and a Covered Employee arising from this Attachment 15, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorney's fees and disbursements, incurred by such prevailing party in such action or proceeding and in any appeal in connection with such action or proceeding; provided, however, that a Contractor shall be entitled to such costs and expenses only if the court determines that the Covered Employee's action or proceeding was frivolous, vexatious or otherwise an act of bad faith. If such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorneys' fees and disbursements shall be included in and as a part of such judgment. This Attachment 15 does not authorize any award of costs, expenses, or attorney's fees in favor of or against the Agency.

**5.6** The Agency shall maintain the confidentiality of payroll information obtained in the course of monitoring compliance with this Policy and shall disclose such information only as necessary for enforcement purposes.

**5.7** The Contract Compliance Division shall develop a procedure for obtaining an assurance from Contractors when they sign an agreement subject to this Policy that they comply with the requirements of this Policy, such as the signing of an affidavit of compliance.

**Section 6. Waivers.** The Executive Director shall waive the requirements of this Policy under the following circumstances:

**6.1** The Executive Director has determined that (a) either (1) there is only one prospective Contractor willing to enter into the applicable Contract on the terms and conditions established by the Agency (other than the requirements of this Policy); or (2) the needed services under the applicable Services Contract are available only from a sole source; and (b) the prospective Contractor is not currently disqualified from doing business with the Agency or any other governmental agency.

**6.2** The Executive Director has determined in writing that the Contract is necessary to respond to an emergency which endangers the public health or safety and no entity that complies with the requirements of this Policy and is capable of responding to the emergency is immediately available to perform the required services.

**6.3** The Executive Director has determined in writing that (a) there are no qualified responsive bidders or prospective vendors that comply with the requirements of this Policy; and (b) the Contract is for a service, project, or property that is essential to the Agency or the public.

**6.4** the Executive Director has determined in writing that (a) the Services to be purchased are available under a bulk purchasing arrangement with a federal, state or local governmental entity; (b) purchase under such arrangement will substantially reduce the Agency's cost of purchasing such Services; and (c) purchase under such an arrangement is in the best interest of the Agency or the public.

**Section 7. Additional Waivers by the Executive Director – Nonprofit Corporations.** A Nonprofit Corporation may seek a waiver from the requirements of the adjustments provided in Section 3.1(b) and Section 3.1(c) if the highest paid managerial position in the organization earns a salary which, when calculated on an hourly basis, is not more than six (6) times the lowest wage paid by the organization to a Covered Employee. The Nonprofit Corporation shall provide to the Contracting Department a written statement, prepared and signed by the Nonprofit Corporation, setting forth an explanation of the economic hardship to the Nonprofit Corporation or the negative impact on services that would result from compliance with this Policy. The Executive Director may grant the requested waiver. Each waiver shall be effective for a period of up to one (1) year, and subsequent waivers may be requested and granted.

**Section 8. Special Waiver By the Agency Commission.** A special waiver may be

granted if, 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.

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 that all covered Projects and Contracts will eventually transition to achieving a viability that will allow for covered Contractors to comply with the Policy.

**Section 9. Waiver Through Collective Bargaining.** 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 10. Relationship to Other Requirements.** This Policy provides a minimum level of compensation and shall not be construed to preempt or otherwise affect any other law, regulation or requirement providing a higher level of compensation.

**Section 11. Preemption.** 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.** This Policy shall become effective the date of the Agency approval.

**Section 13. Severability.** If any part or provision of this Policy, or the application of this Policy to any person or circumstance, is held invalid, the remainder of this Policy, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Policy are severable.