

# **First Source Hiring and Local Business Enterprise Policy**

**City of East Palo Alto  
East Palo Alto Redevelopment Agency**

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## **PART ONE. COVERAGE**

### **Section I. Coverage**

This Policy shall cover projects receiving a Subsidy from the City or Agency valued at over \$50,000, as described below. A "Subsidy" is direct or indirect assistance by the City or Agency to a Developer that materially benefits the Developer, including, but not limited to, grants or loans of funds administered by the City or Agency, tax abatements or deferrals, issuance of bonds, and infrastructure improvements made for the purpose of facilitating or supporting a redevelopment project, land sale, a ground lease, or other project.

The Agency and City shall operate this Policy in a substantially similar manner in all projects in East Palo Alto. The entirety of this Policy shall therefore be included in all disposition and development agreements, owner participation agreements, and other contracts entered into by the City or Agency, so long as the project to which a particular contract relates has received or will receive a Subsidy.

Because this Policy covers a wide range of projects, not every provision of this Policy shall be applicable to any single contractor or employer. This Policy clearly describes which parts are applicable to which entities. Provisions of this Policy that are not designated as applicable to a particular type of entity are instead applicable to all entities that agree to comply with the terms of this Policy. Such parts include Part One, Coverage; Part Two, Definitions; Part Seven, Monitoring and Enforcement, and Part Eight, Miscellaneous Legal Provisions.

## **PART TWO. DEFINITIONS**

As used in this Policy, the following capitalized terms shall have the following meanings. All definitions include both the singular and plural form. Definitions in this part apply to all sections of this Policy.

"Agency" shall mean the Redevelopment Agency of the City of East Palo Alto, or its designee.

"Agency Redevelopment Project" shall mean a project that is the subject of a Disposition and Development Agreement, an Owner Participation Agreement, or a similar agreement entered into by the Agency.

"Business User" shall mean a for-profit business or a nonprofit entity that conducts any portion of its operations within an Agency Redevelopment Project. A Developer may be a Business User only if it engages in retail, office, or industrial operations within an Agency Redevelopment project, rather than renting or leasing all available space to other entities. "Business User" does not include Construction Contractors or businesses performing work pursuant to short-term contracts. Short-term contracts are one-time, nonrenewable contracts to be completed in less than six months time.

"City" shall mean the City of East Palo Alto.

"Construction Contractor" shall mean a prime contractor or a subcontractor performing construction work related to an Agency Redevelopment Project or any other covered project. Lower-tier subcontractors are included in this definition.

"Covered Entity" shall mean any entity that enters into a contractual commitment to comply with this Policy.

"Designated Local Publication" shall mean a publication designated by the Agency as likely to reach Small Local Businesses.

"Developer" shall mean any entity entering into a disposition and development agreement, an owner participation agreement, a loan agreement, or a similar agreement with the Agency or the City.

"First Source Referral System" shall mean the system designated by the Agency to provide job referrals and perform related functions with regard to provisions of this Policy that concern hiring of employees.

"Policy" shall mean this First Source Hiring and Local Business Enterprise Policy, in its entirety.

"Resident" shall mean a resident of the City of East Palo Alto, living in a household earning less than 120% of the average annual income, adjusted for household size, for the Primary

Metropolitan Statistical Area in which East Palo Alto is located. The Agency shall provide data regarding this income level to Covered Entities upon request.

"Small Local Business" shall mean a business that (1) maintains its primary office at an established commercial or residential address in the City (not including temporary offices, movable offices, or Post Office Boxes); (2) maintains a current City business license tax certificate; (3) has been in existence for at least six months; and (4) for the previous complete fiscal year had gross revenues of less than \$5,000,000 for construction contractors, or less than \$500,000 for businesses other than construction contractors (revenue thresholds shall be annually adjusted for inflation). The Agency shall maintain and keep current a list of qualifying Small Local Businesses. If a contract is awarded to a joint venture between a Construction Contractor and a Small Local Business, a percentage of that contract equal to the Small Local Business's percentage share of potential profits may be considered as awarded to a Small Local Business, so long as (1) the Small Local Business exercises a degree of control and responsibility over the project no less than its percentage share of potential profits, and (2) the joint venture is formalized according to standard industry practices and to a degree permitting the Agency to evaluate the requirements described in this provision.

"Subsidy" shall mean direct or indirect assistance by the City or Agency to a Developer that materially benefits the Developer and incurs a material cost to the City or Agency, including, but not limited to, grants or loans of funds administered by the City or Agency, tax abatements or deferrals, infrastructure improvements made for the purpose of facilitating or supporting a redevelopment project, land sale, or a ground lease.

## PART THREE. SUMMARIES

### Section One. Summary of Responsibilities of Developers in Redevelopment Projects

Following is a summary of developers' responsibilities with regard to redevelopment projects in East Palo Alto. This summary does not describe in detail all of developers' responsibilities, and it is not a legal description of these responsibilities. It is intended solely as a convenient overview. For a complete description of developers' responsibilities, please refer to Part Four.

The following responsibilities apply to any business participating in an Agency Redevelopment Project.

#### Basic Responsibilities of Developers:

- **Include First Source Hiring and Local Business Enterprise Policy in Leases and Contracts.** Developers should require their tenants and contractors to follow the First Source Hiring and Local Business Enterprise Policy. Therefore developers should include this Policy in leases and contracts.
- **On Large Construction Contracts, Ensure That Prime Contractor Makes a Good Faith Effort to Include Small Local Businesses.** Before awarding a construction contract worth more than \$250,000, the developer should make sure that the contractor either has arranged to subcontract 30% of the work to small local businesses, or has made good faith efforts to do so. The Agency should see bids and/lists of subcontractors prior to contract award, and the Agency will determine whether bids meet these criteria.
- **On Service Contracts, Supply Contracts, and Small Construction Contracts, Make Good Faith Efforts to Award to Small Local Businesses.** When awarding service contracts, supply contracts, or small construction contracts, developers should make good faith efforts to award contracts to small local businesses. Good Faith Efforts include such steps as notifying the Agency of opportunities to bid, and holding pre-bid meetings for small local businesses.
- **Cooperate with Agency Monitoring Efforts.** When the Agency attempts to monitor compliance with the First Source Hiring and Local Business Enterprise Policy, developers should cooperate by providing requested information or granting access to job sites if necessary. If a developer disagrees with a finding by the Agency staff that the developer was not in compliance with the First Source Hiring and Local Business Enterprise Policy, the developer may present the issue to the Agency board.

## **Section Two. Summary of Responsibilities of Tenants in Agency Redevelopment Projects**

Following is a summary of the responsibilities of tenants under this First Source Hiring and Local Business Enterprise Policy. Tenants in Agency Redevelopment Projects are referred to as "Business Users" elsewhere in this Policy.

This summary does not describe in detail all of tenants' responsibilities, and it is not a legal description of these responsibilities. It is intended solely as a convenient overview. For a complete description of tenants' responsibilities, please refer to Part Five.

### **Basic Responsibilities of Tenants:**

- **Provide Long-Range Information for Job Training Purposes.** At least six months before hiring employees for on-site jobs, tenants should provide to the Agency the approximate number and type of jobs that will become available, and describe the basic job qualifications.
- **Use First Source Referral System When Hiring Employees.** When an on-site job becomes available, tenants should notify the First Source Referral System. The First Source Referral System will promptly refer qualified Residents of East Palo Alto for each available job. For a ten-day period (six weeks for initial store opening), tenants should only consider applicants referred by the First Source Referral System, and should make a good faith effort to hire these applicants. If a tenant fills 30% of available jobs with Residents during a given quarter, the tenant is presumed to be in compliance with these requirements.
- **Make Good Faith Efforts to Award Contracts to Small Local Businesses.** When tenants award contracts such as service contracts or supply contracts, tenants should make good faith efforts to utilize small local businesses. Good Faith Efforts include such steps as notifying the Redevelopment Agency of contracting opportunities, and, where feasible, breaking down large contracts into smaller contracts.
- **Include First Source Hiring and Local Business Enterprise Policy in Contracts.** Tenants should require their contractors and any subtenants to follow the First Source Hiring and Local Business Enterprise Policy. Therefore tenants should include this Policy in contracts and subleases.
- **Cooperate with Agency Monitoring Efforts and Reporting Requirements.** Tenants should prepare quarterly reports detailing the employment of Residents. When the Agency is attempting to monitor compliance with the First Source Hiring and Local Business Enterprise Policy, tenants should cooperate by providing requested information or granting access to job sites as requested. If a tenant disagrees with a finding by the Redevelopment Agency staff that the tenant was not in compliance with the First Source Hiring and Local Business Enterprise Policy, the tenant may present the issue to the Redevelopment Agency members.

### **Section Three. Summary of Responsibilities of Construction Contractors**

Following is a summary of the responsibilities of construction contractors under this First Source Hiring and Local Business Enterprise Policy. These responsibilities apply to both prime contractors and subcontractors.

This summary does not describe in detail all of construction contractors' responsibilities, and it is not a legal description of these responsibilities. It is simply intended as a convenient overview. For a description of primary responsibilities of construction contractors, please refer to Part Six.

#### **Basic Responsibilities of Construction Contractors.**

- **Include First Source Hiring and Local Business Enterprise Policy in Contracts.** Construction contractors should require their subcontractors to follow the First Source Hiring and Local Business Enterprise Policy. Therefore all contractors should include this Policy in contracts and subcontracts.
- **Meet a 30% Employment Goal for Residents.** Thirty percent of all work-hours in each trade should be performed by Residents of East Palo Alto. Each construction contractor should either achieve this goal or show that it made good faith efforts to do so. Good Faith Efforts include such steps as notifying the Agency of employment opportunities, and making reasonable modifications to crew structures to facilitate employment of Residents.
- **When Awarding Subcontracts, Meet a 30% Subcontracting Goal for Small Local Businesses.** Construction contractors that award subcontracts should either award 30% of subcontracts to small local businesses, or make good faith efforts to do so. Good Faith Efforts include such steps as notifying the Redevelopment Agency of contracting opportunities, and, where feasible, breaking down large contracts into smaller contracts.
- **Cooperate with Agency Monitoring Efforts and Reporting Requirements.** Within three days of awarding any subcontract, construction contractors should notify the Agency and report whether the contract was awarded to a small local business. When the Agency is attempting to monitor compliance with the First Source Hiring and Local Business Enterprise Policy, construction contractors should cooperate by providing requested information or granting access to job sites if necessary. If a contractor disagrees with a finding by the Agency staff that the contractor was not in compliance with the First Source Hiring and Local Business Enterprise Policy, the contractor may present the issue to the Agency board.

**PART FOUR. RESPONSIBILITIES OF DEVELOPERS IN REDEVELOPMENT PROJECTS**

**Section One. General Responsibilities of Developers**

- A. Coverage.** This Part applies to any Developer.
- B. Designation of Contact Person.** Within thirty days of having entered into a disposition and development agreement, an owner participation agreement, or a similar agreement with the Agency, each Developer shall designate a contact person for all matters related to implementation of this Policy. The Developer shall forward the name, address and phone number of the designated individual to the Agency. If the contact person changes, the Developer shall immediately notify the Agency.
- C. Include First Source and Business Enterprise Policy in Contracts.** Each Developer entering into any deed, lease, or contract relating to the construction, rental, sale, lease, use, maintenance, or operation of an Agency Redevelopment Project shall include compliance with the entirety of this Policy as a material term of such deed, lease, or contract.
- D. Cooperation with Monitoring Efforts.** Each Developer shall make available to the Agency all requested records and information relevant to monitoring and enforcement of this policy, including contracts between the Developer and other entities. The Agency shall not use such records or information for any purpose other than monitoring or enforcement of this Policy, and shall not release trade secrets. Each Developer shall allow the Agency access to job sites and files during normal business hours as the Agency deems necessary to monitor compliance with this Policy. Each Developer agrees to the provisions of Part Seven regarding monitoring and enforcement of this Policy.

**Section Two. Developer Responsibilities Regarding Award of Construction, Service, or Supply Contracts**

- A. Coverage.** This Section applies to Developers' award of contracts for construction, services, or supplies related to an Agency Redevelopment Project.
- B. Contractor Compliance with First Source and Business Enterprise Policy.** Developers shall not award any contract covered by this section to any business or other entity that does not agree to comply with this Policy. Each Developer shall include compliance with the entirety of this Policy as a material term of any contract covered by this section.
- C. Agency Review of Large Construction Contracts.** Before a Developer enters into a contract covered by this section and worth over \$250,000, the Construction Contractor to whom the contract may be awarded shall prepare and submit to the Developer a list of subcontractors it intends to use and shall submit documentation to prove that either (i) the 30% subcontracting goal for Small Local Businesses has been met, or (ii) good faith efforts have been taken to meet this goal. The Developer shall then submit this list and documentation to the Agency

for determination as to whether the local subcontracting goal has been met or whether good faith efforts have been taken. Each Developer agrees not to award a contract covered by this provision to a contractor that the Agency determines has not met the local subcontracting goal or the good faith efforts specified in Part Six, Section Three, subsection D. Developers may work with the contractor in question and with the Agency to increase participation by Small Local Businesses if necessary.

**D. Developer Award of Service Contracts, Supply Contracts, and Small Construction Contracts.** When a Developer awards a contract for services, a contract for supplies, or a small construction contract, the Developer shall make good faith efforts to award the contract to a Small Local Business. A small construction contract is a construction contract valued at \$250,000 or less. For purposes of this section, good faith efforts include:

- (1) at least two weeks before award of the contract in question, providing notification of the contracting opportunity, and the procedure for bidding on the contract, to Small Local Businesses;
- (2) at least two weeks before award of the contract in question, advertising the opportunity to bid in a Designated Local Publication;
- (3) where feasible, breaking down the contract into smaller contracts where doing so would not increase the total cost of the contract by more than 10%; and
- (4) working closely and cooperatively with the Agency to ensure that Small Local Businesses are aware of the contracting opportunity and are given an opportunity to bid.

**E. Reporting Requirements.** Within three days of the award of any contract covered by this section, the awarding Developer shall provide to the Agency the following information: the name, address, and telephone number of the business to whom the contract was awarded, whether that business is a Small Local Business, and the projected dollar amount of the contract. The Agency may assist Construction Contractors by preparing forms to be completed for this purpose.

**PART FIVE. RESPONSIBILITIES OF BUSINESS USERS IN REDEVELOPMENT PROJECTS**

**Section One. General Responsibilities of Business Users**

- A. Coverage.** This Part applies to all Business Users.
- B. Designation of Contact Person.** Within thirty days of having entered into a contract related to operations within an Agency Redevelopment Project, each Business User shall designate a contact person for all matters related to implementation of this Policy. Each Business User shall forward the name, address and phone number of the designated individual to the Agency. If the contact person changes, the Business User shall immediately notify the Agency.
- C. Include First Source Hiring and Local Business Enterprise Policy in Contracts.** Each Business User entering into any deed, lease, or contract relating to the rental, sale, lease, use, maintenance, or operation of an Agency Redevelopment Project shall include compliance with the entirety of this Policy as a material term of such deed, lease, or contract.
- D. Cooperation with Monitoring Efforts.** Each Business User shall make available to the Agency all requested records and information relevant to monitoring and enforcement of this policy. The Agency shall not use such records or information for any purpose other than monitoring or enforcement of this Policy, and shall not release trade secrets or information regarding employees designated by name. Business Users may redact names and social security numbers from requested records in order to protect the privacy of individual employees, although the Agency may require that a Business User provide addresses of individuals if place of residency is an issue. Where a Business User has redacted names and/or social security numbers from documents it has provided to the Agency, the Business User shall grant the Agency on-site access to unredacted version of such documents during normal business hours upon the Agency's request. Each Business User shall allow the Agency access to job sites and employees as the Agency deems necessary to monitor compliance with this Policy. Each Business User agrees to the provisions of Part Seven regarding monitoring and enforcement of this Policy.

**Section Two. Employment by Business Users**

- A. Coverage.** This section applies to hiring by Business Users for all jobs for which the job site is primarily located within an Agency Redevelopment Project.
- B. Long-Range Planning.** As soon as the information is available, each Business User shall provide to the Agency information regarding the approximate number and type of jobs that will need to be filled and the basic qualifications necessary.
- C. Initial Hiring Process.**
- (1) Notification of Job Opportunities.** At least six weeks prior to a Business User commencing operations in an Agency Redevelopment Project, the Business

User shall notify the Agency of available job openings and provide a clear and complete description of job responsibilities and qualifications, including expectations, salary, minimum qualifications, work schedule, duration of employment, required standard of appearance, and any special requirements (e.g. language skills, drivers' license, etc.). Job qualifications shall be limited to skills directly related to performance of job duties.

(2) **Hiring.** The Business User shall use normal hiring practices, including interviews, to consider all applicants referred by the First Source Referral System during a **six week period** after initial notification, or until all open positions are filled, whichever is sooner. The First Source Referral System shall, as quickly as possible, refer qualified applicants for available jobs. The Business User shall make good faith efforts to fill all available positions with applicants referred by the First Source Referral System. If at the conclusion of the six-week period the Business User has been unable to fill all available positions with applicants referred by the First Source Referral System, the Business User may use other recruitment methods, although the Business User shall continue to make good faith efforts to hire applicants later referred by the First Source Referral System.

(3) **Pre-opening Transfer.** Provisions of this subsection C are not applicable to a Business User that is closing a facility located outside East Palo Alto and is transferring the entire staff to a new facility within East Palo Alto. Upon commencing operation in the new facility, such a Business User is covered by Section Two, subsection D, below.

Provisions of this Section Two, subsection C are applicable to Business Users who hire for positions in facilities located outside East Palo Alto with the intention of transferring such hires to a new facility within East Palo Alto upon commencement of operations for the new facility. All such hires shall be made under the provisions of this Section Two, subsection C.

#### **D. Ongoing hiring process.**

(1) **Notification of job opportunities.** After a Business User has commenced operations in an Agency Redevelopment Project, it shall continue to use the First Source Referral System to fill positions that become available. When a Business User has positions available, the Business User shall notify the First Source Referral System of available job openings and provide a clear and complete description of job responsibilities and qualifications, including expectations, salary, minimum qualifications, work schedule, duration of employment, required standard of appearance, and any special requirements (e.g. language skills, drivers' license, etc.). Job qualifications shall be limited to skills directly related to performance of job duties.

(2) **Hiring.** The Business User shall then use standard hiring practices, including interviews, to consider all applicants referred by the First Source Referral System during a **ten day** period after initial notification, or until all open positions are filled, whichever is sooner. The First Source Referral System shall, as quickly as possible, refer qualified applicants for available jobs. The Business User shall make good faith efforts to fill all available positions with applicants referred through the First Source Referral System. If at the conclusion of the ten-day period the Business User has been unable to fill all available positions with applicants referred by the First Source Referral System, the Business User may use other

recruitment methods, although the Business User shall continue to make good faith efforts to hire applicants later referred through the First Source Referral System.

**E. Safe Harbor Provision.** A Business User who has filled more than 30% of jobs available during a particular quarter with Residents shall be deemed to be in compliance with this subsections C. and D., above, for all hiring during that quarter.

**F. Customized Job Training.** The First Source Referral System shall coordinate job training programs with one or more appropriate job training organizations. Prior to hiring for jobs within Agency Redevelopment Projects, Business Users may request specialized job training for applicants they intend to hire, tailored to the Business Users' particular needs, by contacting the First Source Referral System. The First Source Referral System shall then attempt to ensure that these applicants are provided with the requested training through appropriate job training organizations.

**G. Nondiscrimination.** Business Users shall not discriminate against Residents in any terms and conditions of employment, including retention, promotions, job duties, shift assignments, and training opportunities.

**H. Quarterly Reports.** Each Business User shall prepare quarterly reports detailing the employment of Residents. The Agency may assist Business Users by preparing forms to be completed for this purpose. Reports shall be filed within thirty days after the completion of each quarter. Reports shall include, at a minimum, the following information on the Business User's activities:

- (1) the percentage of available employment and promotions that have gone to Residents;
- (2) a short description of each job that has been filled, and whether a Resident was hired;
- (3) for each Resident that was hired, whether that Resident is still employed by the Business User;
- (4) descriptions and numbers of jobs that will become available, if known, in the future, and an estimated timetable for availability of such jobs; and
- (5) any difficulties the Business User is having with obtaining qualified referrals through the First Source Referral System.

### **Section Three. Contracting by Business Users**

**A. Coverage.** This section applies to Business Users' award of contracts for work to be performed within an Agency Redevelopment Project or for work that is directly related to Business Users' activities within an Agency Redevelopment Project, including, but not limited to, supply contracts and contracts for security, landscaping, custodial services, and property management.

**B. Pre-award Notification of Contracting Opportunities.** Each Business User shall, before accepting bids on a contract covered by this section, provide to the Agency a notification and description of the contracting opportunity, and the method by which bids shall be accepted.

**C. Award Procedures.** Each Business User shall make good faith efforts to award contracts covered by this section to Small Local Businesses and businesses that agree to employ Residents. Each Business User shall work with the Agency to contact such businesses. For purposes of this section, good faith efforts include:

(1) at least two weeks before award of the contract in question, providing notification of the contracting opportunity, and the procedure for bidding on the contract, to Small Local Businesses on a list provided by the Agency;

(2) at least two weeks before award of the contract in question, advertising the opportunity to bid in a Designated Local Publication;

(3) where feasible, breaking down large contracts into smaller contracts where doing so would make Small Local Business participation possible; and

(4) working closely and cooperatively with the Agency to ensure that Small Local Businesses are aware of the contracting opportunity and are given an opportunity to bid.

**D. Include First Source Hiring and Local Business Enterprise Policy in Contracts.** Each Business User entering into a contract covered by this section shall include compliance with the entirety of this Policy as a material term of such contract.

**E. Reporting Requirements.** Within three days of the award of any contract covered by this section, the awarding Business User shall provide to the Agency the following information: the name, address, and telephone number of the business or nonprofit entity to whom the contract was awarded, and whether that business or nonprofit entity is a Small Local Business. The Agency may assist Business Users by preparing forms to be completed for this purpose.

## PART SIX.

## RESPONSIBILITIES OF CONSTRUCTION CONTRACTORS

### Section One. General Responsibilities of Construction Contractors

- A. Coverage.** This Part applies to all Construction Contractors.
- B. Designation of Contact Person.** At time of award of a contract to perform construction work as part of an Agency Redevelopment Project or any other covered project, each Construction Contractor shall designate a contact person for all matters related to implementation of this Policy. Each Construction Contractor shall forward the name, address and phone number of the designated individual to the Agency. If the contact person changes, the Construction Contractor shall immediately notify the Agency.
- C. Include First Source Hiring and Local Business Enterprise Policy in Contracts.** Each Construction Contractor entering into any subcontract, contract, deed, or lease relating to the construction, rental, sale, lease, use, maintenance, or operation of an Agency Redevelopment Project or any other covered project shall include compliance with the entirety of this Policy as a material term of such subcontract, contract, deed, or lease.
- D. Cooperation with Monitoring Efforts.** Each Construction Contractor shall make available to the Agency all requested records and information relevant to monitoring and enforcement of this Policy. The Agency shall not use such records or information for any purpose other than monitoring or enforcement of this Policy, and shall not release trade secrets or information regarding employees designated by name. Construction Contractors may redact names and social security numbers from requested documents in order to protect the privacy of individual employees, although the Agency may require that a Construction Contractor provide addresses of individuals if place of residency is an issue. Where a Construction Contractor has redacted names and/or social security numbers from documents it has provided to the Agency, the Construction Contractor shall grant the Agency on-site access to unredacted version of such documents during normal business hours upon the Agency's request. Each Construction Contractor shall allow the Agency access to job sites and employees during usual business hours as the Agency deems necessary to monitor compliance with this Policy. Each Construction Contractor agrees to the provisions of Part Seven regarding monitoring and enforcement of this Policy.

### Section Two. Construction Contractor Responsibilities Regarding Employees

- A. Coverage.** This Section applies to any employment by a Construction Contractor in fulfillment of the Construction Contractor's responsibilities under a contract to perform construction work as part of an Agency Redevelopment Project or any other covered project.
- B. 30% Local Employment Goal.** Thirty percent of all work-hours in each trade shall be performed by Residents. Each Construction Contractor shall either achieve this goal or demonstrate that it made good faith efforts to do so.

**C. Good Faith Efforts.** For purposes of this section, good faith efforts shall mean diligent efforts to locate and employ qualified Residents. Good faith efforts include:

- (1) at least three days prior to hiring for any job, providing to the Agency written notification of employment opportunities for Residents;
- (2) working closely and cooperatively with the Agency to locate and employ Residents;
- (3) making reasonable modifications to crew structures to facilitate employment of Residents;
- (4) promptly contacting the Agency if difficulty in reaching the goal is anticipated or encountered;
- (5) maintaining a file on the job site of the names and addresses of each Resident referred to the Construction Contractor from any source, and, for Residents not hired, the reasons therefore; and
- (6) promptly notifying the Agency in writing if a union hiring hall with which the Construction Contractor has a collective bargaining agreement fails to refer a Resident requested by that Construction Contractor.

**D. Existing Workforce.** The existence of a crew or workforce usually employed by a Construction Contractor shall not affect the Construction Contractor's responsibilities under this Policy.

**E. Nondiscrimination.** Construction Contractors shall not discriminate against Residents in any terms and conditions of employment, including retention, promotions, job duties, and training opportunities.

### **Section Three. Construction Contractor Responsibilities When Awarding Subcontracts**

**A. Coverage.** This section applies to the award of any contract by a Construction Contractor, including, but not limited to, subcontracts, supply contracts, and lower-tier subcontracts, related to that Construction Contractor's fulfillment of a contract to perform construction work as part of an Agency Redevelopment Project or any other covered project.

**B. Subcontracting Goal of 30%.** Each Construction Contractor that awards any contract covered by this section is subject to a 30% subcontracting goal for Small Local Businesses. Under this requirement, each Construction Contractor shall either meet this goal or demonstrate that it made good faith efforts to do so. In order to demonstrate good faith efforts, Construction Contractors shall prepare and forward to the Agency a summary of outreach and assistance efforts to Small Local Businesses, including each of the requirements listed in subsection D, below. If a Construction Contractor awards only one contract covered by this section, the Construction Contractor shall either award that contract to a Small Local Business or make good faith efforts to do so. The 30% subcontracting goal does not apply to any Construction Contractor that does not award any contracts covered by this section.

**C. Definition of Good Faith Efforts.** Good faith efforts include:

- (1) at least two weeks before award of the contract in question, providing **notification of subcontracting opportunities** and procedure for bidding on all contracts to Small Local Businesses on a list provided by the Agency; such notification shall include project specifications, location of the project, contact information for the Construction Contractor's representative who is familiar with the project, trades required, and bonding and insurance requirements for the contract;
- (2) at least two weeks before award of the subcontract in question, **advertising** the opportunity to bid in a Designated Local Publication;
- (3) holding a **pre-bid meeting** for Small Local Businesses in which opportunities for subcontracts are described and can be discussed;
- (4) **providing pre-bid technical assistance** to Small Local Businesses that have expressed interest in bidding;
- (5) engaging in **one-on-one review of bids** submitted by Small Local Businesses;
- (6) working with the Agency to help Small Local Businesses who might participate obtain bonding and insurance;
- (7) where feasible, facilitating **joint venturing** and second-tier subcontracting in an effort to include Small Local Businesses in the project; and
- (8) where feasible, **breaking down large subcontracts** into smaller subcontracts where doing so would make Small Local Business participation possible.

**D. Include First Source Hiring and Local Business Enterprise Policy in Contracts.** Each Construction Contractor entering into a contract or subcontract covered by this section shall include compliance with the entirety of this Policy as a material term of such contract or subcontract.

**E. Reporting Requirements.** Within three days of the award of any contract covered by this section, the awarding Construction Contractor shall provide to the Agency the following information: the name, address, and telephone number of the subcontractor, whether that subcontractor is a Small Local Business, and the projected dollar amount of the contract. For each contract that was not awarded to a Small Local Business, the Construction Contractor shall provide written documentation of good faith efforts taken with regard to award of that contract. The Agency may assist Construction Contractors by preparing forms to be completed for this purpose.

## **PART SEVEN. MONITORING AND ENFORCEMENT**

### **Section One. Monitoring by the Redevelopment Agency**

**A. Monitoring Activities.** The Agency shall monitor compliance with this Policy by Covered Entities. Monitoring activities may include requests to produce documentation, site visits, interviews, review of required reports, and any other monitoring activities the Agency reasonably finds necessary to assess compliance with this Policy. Covered Entities shall cooperate fully and promptly with any inquiries the Agency deems necessary in order to monitor compliance with this policy. The Agency may review a Covered Entity's compliance with this Policy either on its own initiative or after receiving a complaint or inquiry from a member of the public or City or Agency staff.

### **Section Two. Enforcement by the City or Redevelopment Agency**

**A. Agency Enforcement Procedures.** The following procedures shall be followed when the Agency staff determines that there has been a violation of this Policy:

(1) **Notice of Violation.** When the Agency staff determines that there has been a violation of this Policy, it shall notify the Covered Entity alleged to be in violation. Such notification shall be in writing, and shall specify with particularity the alleged violation and shall state the precise measures necessary to correct the violation.

(2) **Good Faith Resolution Efforts.** If the Covered Entity does not correct the violation within ten business days, the Covered Entity and the Agency staff shall meet and confer in a good-faith effort to hear all sides and to negotiate a resolution.

(3) **Referral to City and/or Agency.** If the Covered Entity and the Agency staff or designee cannot negotiate a resolution within 45 days of the Notice of Violation, the Agency staff or designee shall refer the matter to the City and/or Agency for enforcement efforts, depending on whether the contract that incorporated this Policy was awarded by the City or Agency. At this time the Agency staff may amend the Notice of Violation, and the Covered Entity alleged to be in Violation shall forward to the Agency staff a written statement describing with particularity its position regarding the substance of the Notice of Violation. The Agency staff may refer a matter to the City and/or Agency for enforcement efforts in less than 45 days if it determines that there is a continuing violation of the Policy.

**B. Enforcement by City and/or Agency.** If the Agency staff and the Covered Entity cannot negotiate a resolution within a period of time deemed reasonable by the City or Agency, the City and/or Agency may take any or all of the following actions. While any of these actions are pending, City staff and/or Agency staff and the Covered Entity may continue to negotiate a resolution of the dispute.

(1) **Arbitration.** The City and/or Agency may refer the dispute to binding arbitration to be conducted in accordance with the rules of the American Arbitration Association regarding arbitration of commercial disputes. Each party shall bear its own costs of such arbitration and the parties shall equally split the cost of the arbitrator. The arbitrator, upon hearing the matter,

may provide for specific enforcement of this Policy, injunctive relief against the Covered Entity, and/or liquidated damages as described below.

(2) **Enforcement by Courts.** The City and/or Agency may file a legal action in a court of law to enforce this Policy. The court may provide for specific enforcement of this Policy, injunctive relief against the Covered Entity, and/or liquidated damages as described below. The court may award reasonable attorneys' fees and costs to the City or Agency if it prevails in such an action.

(3) **Termination of Contract.** The City and/or Agency may suspend or terminate for cause any contract or other agreement between the City and/or Agency and the Covered Entity.

(4) **Withholding of Funds.** If the City and/or Agency owes to the Covered Entity any monetary payments pursuant to a contract or debt, the City and/or Agency may withhold funds in an amount specified below as liquidated damages. If the Covered Entity is a subcontractor on a City-funded or Agency-funded construction project, the City may withhold progress payments to the prime contractor on that project.

(5) **Suspension or Revocation of Construction Permit.** If the Covered Entity is performing work requiring a construction permit or similar permit issued by the City, the City may suspend or revoke the construction permit or similar permit, or may issue a stop work order.

(6) **Suspension or Revocation of Use or Occupancy Permit.** If the Covered Entity is engaging in activities requiring a use or occupancy permit or similar permit issued by the City, the City may suspend or revoke the use or occupancy permit or similar permit.

(7) **Declaration of ineligibility.** The City and/or Agency may declare the Covered Entity ineligible for participation in future City public works contracts and/or Agency redevelopment projects for a period of three years or until liquidated damages and other restitution have been paid in full, whichever is longer.

**C. Liquidated Damages.** Because the City and/or Agency's actual damages for breach of the terms of this Policy would be extremely difficult to determine, the City, Agency, and Covered Entities designate the following preestimates of damages for noncompliance with this Policy, to function as liquidated damages. Any liquidated damages collected by the City or Agency shall be used for job training of Residents.

(1) Business User hiring an employee without having followed the procedures specified in this Policy: \$1000.

(2) Covered Entity awarding a contract without having followed the procedures specified in this Policy: 10% of the value of the contract.

(3) Contractor failure to comply with Part Six, Section Three, subsection B (subcontracting goal / good faith efforts): 10% of the value of all subcontracts awarded. Liquidated damages imposed under this subsection shall not be passed on to subcontractors by a Contractor.

(4) Contractor failure to comply with Part Six, Section Two, subsection B (resident workforce goal / good faith efforts): \$500 per day of noncompliance.

(5) Failure to comply with any other provision of this Policy: \$500 per day of noncompliance.

**D. Consequences of Omission of this Policy From Deeds, Leases, or Contracts.**

If a Covered Entity fails to comply with any provision of this Policy requiring inclusion of this Policy in any deed, lease, or contract, that Covered Entity shall be, jointly and severally, strictly liable for any damages or attorney's fees incurred due to, or equitable relief made necessary by, that failure of compliance. For purposes of this subsection, the liquidated damages provisions of subsection C., above, shall apply when calculating damages incurred by the City or Agency.

**PART EIGHT. MISCELLANEOUS LEGAL PROVISIONS.**

**Section One. General Provisions**

**A. Term.** This Policy shall be in effect with regard to City contracts and projects from the date of its adoption by the City until such time as it is repealed by the City. Similarly, this Policy shall be in effect with regard to Agency contracts and projects from the date of its adoption by the Agency until such time as it is repealed by the Agency. The City and Agency shall regularly evaluate the Policy to determine the Policy's effectiveness, and may make any amendments to the Policy as deemed appropriate.

**B. Compliance with State and Federal Law.** This Policy shall be enforced only to the extent that it is consistent with the laws of the State of California and the United States. If any provision of this Policy is held by a court of law to be in conflict with state or federal law, the applicable law shall prevail over the terms of this Policy, and the conflicting provisions of this Policy shall not be enforceable.

**C. Compliance with Court Order.** Notwithstanding the provisions of this Policy, a Covered Entity shall be deemed to be in compliance with this Policy if the Covered Entity is bound by a court or administrative order or decree which governs the hiring of workers, and the provisions of which explicitly and unalterably conflict with terms of this Policy.

**D. Severability Clause.** If any term, provision, covenant, or condition of this Policy is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall continue in full force and effect.

**E. Binding on Successors.** This Policy shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, and assigns of any Covered Entity. Any reference in this Policy to a party shall be deemed to apply to any successor in interest, heir, administrator, executor, or assign of such party.

**F. Material Terms.** The provisions of this Policy are material terms of all contracts or agreements in which this Policy is incorporated.

**G. Covenants Run with Land.** The provisions of this Policy are covenants that run with the land and bind all grantees, lessees, or other transferees thereto for the benefit of and in favor of the City and/or Agency.

**H. Intended Beneficiaries.** The City and Agency are intended third-party beneficiaries of contracts and other agreements which incorporate this Policy. The City and Agency shall therefore have the right to enforce the provisions of this Policy against all parties incorporating this Policy into contracts or other agreements.

**I. Required Contractual Provisions Binding Other Entities.** Any Covered Entity entering into in a deed, lease, or contract related to the rental, sale, lease, use, construction, maintenance, or operation of the entirety of or any portion of a redevelopment project or public

works project in the City shall include compliance with the entirety of this First Source Hiring and Local Business Enterprise Policy by all parties as a material term of such deed, lease, or contract.