



**FOURTEENTH SUPPLEMENT TO MAYORAL PROCLAMATION DECLARING
THE EXISTENCE OF A LOCAL EMERGENCY DATED FEBRUARY 25, 2020**

WHEREAS, California Government Code Sections 8550 et seq., San Francisco Charter Section 3.100(14) and Chapter 7 of the San Francisco Administrative Code empower the Mayor to proclaim the existence of a local emergency, subject to concurrence by the Board of Supervisors as provided in the Charter, in the case of an emergency threatening the lives, property or welfare of the City and County or its citizens; and

WHEREAS, On February 25, 2020, the Mayor issued a Proclamation (the “Proclamation”) declaring a local emergency to exist in connection with the imminent spread within the City of a novel (new) coronavirus (“COVID-19”); and

WHEREAS, On March 3, 2020, the Board of Supervisors concurred in the Proclamation and in the actions taken by the Mayor to meet the emergency; and

WHEREAS, On March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency to exist within the State due to the threat posed by COVID-19; and

WHEREAS, On March 6, 2020, the Local Health Officer declared a local health emergency under Section 101080 of the California Health and Safety Code, and the Board of Supervisors concurred in that declaration on March 10, 2020; and

WHEREAS, On March 6, 2020, the City issued public health guidance to encourage social distancing to disrupt the spread of COVID-19 and protect community health; and

WHEREAS, On March 16, 2020, the City’s Health Officer issued a stay safe at home order, Health Officer Order No. C19-07 (the “Stay Safe At Home Order”), requiring most people to remain in their homes subject to certain exceptions including obtaining essential goods such as food and necessary supplies, and requiring the closure of non-essential businesses; the Health Officer has amended the Stay Safe At Home Order and extended it through May 31, 2020; and

WHEREAS, There have been 1,994 confirmed cases of COVID-19 within the City and 35 COVID-19-related deaths in the City; there have been more than 71,000 confirmed cases in California and more than 2,800 COVID-19-related deaths in California; and



WHEREAS, This order and the previous orders issued during this emergency have all been issued because of the propensity of the virus to spread person to person and also because the virus physically is causing property loss or damage due to its proclivity to attach to surfaces for prolonged periods of time; and

WHEREAS, In connection with the emergency response, the City is engaging contractors to perform direct services to members of the public, such as food service, delivery services, and cleaning and janitorial services. Due to the nature of the work they are performing in the environment these services are needed, these workers face an increased risk of contracting the virus. Given this risk, it is in the City's interest to require contractors to provide health insurance to workers and their families so that workers on these contracts have assurances they will be cared for if they or their family members become ill. This will ensure the work on these critical contracts is consistently and efficiently performed by quality workers who can be confident they are not unduly risking their health by performing these services; and

NOW, THEREFORE,

I, London N. Breed, Mayor of the City and County of San Francisco, proclaim that there continues to exist an emergency within the City and County threatening the lives, property or welfare of the City and County and its citizens;

In addition to the measures outlined in the Proclamation and in the Supplements to the Proclamation dated March 11, March 13, March 17, March 18, March 23, March 27, March 31, April 1, April 10, April 14, April 23, April 30, and May 11, 2020, it is further ordered that:

The following Order shall apply to certain contracts during the emergency:

(a) For purposes of this Order, the following definitions apply:

“Agency” shall mean the Office of Labor Standards Enforcement.

“Agency Director” shall mean the Director of the Office of Labor Standards Enforcement or his or her designee.



“Contracting Department” shall mean the City department, office, board, commission or other City agency that enters into the applicable COVID-19 Essential Service Contract on behalf of the City.

“Contracting Parties” shall mean Contractors and Subcontractors,

“Contractor” shall mean the person or entity that enters into a COVID-19 Essential Service Contract with the City.

“Covered Employee” shall mean an Employee of a Contractor or Subcontractor who works on a COVID-19 Essential Service Contract or Subcontract for 2 hours or more per Week within the geographic boundaries of the City. A Contractor or Subcontractor may not divide an Employee’s time between working on a COVID-19 Essential Service Contract and working on other duties with the intent of reducing the number of Covered Employees working on the COVID-19 Essential Service Contract to evade compliance with this Order.

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 any Employee who is (A) a temporary Employee hired for a time-limited period, and (B) for that period is receiving academic credit or completing mandatory hours for professional licensure or certification, and (C) the Employee does not replace, displace or lower the wage or benefits of an existing position or Employee; or
- (2) 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
- (3) Any Employee that the Contracting Party is required to pay no less than the “prevailing rate of wage” in accordance with Section A7.204 of Appendix A to the City’s Charter or any provision of the San Francisco Administrative Code; or



(4) Any disabled Employee who: (A) is covered by a current sub-minimum wage certificate issued to the employer by the U.S. Department of Labor; or (B) 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

(5) 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.

“COVID-19 Essential Service Contract” shall mean an agreement procured during the local emergency regarding the COVID-19 pandemic declared by the Mayor on February 25, 2020, between a City department and any person or entity for purposes of providing the following services at the expense of the City as part of the City’s emergency response effort: food service, delivery of food, janitorial services, and cleaning services. COVID-19 Essential Service Contract shall not include agreements for the procurement of supplies and materials, such as personal protective equipment and medical supplies. COVID-19 Essential Service Contract shall not include agreements with a duration of one year or more, and shall not include amendments to or renewals of any agreement that existed prior to the date of this Order. Any solicitation for a COVID-19 Essential Service Contract shall indicate that this Order applies to agreements awarded from the solicitation.

“Employee” shall mean any person who is employed by a Contracting Party, including part-time and temporary employees. “Employee” includes any worker considered an employee under Section 2750.3 of the California Labor Code, including workers for on-demand delivery services such as online or mobile application-based delivery platforms or network companies that engage persons, through online or app-based platforms, to deliver food products or other consumer products.

“Health Director” shall mean the Director of the Department of Public Health, or the Health Director’s designee.

“Nonprofit Corporation” shall mean a nonprofit corporation, duly organized and in good standing, which has established and maintains valid nonprofit status under Section 501(c)(3) of the Internal Revenue Code.



“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 COVID-19 Essential Service Contract.

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

“Week” shall mean a consecutive seven-day period. If the Contracting Party’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 Order; shall be calculated by adjusting the number of hours actually worked during the Contracting Party’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.

(b) With respect to each Covered Employee, each Contracting Party shall offer to the Covered Employee health plan benefits that meet minimum standards prepared by the Health Director and that provide coverage to the Covered Employee’s dependents. The minimum standards shall provide for a maximum period for each Covered Employee’s health benefits to become effective, no later than the first day from the start of employment on a COVID-19 Essential Service Contract;

Notwithstanding the above, if, at the time a COVID-19 Essential Service Contract is executed, the Contracting Party has 10 or fewer employees (or, in the case of a Nonprofit Corporation, 25 or fewer employees), including any employees the Contracting Party plans to hire to implement the COVID-19 Essential Service Contract, the Contracting Party shall not be obligated to provide the health plan benefits required by this Order. In determining the number of employees had by a Contracting Party, all employees of all entities that own or control the Contracting Party and that the Contracting Party owns or controls, shall be included.

(c) Each Contracting Party that enters into a COVID-19 Essential Service Contract shall agree:

- (1) To comply with the requirements of this Order;
- (2) To comply with regulations adopted by the Agency pursuant to this Order;



(3) 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 COVID-19 Essential Service Contract. If the Contracting Party fails to maintain records that accurately reflect the number of hours each employee has worked on the COVID-19 Essential Service Contract, it shall be presumed that any employee who has worked on a COVID-19 Essential Service Contract is a Covered Employee under this Order;

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

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

(6) To allow the City to inspect Contracting Parties' job sites and have access to Contracting Parties' employees in order to monitor and determine compliance with this Chapter;

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

(8) To include in every COVID-19 Essential Service Contract subject to this Order provisions requiring compliance with this Order, consistent with any directives or standards adopted by the Agency;

(9) To notify the Contracting Department promptly of any Subcontractors performing services covered by this Order and certify to the Contracting Department that it has notified the Subcontractors of their obligations under this Order; and

(10) 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 Order.

(d) A Contracting Party shall not discharge, reduce in compensation, or otherwise discriminate against any Employee for notifying the City regarding the Contracting Party's noncompliance or anticipated noncompliance with this Order, for opposing any



practice proscribed by this Order, for participating in proceedings related to this Chapter, or for seeking to assert or enforce any rights under this Order by any lawful means.

(e) The Agency, in consultation with the Department of Public Health, is authorized to issue any necessary rules and guidance consistent with this Order. The Agency shall monitor Contracting Parties for compliance and investigate complaints of violations. The Agency shall monitor Contracting Parties for compliance and investigate complaints of violations. The Agency shall promulgate rules for investigation and determination of violations that comply with Section 12Q.5.2 of the Administrative Code to the extent feasible.

(f) In addition to any other rights or remedies available to the City under the terms of any agreement of a Contracting Party or under applicable law, the City shall have the following rights:

(1) The right, at the discretion of the Contracting Department, to terminate the COVID-19 Essential Service Contract;

(2) The right, at the discretion of either the Contracting Department or the Agency, to bar a Contracting Party from entering into future contracts with the City for three (3) years; and

(3) The right to bring a civil action against the Contractor to pursue the remedies provided by this Order and other applicable law. The prevailing party shall be entitled to all costs and expenses, including reasonable attorney's fees.

(g) Each Contractor shall be responsible for its Subcontractors with respect to compliance with this Order. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against the Contractor based on the Subcontractor's failure to comply, provided that the Contracting Department has first provided the Contractor with notice and an opportunity to obtain a cure of the violation.

(h) The Agency may compromise and settle unlitigated claims against Contracting Parties for violations of contractual provisions required by this Order.



(i) All Contracting Parties and Contracting Departments shall cooperate fully with the Agency in connection with any investigation of an alleged violation of this Order or with any inspection conducted by the Agency.

(j) The Agency Director or designee, in consultation with the Department of Public Health, shall waive the requirements of this Order when the Contracting Department has provided justification to the Agency Director, and the Agency Director has found that one of the following circumstances exists:

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

(2) There are no qualified responsive bidders or prospective vendors that comply with the requirements of this Order and the agreement is for a service that is essential to the City or the public;

(3) The public interest warrants the granting of a waiver because application of this Order would constitute an adverse impact on services or an unreasonable adverse financial impact on the City.

(l) All or any portion of the applicable requirements of this Order 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.

(m) This Order shall apply to COVID-19 Essential Service Contracts first advertised, solicited, or initiated after May 13, 2020. This Order shall remain in place during the local emergency unless terminated earlier by the Mayor. Contractual obligations created under this Order shall survive expiration or termination of this Order and will run with the term of the COVID-19 Essential Service Contract.

DATED: May 13, 2020

A handwritten signature in blue ink, appearing to read "London Breed".

London N. Breed
Mayor of San Francisco