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2012 JUN -8 AM 9:23

# AGENDA REPORT

TO: DEANNA J. SANTANA  
CITY ADMINISTRATOR

FROM: Fred Blackwell

SUBJECT: Army Base Budget Modification

DATE: June 6, 2012

City Administrator

Date

Approval

6/8/12

COUNCIL DISTRICT: 3

## RECOMMENDATION

Staff recommends that the City Council consider the attached, updated version of the Army Base Cooperation Agreement and the attached set of Community Jobs Policies for the construction and operations phases of the former Oakland Army Base development project.

## REASON FOR SUPPLEMENTAL

The purpose of this report is to provide the City Council with updated information regarding the status of the proposed Cooperation Agreement among various community and labor organizations and the City and regarding the Community Jobs Policies for the construction and operations phases of the former Oakland Army Base development project.

In the previous staff report, staff indicated that there were a variety of issues that were still being negotiated with regard to the Job Policies and Cooperation Agreement. Those issues included provisions regarding ban-the-box, use of temporary hiring agencies, core workers on vertical construction, and definition of large employers. In addition, with regard to the Cooperation Agreement, staff highlighted the lack of agreement regarding the ability of the City to amend the Job Policy's without the approval of the signatories to the agreement. This Supplemental Report provides updates on each of those issues and more complete versions of the Jobs Policy and Cooperation Agreement.

The majority of the terms contained in the Community Jobs Policies and the Cooperation Agreement stem from the extensive work performed by the Army Base Jobs Working Group facilitated by Councilmember Brunner and subsequent meetings and discussions among the various key stakeholders representing the interests of the Community, Labor, Business and the City.

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1. Areas of Agreement Adopted by the City Council

Please refer to *Attachment A*, the staff report and recommendations adopted by the City Council on January 31, 2012, regarding the Areas of Agreement developed by the Army Base Jobs Working Group, which set the framework for the development of the Army Base Jobs Policies. These areas of agreement were used as the point of departure for subsequent negotiations with the developer. Throughout the discussions and negotiations following the adoption of the Army Base Jobs Policy framework, staff has attempted to adhere to its terms to the best extent possible in all policy document drafts.

2. Process

The negotiations of the Community Jobs Policy involved a wide cross-section of representatives from the Community, Labor, the Developers, and the City. Ultimately staff was unable to reach consensus with all parties in all areas of the Job Policy, but staff and our key stakeholders have remained committed to the negotiations, which have yielded substantial agreement on a wide variety of issues, including local hiring.

Following the City Council's adoption of the Areas of Agreement, staff facilitated dozens of meetings among key stakeholders from Revive Oakland!, Oakland WORKS, the Building and Construction Trades of Alameda County, the Alameda Labor Council, California Capital Investment Group and Prologis. Talks and negotiations intensified substantially as the sense of urgency to preserve the Trades Corridor Improvement Fund (TCIF) began driving the project design and timeframes for various approvals including the completion of CEQA documents and confirming the presence of public and private funds to match the TCIF allocation.

It is important to note some major areas where key agreements have been met or where significant concessions have been provided. From the developer perspective, CCIG, which at this moment would control 40% of the development, has agreed to most of the key terms and provisions put forth by the community and labor stakeholders and the City. From a labor and community standpoint, the Jobs Working Group agreed to not being signatory to the LDDA and concessions in the area of "Labor Peace" in order to advance coming to agreement.

The concession of not being signatory to any binding agreement with the developer led to the creation of the Cooperation Agreement, which is a legal instrument the City has used in other major development projects, including Uptown and Oak to Ninth. Dropping the Labor Peace provision was a major concession from staff's point of view.

CCIG's concurrence with the spirit and intent of the terms set forth in the Areas of Agreement and emerging Community Jobs Policies has kept the dialogue open among all of the key stakeholders.

### 3. Outstanding Issues

As previously stated, among the outstanding issues that were highlighted as requiring further discussion in the staff report and left open in the Jobs Policy included the following: Ban-the-Box (Worker Qualifications), Use of Temporary Workers and Agencies, Core Workers for Vertical Construction, and the size definition for large employers. In addition staff highlighted the lack of agreement regarding the ability of the City to amend the documents.

The attached version of the Jobs Policy fills in those areas where we have reached agreement with the developer. This includes four pieces: *Attachment B-1* is the Construction Jobs Policy for Public Improvements, *Attachment B-2* is the Construction Jobs Policy for Vertical Construction, *Attachment B-3* is the Operations Jobs Policy for the West Gateway area, and *Attachment B-4* is the Operations Jobs Policy for the Prologis portion of the area.

The Cooperation Agreement, included as *Attachment C* to this report, incorporates areas where agreement has been reached with the community groups with one major exception. With regard to the Cooperation Agreement, it is important to note that agreement was not reached on a lock in provision. The community and labor stakeholders require assurance that no amendments to the terms of the Community Jobs Policies can occur without the knowledge and consent of the signatory organizations to the Cooperation Agreement. The developer's position is that the City in its sole and absolute discretion should have the right to amend the LDDA including the Jobs Policy. The community groups have been clear that they will not sign an agreement without the lock in provision. Prologis and CCIG have articulated strong opposition to such a clause and Prologis specifically has highlighted the issue as a potential deal breaker. It is staff's recommendation that the Cooperation Agreement remain silent on the issue of the amendment process.


### OUTCOME

The acceleration of the negotiations is one of the main reasons why there is not a greater degree of consensus on the Community Jobs Policy. As things currently stand, the parties have concluded direct negotiations. As previously stated, the Jobs Policy reflects areas of agreement between the developer and staff but community groups still have strong concerns around key aspects of Ban-the-Box, the Use of Temporary Agencies, core workers on vertical construction, and the size definition for large employers. In addition, the Cooperation Agreement has one major area where agreement has not been reached. Overall, however, staff believes that what has been negotiated in a robust agreement that includes very important provisions that ensure that a significant number of Oakland residents will benefit from the City's investment in the revitalization of the Oakland Army Base.

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For questions regarding this report, please contact Al Auletta, Program Manager, at 510-238-3752.

Respectfully submitted,

  
FRED BLACKWELL,  
Assistant City Administrator

Prepared by: Al Auletta  
Office of Neighborhood Investment

**CITY OF OAKLAND**  
**AGENDA REPORT**FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2012 JAN 12 PM 1:00

TO: Office of the City Administrator  
ATTN: Deaima J. Santana  
FROM: Community and Economic Development Agency  
DATE: January 24, 2012

RE: Report and Recommendations from the Jobs Working Group on Employment-Related Community Benefits for the Development and Operations at the Former Oakland Army Base

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**SUMMARY**

This Report is intended to clarify recommendations presented in the Army Base Community Benefits staff reports, which were scheduled for the December 13, 2011 and January 10, 2012 Community and Economic Development (CED) Committee meetings, but not presented.

This Supplemental Report focuses specifically on the package of recommendations developed by the Army Base Jobs Working Group, which was facilitated by Councilmember Jane Brunner.

The other recommendations regarding Army Base Community Benefits previously published will be presented to the CED Committee and considered as a separate item.

**FISCAL IMPACT**

There is no negative fiscal impact anticipated to the City's General Purpose Fund as a result of this report and recommendations. It is currently staff's position that the re-use of the Oakland Army Base constitutes an enforceable obligation that will require implementation by the successor entity to redevelopment. Staff will return to the City Council with a fiscal impact analysis regarding Community Benefits at a later date.

**BACKGROUND**

This report presents a set of recommendations reached by consensus by the Army Base Jobs Working Group. It is being presented as a distinct report to ensure that everyone who participated in this extensive process is clear about the recommendations being forwarded to City Council, which the Working Group agreed to by consensus during its October 27, 2011 meeting.

**KEY ISSUES AND IMPACTS**

The recommendations of the Jobs Working Group will serve as the platform for developing an over-arching Community Jobs Agreement for the Army Base project, which will encompass construction and operations jobs.

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The Project Labor Agreement with the City for the construction phase of the Army Base project will be based upon the goals and policies of the Community Jobs Agreement.

## PROJECT DESCRIPTION

Following are the recommendations from the Army Base Jobs Working Group, which are consistent with the recommendations published in previous staff reports regarding Army Base Community Benefits. Staff concurs with the recommendations of the Army Base Jobs Working Group.

### Local Hire

- The goal for local hire is 50% of work hours for Oakland residents. It applies to both construction jobs work hours (similar to the City's existing Local Employment Program), and also to operations jobs work hours.
- "Local" is defined as the City of Oakland, with first priority being given to the zip codes that comprise West Oakland and City Council District 3, and second priority to areas within the Oakland Enterprise Zone Targeted Employment Area.
- Staff will conduct a "capacity study" of West Oakland and other targeted communities to better understand the skill sets, training and support needs and demographics of local residents [to the extent possible given the dissolution of Redevelopment].<sup>1</sup>

### Jobs Center

- The Working Group recommends the development of a one-stop Jobs Center located in West Oakland. The Jobs Center is a critical piece for the community. The Center should be readily accessible, and serve as a resource for contractors, employers and job seekers during construction and operations phases of the Army Base project. The Jobs Center will also connect job seekers with existing job training, education and other support services.
- The Working Group developed a tracking system for construction work that met the needs of both the Building Trades and community groups to ensure transparency regarding hiring. Every request for workers to hiring halls and dispatches will be forwarded to Jobs Center staff to track retention and compliance with the 50% local hiring goal craft by craft.

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<sup>1</sup> This and other types of staff work to support Community Benefits are dependent upon the availability of staff and other resources given the dissolution of Redevelopment

- The Jobs Center will also serve as a resource for matching local residents with operations jobs on the former Army Base.

#### Apprenticeships

- Working Group members support providing career pathway opportunities for Oakland residents, not just temporary jobs. In line with this goal, the Working Group recommends that:
  - The goal for the percent of overall apprentice work hours should be raised from 15% to 20% of total work hours.
  - All new apprentices must be Oakland residents.
  - There should be a requirement for a specific number of new apprentices, craft by craft. The recommended range for new apprentice utilization is 5-10% of total work hours (which translates to about 25-50% of apprentice hours).
  - New apprenticeship hiring opportunities shall be given first to qualified graduates of Oakland pre-apprenticeship training programs. (The process of developing the Community Jobs Agreement and Jobs Center will also include the establishment of pre-apprenticeship training standards.)

#### Disadvantaged Workers

- The Working Group wants to ensure that there are opportunities for segments of the populations facing significant obstacles to employment, such as low income young adults ages 18 to 25, disabled individuals, and the formerly incarcerated.
  - For operations jobs, the Group recommends a goal of 25% of hours for disadvantaged workers.
  - For construction jobs, the Group recommends a goal of 25% apprentice hours to be completed by workers qualifying as disadvantaged.
  - The Working Group also supported requiring employers to ban the box on job applications and preventing employers from asking for credit references.

#### Oversight Committee

- The Working Group recommends establishment of a trained Stakeholder Oversight Committee charged with monitoring the good faith efforts of contractors (for construction jobs) and employers (for operations jobs) to comply with the goals of a Community Jobs Agreement, including local hiring and the City's Local Employment Program goals.
- The Stakeholder Oversight Committee will be made up of representatives from the community, labor, City and Port government, contractors and developers, with a majority representing community groups from a cross-section of the community. Representatives would serve specific terms and be expected to participate regularly.

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- The Working Group recommends dedicating resources to train community members to serve on the Stakeholder Oversight Committee and to provide stipends for community Committee members who are not paid by another organization.
- The Stakeholder Oversight Committee will have the authority to recommend solutions and to enforce penalties when contractors are out of compliance. Tough penalties are needed to hold contractors responsible for meeting goals. There should be non-monetary penalties in addition to monetary penalties such as:
  - An increase in local hiring percentage (as an option instead of withholding retainer funds);
  - Banning contractors from future City funded work.
- There should also be incentives for contractors who exceed goals by 10% or more (and are on schedule).

#### Project Labor Agreement/Community Jobs Agreement

- The Working Group recommends the development of a binding Community Jobs Agreement (CJA), which will serve as the overarching policy and program framework for construction and operations jobs. The CJA would be a "3<sup>rd</sup> party agreement" between the developers, the City, community stakeholders (representatives to be determined) and labor. A CJA would provide signatories with legally enforceable rights and obligations.
- The City's Project Labor Agreement for the construction jobs with the Building Trades and developers will be aligned and consistent with the terms and conditions of the Community Jobs Agreement, including local hiring.
- A CJA will be developed and approved prior to the City of Oakland signing a PLA for the construction phase of the Army Base development project.

#### Operations Jobs

- The Working Group confirms that all of the policies developed for local hire, disadvantaged workers, the CJA and the Jobs Center shall be the baseline policies for operations jobs, including the 50% local hire goal and 25% disadvantaged worker goal.
- The goal for operations jobs at the redeveloped Army Base is permanent jobs not temporary ones. The Working Group does not support the use of temporary employment agencies. If temporary workers are employed, there should be a time limit on their employment and a pathway for temporary workers to become permanent.



- Seasonal workers ("casual workforce") hired directly by employers are permissible but temporary employment agencies should not be used.

## **SUSTAINABLE OPPORTUNITIES**

**Economic:** The development of the former Army Base has the potential to create thousands of construction and permanent jobs for Oakland residents. While it is staff's position that the re-use of the Oakland Army Base is an enforceable obligation, we will continue to closely monitor Sacramento's position on enforceable obligations because without the continued ability to develop the base, the construction and permanent jobs associated with the bases re-use will not come to fruition.

**Environmental:** This report does not directly address environmental sustainability.

**Social Equity:** This report addresses the City's commitment to social equity by way of jobs for local residents.

## **DISABILITY AND SENIOR CITIZEN ACCESS**

Individuals with disabilities may be given preference for local hire depending on the goal that is approved for hiring of local "disadvantaged" residents.

## **RECOMMENDATION AND RATIONALE**

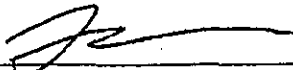
That the City Council adopt the policy recommendations of the Jobs Working Group as the platform for developing a Community Jobs Agreement for the Oakland Army Base project.

The Army Base Jobs Working Group meetings were open to anyone wishing to weigh in on developing a comprehensive set of goals, conditions and implementation processes regarding local hiring for the construction and operations phases of the Army Base project. Upwards of 50 people participated in this process. Councilmember Jane Brunner and her staff recorded each recommendation offered by meeting participants. The group discussed each item at length, and voted on each item. (Please see Attachment A, which is the original summary of the Areas of Agreement reached by the Working Group.) Only those recommendations that achieved 100% approval of the entire group are included in this report.

**ACTION REQUESTED OF THE CITY COUNCIL**

That the City Council adopt the policy recommendations of the Jobs Working Group as the platform for developing a Community Jobs Agreement for the Oakland Army Base project.

Respectfully submitted,



Fred Blackwell, Assistant City Administrator  
Community and Economic Development Agency

Reviewed by:   
Gregory D. Hunter, Deputy Director of Economic  
Development and Redevelopment

Prepared by:  
Al Auletta, Redevelopment Area Manager

**APPROVED AND FORWARDED TO THE  
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:**

  
Office of the City Administrator

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OAKLAND ARMY BASE JOBS WORKING GROUP

AREAS OF AGREEMENT

October 27, 2011

*The following is the compilation of all of the Areas of Agreement developed in the Jobs Working Group (Large Group) sessions facilitated by Councilmember Jane Brunner.*

*Please note that some of these notes have been modified in the staff report for the benefit of those who did not participate in this consensus process.*

**I. LOCAL HIRE (FOR CONSTRUCTION AND OPERATIONAL JOBS)**

- 50% (plus one) work hours for Oakland residents, craft by craft.
- There should be additional priority for local hire given to:
  - 1. West Oakland residents
  - 2. Enterprise Zone residents (or another proxy for areas of low-income, high employment etc.)
- 100% of new apprentices must be Oakland residents.
- Unions/contractors must guarantee that Oakland journey workers will get preference.
- Existing workers in Oakland must be recruited for job opportunities.
- A study of existing, trained workforce in Oakland is needed.
- Employers need to disclose info on jobs in advance (construction and operations).
- Contractors should get credit for local hire if they employ workers at other projects in other cities.
- Majority agree that there should be a one-source center for all employees.

***Develop priority criteria for local hire***

- "Local" is defined as the City of Oakland, with priority being given to the zip codes that comprise West Oakland and city council District 3, and then to all of the Oakland Enterprise Zone.
- Staff will conduct a capacity study of West Oakland to better understand the skills, needs, and demographics of the targeted population.

***Clarify hiring process at jobs center***

- The Jobs Center should be located in West Oakland, be readily accessible, and serve as a resource for contractors, employers and job seekers during Construction and Operations phases.
- The Center will connect job seekers with job training, education and other support services, such as transportation.

- The Center will be overseen and administered by an independent body. Staff will develop an RFP for the operations of the Jobs Center.
- To meet local hire goals, contractors would send requests to the union hiring hall and to the Jobs Center simultaneously. If the hall cannot provide a local worker within 72 hours, the contractor would then call the Jobs Center to provide a qualified worker. All such workers need to be dispatched through the appropriate union hiring hall.
- The Jobs Center will monitor and track job assignments and worker hiring and retention. On a regular basis, the Jobs Center will transmit these results to the Monitoring and Enforcement sub-committee of the stakeholder Oversight Committee for compliance determination and enforcement actions.

*Should Oakland residents who had to move away be included in the local hire policy? If so, how?*

- Not included in recommendations. The general opinion of the Working Group was that it would be difficult to establish parameters for determining local hire eligibility for people who once lived in Oakland.

## II. TRAINING AND JOB PATHWAYS

### Apprenticeships

- 100% of new apprentices must be Oakland residents.
- There should be a requirement for a specific number of new apprentices, craft by craft.
- There should be a number of apprenticeships set aside for graduates of pre-apprenticeship training programs.
- Statistics and regular reports on the number of pre-apprenticeship graduates in apprenticeships, and number of apprentices becoming journeyworkers should be provided.
- Contractors should be required to keep apprentices on for at least one year, beyond that the requirement will be negotiated case by case.
- Need a mechanism to recognize, analyze and ensure that contractors use apprenticeship graduates on a long-term basis (must include an enforcement mechanism).
- Need to define and implement pre-apprenticeship training standards.
- Apprentices should reflect ethnic diversity of Oakland community.

### General Workforce Development

- City/CEDA/WIB should have a workforce development plan for the Army Base.
- Community Colleges should be encouraged to offer associate's degrees as well as certificates to trainees.
- Existing Workforce Development/job training programs should be utilized to train workers.

- Use linkages with Peralta Community College District.
- Employers must provide advance information on the type of jobs, number of jobs and duration of jobs.

#### Number for new apprenticeships

- The goal for the percent of overall apprentice work hours should be raised from 15% to 20% of total work hours.
- 5-10% of total work hours must be worked by new apprentices. (This translates to 25-50% of apprentice hours must be worked by new apprentices). The Working Group did not reach agreement on an exact number.
- Developers/contractors will get credit for new Oakland apprentice hires once the apprentice has worked 1,000 hours. Off-site hours may also be included.
- New apprentices are defined as individuals who have not worked in union construction prior to being hired on the Oakland Army Base (OAB) and who are starting at the entry level of a 1<sup>st</sup> period apprentice.
- Stakeholders will contribute to a revolving loan fund that will help pay for initiation fees for low, very low and extremely low-income new apprentices.
- New apprenticeship hiring opportunities shall be given first to qualified graduates of Oakland pre-apprenticeship training programs.
- Jobs Center will track and support the progress of apprentices becoming journey-level workers.
- There should be established pre-apprenticeship training standards.

### III. YOUNG ADULT/RE-ENTRY EMPLOYMENT PROGRAM

- Need job training and placement opportunities for young adults (18 and over).
- For youth (under 18):
  - Start basic math and reading foundational skills training in middle schools.
  - Funding for high schools, like McClymonds and others, to offer pre-apprenticeship training for pathways to Army Base jobs.
- For formerly incarcerated workers:
  - Require employers to ban the box on the job applications.
  - Jobs should be open to folks on parole or probation.
  - There should be a commitment by employers to hire re-entry workers.
  - Employers cannot ask for credit references.
  - If a background check is required, it should be done at the end of the hiring process.

- There should be targets set for hiring and retaining re-entry workers and other disadvantaged workers.
- There should be incentives/penalties associated with meeting re-entry/disadvantaged worker targets (i.e. discounts on lease payments).
- Need outreach and education to both employers and potential employees (young adult/formerly incarcerated).

#### Definition of "disadvantaged worker"

- "Local Disadvantaged" will include such populations as low income young adults (18-25), disabled individuals, and the formerly incarcerated.
- The Jobs Center will follow Federal Department of Labor guidelines for defining "disadvantaged". Under the Workforce Investment Act (WIA), the term "disadvantaged adult" means an adult who received an income, or is a member of a family that received a total family income, that, in relation to family size, does not exceed the higher of the poverty line or 70% percent of the lower living standard income level.
- Formerly incarcerated residents also qualify as disadvantaged.
- The project should include a goal of 25% of apprentice hours to be completed by workers qualifying as "disadvantaged". These hours can be met by new apprentices and local workers.

#### IV. MONITORING AND COMPLIANCE

- The City, Port and community must all make a commitment to doing monitoring and compliance, including a commitment to funding staff to do monitoring and compliance.
- Resources are needed to train community members to participate in monitoring.
- A joint committee made up of representatives from the community, labor, government, and contractors should be responsible for the oversight of monitoring and compliance.
- A majority of the committee should be from community groups and should represent a cross section of the community.
- WOCAG should be part of the stakeholder oversight group.
- The Committee will have the authority to recommend solutions and to enforce penalties when contractors are out of compliance.
- Majority support a "Good Faith" effort to reach goals.
- Tough penalties are needed to hold contractors responsible for meeting goals. There should be non-monetary penalties in addition to monetary penalties such as:
  - o increase local hire percentage (as an option instead of withholding retainer funds)
  - o ban contractor from future Oakland work
- Penalty funds should go towards training, one-stop job center, monitoring and compliance, and/or a fund to address other problems associated with meeting the local hire goals.
- There must be a process that includes technical support, to help contractors get into compliance.

- There should be incentives for contractors that exceed goals by 10% or more (and are on schedule).

#### The "Good Faith" hiring process

- "Good faith" efforts will involve utilizing "name call," "rehire," or other similar programs at the hiring halls to reach goals when they are available as part of the hiring hall dispatch procedures, as well as using the Jobs Center as a resource if the union cannot provide the local residents as requested.
- The Oversight Committee will review the "good faith" efforts of the contractor or employer and determine whether they meet the goals of the Community Jobs Agreement, including local hiring and the City's Local Employment Program goals.
- If the Committee determines that "good faith" has not met, then there shall be corrective actions, penalties, or possibly referral to arbitration.

What should be included in the monitoring program e.g. retention, verifying residency, software?

- The Working Group agreed on the need for an ongoing monitoring program.

What is the definition of "community" in terms of determining community representatives on Stakeholder/ Oversight group?

- In general, membership would be composed of representatives from the local community, developers, labor, contractors, employers, the City and the Port.
- No consensus on specific composition of committee or definition of "community."

Should this committee be modeled on the Port's Social Justice Committee?

- There was no consensus on whether the Committee should be modeled on the Port's Social Justice Committee.

#### Definition of the Oversight Committee

- There should be a "transparent, participatory and stakeholder model" for the Oversight Committee.
- Representatives to the stakeholder Oversight Committee would have to be specific individuals, committed to serve a term and to participate regularly.
- The Working Group agreed that the stakeholder Oversight Committee should be a separate entity from the Jobs Center and its related advisory board.

- There should be a stipend provided for community members (who are not paid by another organization for their time) for serving on the Oversight Committee.

## V. PROJECT LABOR AGREEMENT/COMMUNITY JOBS AGREEMENT

Overall structure and general content of agreement (community workforce agreement, project labor agreement etc.)

- The Community Jobs Agreement (CJA) should be a “3<sup>rd</sup> party agreement” between the developers, the City, community stakeholders (representatives to be determined) and labor. A CJA would provide signatories with legally enforceable rights and obligations.

How the PLA meet the goals of community benefits

- A binding Community Jobs Agreement (CJA) will serve as the overarching policy and program framework for construction and operations jobs. The terms of the Project Labor Agreements (PLA) for the construction jobs will conform to the mutually agreed upon local hiring and program operations requirements within the CJA.
- The terms and conditions of a Project Labor Agreement, Community Jobs Agreement and Development Agreements will be aligned and consistent.
- A CJA should be developed and approved prior to the City of Oakland signing a PLA for the Army Base development.

## VI. OPERATIONS JOBS

- Need operations jobs for Oakland residents, including blue collar and white collar jobs.
- Need an additional focus on sustainable industries like clean energy, movement of agriculture products, clean energy, and recycling, and on green jobs.
- Want permanent jobs not temporary ones. If temporary workers are employed; there needs to be a time limit and there should be a pathway for temporary workers to become permanent.
- Seasonal workers (“casual workforce”) hired directly by employers is permissible but temp agencies should not be used.
- All of the policies developed for local hire, disadvantaged workers, the CJA and the Jobs Center shall be the baseline policies for operations jobs, including the 50% local hire goal and 25% disadvantaged worker goal.

# # #



EXHIBIT \_\_\_\_

Construction Jobs Policy  
Oakland Army Base Project  
Public Improvements

I. Purpose. This Construction Jobs Policy ("Policy") sets forth certain requirements regarding hiring and employment for the construction of the Public Improvements. Contractors participating in the construction of the Public Improvements agree to comply with terms of this Policy as a condition of operation.

II. Definitions. As used in this Policy, the following capitalized terms shall have the following meanings. All definitions include both the singular and plural form. Capitalized terms that are not defined below are defined as in the LDDA.

"Apprentice" shall mean an individual who is enrolled in a Registered Apprenticeship Program on the date that such individual is hired or assigned to perform the applicable work.

"Apprentice Work Hours" shall mean Project Work Hours performed by Apprentices.

"Background Exceptions" shall mean: (i) law, regulation or policy of any applicable governmental or quasi-governmental body (including, but not limited to, those established under the Transportation Worker Identification Credential (TWIC) program and the Customs Trade Partnership Against Terrorism); or (ii) the Contractor's good faith determination that the position is of such sensitivity that individuals with particular types of criminal convictions or histories are ineligible.

"Contractor" shall mean any entity employing individuals to perform Project Construction Work, including contractors and subcontractors of any tier, and any entity with a construction management contract for performance of Project Construction Work.

"Designated Preapprenticeship Program" shall mean a preapprenticeship program designated by the City for purposes contemplated in this Policy. The City shall provide developer with 60 days notice of changes to the list of Designated Preapprenticeship Programs. Do we use this definition?

"Disadvantaged Worker" shall mean a Resident meeting eligibility criteria for California Enterprise Zone Hiring Credits, as set forth in Cal. Rev. & Tax Code Sec. 23622.7 (4)(A) on the date that such individual is hired or assigned to perform the applicable work.

"Public Improvements" shall mean construction work performed pursuant to

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Section \_\_\_\_ of the LDDA or otherwise occurring on the Project Site pursuant to a prime contract entered by the City or by any entity serving as a construction manager or other agent of the City.

“City PLA” shall mean a project labor agreement governing Horizontal Construction, and executed by the Alameda County Building Trades Council and the City.

“Jobs Center” shall mean a referral center to be designated by the City as such for purposes of implementation of this Policy.

“LDDA” shall mean the Lease Disposition and Development Agreement entered into by the City and Developer respecting the development activities at the Oakland Army Base.

“New Apprentice” shall mean a Resident who is newly enrolled (less than 3 months) as an Apprentice in a Registered Apprenticeship Program on the date that such individual is hired or assigned to perform the applicable work.

“Policy” shall mean this Construction Jobs Policy.

“Prime Contractor” shall mean a Contractor awarded a contract by a Developer, the City, or a construction manager retained by a Developer or the City, for performance of Project Construction Work.

“Project Construction Work” shall mean construction work performed on the Project Site and in furtherance of the Public improvements. For purposes of this definition, “construction work” shall mean work for which a California state contractor’s license is required.

“Project Work Hours” shall mean hours of Project Construction Work performed on the Project Site.

“Project Site” shall mean parcels [define] as described in the LDDA .

“Registered Apprenticeship Program” shall mean a labor-management apprenticeship program that is currently registered with the State of California’s Division of Apprenticeship Standards.

“Resident” shall mean an individual domiciled in the City for at least seven days prior to the commencement of Project Construction Work, with “domiciled” as defined by Section 349(b) of the California Election Code on the date that such individual is hired or assigned to perform the applicable work.

“Unions” shall mean construction trades unions affiliated with the Alameda

County Building Trades Council and that have executed the City PLA.

### **III. EMPLOYMENT REQUIREMENTS.**

**A. Alternative Approaches.** Each Contractor shall either follow the Hiring and Referral Processes set forth in Section III.B, below, or satisfy the percentage requirement set forth in Section III.C, below.

#### **B. Hiring and Referral Processes.**

**1. Contractor Procedures.** Contractors shall undertake the following steps in the following order, in an effort to retain Residents and New Apprentices:

- a. **Step One:** Utilize the Contractor's discretion to assign to perform Project Work any current employees who are Residents, Identified Disadvantaged Workers, or New Apprentices;
- b. **Step Two:** If the Contractor utilizes a Union hiring hall to retain workers, utilize name call, rehire, or similar procedures in the relevant collective bargaining agreement to request particular Individuals who have been Identified as Residents, Disadvantaged Workers, Apprentices, or New Apprentices;
- c. **Step Three:** If the Contractor utilizes a Union hiring hall to retain workers, request that the hiring hall refer Residents, Apprentices, and/or New Apprentices;
- d. **Step Four:** If the above steps have not enabled satisfaction of requirements of this Policy related to hiring of Residents, Disadvantaged Workers, Apprentices, and New Apprentices, request referral of needed categories of workers from the Jobs Center;
- e. **Step Five:** Fairly consider workers referred by the Jobs Center within three business days of notification.

**2. Hiring Discretion.** Nothing in this Policy shall require that any Contractor hire any particular Individual; each Contractor shall have the sole discretion to hire any individual referred by the Jobs Center or any other person or entity.

**C. Percentage Requirements.** The requirements of this Section III(C) shall be satisfied if:

1. **Residents.** For each construction trade in which it performs for Project Construction Work, at least 50% of Project Work Hours are performed by Residents.

2. **Disadvantaged Workers** For each construction trade in which a Contractor performs for Project Construction Work, at least 25% of hours worked by Registered Apprentices are performed by Disadvantaged Workers.

3. **Twenty Percent Utilization Requirement.** For all Project Work Hours in aggregate, performed by any Contractor, Apprentice Work Hours shall constitute at least 20% of Project Work Hours.

4. **Credit for Hours Worked on Other Projects.** Construction work to be credited toward the requirements set forth above may be Project Work or work on other construction projects performed by the Contractor.

5. **Bonus for Retention of New Apprentices.** For every 1,000 hours beyond an initial 1000 hours that any one New Apprentice works for a Contractor (on the Project Construction Work or otherwise), such Contractor shall be entitled to 500 "bonus" hours that may be applied toward satisfaction of the percentage requirements set forth in Section III.C.1 and III.C.2.

**D. Liquidated Damages for Percentage Requirements.** If a Contractor fails to satisfy its the requirements of either Section III(B) or III(C), then as the sole and exclusive remedy therefor, such Contractor shall pay as liquidated damages an amount equal to \$20.00 per hour short of such requirements for Resident, Disadvantaged Worker and Apprenticeship Project Construction Hours, as applicable, in any case to the extent that such Contractor failed to achieve the applicable hour threshold. In addition, a Contractor shall not owe liquidated damages if it negotiates a Negotiated Compliance Plan with the City, and complies with that plan. Any liquidated damages collected by the City shall be used solely to support training, referral, monitoring, or technical assistance to advance the purposes of this Policy.

**E. New Apprentice Sponsorship Requirements for Prime Contractors.** In each calendar year, for each 20,000 Project Work Hours performed by a Prime Contractor and its subcontractors of any tier, the Prime Contractor or its subcontractors shall sponsor at least one New Apprentice and employ that apprentice for at least 1000 hours of construction work, on the Project Site and/or on other projects. A Contractor may satisfy this requirement by sponsoring more than one New Apprentice and employing those New Apprentices for a combined total of at least 1000 hours of construction work, on the Project Site and/or on other projects. The parties agree that

the City's sole and exclusive remedy for a Contractor's failure to meet this requirement will be specific performance.

**F. Funding Restrictions.** For any portions of the Project Construction Work on which, based on use of federal or state funds, a federal or state agency prohibits application of the requirements described above, the City will work collaboratively with the funding agency to adapt the above requirements to the restrictions imposed by the funding agency, advancing the goals of this Policy to the greatest extent permitted by the funding agency. In such cases, the Developers and the City shall meet and confer with regard to the adapted requirements agreed to by the City and the funding agency, and, with the Developer's consent, such requirements shall be applied to portions of the Project Construction Work in question, and shall automatically become terms of this Construction Jobs Policy, to which all Contractors agree. Developer's consent to application of such adapted terms shall not be withheld if such adapted terms are reasonable and generally advance the goals of this Policy. Such adapted terms shall be deemed to have Developer consent if no contrary position is delivered by Developer to the City within ten days of being furnished to the Developer.

**G. Contact Person.** At least two weeks prior to performance of Project Construction Work, each Contractor shall provide to the City contact information for a contact person for purposes of implementation of this Policy.

**H. Employment Needs Projections.**

**1. Prime Contractor.** Within one month after being awarded a prime contract any prime contractor shall project employment needs by Project Work Hours for performance of the contract, and provide such projection to the Jobs Center and the City. Such projection shall indicate number of workers, apprentices, and Project Work Hours needed by trade, at different stages of performance of the contract.

**2. Subcontractors.** Each Contractor shall, at least one month before commencing performance of Project Work, project employment needs for performance of the contract, and provide such projection to the Jobs Center and the City. Such projection shall indicate number of workers, apprentices, and Project Work Hours needed by trade, at different stages of performance of the contract.

**3. Compliance Plan.** Prior to commencement of construction, Prime Contractors may request participation from the City in negotiation of a proactive compliance plan with regard to requirements of this Policy. The City shall negotiate in good faith in an attempt to reach agreement on such a plan. Negotiated compliance plans may streamline and clarify responsibilities under this Policy, but may not conflict with this Policy. If such a plan is agreed to by Prime Contractors and the City, then compliance with the plan shall be compliance with the Policy.

I. **Determination of Status.** The applicable Contractor's determination of whether any individual is a Resident, Disadvantaged Worker, Apprentice or New Apprentice shall be binding in determining whether the requirements of this Policy have been satisfied, including the requirements of Sections III.B and III.C, provided that Developer or such Contractor obtains reasonable documentation demonstrating that such individual is a Resident or New Apprentice at the time that such individual is assigned or hired and Developer or such Contractor retains such documentation and makes it available to City for inspection at reasonable times (provided that City shall not request such information more than once every three (3) months). The City shall keep all documentation provided pursuant to this Section confidential, subject to applicable law. [Note: Contractor determination of Disadvantaged Worker status (versus Job Center determination.)]

J. **Worker Qualifications.** Unless a criminal background check is required by any of the Background Exceptions, a Contractor shall neither request from prospective workers, nor independently research prospective workers' history of involvement with the criminal justice system. Where a criminal background check is required by any Background Exception, subject to the requirements of such Background Exception the Contractor shall: (a) include the following statement in the position description: "This position is subject to a background check for any convictions related to its responsibilities and requirements. Only criminal histories (i) related to job requirements and responsibilities or (ii) related to violent acts will be considered and will not automatically disqualify a finalist candidate."; (b) undertake the background check only after the initial interview (or, if no interview is undertaken, after a candidate has received a conditional offer of employment for the position in question); (c) consider only criminal histories (i) related to job requirements and responsibilities or (ii) related to violent acts; and (d) take into account the age of the individual at the time of the offense, the time that has passed since the offense, the nature and seriousness of the offense, and any evidence of the individual's rehabilitation. Where a criminal background check is required by any Background Exception, subject to the requirements of such Background Exception the Contractor may state such requirement at the outset of the recruitment and hiring process. Unless a credit history is required by any of the Background Exceptions or Contractor's good faith determination that the position is of such sensitivity that individuals with particular types of credit histories are ineligible, a Contractor shall neither request from prospective workers, nor independently research prospective workers', credit histories.

#### **IV. MONITORING AND ENFORCEMENT.**

A. **Reporting Requirements.** Contractors shall submit monthly

certified payroll records to the City, with an indication as to which work hours were worked by Residents, Disadvantaged Workers, and New Apprentices. Each Contractor shall also provide other records or information requested by the City regarding fulfillment of responsibilities under this Policy. All such records and Information shall be considered public documents. Prior to such documents being released to the public, the City will redact identifying information from such documents to protect privacy of individuals.

**B. Project Labor Agreement.** As set forth in the LDDA, in order to protect the City's proprietary interest in prompt completion of Public Improvements, and to Implement this Policy, the City has or will have entered into a Project Labor Agreement (PLA) with the Building and Construction Trades Council of Alameda County covering the Public Improvements, with contractors and subcontractors to perform work under terms of such PLA, and such PLA to be consistent with and facilitate compliance with this Policy.

## **V. MISCELLANEOUS.**

**A. Subcontracts.** Each Contractor shall include compliance with this Policy as a material term of any subcontract under which Project Construction Work will be performed, with such subcontractor having all rights and responsibilities of a Contractor. If a Contractor enters into a subcontract in violation of this subsection A., then such Contractor shall be liable for any breach of this policy at any sub-tier level(s). If a Contractor complies with this subsection A, such Contractor shall not be liable for any breach of this policy at any sub-tier level.

**B. Assurance Regarding Preexisting Contracts.** Except with respect to [Insert provision regarding existing CCIG PLA for the Project], each entity that agrees to comply with this Policy warrants and represents that as of the date that a contract incorporating this Policy became effective, it has executed no contract pertaining to the Project or the Project Site that would have violated this Policy had it been executed after that date, or would interfere with fulfillment of or conflict with terms of this Policy. If, despite this assurance, an entity that has agreed to comply with this Policy has entered into a contract in violation of this Section V.B, then upon request from the City it shall either amend that contract to include the provisions required by this Policy, or terminate that contract.

**C. Third Party Beneficiaries.** Each entity that agrees to comply with this Policy agrees that, with regard to the terms of this Policy, the City is an intended third-party beneficiary of any contract that incorporates this Policy, and that the City shall

have the right to enforce terms of this Policy directly against entities that have agreed to comply with this Policy. There shall be no other third party beneficiaries. City shall not delegate any of its responsibilities to any third party, require the consent of any third party or act solely upon the direction of any third party in performing its obligations or exercising its rights under this Policy.

**D. Out-of-State Workers.** The requirements of Sections III.C.1 or III.C.2 shall not apply to Project Work Hours performed by residents of states other than the State of California. Notwithstanding the above, if, for any calendar year, the percentage of Project Work Hours worked by residents of states other than the State of California exceeds thirty percent, then for all subsequent years of work on the Project, the first sentence of this Section V.D. shall not apply, and the requirements of Sections III.C.1 or III.C.2 shall be applicable to all Project Work Hours.

**E. Material Term.** This Policy is a material term of any contract into which it is incorporated.

**F. Severability.** If any of the provisions of this Policy are held by a court of competent jurisdiction to be invalid, void, illegal, or unenforceable, that holding shall in no way affect, impair, or invalidate any of the other provisions of this Policy.

**G. Applicable Law and Compliance with Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California and the United States and shall be enforced only to the extent that it is consistent with those laws. Parties who have agreed to comply with this Policy agree: (i) that their understanding is that all terms of this Policy are consistent with federal, state, and local law; and (ii) that this Policy shall be reasonably interpreted so as to comply with any conflicting law.

**H. Successors and Assigns.** This Policy shall be binding upon and inure to the benefit of successors and assigns of any party to a contract incorporating this Policy. References in this Agreement to any entity shall be deemed to apply to any successor of that entity.

**I. Warranties and Representation.** Each party to a contract incorporating this Policy agrees not to either affirmatively or by way of defense seek to invalidate or otherwise avoid application of the terms of this Policy in any judicial action or arbitration proceeding; has had the opportunity to be consult counsel regarding terms of this Policy, and has agreed to such terms voluntarily as a condition of entering into a contract that incorporates this Policy. This Policy shall not be strictly construed against any entity, and any rule of construction that any ambiguities be resolved against the drafting party shall not apply to this Policy.



**Construction Jobs Policy**  
**Oakland Army Base Project**  
**Vertical Construction**

I. **Purpose.** This Construction Jobs Policy ("Policy") sets forth certain requirements regarding hiring and employment in Vertical Construction portions of the Oakland Army Base project. Contractors participating in Vertical Construction agree to comply with terms of this Policy as a condition of operation.

II. **Definitions.** As used in this Policy, the following capitalized terms shall have the following meanings. All definitions include both the singular and plural form. Capitalized terms that are not defined below are defined as in the Community Jobs Agreement.

"Apprentice" shall mean an individual who is enrolled in a Registered Apprenticeship Program.

"Apprentice Work Hours" shall mean Project Work Hours performed by Apprentices.

"Background Exceptions" shall mean: (i) law, regulation or policy of any applicable governmental or quasi-governmental body (including, but not limited to, those established under the Transportation Worker Identification Credential (TWIC) program and the Customs Trade Partnership Against Terrorism); (ii) the Contractor's good faith determination that the position is of such sensitivity that individuals with particular types of criminal convictions or histories are ineligible; and (iii) the Contractor's hiring policies that are uniformly applied in the State of California.

"Contractor" shall mean any entity employing individuals to perform Project Construction Work, including contractors and subcontractors of any tier, and any entity with a construction management contract for performance of Project Construction Work.

"Designated Preapprenticeship Program" shall mean a preapprenticeship program designated by the City for purposes contemplated in this Policy.

"Jobs Center" shall mean a referral center to be designated by the City as such for purposes of implementation of this Policy.

"LDDA" shall mean the Lease Disposition and Development Agreement entered into by the City and Developer respecting the development activities at the Oakland Army Base.

"New Apprentice" shall mean a Resident who is newly enrolled as a first period apprentice in a Registered Apprenticeship Program.

"Policy" shall mean this Construction Jobs Policy.

"Prime Contractor" shall mean a Contractor awarded a contract by a Developer, the City, or a construction manager retained by a Developer, for performance of Project Construction Work.

"Project Construction Work" shall mean construction work performed in on the Project Site, other than the Public Improvements.

"Project Work Hours" shall mean hours of Project Construction Work performed on the Project Site.

"Project Site" shall mean parcels [define] as described In Exhibit A of the ENA.

"Registered Apprenticeship Program" shall mean a labor-management apprenticeship program that is currently registered with the State of California's Division of Apprenticeship Standards.

"Resident" shall mean an individual domiciled in the City for at least seven days prior to the commencement of Project Construction Work, with "domiciled" as defined by Section 349(b) of the California Election Code.

"Unions" shall mean construction trades unions affiliated with the Alameda County Building Trades Council that have executed a Vertical PLA.

"Vertical Construction" shall mean Project Construction Work related to private site improvements and core and shell building improvements worth over \$1,000,000, and expressly excludes any tenant improvements. This threshold applies to prime contract awards, rather than to subcontract amounts.

"Vertical PLA" shall mean any project labor agreement governing Vertical Construction, and executed by the Alameda County Building Trades Council and a Developer.

### **III. EMPLOYMENT REQUIREMENTS.**

A. Alternative Approaches. Each Contractor shall either follow the Hiring and Referral Processes set forth in Section III.B, below, or satisfy the

percentage requirement set forth in **Section III.C**, below.

**B. Hiring and Referral Processes.**

**1. Contractor Procedures.** Contractors shall undertake the following steps in the following order, in an effort to retain Residents and New Apprentices:

- a. **Step One:** Assign to perform Project Work any current employees who are Residents or New Apprentices;
- b. **Step Two:** Utilize name call, rehire, or similar procedures in the relevant collective bargaining agreement to request particular individuals who have been identified, in cooperation with the Unions, as Residents or New Apprentices;
- c. **Step Three:** Request that the union hiring hall refer Residents and/or New Apprentices;
- d. **Step Four:** If the above steps have not enabled satisfaction of requirements of this Policy related to hiring of Residents, Disadvantaged Workers, and New Apprentices, request referral of needed categories of workers from the Jobs Center.
- e. **Step Five:** Fairly consider workers referred by the Jobs Center within three business days of notification.

**C. Percentage Requirements.**

**1. Residents.** The percentage requirement of this subsection III.C is satisfied if, for each construction trade in which a Contractor performs Project Construction Work, at least 50% of Project Work Hours are performed by Residents.

**2. Credit for Hours Worked on Other Projects.** Construction work to be credited toward the percentage requirement set forth above may be Project Work or work on other construction projects performed by the Contractor.

**3. Bonus for Retention of New Apprentices.** For every 1,000 hours beyond an initial 1000 hours that any one New Apprentice works for a Contractor, such contractor shall be entitled to 500 "bonus" hours that may be applied toward satisfaction of the percentage requirement set forth above.

**4. Exemption for Core Workers.** The percentage requirement set forth above, shall not apply to Project Work Hours performed by members of

a Contractor's core workforce. For a Contractor that is certified by the City of Oakland as a Very Small Local Business Enterprise, a Small Local Business Enterprise, or a Local Business Enterprise, a member of the core workforce is a worker who has appeared on payroll records for at least 750 hours of work in the 180 days prior to that Contractor's commencement of work on the contract in question. For any other Contractor, a member of the core workforce is a worker who has appeared on payroll records for at least 1500 hours of work in the 365 days prior to that Contractor's commencement of work on the contract in question.

**D. Apprentices.**

1. **New Apprentice Sponsorship Requirements for Prime Contractors.** In each calendar year, for each 20,000 Project Work Hours performed by a Prime Contractor and its subcontractors of any tier, the Prime Contractor and/or its subcontractors shall sponsor at least one New Apprentice and employ that apprentice for at least 1000 hours of construction work, on the Project Site and/or on other projects. A Prime Contractor may satisfy this requirement by sponsoring more than one New Apprentice for each 20,000 Project Work Hours, and employing those New Apprentices for a combined total of at least 1000 hours of construction work, on the Project Site and/or on other projects.

2. **Twenty Percent Utilization Requirement.** For all Project Work Hours in aggregate, performed by any Contractor, Apprentice Work Hours shall constitute at least 20% of Project Work Hours.

**E. Hiring Discretion.** Nothing in this Policy shall require that any Contractor hire any particular individual; each Contractor shall have the sole discretion to make hiring decisions with regard to any individual referred by the Jobs Center or any other person or entity.

**F. Funding Restrictions.** For any portions of the Project Construction Work on which, based on use of federal or state funds, a federal or state agency prohibits application of the requirements described above, the City will work collaboratively with the funding agency to adapt the above requirements to the restrictions imposed by the funding agency, advancing the goals of this Policy to the greatest extent permitted by the funding agency. In such cases, the Developers and the City shall meet and confer with regard to the adapted requirements agreed to by the City and the funding agency, and, with the Developer's consent, such requirements shall be applied to portions of the Project Construction Work in question, and shall automatically become terms of this Construction Jobs Policy, to which all Contractors agree. Developer's consent to application of such adapted terms shall not be withheld if such

adapted terms are reasonable and generally advance the goals of this Policy. Such adapted terms shall be deemed to have Developer consent if no contrary position is delivered by Developer to the City within ten days of being furnished to the Developer.

**G. Contact Person.** At least two weeks prior to performance of Project Construction Work, each Contractor shall provide to the City contact information for a contact person for purposes of implementation of this Policy.

**H. Employment Needs Projections.**

**1. Prime Contractor.** Within one month of being awarded a prime contract, any prime contractor shall project employment needs for performance of the contract, and provide such projection to the Jobs Center and the City. Such projection shall indicate number of workers and apprentices needed by trade, at different stages of performance of the contract.

**2. Subcontractors.** Each Contractor shall, at least one month before commencing performance of Project Work, project employment needs for performance of the contract, and provide such projection to the Jobs Center and the City. Such projection shall indicate number of workers and apprentices needed by trade, at different stages of performance of the contract.

**3. Compliance Plan.** Prior to commencement of construction, Prime Contractors may request participation from the City in negotiation of a proactive compliance plan with regard to requirements of this Policy. The City shall negotiate in good faith in an attempt to reach agreement on such a plan. Negotiated compliance plans may streamline and clarify responsibilities under this Policy, but may not conflict with this Policy. If such a plan is agreed to by Prime Contractors and the City, then compliance with the plan shall be compliance with the Policy.

**I. Worker Qualifications.** Unless a criminal background check is required by any of the Background Exceptions, a Contractor shall neither request from prospective workers, nor independently research prospective workers' history of involvement with the criminal justice system. Where a criminal background check is required by any Background Exception, subject to the requirements of such Background Exception the Contractor shall: (a) include the following statement in the position description: "This position is subject to a background check for any convictions related to its responsibilities and requirements. Only criminal histories (i) related to job requirements and responsibilities or (ii) related to violent acts will be considered and will not automatically disqualify a finalist candidate."; (b) undertake the background check only after the initial interview (or, if no interview is undertaken, after a candidate has received a conditional offer of employment for the position In

question); (c) consider only criminal histories (i) related to job requirements and responsibilities or (ii) related to violent acts; and (d) take into account the age of the individual at the time of the offense, the time that has passed since the offense, the nature and seriousness of the offense, and any evidence of the individual's rehabilitation. Where a criminal background check is required by any Background Exception, subject to the requirements of such Background Exception the Contractor may state such requirement at the outset of the recruitment and hiring process. Unless a credit history is required by any of the Background Exceptions or Contractor's good faith determination that the position is of such sensitivity that individuals with particular types of credit histories are ineligible, a Contractor shall neither request from prospective workers, nor independently research prospective workers', credit histories.

J. **Project Labor Agreement.** As set forth in the LDDA, the project developer has or will have entered into a Project Labor Agreement (PLA) with the Building and Construction Trades Council of Alameda County covering the vertical construction phases of this project, with all contractors and subcontractors to perform work under terms of such PLA, and such PLA to be consistent with and facilitate compliance with this Policy.

#### **IV. MISCELLANEOUS.**

A. **Subcontracts.** Each Contractor shall include compliance with this Policy as a material term of any subcontract under which Project Construction Work will be performed, with such subcontractor having all rights and responsibilities of a Contractor. If a Contractor enters into a subcontract in violation of this subsection A., then such Contractor shall be liable for any breach of this policy at any sub-tier level(s). If a Contractor complies with this subsection A, such Contractor shall not be liable for any breach of this policy at any sub-tier level.

B. **Assurance Regarding Preexisting Contracts.** Each entity that agrees to comply with this Policy warrants and represents that as of the date that a contract incorporating this Policy became effective, it has executed no contract pertaining to the Project or the Project Site that would have violated this Policy had it been executed after that date, or would interfere with fulfillment of or conflict with terms of this Policy. If, despite this assurance, an entity that has agreed to comply with this Policy has entered into a contract in violation of this Section V.B, then upon request from the City it shall either amend that contract to include the provisions required by this Policy, or terminate that contract.

C. **Third Party Beneficiaries.** Each entity that agrees to comply with this Policy agrees that, with regard to the terms of this Policy, the City is an Intended third-party beneficiary of any contract that incorporates this Policy, and

that the City shall have the right to enforce terms of this Policy directly against entities that have agreed to comply with this Policy. There shall be no other third party beneficiaries. City shall not delegate any of its responsibilities to any third party, require the consent of any third party or act solely upon the direction of any third party in performing its obligations or exercising its rights under this Policy.

**D. Reporting Requirements.** Contractors shall submit monthly certified payroll records to the City, with an indication as to which work hours were worked by Residents and New Apprentices. Each Contractor shall also provide other records or information requested by the City regarding fulfillment of responsibilities under this Policy. All such records and information shall be considered public documents. Prior to such documents being released to the public, the City will redact identifying information from such documents to protect privacy of individuals.

**E. Determination of Status.** A Contractor's determination of whether any individual is a Resident or New Apprentice shall be binding in determining whether the requirements of this Policy have been satisfied, including the requirements of Sections III.A and III.B, provided that such Contractor obtains reasonable written documentation demonstrating that such individual is a Resident or New Apprentice at the time that such individual is assigned or hired and such Contractor retains such documentation and makes it available to City for inspection at reasonable times.

**F. Remedies.**

**1. Liquidated Damages for Percentage Requirements.** If a Contractor fails to satisfy at least one of the alternative approaches set forth in Section III.A of this Policy, then as the sole and exclusive remedy therefor, such Contractor shall pay to the City liquidated damages an amount equal to \_\_\_\_\_ dollars for each hour short of the percentage requirement. A Contractor shall not owe liquidated damages if it negotiates a Negotiated Compliance Plan with the City, and complies with that plan. Any liquidated damages collected by the City shall be used solely to support training, referral, monitoring, or technical assistance to advance the purposes of this Policy.

**2. Specific Performance.** The City may bring an action for specific performance to ensure compliance with this Policy.

**3. No Breach of Certain Agreements.** In no case shall a Contractor's noncompliance with this Policy constitute a breach of the LDDA or any Ground Lease related to the Project Site.

**G. Out-of-State Workers.** The requirements of Sections III.A.1 or III.A.2 shall not apply to Project Work Hours performed by residents of states other than the State of California. Notwithstanding the above, if, for any calendar year, the percentage of Project Work Hours worked by residents of states other

than the State of California exceeds thirty percent, then for all subsequent years of work on the Project, the first sentence of this Section V.D. shall not apply, and the requirements of Sections III.A.1 or III.A.2 shall be applicable to all Project Work Hours.

**H. Material Term.** This Policy is a material term of any contract into which it is incorporated.

**I. Emergency.** [Emergency provision to be negotiated to ensure safety or material damage to property.]

**E. Severability.** If any of the provisions of this Policy are held by a court of competent jurisdiction to be invalid, void, illegal, or unenforceable, that holding shall in no way affect, impair, or invalidate any of the other provisions of this Policy.

**F. Applicable Law and Compliance with Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California and the United States and shall be enforced only to the extent that it is consistent with those laws. Parties who have agreed to comply with this Policy agree: (i) that their understanding is that all terms of this Policy are consistent with federal, state, and local law; and (ii) that this Policy shall be reasonably interpreted so as to comply with any conflicting law.

**G. Successors and Assigns.** This Policy shall be binding upon and inure to the benefit of successors and assigns of any party to a contract incorporating this Policy. References in this Agreement to any entity shall be deemed to apply to any successor of that entity.

**H. Warranties and Representation.** Each party to a contract incorporating this Policy agrees not to either affirmatively or by way of defense seek to invalidate or otherwise avoid application of the terms of this Policy in any judicial action or arbitration proceeding; has had the opportunity to be consult counsel regarding terms of this Policy, and has agreed to such terms voluntarily as a condition of entering into a contract that incorporates this Policy. This Policy shall not be strictly construed against any entity, and any rule of construction that any ambiguities be resolved against the drafting party shall not apply to this Policy.



EXHIBIT

Operations Jobs Policy  
Oakland Army Base Project  
West Gateway

I. Purpose. This Operations Jobs Policy ("Policy") sets forth certain requirements regarding hiring and employment in operation of portions of the West Gateway, pursuant to the LDDA. Employers in the West Gateway portions of the Oakland Army Base project agree to comply with terms of this Policy as a condition of entry into any Agreement to which this Policy is attached. This Policy does not cover construction hiring or employment.

II. Definitions. As used in this Policy, the following capitalized terms shall have the following meanings. All definitions include both the singular and plural form. Capitalized terms that are not defined below are defined as in the Community Jobs Agreement.

"Background Exceptions" shall mean: (i) law, regulation or policy of any applicable governmental or quasi-governmental body (including, but not limited to, those established under the Transportation Worker Identification Credential (TWIC) program and the Customs Trade Partnership Against Terrorism); or (ii) the Contractor's good faith determination that the position is of such sensitivity that individuals with particular types of criminal convictions or histories are ineligible.

"Employer" shall mean any entity employing at least two full time equivalent individuals to perform On-Site Jobs. For example, this threshold would be satisfied by employment of either two full-time workers or four half-time workers to perform On-Site Jobs.

"Disadvantaged Worker" shall mean a Resident meeting eligibility criteria for California Enterprise Zone Hiring Credits, as set forth in Cal. Rev. & Tax Code Sec. 23622.7 (4)(A) on the date that such individual is hired or assigned to perform the applicable work.

"Jobs Center" shall mean a referral center to be designated by the City as such for purposes of implementation of this Policy.

"Large Employer" shall mean any entity leasing space within the Project Site and employing at least fifty (50) full time equivalent individuals to perform On-Site Jobs, or performing services pursuant to one or more service contracts within the Project Site

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and employment at least fifty (50) full time equivalent individuals to perform On-Site Jobs.

“LDDA” shall mean the Lease Disposition and Development Agreement entered into by City and Developer respecting the development of the Oakland Army Base.

“On-Site Job” shall mean any job for which at least fifty percent of the work hours are performed on the Project Site.

“Policy” shall mean this Operations Jobs Policy.

“Project Site” shall mean the West Gateway as described in Exhibit A of the LDDA.

“Resident” shall mean an individual domiciled in the City for at least seven days prior to having been retained by an Employer under this policy, with “domiciled” as defined by Section 349(b) of the California Election Code on the date that such individual is hired or assigned to perform the applicable work.

### III. Local Hiring.

#### A. Hiring Process.

**1. Long-Range Planning.** Prior to a Large Employer commencing operations in the Project and within thirty (30) days of each January 1 thereafter, each Large Employer shall provide to the City and the Jobs Center information regarding such Large Employers’ good faith estimate of the number and type of On-Site Jobs that such Large Employer reasonably believes it will need to fill during the applicable calendar year and the basic qualifications anticipated to be necessary for such On-Site Jobs.

#### **2. Initial Hiring Process.**

**a. Notification of Job Opportunities.** At least four weeks prior to an Employer commencing operations in the Project, each Large Employer shall notify the Jobs Center of available non-management 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, required background check, etc.). Job qualifications shall be limited to skills directly related to performance of job duties.

b. **Hiring.** The Large Employer shall use normal hiring practices, including interviews, to consider all Residents and Disadvantaged Workers referred by the Jobs Center and meeting the qualifications described in the referral request during the four week period after initial notification to the Jobs Center, or until all open positions are filled, whichever is sooner. The Large Employer shall make best efforts to fill all non-management available positions with Residents and Disadvantaged Workers referred by the Jobs Center. If at the conclusion of the four-week period the Large Employer has been unable to fill all available non-management positions with Residents and Disadvantaged Workers referred by the Jobs Center, the Large Employer may use other recruitment methods.

c. **Pre-opening Transfer.** Provisions of Section III.A.1 are not applicable to a Large Employer that is closing a facility located outside Oakland and is transferring the majority of its staff from the previous facility to a new facility within Oakland. Upon commencing operation in the new facility, such a Large Employer is covered by subsection 3, below. Provisions of this Section III.A.2 are applicable to Large Employers who hire for positions in facilities located outside Oakland with the intention of transferring such hires to a new facility at the Project Site upon commencement of operations for the new facility. All such hires shall be made under the provisions of this subsection.

d. **Jobs Center Feedback.** Following the completion of the initial hiring process set forth in this Section, at the request of the City a Large Employer shall meet and confer with and provide feedback to the City Administrator and the Jobs Center to provide feedback on the initial hiring process so as to ensure that the Jobs Center may meet the future employment needs of the Employer and any future Employer and ensure the maximum hiring of Residents and Disadvantaged Workers feasible given the opportunities to be created by the Project.

### **3. Ongoing hiring process.**

a. **Notification of job opportunities.** After a Large Employer has commenced operations in the Project, it shall continue to use the Jobs Center as a resource to fill positions that become available. When a Large Employer has positions available, the Employer shall notify the Jobs Center 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, required background check, etc.). Job qualifications shall be limited to skills directly related to performance of job duties.

b. **Hiring.** The Large Employer shall then use standard hiring practices, including interviews, to consider all Residents and Disadvantaged Workers referred by the Jobs Center and meeting the qualifications described in the referral request during a five-day period after initial notification, or until all open positions are filled, whichever is sooner. The Large Employer shall make good faith efforts to fill all available positions with Residents and Disadvantaged Workers referred through the Jobs Center. If at the conclusion of the five day period the Large Employer has been unable to fill all available positions with Residents and Disadvantaged Workers referred by the Jobs Center, the Large Employer may use other recruitment methods.

**4. Nondiscrimination.** Employers shall not discriminate against Residents or Disadvantaged Workers on the basis of their Resident status, status as a Disadvantaged Worker, or on any prohibited basis in any terms and conditions of employment, including retention, promotions, job duties, shift assignments, and training opportunities.

**5. Priorities.** Each Large Employer shall apply the following priorities in hiring Residents:

- i. **First Priority:** Residents of zip codes \_\_\_\_\_;  
[insert zip codes that comprise West Oakland and city council District 3]
- ii. **Second Priority:** Residents of the Oakland Enterprise Zone  
[need zip codes];
- iii. **Third Priority:** other Residents of the City of Oakland.

**6. Worker Qualifications.** Unless a criminal background check is required by any of the Background Exceptions, a Employer shall neither request from prospective workers, nor independently research prospective workers' history of involvement with the criminal justice system. Where a criminal background check is required by any Background Exception, subject to the requirements of such Background Exception the Employer shall: (a) include the following statement in the position description: "This position is subject to a background check for any convictions related to its responsibilities and requirements. Only criminal histories (i) related to job requirements and responsibilities or (ii) related to violent acts will be considered and will not automatically disqualify a finalist candidate."; (b) undertake the background check only after the initial interview (or, if no interview is undertaken, after a candidate has received a conditional offer of employment for the position in question); (c) consider only criminal histories (i) related to job requirements and responsibilities or (ii) related to

violent acts; and (d) take into account the age of the Individual at the time of the offense, the time that has passed since the offense, the nature and seriousness of the offense, and any evidence of the individual's rehabilitation. Where a criminal background check is required by any Background Exception, subject to the requirements of such Background Exception the Employer may state such requirement at the outset of the recruitment and hiring process. Unless a credit history is required by any of the Background Exceptions or Employer's good faith determination that the position is of such sensitivity that individuals with particular types of credit histories are ineligible, a Employer shall neither request from prospective workers, nor independently research prospective workers', credit histories.

**B. Monitoring and Enforcement.**

**1. Safe Harbor Provision.** Any Large Employer for whom at least fifty percent of workers hired for On-Site Jobs during a particular year were Residents, and for whom at least twenty-five percent of workers hired for On-Site Jobs during a particular year were Disadvantaged Workers, shall be deemed to be In compliance with Sections III.A.2, and III.A.3 of this Policy, for all hiring during that year.

**2. Credit for Hiring at Other Locations.** Large Employers shall receive credit toward achievement of the Safe Harbor threshold set forth in Section III.B.1 for any hires of Residents or Disadvantaged Workers to perform jobs at other locations, so long as such Residents or Disadvantaged Workers are paid are compensated in an amount equal to or in excess of that set forth In the Oakland Living Wage Ordinance (Oakland Municipal Code Section 2.28.010 et seq.)

**3. Retention Incentive.** For every 2,000 hours that any one Resident or Disadvantaged Worker hired pursuant to this Policy works for a Large Employer, that Large Employer shall be entitled to a "bonus" hiring credit towards achievement of the Safe Harbor threshold set forth in Section III.B.1, above.

**4. Liquidated Damages.** Each Large Employer agrees that, if it has not complied with the hiring process requirements of Sections III.A.2 and III.A.3, above, during a particular year, then as the sole and exclusive remedy therefor, it shall pay to the City liquidated damages in the amount of \$5,000.00 per job short of the Safe Harbor threshold set forth in Section III.B.1, above. A Large Employer shall not owe liquidated damages if it negotiates a Negotiated Compliance Plan with the City, and complies with that plan. Any liquidated damages collected by the City shall be used solely to support training, referral, monitoring, or technical assistance to advance the purposes of this Policy.

**5. Compliance Records.** Each Employer shall make available to the City on an annual basis or upon request records sufficient to determine compliance with this Policy. The City shall keep all documentation provided pursuant to this Section confidential, subject to applicable law.

#### IV. Temporary Employment Agencies.

A. Temporary Employment Agencies. Large Employers may enter into a contract or other arrangement to supply workers for temporary employment in On-Site Jobs, provided that without the approval of the City Administrator in his or her reasonable discretion (i) temporary employment of any individual worker will last one hundred twenty (120) days or less per calendar year and (ii) no more than forty percent (40%) of the total number of days worked by all individuals performing On-Site Jobs on behalf of such Large employer shall be performed by temporary workers. The City Administrator shall reasonably consider any request for such approval by the applicable Large Employer if such Large Employer reasonably demonstrates that compliance with this Section IV.A could create significant economic or operational hardship for the Large Employer.

#### V. Living Wages

A. Compliance with Ordinance. Each Employer shall provide compensation required of covered employers under, and shall otherwise comply with, the Oakland Living Wage Ordinance. (Oakland Municipal Code Section 2.28.010 et seq.)

#### VI. Miscellaneous.

A. Contact Person. Within 30 days of having entered into any contract related to operation on the Project Site, each Employer will designate a contact person for all matters related to implementation of this Policy. The Employer shall forward the name, address and phone number of the designated individual to the City.

B. Determination of Status. The applicable Employer's determination of whether any individual is a Resident or Disadvantaged Worker shall be binding in determining whether the requirements of this Policy have been satisfied, including the requirements of Section III.B(1), provided that such Employer obtains reasonable documentation demonstrating that such individual is a Resident or New Apprentice at the time that such individual is assigned or hired such Employer retains such documentation and makes it available to City for inspection at reasonable times. The

City shall keep all documentation provided pursuant to this Section confidential, subject to applicable law. [Note: Contractor determination of Disadvantaged Worker status (versus Job Center determination).]

C. **Subcontracts.** Each Employer shall include compliance with this Policy as a material term of any subcontract or other agreement under which any On-Site Jobs may be performed. If an Employer enters into a contract in violation of this Section VII.C, then upon request from the Oversight Committee or the City it shall either amend that contract to include all requirements of this Policy, or terminate that contract.

D. **Assurance Regarding Preexisting Contracts.** Each entity that agrees to comply with this Policy warrants and represents that as of the date that a contract incorporating this Policy became effective, it has executed no contract pertaining to the Project or the Project Site that would have violated this Policy had it been executed after that date, or would interfere with fulfillment of or conflict with terms of this Policy. If, despite this assurance, an entity that has agreed to comply with this Policy has entered into a contract in violation of this Section VI.C, then upon request from either the Oversight Committee or the City it shall either amend that contract to include the provisions required by this Policy, or terminate that contract.

E. **Funding Restrictions.** If a federal or state agency prohibits application of the requirements of this Policy based on the use of federal or state funds, the City will work collaboratively with the applicable agency to adapt the requirements of this Policy to the restrictions imposed by the agency, advancing the goals of this Policy to the greatest extent permitted by the funding agency. In such cases, Developer and the City shall meet and confer with regard to the adapted requirements agreed to by the City and the agency, and, with the Developer's consent, such requirements shall be applied, and shall become terms of this Policy with respect to the applicable portion of the Project. Developer's consent to application of such adapted terms shall not be withheld if such adapted terms are reasonable, generally advance the goals of this Policy and do not create a material adverse economic impact on Employers. Such adapted terms shall be deemed to have Developer consent if no contrary position is delivered by the Developer to the City within ten (10) business days of being furnished to the Developer. If such adapted terms are consented to by Developer, the adapted terms shall be applied to portions of the Project in question, and shall automatically become terms of this Policy, to which Employers agree. If no Developer consent is obtained in accordance with this Section VI.E, then the parties shall continue to meet and confer in a good faith attempt to resolve the issue. Portions of this Policy prohibited by a funding source shall not apply without Developer's consent as described in this paragraph.

F. **Third Party Beneficiaries.** Each entity that agrees to comply with this Policy agrees that, with regard to the terms of this Policy, the City is an intended third-party beneficiary of any contract that incorporates this Policy, and that the City has the

right to enforce terms of this Policy directly against entities that have agreed to comply with this Policy.

**G. Retaliation Prohibited.** An Employer shall not discharge, reduce the compensation of, or otherwise discriminate against any person for making a complaint, participating in any proceedings, using any civil remedies to enforce his or her rights, or otherwise asserting his or her rights under this Policy.

**H. Waiver.** Any waiver by any worker hired for the performance of an On-Site Job of any of the provisions of this Policy shall be deemed contrary to public policy and shall be void and unenforceable, except that workers hired for the performance of On-Site Jobs shall not be barred from entering into a written valid collective bargaining agreement waiving a provision of this Policy if such waiver is set forth in clear and unambiguous terms. Any request to an individual by an Employer to waive his or her rights under this Policy shall constitute a violation of this Policy. [Note: Subject to negotiation.]

**i. Material Term.** This Policy is a material term of any contract into which it is incorporated.

**J. Severability.** If any of the provisions of this Policy are held by a court of competent jurisdiction to be invalid, void, illegal, or unenforceable, that holding shall in no way affect, impair, or invalidate any of the other provisions of this Policy.

**K. Applicable Law and Compliance with Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California and the United States and shall be enforced only to the extent that it is consistent with those laws. Parties who have agreed to comply with this Policy agree: (i) that their understanding is that all terms of this Policy are consistent with federal, state, and local law; and (ii) that this Policy shall be reasonably interpreted so as to comply with any conflicting law.

**L. Successors and Assigns.** This Policy shall be binding upon and inure to the benefit of successors and assigns of any party to a contract incorporating this Policy. References in this Agreement to any entity shall be deemed to apply to any successor of that entity.

**M. Warranties and Representation.** Each party to a contract incorporating this Policy agrees not to either affirmatively or by way of defense seek to invalidate or otherwise avoid application of the terms of this Policy in any judicial action or arbitration proceeding; has had the opportunity to be consulted regarding terms of this Policy, and has agreed to such terms voluntarily as a condition of entering into a contract that incorporates this Policy. This Policy shall not be strictly construed against



any entity, and any rule of construction that any ambiguities be resolved against the drafting party shall not apply to this Policy.

**N. Collective Bargaining Agreement(s).** To the extent that Sections IV or V conflict with any collective bargaining agreement(s) to which Employer is a party, the terms of such collective bargaining agreement(s) shall take precedence, and Sections IV or V of this Policy shall not apply to the extent of such conflict.

**Operations Jobs Policy**  
**Oakland Army Base Project**  
**Prologis Portion**

I. **Purpose.** This Operations Jobs Policy ("Policy") sets forth certain requirements regarding hiring and employment in operation of portions of the Project developed by Prologis, pursuant to the LDDA. Employers in Prologis portions of the Oakland Army Base project agree to comply with terms of this Policy as a condition of entry into any Agreement to which this Policy is attached. This Policy does not cover construction hiring or employment.

II. **Definitions.** As used in this Policy, the following capitalized terms shall have the following meanings. All definitions include both the singular and plural form. Capitalized terms that are not defined below are defined as in the Community Jobs Agreement.

"Employer" shall mean any entity employing at least two individuals to perform On-Site Jobs.

"Background Exceptions" shall mean: (i) law, regulation or policy of any applicable governmental or quasi-governmental body (including, but not limited to, those established under the Transportation Worker Identification Credential (TWIC) program and the Customs Trade Partnership Against Terrorism); (ii) the Employer's good faith determination that the position is of such sensitivity that individuals with particular types of criminal convictions or histories are ineligible; and (iii) the Employer's hiring policies that are uniformly applied in the State of California.

"Disadvantaged Worker" shall mean a Resident meeting eligibility criteria for California Enterprise Zone Hiring Credits, as set forth in Cal. Rev. & Tax Code Sec. 23622.7 (4)(A).

"Jobs Center" shall mean a referral center to be designated by the City as such for purposes of implementation of this Policy.

"Large Employer" shall mean any entity leasing space within the Project Site and employing at least 50 individuals to perform On-Site Jobs, or performing services pursuant to one or more service contracts within the Project Site and employment at least 50 individuals to perform On-Site Jobs.

"LDDA" shall mean the Lease Disposition and Development Agreement or similar agreement entered into by city and Developer respecting the development of the Oakland Army Base project.

"On-Site Job" shall mean any job for which at least fifty percent of the work hours are performed on the Project Site.

"Policy" shall mean this Operations Jobs Policy.

"Project Site" shall mean parcels \_\_\_\_\_ as described in Exhibit A of the LDDA. [limit to Prologis portions]

"Resident" shall mean an individual domiciled in the City for at least seven days prior to having been retained by an Employer under this policy, with "domiciled" as defined by Section 349(b) of the California Election Code.

### III. Local Hiring.

#### A. Hiring Process.

1. **Long-Range Planning.** As soon as the information is available, each Large Employer shall provide to the City and the Jobs Center information regarding the approximate number and type of jobs that will need to be filled and the basic qualifications necessary.

#### 2. Initial Hiring Process.

a. **Notification of Job Opportunities.** At least four weeks prior to an Employer commencing operations in the Project, each Large Employer shall notify the Jobs Center 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, required background check, etc.). Job qualifications shall be limited to skills directly related to performance of job duties.

b. **Hiring.** The Large Employer shall use normal hiring practices, including interviews, to consider all Residents and Disadvantaged Workers referred by the Jobs Center and meeting the qualifications described in the referral request during the four week period after initial notification to the Jobs Center, or until all open positions are filled, whichever is sooner. The Large Employer shall make best efforts to fill all available positions with Residents and Disadvantaged Workers referred by the Jobs Center. If at the conclusion of the four-week period the Large Employer has

been unable to fill all available positions with Residents and Disadvantaged Workers referred by the Jobs Center, the Large Employer may use other recruitment methods, although the Employer shall continue to make best efforts to hire Residents and Disadvantaged Workers later referred by the Jobs Center.

c. **Pre-opening Transfer.** Provisions of Section III.A.1 are not applicable to a Large Employer that is closing a facility located outside Oakland and is transferring the majority of its staff from the previous facility to a new facility within Oakland. Upon commencing operation in the new facility, such a Large Employer is covered by subsection 3, below. Provisions of this Section III.A.2 are applicable to Large Employers who hire for positions in facilities located outside Oakland with the intention of transferring such hires to a new facility at the Project Site upon commencement of operations for the new facility. All such hires shall be made under the provisions of this subsection.

d. **Jobs Center Feedback.** Following the completion of the initial hiring process set forth in this Section, at the request of the City a Large Employer shall meet and confer with and provide feedback to the City Administrator and the Jobs Center to provide feedback on the initial hiring process so as to ensure that the Jobs Center may meet the future employment needs of the Employer and any future Employer and ensure the maximum hiring of Residents and Disadvantaged Workers feasible given the opportunities to be created by the Project.

### **3. Ongoing hiring process.**

a. **Notification of job opportunities.** After a Large Employer has commenced operations in the Project, it shall continue to use the Jobs Center as a resource to fill positions that become available. When a Large Employer has positions available, the Employer shall notify the Jobs Center 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, required background check, etc.). Job qualifications shall be limited to skills directly related to performance of job duties.

b. **Hiring.** The Large Employer shall then use standard hiring practices, including interviews, to consider all Residents and Disadvantaged Workers referred by the Jobs Center and meeting the qualifications described in the referral request during a five-day period after initial notification, or until all open positions are filled, whichever is sooner. The Large Employer shall make good faith efforts to fill all available positions with Residents and Disadvantaged Workers referred through the Jobs Center. If at the conclusion of the five day period the Large Employer has been unable to fill all available positions with Residents and Disadvantaged Workers referred by the Jobs Center, the Large Employer may use other recruitment methods, although

the Large Employer shall continue to make good faith efforts to hire Residents and Disadvantaged Workers later referred through the Jobs Center.

**4. Nondiscrimination.** Employers shall not discriminate against Residents or Disadvantaged Workers on the basis of their Resident status, status as a Disadvantaged Worker, or on any prohibited basis in any terms and conditions of employment, including retention, promotions, job duties, shift assignments, and training opportunities.

**5. Priorities.** Each Large Employer shall apply the following priorities in hiring Residents:

- i. First Priority: Residents of zip codes \_\_\_\_\_;  
[insert zip codes that comprise West Oakland and city council District 3]
- ii. Second Priority: Residents of the Oakland Enterprise Zone;
- iii. Third Priority: other Residents of the City of Oakland.

**6. Worker Qualifications.** Unless a criminal background check is required by any of the Background Exceptions, an Employer shall neither request from prospective workers, nor independently research prospective workers' history of involvement with the criminal justice system. Where a criminal background check is required by any Background Exception, subject to the requirements of such Background Exception the Employer shall: (a) include the following statement in the position description: "This position is subject to a background check for any convictions related to its responsibilities and requirements. Only criminal histories (i) related to job requirements and responsibilities or (ii) related to violent acts will be considered and will not automatically disqualify a finalist candidate."; (b) undertake the background check only after the initial interview (or, if no interview is undertaken, after a candidate has received a conditional offer of employment for the position in question); (c) consider only criminal histories (i) related to job requirements and responsibilities or (ii) related to violent acts; and (d) take into account the age of the individual at the time of the offense, the time that has passed since the offense, the nature and seriousness of the offense, and any evidence of the individual's rehabilitation. Where a criminal background check is required by any Background Exception, subject to the requirements of such Background Exception the Employer may state such requirement at the outset of the recruitment and hiring process. Unless a credit history is required by any of the Background Exceptions or Employers' good faith determination that the position is of such sensitivity that individuals with particular types of credit histories are ineligible, an Employer shall neither request from prospective workers, nor independently research prospective workers', credit histories.

**7. Management Employees.** [provision re management employees under negotiation]

**B. Monitoring and Enforcement.**

**1. Safe Harbor Provision.** Any Large Employer for whom at least fifty percent of workers hired for On-Site Jobs during a particular year were Residents, and for whom at least twenty-five percent of workers hired for On-Site Jobs during a particular year were Disadvantaged Workers, shall be deemed to be in compliance with Sections III.A.2, and III.A.3 of this Policy, for all hiring during that year.

**2. Credit for Hiring at Other Locations.** Large Employers shall receive credit toward achievement of the Safe Harbor threshold set forth in Section III.B.1 for any hires of Residents or Disadvantaged Workers to perform jobs at other locations, so long as such Residents or Disadvantaged Workers are compensated in an amount equal to or in excess of that set forth in the Oakland Living Wage Ordinance (Oakland Municipal Code Section 2.28.010 et seq.)

**3. Retention Incentive.** For every 2,000 hours that any one Resident or Disadvantaged Worker hired pursuant to this Policy works for a Large Employer, that Large Employer shall be entitled to a "bonus" hiring credit towards achievement of the Safe Harbor threshold set forth in Section III.B.1, above.

**4. Liquidated Damages.** Each Large Employer agrees that, if it has not complied with the hiring process requirements of Sections III.A.2 and III.A.3, above, during a particular year, it shall pay to the City liquidated damages in the amount of \$5,000.00 per job short of the Safe Harbor threshold set forth in Section III.B.1, above. A Large Employer shall not owe liquidated damages if it negotiates a Negotiated Compliance Plan with the City, and complies with that plan. Any liquidated damages collected by the City shall be used solely to support training, referral, monitoring, or technical assistance to advance the purposes of this Policy.

**5. Compliance Records.** Each Employer shall make available to the City on an annual basis or upon request records sufficient to determine compliance with this Policy. An Employer may redact names and social security numbers from requested records in order to protect the privacy of individual employees.

**6. Additional Enforcement Mechanisms.** Assessment of liquidated damages as described herein does not derogate other contractual remedies the City may have for failure to comply with this Policy. Employers who repeatedly violate this Policy may be debarred from future City contracts.

#### IV. Temporary Employment Agencies.

A. Large Employers may enter into a contract or other arrangement to supply workers for temporary employment in On-Site Jobs, provided that without the approval of the City Administrator in his or her reasonable discretion (I) temporary employment of any individual worker will last one hundred twenty (120) days or less per calendar year and (II) no more than forty percent (40%) of the total number of days worked by all individuals performing On-Site Jobs on behalf of such Large Employer shall be performed by temporary workers. The City Administrator shall reasonably consider any request for such approval by the applicable Large Employer if such Large Employer reasonably demonstrates that compliance with this Section IV.A may reasonably be expected to create significant economic or operational hardship for the Large Employer.

#### V. Living Wages

A. Compliance with Ordinance. Each Employer shall provide compensation required of covered employers under, and shall otherwise comply with, the Oakland Living Wage Ordinance. (Oakland Municipal Code Section 2.28.010 et seq.)

#### VI. Miscellaneous.

A. Contact Person. Within 30 days of having entered into any contract related to operation on the Project Site, each Employer will designate a contact person for all matters related to implementation of this Policy. The Employer shall forward the name, address and phone number of the designated individual to the City.

B. Determination of Residency Status. An Employer's determination of whether any individual is a Resident or New Apprentice shall be binding in determining whether the requirements of this Policy have been satisfied, including the requirements of Sections III.A and III.B, provided that such Employer obtains reasonable written documentation demonstrating that such individual is a Resident or New Apprentice at the time that such individual is assigned or hired and such Employer retains such documentation and makes it available to City for inspection at reasonable times.

C. Determination of Disadvantaged Status. [Contractor determination of disadvantaged status vs Jobs Center determination is subject to negotiation]

D. Subcontracts. Each Employer shall include compliance with this Policy as a material term of any subcontract or other agreement under which any On-Site Jobs may be performed. If an Employer enters into a contract in violation of this Section

VLB., then upon request from the Oversight Committee or the City it shall either amend that contract to include all requirements of this Policy, or terminate that contract.

**E. Assurance Regarding Preexisting Contracts.** Each entity that agrees to comply with this Policy warrants and represents that as of the date that a contract incorporating this Policy became effective, it has executed no contract pertaining to the Project or the Project Site that would have violated this Policy had it been executed after that date, or would interfere with fulfillment of or conflict with terms of this Policy. If, despite this assurance, an entity that has agreed to comply with this Policy has entered into a contract in violation of this Section VI.C, then upon request from either the Oversight Committee or the City it shall either amend that contract to include the provisions required by this Policy, or terminate that contract.

**F. Funding Restrictions.** For any portions of the Project on which, based on use of federal or state funds, a federal or state agency prohibits application of the requirements described above, the City will work collaboratively with the funding agency to adapt the above requirements to the restrictions imposed by the funding agency, advancing the goals of this Policy to the greatest extent permitted by the funding agency. In such cases, the adapted requirements agreed to by the City and the funding agency shall be applied to portions of the Project in question, and shall automatically become terms of this Policy, to which all Employers agree.

**G. Third Party Beneficiaries.** Each entity that agrees to comply with this Policy agrees that, with regard to the terms of this Policy, the City is an intended third-party beneficiary of any contract that incorporates this Policy, and that the City has the right to enforce terms of this Policy directly against entities that have agreed to comply with this Policy. There shall be no other third party beneficiaries. City shall not delegate any of its responsibilities to any third party, require the consent of any third party or act solely upon the direction of any third party in performing its obligations or exercising its rights under this Policy.

**H. Retaliation Prohibited.** An Employer shall not discharge, reduce the compensation of, or otherwise discriminate against any person for making a complaint to the City or participating in any proceedings related to enforcement of this Policy against the Employer.

**I. Material Term.** This Policy is a material term of any contract into which it is incorporated.

**J. Severability.** If any of the provisions of this Policy are held by a court of competent jurisdiction to be invalid, void, illegal, or unenforceable, that holding shall in no way affect, impair, or invalidate any of the other provisions of this Policy.

**K. Applicable Law and Compliance with Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California and



the United States and shall be enforced only to the extent that it is consistent with those laws. Parties who have agreed to comply with this Policy agree: (i) that their understanding is that all terms of this Policy are consistent with federal, state, and local law; and (ii) that this Policy shall be reasonably interpreted so as to comply with any conflicting law.

**L. Successors and Assigns.** This Policy shall be binding upon and inure to the benefit of successors and assigns of any party to a contract incorporating this Policy. References in this Agreement to any entity shall be deemed to apply to any successor of that entity.

**M. Collective Bargaining Agreement Supersession.** [provision to be negotiated]

**N. Warranties and Representation.** Each party to a contract incorporating this Policy agrees not to either affirmatively or by way of defense seek to invalidate or otherwise avoid application of the terms of this Policy in any judicial action or arbitration proceeding; has had the opportunity to be consult counsel regarding terms of this Policy, and has agreed to such terms voluntarily as a condition of entering into a contract that incorporates this Policy. This Policy shall not be strictly construed against any entity, and any rule of construction that any ambiguities be resolved against the drafting party shall not apply to this Policy.

**O. Emergency.** [Emergency provision to be negotiated to ensure safety or material damage to property.]

**P. Hiring Discretion.** Nothing in this Policy shall require that any Contractor hire any particular individual; each Contractor shall have the sole discretion to hire any individual referred by the Jobs Center or any other person or entity.

**COOPERATION AGREEMENT AMONG THE CITY OF OAKLAND, ALAMEDA  
COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL, ALAMEDA  
COUNTY CENTRAL LABOR COUNCIL, AND SPECIFIED OAKLAND  
COMMUNITY-BASED ORGANIZATIONS REGARDING THE OAKLAND ARMY  
BASE PROJECT**

This Cooperation Agreement (“Agreement”) dated this \_\_ day of June, 2012 (“Effective Date”), is by and among the CITY OF OAKLAND, a California municipal corporation (“City”); the ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL (“Trades Council”); the ALAMEDA COUNTY CENTRAL LABOR COUNCIL, AFL-CIO (“CLC”); [PLACEHOLDER FOR COMMUNITY ORGANIZATIONS AND LABOR UNIONS] (together, the “Parties”).

**RECITALS**

A. The City is working to advance development of the former Oakland Army Base site, and has entered into an Exclusive Negotiating Agreement (“ENA”) with developers Prologis and California Capital and Investment Group (“Developers”) for the development of the project on the Oakland Army Base that is the subject of the ENA.

B. The parties to this Agreement other than the City (together, “Community Parties”) wish to secure the commitment of the City as to the number and nature of jobs created by the construction and operations phases of the Army Base project(s), and as to workforce development in West Oakland.

C. The City wishes to provide a strong slate of benefits and opportunities for West Oakland and the wider Oakland community by way of the Project, and it wishes to secure the support of the Community Parties for the Project.

The Parties hereby agree as follows:

**I. DEFINITIONS**

As used in this Agreement, the following capitalized terms will have the following meanings. All definitions include both the singular and plural form.

“ENA” will mean the Exclusive Negotiating Agreement dated January 22, 2010 by and between the City of Oakland Redevelopment Agency and Developers, and relating to development of Agency-owned land within the former Oakland Army Base, attached to this Agreement as Attachment C.

“Agreement” will mean this Cooperation Agreement, including all attachments.

“City” will mean the City of Oakland, California.

“Construction Jobs Policies” will mean Attachment A to this Agreement.

“Contractor” will mean any entity employing individuals to perform Project Work, including contractors and subcontractors of any tier, and any entity with a prime contract or construction management contract for performance of Project Work.

“Community Parties” is defined in Recital B.

“Developers” is defined in Recital A.

“ENA” is defined in Recital A.

“Effective Date” will mean the date set forth in Section [X].

“Employer” will have the meaning set forth in the Operations Jobs Policies.

“LDDA” will mean the Lease Disposition and Development Agreement entered into by City and Developers respecting the development of the Project.

“On-Site Job” will have the meaning set forth in the Operations Jobs Policies.

“Operations Jobs Policies” will mean Attachment [] to this Agreement.

“Project” will mean development of the Oakland Army Base as specifically described in Attachment [ ].

“Project Approval” shall mean any approval by any government agency required for the Project to become operational, and that will be reviewed by a government body prior to the first point in time at which at least fifty percent of the warehouse facilities located on the Project Site are under lease or have become operational.

“Project PLA” will mean a project labor agreement or project stabilization agreement covering Project Work.

“Project Site” will mean the parcels depicted in Exhibit A of the ENA.

“Project Work” will mean construction work performed on the Project Site.

“Successor” will mean successors in interest, transferees, assigns, agents, and representatives.

## **II. CITY RESPONSIBILITIES.**

**A. Capacity Study.** Within three (3) months of the Effective Date, City will commence or cause to be commenced a capacity study of the skills, needs, and demographics of the existing, trained workforce in Oakland and West Oakland.

**B. Inclusion of Terms in LDDA.** The City will include the Construction Jobs Policies attached as Attachment A hereto and the Operations Jobs Policies attached as Attachment B hereto (together, the “Policies”), in substantially the same form and content as those attached, as material terms of the LDDA. The City will include, as material terms of the

LDDA, provisions requiring Developers and their Successors to (i) comply with the Policies, and (ii) ensure inclusion of the Policies as material terms in all contracts under which any On-Site Jobs will be performed. The City will require any development entity that participates in the Project to ensure inclusion of the Policies as material terms in all contracts under which any On-Site Jobs will be performed. The City will include a term in the LDDA requiring Developers to notify the City immediately upon entering into any lease agreement for any facility on the Project Site.

C. Labor Peace. The City will include a term in the LDDA requiring Developers to ensure labor peace during all portions of Project construction, and requiring that any project labor agreement or project stabilization agreement be consistent with and facilitate compliance with the Construction Jobs Policies.

D. Jobs Center.

1. Establishment. Without committing any City funds, the City will, with the assistance of the Community Parties as described in Section III, take the following steps to establish a "Jobs Center" in West Oakland:

- i. Not later than August 15, 2012, the City will finalize the Scope of Work and selection criteria of an operator of the Jobs Center;
- ii. Not later than September 15, 2012, the City will release an RFP for an operator of the Jobs Center;
- iii. Not later than April 2013, the City will select an operator of the Jobs Center; and
- iv. On an annual basis, use best efforts to ensure adequate resources to sustain the Jobs Center's start-up and ongoing operations.

2. Services. The Jobs Center will serve as a resource for contractors, employers and job seekers during Construction and Operations phases by providing the following services:

- i. Connect job seekers with job training, education and other support services, such as transportation;
- ii. Receive notifications of job opportunities from Project employers;
- iii. Circulate such notifications to a network of local job training programs;
- iv. Refer qualified workers to Project employers in response to notifications of job opportunities;
- v. Provide technical support to employers, to assist them in complying with this Agreement;
- vi. Work with apprentice programs, community-based training organizations and the City to move applicants into construction trades

- and onto job sites;
- vii. Recruit existing workers in Oakland for job opportunities, on a priority basis;
- viii. Collect and report job placements, job retention and advancement data to meet goals and benchmarks and to track workers' career pathway advancement; and
- ix. Convene a sector-focused employer advisory group to plan for implementation, review progress in meeting benchmarks and goals, adopt 'course corrections', if needed, and identify ways to improve job placements and retention.

3. Operation. The Jobs Center will be operated by a nonprofit corporation, with a board governing Jobs Center operations.

E. Designation of Pre-Apprenticeship Programs. At least four (4) months prior to commencement of Project construction, the City will designate one or more pre-apprenticeship programs for purposes related to this Agreement. In order to be designated, pre-apprenticeship programs will satisfy the standards to be developed at a later date.

F. Workforce Development Plan. Within one year of the Effective Date, the City will release a workforce development plan for the Project. The City will make the workforce development plan consistent with the Oakland Workforce Investment Board's Strategic Plan. The workforce development plan will incorporate the following principles:

1. Encourage community colleges to offer certificates that are 'stackable' and lead to an AA/transfer degrees;
2. Maximize utilization of existing workforce development programs to train and case manage workers and develop linkages to the community colleges for technical training for entry-level and advancement training;
3. Enhance linkages with Peralta Community College District, particularly for basic education skills, career counseling and career pathway training;
4. Maximize job training and placement opportunities for young adults (18 to 25) and for youth (under 18);
5. Begin basic math and reading foundational skills training in middle schools;
6. Develop funding sources for local public high schools (including McClymonds High School and others) to offer pre-apprenticeship training tailored to Project opportunities, and linkages to career pathway programs aligned with construction and operations jobs;
7. Ensure outreach and education to both employers and potential employees, including targeted workers like young adults and the formerly incarcerated; and Encourage the use of coordinated support services to assist youth, the formerly incarcerated and

long-term unemployed for successful outcomes for completion of training, job placement and job retention.

#### **G. Monitoring and Enforcement.**

1. **City Staff.** The City will provide staffing to monitor and enforce the terms of this Agreement and the terms of the Policies.

2. **Resources for Community Representatives.** The City will assist the Community Parties to find or raise funds to train and provide stipends to community representatives serving on the Oversight Commission described in Section II.K. herein.

3. **Investigation.** The City will use best efforts to ensure compliance by Employers and Contractors with the Policies, including investigating any written complaint made to the City of non-compliance with the Policies. Where evidence clearly establishes that an Employer or Contractor is non-compliant, the City will pursue all available remedies against the subject Employer or Contractor.

**H. Worker Assistance Fund.** Without committing City funds, the City will establish and administer a Worker Assistance Fund for the purpose of payment of initiation fees for individuals who become new apprentices engaged in Project Work. The City will help find resources to be used for administration of the fund and to provide loans.

**L Use of Liquidated Damages.** Any monetary damages, including liquidated damages, collected by the City pursuant to this Agreement will be used solely to support training, referral, monitoring, or technical assistance to advance the purposes of this Agreement.

#### **J. Federal and State Funding.**

1. **Segregation.** Where the application of the Construction Jobs Policies or the Operations Jobs Policies is determined by a court of competent jurisdiction to violate federal or state law, or where such application would be inconsistent with the terms or conditions of a grant or a contract with an agency of the United States or the State of California, then the City will, where administratively feasible, segregate federal or state funds from City funds, and/or segregate project administration and contracts, so as to maximize application of the Construction Jobs Policies and the Operations Jobs Policies to the Project.

2. **Alternative Terms in Case of Conflict.** Where a court of competent jurisdiction determines that application of provisions of the Construction Jobs Policy or the Operations Jobs Policy is prohibited by federal or state law, or where such application would violate or be inconsistent with the terms or conditions of a grant or a contract with an agency of the United States or the State of California, and where segregation of funds pursuant to subsection 1 herein is not administratively or financially feasible with regard to portions of the Project, then the City will work with the Community Parties to adapt requirements of the Construction Jobs Policies and/or the Operations Jobs Policies into a set of contract provisions that advance the purposes of this Agreement to the maximum extent feasible without conflicting with federal or state law or with terms or conditions of the state or federal grant or contract in

question. If agreed to by the Parties, such contract provisions will then replace relevant terms of the Construction Jobs Policies and/or the Operations Jobs Policies with regard to portions of the project for which this Policies would conflict with federal or state requirements. The Parties agree to comply with such replacement provisions.

#### **K. Oversight Commission.**

**1. Reservation of Legislative Power.** City commitments in subsection **II.(K).(2)**, below are subject to reservation of the City Council's legislative authority. That Subsection states the City's intention, but does not bind the City Council to particular commitments or limitations in the enactment of legislation to advance the purposes of this Section.

**2. Establishment.** Through City ordinance, the City will establish and convene an Oversight Commission to assist in monitoring and enforcement of this Agreement. The establishing ordinance will set forth basic rules of operation of the Oversight Commission and committee member number and qualifications. Additional rules of operation may be established by the Oversight Commission after initiation.

**3. Composition.** Membership on the Oversight Commission shall include representatives from the Oakland and West Oakland communities, organized labor, government, and employers. At least one of the community representatives will be appointed by and represent the West Oakland Community Advisory Group.

**4. Authority.** The Oversight Commission will have the authority to:

- i. review implementation of this Agreement, and work with Parties to attempt to resolve issues that arise in implementation; and
- ii. review compliance of Project employers with the Construction Jobs Policies and the Operations Jobs Policies;
- iii. in cases where the Oversight Committee deems a Project employer to be out of compliance, directly negotiate with that employer a remedy for the alleged violation, through a Negotiated Compliance Plan, which may include increased percentage goals on future work;
- iv. in cases where a negotiated remedy cannot be reached, act on behalf of the City to enforce the Policies.

**5. Engagement with Implementation Committees.** The Oversight Committee may engage the Implementation Committees described in this Agreement for advice and assistance in performance of investigative functions and negotiation of compliance plans.

### **III. COMMUNITY PARTIES' RESPONSIBILITIES.**

The Community Parties will assist the City in the establishment and operation of the Jobs Center described in Section II(C)(I) of this Agreement by doing the following:

- i. Not later than \_\_\_\_\_, provide to the City suggestions for suitable locations readily accessible to West Oakland residents;
- ii. Not later than \_\_\_\_\_, provide input regarding the criteria for the selection of an operator of the Jobs Center;
- iii. Not later than \_\_\_\_\_, provide input to the City regarding the RFP for an operator of the Jobs Center;
- iv. Not later than \_\_\_\_\_, participate in the City's process to recruit and select an operator of the Jobs Center.
- v. On an annual basis, participate in fundraising efforts to support the Jobs Center's ongoing operations.

**IV. BUILDING TRADES COUNCIL'S RESPONSIBILITIES.** The Building Trades Council will enter into, and recommend that affiliated local unions enter into, a Project PLA that is consistent with and that facilitates the achievement of the goals of the Construction Jobs Policies.

#### **V. PROJECT SUPPORT AND CLAIMS RELEASE.**

**A. Project Support.** Each Community Party agrees that the terms of this Agreement, including the Community Jobs Policies and the Operations Jobs Policies, provide a strong slate of benefits and opportunities for West Oakland and the wider community. Therefore, each Community Party agrees to take a public position, denoted in writing provided to all Parties and available to the public, in favor of any necessary Project Approvals. Through such time as all Project Approvals have been granted, each Community Party will refrain from demanding from the City, any public entity, or Developers, through either public positions or private lobbying activities, additional community benefits or mitigations related to job access or job quality with regard to the Project, or assisting other organizations or individuals in such public or private activities.

**B. Litigation Release.** Each Community Party does hereby release and forever discharge and hold harmless the City and its agents, servants, employees, predecessors, successors and assigns, and each of them ("City Parties"), of all administrative challenges, claims, demands, accounts, actions, causes of action, obligations, proceedings, losses, liabilities and sums of money of every kind and character whatsoever, whether now known or unknown, whether based upon contract, statute, and/or other legal or equitable theory of recovery, including attorneys fees and costs which the Community Parties, their successors, or assigns can, shall or may have against any of the City Parties, arising out of the approval by the City or any government agency necessary for Project Approvals. Each Community Party agrees that this is a full and final release applying to all unknown and unanticipated injuries or damages, including any and all claims now existing or which may arise in the future, arising out of Project



Approvals, including those not known or disclosed, and the undersigned expressly waive any right or claim of right to assert hereafter that any claim, demand, obligation and/or cause of action has, through ignorance, oversight or error, been omitted from the terms of this release, and further waive any right or claim of right that they, or any of them, may have under the law of any jurisdiction that releases such as those herein given do not apply to unknown or unstated claims.. It is the express intent of the undersigned to waive any and all claims that they may have against the persons or entities herein released, including any which are presently unknown, unsuspected, unanticipated or undisclosed. This release does not preclude advancement of or otherwise affect any claim that the City has violated terms of this Agreement.

C. Changes in Project Plans. Provisions of Sections V.A. and V.B. will not apply to aspects of Project scope and plans that substantially deviate from scope and plans set forth in \_\_\_\_\_.

## **VI. IMPLEMENTATION COMMITTEES.**

### **A. Construction Jobs Policies Implementation Committee**

- 1. Establishment.** In order to facilitate implementation of the Construction Jobs Policies, the Parties will establish and designate representatives for a Construction Jobs Policies Implementation Committee, the membership of which will include a balanced representation of community-based organizations, Alameda County Building and Construction Trades Council, Contractors and the City.
- 2. Purpose and Activities.** The Parties intend that, to the extent that the Oversight Commission engages the Construction Jobs Policies Implementation Committee for these purposes, the Construction Jobs Policies Implementation Committee perform the following functions, to assist the Oversight Commission in monitoring and ensuring compliance with the Construction Jobs Policies:
  - i. Meet with prime contractors before work commences to hear local hire plans for each bid package to ensure compliance with the Construction Jobs Policies;
  - ii. Review compliance of Contractors with the Construction Jobs Policies;
  - iii. Negotiate with any Contractor a remedy for alleged violations of the Construction Jobs Policies, through a Negotiated Compliance Plan, which may include increased percentage hiring goals on future work; and
  - iv. In cases where a negotiated remedy cannot be reached, recommend to the City's Oversight Commission specific remedies.

### **B. Operations Jobs Policies Implementation Committee**

- 1. Establishment.** In order to facilitate implementation of the

Operations Jobs Policies, the Parties will establish and designate representatives for an Operations Jobs Policies Implementation Committee, the membership of which will include a balanced representation of community-based organizations, Alameda County Building and Construction Trades Council, employers, and the City.

2. Purpose and Activities. The Parties intend that, to the extent that the Oversight Commission engages the Operations Jobs Policies Implementation Committee for these purposes, the Operations Jobs Policies Implementation Committee perform the following functions, to assist the Oversight Commission in monitoring and ensuring compliance with the Operations Jobs Policies:

- i. Meet with Employers opening operations on the Project Site to hear their plans to ensure compliance with the Operations Jobs Policies before work commences;
- ii. Review compliance of Employers with the Operations Jobs Policies
- iii. Negotiate with any Employer a remedy for alleged violations of the Operations Jobs Policies through a Negotiated Compliance Plan, which may include increased percentage hiring goals on future work; and
- iv. In cases where a negotiated remedy cannot be reached, recommend to the City's Oversight Commission specific remedies.

## VII. MISCELLANEOUS

A. Contact Person. Within 30 days of having entered into a lease disposition and development agreement or a similar agreement related to development of the Project, each Party will designate a contact person for all matters related to implementation of this Agreement. Each Party will forward the name, address and phone number of the designated individual to all Parties. If the contact person changes, all Parties will promptly be notified.

B. Successors and Assigns. This Agreement will be binding upon and inure to the benefit of Successors to any party, and to Successors of Successors to any Party. References in this Agreement to any entity will be deemed to apply to any Successor of that entity..

C. Entire Agreement. The Agreement contains the entire agreement between the Parties and supersedes any prior agreements, whether written or oral. This Agreement may not be altered, amended or modified except by an instrument in writing signed by the Parties.

D. Authority, Representations and Warranties. Each signatory to this Agreement represents and warrants that he or she has full power and authority to execute and deliver this Agreement on behalf of the entity for whom he or she is signing. Upon proper execution and delivery, this Agreement will have been duly entered into by the Parties, will constitute as

against each Party a valid, legal and binding obligation, and will be enforceable by each Party and against each Party in accordance with the terms herein. Each Party agrees not to either affirmatively or by way of defense seek to invalidate or otherwise avoid application of the terms of this Agreement in any judicial action or arbitration proceeding, provided that the parties have complied with the procedural prerequisites to initiation of judicial action or arbitration as set forth in this Agreement.

**E. Community Parties' Scope of Responsibilities.** Obligations of a Community Party will be obligations only of the organization itself as distinct from its associated organizations, constituent organizations or any natural persons. Actions of a Community Party include only those actions taken by staff members or members of the Board of Directors of a Community Party when those persons are authorized to act on behalf of the organization by the Board of Directors. When this Agreement sets out a responsibility of "each Community Party," then each Community Party must satisfy that responsibility. When this Agreement sets out a responsibility of "the Community Parties," then that responsibility is satisfied for all Community Parties when any Community Party satisfies that responsibility.

**F. Applicable Law and Compliance with Law.** This Agreement will be governed by and construed in accordance with federal, state, and local laws, and will be enforced only to the extent that it is consistent with those laws. Parties agree that their understanding is that all terms of this Agreement are consistent with federal, state, and local law; and that this Agreement will be reasonably interpreted so as to comply with any conflicting law.

**G. Severability.** If any of the provisions of this Agreement are held by a court of competent jurisdiction to be invalid, void, illegal, or unenforceable, that holding will in no way affect, impair, or invalidate any of the other provisions of this Agreement.

**H. Attorneys' Fees.** In any litigation or other proceeding arising out of this Agreement, each Party will be responsible for its own attorneys' fees and other costs incurred therein.

**I. Default and Remedies.**

**1. Default.** Failure by any Party to perform or comply with any term or provision of this Agreement, if not cured, will constitute a default under this Agreement.

**2. Sixty-Day Right to Cure.** If any Party believes that another Party is in default of this Agreement, it will provide written notice to the allegedly defaulting Party of the alleged default; offer to meet and confer in a good-faith effort to resolve the issue; and, except where a delay may cause irreparable injury, provide sixty days to cure the alleged default, commencing at the time of the notice. Any notice given pursuant to this provision will specify the nature of the alleged default, and, where appropriate, the manner in which the alleged default may be cured.

**3. Remedies.** In the event that another Party is allegedly in default under this Agreement, then the Party alleging default (a "Complaining Party"), may elect to waive the default or to pursue remedies as described in this Section. Such remedies may be pursued only after exhaustion of the sixty-day right to cure period described above, except where an alleged default may result in irreparable injury, in which case the Complaining Party may immediately pursue the remedies described herein, in any court of proper jurisdiction. A Complaining Party may seek relief ordering, and the court will have the power to order, affirmative equitable and/or

affirmative injunctive relief, temporary or permanent, requiring another Party to comply with this Agreement. No Party will seek relief awarding, and the court will not have power to award, any money damages, although to the extent that funds are required to be expended or provided by this Agreement, or liquidated damages are specified, the court will have power to compel the party in question to expend or provide those funds. Each Party will bear its own fees and other costs of such court action.

**J. Effective Date.** The Effective Date of this Agreement will be the first date after this Agreement has been executed by each Party. Except as described in Section VII.K, below, all commitments of the Parties described herein are effective upon the Effective Date, unless otherwise specified.

**K. Limited Responsibilities if Project Not Approved.** The City will have no responsibilities pursuant to Sections II.A, II.E, II.F, II.G, II.H, II.I, II.J, and II.L of this Agreement prior to the LDDA becoming effective. Notwithstanding the above, after the Effective Date, the City will not take any action inconsistent with this Agreement or that would impede evenmal satisfaction of terms of this Agreement.

**L. No Public Responsibility for Financial Commitments.** The LDDA may describe certain financial and operational commitments made by Developers and other private enthies. This Agreement does not make the City responsible for satisfaction of such commitments. This Agreement does not provide enforcement rights against the City or any other public entity with regard to Developers' and other private entities' commitments made in the LDDA or other documents or agreements.

**M. Waiver.** The waiver by any Party of any provision or term of this Agreement will not be deemed a waiver of any other provision or term of this Agreement. The mere passage of time, or failure to act upon a breach, will not be deemed a waiver of any provision or term of this Agreement.

**N. Construction.** Each of the Parties has had the opportunity to be advised by counsel with regard to this Agreement. Accordingly, this Agreement will not be strictly construed against any Party, and any rule of construction that any ambiguities be resolved against the drafting Party will not apply to this Agreement.

**O. Correspondence.** All correspondence will be in writing and will be addressed to the affected parties at the addresses set forth below. A Party may change its address by giving notice in compliance with this Section. The addresses of the parties are

If to Community Parties:

If to the City:

[address]

**P. Counterparts.** This Agreement may be executed in two or more counterparts, each of which may be deemed an original, but all of which will constitute one and the same document.

**Q. Further Acts.** The Parties will execute and deliver such further documents and instruments and take such other further actions as may be reasonably necessary to carry out the intent and provisions of this Agreement.

IN WITNESS WHEREOF, the following Parties have executed this Agreement:

THE CITY OF OAKLAND,  
a California municipal corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

ALAMEDA COUNTY BUILDING AND  
CONSTRUCTION TRADES COUNCIL

By: \_\_\_\_\_

Its: \_\_\_\_\_

ALAMEDA COUNTY CENTRAL  
LABOR COUNCIL, AFL-CIO

By: \_\_\_\_\_

Its: \_\_\_\_\_

[INSERT OTHER SIGNATORIES HERE]

List of Attachments:

Attachment A: Construction Jobs Policies

Attachment B: Operations Jobs Policies

Attachment C: ENA

# **ATTACHMENT A**

## **Construction Jobs Policies Oakland Army Base Project**

# **ATTACHMENT B**

**Operations Jobs Policies**

**Oakland Army Base Project**