



October 9, 2019

Ms. Sabrina Landreth  
City Administrator  
City of Oakland  
1 Frank Ogawa Plaza, Suite 301  
Oakland, CA 94612

RE: Impact Fee Waiver Request – Building Permit No. B190001472

Dear Ms. Landreth:

I am writing to request a waiver of 50% of the Jobs/Housing Impact Fee pursuant to Oakland Municipal Code (Muni Code) Section 15.68.070 for the above referenced building permit application submitted by CenterPoint Properties for the development of an approximate 460,000 square foot non-residential building at 1300 Maritime Street (Project). The basis for this waiver request, outlined in more detail below, is that the Project is **required** to hire local residents or individuals that currently reside in the City of Oakland and pay a Living Wage, two factors that mitigate the Project's impact and qualify it for a reduced impact fee or reduced housing production obligation. Specifically, the Project qualifies for a waiver as the increase in any need for additional affordable housing "will be limited so as to justify a reduced impact fee or reduced housing production mitigation obligation." (Muni Code sec. 15.68.070).

As you are aware, the purpose of the Jobs/Housing Impact Fee is to assure that certain commercial development projects compensate and mitigate for the increased demand for affordable housing generated by such development projects within the City of Oakland. As noted, the Municipal Code expressly allows for a reduction or waiver of that fee if it can be demonstrated that the new development will not increase housing demand or if that increase in demand is limited. The Project qualifies for a reduction or waiver as it is unique and is subject to a ground lease between the Port and Centerpoint that requires the Project sponsor to implement an Operations Jobs Policy which must ensure that the majority of employees or service providers at the Project are **existing** local residents and are paid an elevated wage.

Specifically, the Operations Jobs Policy implements a very strict local hiring requirement including a requirement that large employers, any entity with 20 or more employees that either lease space at the Project or provide services at the Project, make best efforts to fill all available jobs with local residents or disadvantaged workers (a copy of the Operations Jobs Policy is attached.). While future employers or service providers are not specifically known at this point, due to the size of the Project, Centerpoint is highly confident that large employers are likely tenants. Pursuant to the Operations Jobs Policy, a local resident is one that already resides in Oakland prior to hiring and must be one that has been domiciled in the area for six (6) months prior to hiring. The Operations Jobs Policy offers "safe harbor" to any large employer (meaning assured compliance with the requirements of Operations Jobs Policy) if at least 50% of the workers hired are local residents. This means, at a



minimum, **to comply with the Operations Jobs Policy half (50%) of the employees or service providers of the Project must be or will be local residents.**

Because the Project is governed by the Operations Jobs Policy which strives to achieve complete hiring of local residents, but that **requires at a minimum that 50% must be local residents**, the Project by definition will have a minimal impact on new housing demand as the vast majority of the future employees or service providers at the Project will presumably already be housed in Oakland. In addition, the Operations Jobs Policy requires payment of a Living Wage defined at Oakland Municipal Code Section 2.28.010 to every employee of the Project. Payment of a Living Wage will ensure that future employees and service providers at the Project will receive compensation at a level that ensures that they can be housed in existing housing, at market-rates.

These two facts combined, a requirement that the bulk of future employees of the Project be existing Oakland residents and that they be paid a Living Wage, will ensure that the demands for affordable housing are minimized, thus justifying a reduction or waiver of the Jobs/Housing Impact Fee. Moreover, under the provisions of the Operations Jobs Policy as noted above, there is a minimal, or no, nexus between the development of the Project and an increased demand for affordable housing.

For these reasons, we respectfully request a 50% in the Jobs/Housing Impact Fee consistent with Oakland Municipal Code Section 15.68.070 as increased needs for affordable housing created by the Project will be limited such that it justifies a reduced impact fee or reduced housing production mitigation obligation. In making this request we also would ask that the City clarify the timing of payment of the Jobs/Housing Impact Fee as we understand it may be paid in installments.

\* \* \* \* \*

Please let me know if you have any questions or need any additional information and feel free to contact me at 415-273-9670 or at [alexis@pelosilawgroup.com](mailto:alexis@pelosilawgroup.com).

Very truly yours,

A handwritten signature in blue ink that reads "Alexis M. Pelosi". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Alexis M. Pelosi

cc: William Gilchrist, Planning Director

**Attachment B**

**OPERATIONS JOBS POLICY**

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Oakland Army Base Project – Port of Oakland

Seaport Logistics Complex

Port – Centerpoint Oakland Global Logistics Center LLC Ground Lease

- I. Purpose.** This Operations Jobs Policy sets forth certain requirements regarding hiring and employment for jobs related to operation of the development on the Project Site associated with the Seaport Logistics Complex depicted in the attached Schedule 1 consisting of approximately 27 acres located at the Port of Oakland. Employers in the Project Site agree to comply with terms of this Operations Jobs Policy as a condition of entry into any agreement to which this Operations Jobs Policy is attached, as more particularly set forth herein. This Operations Jobs Policy does not cover construction hiring or construction employment, or any work covered under the Port’s Maritime and Aviation Project Labor Agreement (MAPLA).
- II. Definitions.** As used herein, the following capitalized terms shall have the following meanings. All definitions include both the singular and plural form.

“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 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 Directly-Related Convictions are ineligible (“Directly-Related Conviction” meaning a conviction for which the associated illegal acts in question have a direct and specific relationship on that person’s ability to perform the duties or responsibilities necessarily related to the employment position); or (iii) the Employer’s hiring policies that are uniformly applied on a national basis with respect to prospective workers’ history of involvement with the criminal justice system.

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

“Developer” shall mean: (i) Centerpoint Oakland Global Logistics Center LLC and its approved successors, assigns and transferees, as set forth in the Initial Ground Lease.

“Disadvantaged Worker” shall mean a Resident that (i) is a custodial single parent; (ii) has been emancipated from the foster care system within the previous five (5) years; or (iii) meets the below eligibility criteria of a “qualified full-time employee” under California’s New Employment Credit at the time of hire. As set forth in Cal. Rev. & Tax Code Sec.

23626(b)(10), a “qualified full-time employee” at the time of hire means an individual who meets the following criteria:

(i) Upon commencement of employment with the qualified taxpayer, the individual:

(I) Was unemployed for the six months immediately preceding employment with the qualified taxpayer. In the case of an individual who completed a program of study at a college, university, or other postsecondary educational institution, received a baccalaureate, postgraduate, or professional degree, and was unemployed for the six months immediately preceding employment with the qualified taxpayer, that individual must have completed that program of study at least 12 months prior to the individual’s commencement of employment with the qualified taxpayer; or

(II) Is a veteran who separated from service in the Armed Forces of the United States within the 12 months preceding commencement of employment with the qualified taxpayer; or

(III) Was a recipient of the credit allowed under Section 32 of the Internal Revenue Code, relating to earned income, as applicable for federal purposes, for the previous taxable year; or

(IV) Is an ex-offender previously convicted of a felony; or

(V) Is a recipient of either CalWORKs, in accordance with Article 2 (commencing with Section 11250) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, or general assistance, in accordance with Section 17000.5 of the Welfare and Institutions Code.

“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.

“Initial Ground Lease” shall mean the Ground Lease by and between the Port and the Developer dated \_\_\_\_\_, 2017 for approximately 27 acres within the Project Site.

“Jobs Center” shall mean the West Oakland Job Resource Center or other jobs center to be designated by the Port as such for purposes of implementation of this Policy.

“Large Employer” shall mean any entity having a total job count of twenty (20) or more, and either leasing space within the Project Site or performing services within the Project Site pursuant to one or more service or labor supply contracts, and, for purposes of the application of this Operations Jobs Policy only, such entity’s service contractors, subcontractors, and labor suppliers that employ workers to perform services for such entity. For purposes of this definition, “total job count” shall mean the number of individuals working in On-Site Jobs and employed directly by the entity in question, working under a service contract or labor supply

contract with the entity in question, or working under any related subcontract or agreement with the entity in question.

“LIA” shall mean the California cities of Oakland, Alameda, Emeryville and San Leandro.

“On-Site Job” shall mean any job for which at least fifty percent (50%) of the work hours during any calendar year are performed on the Project Site.

“Policy” shall mean this Operations Jobs Policy for the Seaport Logistics Complex.

“Port” shall mean the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners.

“Project” shall mean the redevelopment activities occurring at the Project Site.

“Project Site” shall mean the parcels of land within the Seaport Logistics Complex depicted in the attached Schedule 1 consisting of approximately 27 acres at the Port of Oakland. If the Developer and the Port successfully negotiate the terms of a lease on all or a portion of the Expansion Area as defined in the Initial Ground Lease, then this definition shall be expanded to include the development, leasing and operation of the leased expansion area.

“Resident” shall mean an individual domiciled in the LIA for at least six (6) months prior to the date that such individual is hired or assigned to perform the applicable work, with “domiciled” as defined by Section 349(b) of the California Election Code, as in effect on the Effective Date of the lease, and as attached hereto as Schedule 2.

“Tenant” shall mean any entity leasing space from a Developer in the Project Site.

### **III. Local Hiring.**

#### **A. Hiring Process.**

1. Long-Range Planning. As soon as the information is available following a Large Employer’s execution of a contract under which it will operate at the Project Site and within thirty (30) days of each January 1 thereafter, the Large Employer shall provide to the Port and the Jobs Center information regarding such Large Employer’s good faith projection 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, the basic qualifications anticipated to be necessary for such On-Site Jobs, and which, if any, of the Background Exceptions the Large Employer expects will apply to any of such On-Site Jobs based on the Large Employer’s knowledge at the time such information is provided.

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

a. Notification of Job Opportunities. At least four (4) weeks prior to the date that a Large Employer is anticipated to commence operations in the Project Site, or, if such Large Employer executes a contract under which it will operate at the Project Site less than four (4) weeks prior to such anticipated date, within two (2) business days following execution of such contract and prior to commencing operations, such Large Employer shall notify the Jobs Center of openings for non-management On-Site Jobs and provide a clear and complete description of job responsibilities and qualifications therefor, 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 qualifications directly related to performance of job duties.

b. Hiring. The Large Employer shall use normal hiring practices, including interviews, to exclusively consider for all On-Site Jobs all Residents and Disadvantaged Workers referred by the Jobs Center and meeting the qualifications described in the referral request for a four (4)-week period following notification to the Jobs Center, or until all open On-Site Jobs are filled, whichever is sooner. The Large Employer shall make best efforts to fill all available On-Site Jobs with Residents and Disadvantaged Workers referred through the Jobs Center. If at the conclusion of the four (4)-week period the Large Employer has been unable to fill all openings for On-Site Jobs 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 best efforts to hire Residents and Disadvantaged Workers later referred by the Jobs Center for non-management On-Site Jobs.

c. Pre-opening Transfer.

i. When a Large Employer is closing a facility and is transferring the majority of its staff from the previous facility to a new facility within the Project Site, the provisions of the Initial Hiring Process (as set forth in Section III.A.2 above) will not apply to the positions filled by workers transferred from the closing facility. However, with regard to those positions not filled by staff transferred from the previous facility, such Large Employer will be subject to the initial hiring process (as set forth in Section III.A.2 above). Upon commencing operation in the new facility, such Large Employer will be subject to the ongoing local hiring requirements (as set forth in Section III.A.3 below), regardless as to whether the staff that the Large Employer is transferring already satisfy the safe harbor provisions (as set forth in Sections III.B.2 below), including any notice and exclusive hiring requirements.

ii. When a Large Employer hires for positions in facilities located outside of the Port with the intention of transferring such hires to a new facility at the Project Site, such Large Employer will be subject to the initial hiring process (as set forth in Section III.A.2 above) for those positions, including the notice provisions.

d. Jobs Center Feedback. Following the completion of the initial hiring process set forth in this Section III.A.2, at the request of the Port a Large Employer shall meet and confer with the Port Executive Director or his designee 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 Large Employer and any future Employer, as relevant, 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 at the Project Site, it shall continue to use the Jobs Center in accordance with this Section III.A.3 as a resource to fill openings for On-Site Jobs. When a Large Employer has an opening for an On-Site Job available, the Large Employer shall notify the Jobs Center of such 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 qualifications directly related to performance of job duties.

b. Hiring. The Large Employer shall then use normal hiring practices, including interviews, to exclusively consider for all On-Site Jobs all Residents and Disadvantaged Workers referred by the Jobs Center and meeting the qualifications described in the referral request during a five (5)-day period after initial notification to the Jobs Center, or until all open On-Site Jobs are filled, whichever is sooner. The Large Employer shall make good faith efforts to fill all available On-Site Jobs with Residents and Disadvantaged Workers referred through the Jobs Center. If at the conclusion of the five (5)-day period the Large Employer has been unable to fill all openings for On-Site Jobs 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 by the Jobs Center for non-management On-Site Jobs.

4. Priorities for Initial and Ongoing Hiring. In engaging the Jobs Center to perform the services described in this Policy, the Port shall require the Jobs Center to apply the following priorities in referral of applicants to Large Employers:

i. First Priority: Residents and Disadvantaged Workers residing in the following zip codes: 94608, 94609, 94607, 94612, 94606, 94601, 94621, and 94603;

ii. Second Priority: Residents of the LIA.

5. Nondiscrimination. Employers shall not discriminate against Residents or Disadvantaged Workers on the basis of their status as a Resident, 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.

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, unless the requirements of a law, regulation, or governmental policy require otherwise, 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. 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, nor independently research, prospective workers' credit histories. When conducting background checks, an Employer must comply with all applicable federal and state laws, which may include provisions requiring Employers to provide the candidate an opportunity to obtain a copy of the background check, and/or inform the candidate in writing if an Employer determines a candidate is unqualified for a position based on information discovered in the background check. To the extent that this Section III.A.6 conflicts with any requirements of this Policy related to Disadvantaged Workers, this Section III.A.6 shall control.

B. Monitoring and Enforcement.

1. Safe Harbor Provision. Any Large Employer for whom at least fifty percent (50%) of workers hired for On-Site Jobs during a particular year were Residents, and for whom at least twenty-five percent (25%) 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. For the avoidance of doubt, for purposes of determining the percentages of workers hired for On-Site Jobs during a particular year that were Residents and Disadvantaged Workers, a Disadvantaged Worker shall be counted as both a Resident and a Disadvantaged Worker.

2. Credit for Hiring at Other Locations. Large Employers shall receive credit toward achievement of the safe harbor percentages set forth in Section III.B.1 for any hires of Residents and/or Disadvantaged Workers to perform jobs at other locations, so long as such Residents and/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.) (e.g., if a Large Employer hires ten (10) workers for On-Site Jobs in a year, and six (6) are Residents, and such Large Employer also hires one Resident to perform a job at another location with such compensation, then, for purposes of Section III.B.1, seven (7) of such ten (10) workers will be deemed



to be Residents). Notwithstanding the foregoing, the total credits determined under this Section III.B.2. that may be applied under the safe harbor provisions of Section III.B.1. shall not exceed fifty percent (50%) of the total safe harbor requirements of Section III.B.1.

3. Retention Incentive. For every two thousand (2,000) hours that any one Resident and/or Disadvantaged Worker who performs an On-Site Job works for a Large Employer, that Large Employer shall be entitled to a “bonus” hiring credit of one individual/position for the applicable category towards achievement of the safe harbor percentages set forth in Section III.B.1. For example, if a Large Employer hires ten (10) workers for On-Site Jobs in a year, and six (6) are Residents, and a Resident works his or her two thousandth (2,000<sup>th</sup>) hour for such Large Employer, then, for purposes of Section seven (7) of such ten (10) workers will be deemed to be Residents. For any employee that does not work on an hourly basis, hours shall be counted towards this threshold on the basis of forty (40) hours per week of full time employment, so long as that employee actually works or is otherwise paid for at least forty (40) hours in all weeks in question.

4. Liquidated Damages. Each Large Employer agrees that, if during a particular year it has not either complied with the hiring process requirements of Sections III.A.2 and III.A.3, above or satisfied the safe harbor percentage set forth in Section \_\_\_\_ above, then as the sole and exclusive remedy therefor, it shall pay to the Port liquidated damages in the amount of five thousand dollars (\$5,000) per On-Site Job short of the safe harbor percentage set forth in Section III.B.1. For example, if a Large Employer hires ten workers for On-Site Jobs in a year, and four are Residents and two are Disadvantaged Workers, then the liquidated damages shall total seven thousand five hundred dollars (\$7,500). Of this amount, five thousand dollars (\$5,000) is based on failure to meet the fifty percent (50%) safe harbor percentage for hiring of Residents, with safe harbor in this case requiring five Residents to be hired, and actual performance having been four hires. The remaining two thousand five hundred dollars (\$2,500) is based on failure to meet the twenty-five percent (25%) safe harbor percentage for Disadvantaged Workers, with safe harbor amount in this case requiring at least two and one half (2.5) Disadvantaged Workers to be hired, and actual performance having been two hires; as shortfall in this case would be one-half of a single hire, liquidated damages would be half of one On-Site Job, or two thousand five hundred dollars (\$2,500). Any liquidated damages collected by the Port 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 Port on a quarterly basis (as of January 1, April 1, July 1, and October 1 of each year), 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. Except as set forth in Section III.B.4 above, the Port shall be entitled to all remedies at law or in equity for any failure

to comply with this Policy. Further, Employers who repeatedly violate this Policy may be debarred from future Port 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 before engaging a referral source as the employer of record for temporary workers, the employer provides notice to the Jobs Center, and exclusively considers any workers referred by the Jobs Center (for employment through the Jobs Center as employer of record) for a period of 48 hours. Furthermore, without the approval of the Port Executive Director 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 Port Executive Director 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 thirty (30) days of having entered into any contract (including any assignment of all or any portion of a lease) 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 Port.

B. Determination of Residency or Priority Status. A Large Employer's determination of (i) whether any individual is a Resident or (ii) any individual's status within the priorities set forth in Section III.A.4 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 Large Employer obtains reasonable written documentation demonstrating such individual's status at the time that such individual is assigned or hired and such Large Employer retains such documentation and makes it available to Port for inspection at reasonable times.

C. Determination of Disadvantaged Status. The Jobs Center shall make determinations of Disadvantaged Worker status. The Jobs Center shall make such determinations promptly upon request from an Employer, a worker, or the Port.

D. Assignments, Subleases and Contracts. Each Developer or Tenant shall include compliance with this Policy as a material term of any assignment or sublease of all or a portion of its interest in a lease of any portion of the Project Site. If Developer complies with this Section IV.D with regard to an assignment or sublease, then Developer shall not be liable for any breach of this Policy where that breach is (i) related to the interest so assigned or subleased and (ii) first arises after the date of such assignment or sublease. Each Employer shall include compliance with this Policy as a material term of any contract or other agreement under which any On-Site Jobs may be performed. Each Tenant leasing space from the Developer shall be responsible for compliance with this Policy by subtenants, contractors and subcontractors, temporary employment agencies, and any other entities with responsibilities under this Policy and operating on property leased by that Tenant. Such Tenants shall take all reasonable steps to ensure compliance by such entities, and shall be responsible to the Port (as an intended third party beneficiary) for liability based upon violations of this Policy on the property in question. If Developer does not lease a portion of the Project Site to any Tenant, then with regard to that portion of the Project Site, Developer shall have responsibilities as described for Tenants leasing space from Developer. If a Developer, Employer or Tenant enters into a contract in violation of this Section VI.D, then upon request from the Port 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 such a contract, then upon request from the Port it shall either amend that contract to include the provisions required by this Policy, or terminate that contract.

F. Funding Restrictions. For any portion of operations on the Project Site for which, based on use of federal or state funds, a federal or state agency prohibits application of the requirements of this Policy, the Port will, after consultation with Developer, work collaboratively with the funding agency to adapt the requirements of this Policy 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, Developer and the Port shall meet and confer with regard to the adapted requirements agreed to by the Port and the funding agency, and such requirements shall be applied to such portions of operations on the Project Site for the period required by such agency, and shall automatically become terms of this Policy with respect to such operations.

G. Third Party Beneficiaries. The Port is an intended third-party beneficiary of any contract that incorporates this Policy, but only for the purposes of enforcing the terms of this Policy. There shall be no other third party beneficiaries of this Policy. The Port shall not delegate any of its responsibilities to any other 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 Port 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. If this Policy's six (6)-month requirement for qualification as a Resident is deemed invalid by final decision of a court of competent jurisdiction, then "Resident" shall mean an individual domiciled in the City prior to the date that such individual is hired or assigned to perform the applicable work, with "domiciled" as defined by Section 349(b) of the California Election Code, as in effect on the LDDA Execution Date, attached hereto as Schedule 2.

K. Applicable Law and Compliance with Law. This Policy 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 Policy 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 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.

N. Emergency. Developer or Large Employers may apply to the Port Executive Director for a waiver of Section III.A.2 or III.A.3 of this Policy on a temporary basis with regard to a particular portion of the requesting party's work on grounds of a major emergency or risk of serious damage to property, such as natural disaster or fire. The Port Executive Director may grant such waiver only for a period of time necessary to respond to the emergency or serious property damage and only where the requesting party demonstrates (i) specific evidence of a major emergency or risk of serious property damage, the response to which requires rapid hiring of a significant number of temporary workers, (ii) that application of Section III.A.2 or III.A.3 of this Policy would necessarily lead to an inability to address the emergency within the necessary timeframe or without substantial risk to safety of workers or serious damage to property, and (iii) that such inability or such risk cannot be avoided through changes to staffing, supervision, or operations in conjunction with application of Section III.A.2 or III.A.3 of this Policy. If the requesting party reasonably and in good faith believes that such a major emergency or risk of serious damage to property requires, and Developer or Large Employer undertakes, immediate action prior to obtaining any such waiver, then the Port shall reasonably consider granting any requested waiver on a retroactive basis with respect to such actions.

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

P. Collective Bargaining Agreements. To the extent that this Policy conflicts with any collective bargaining agreement(s) to which an Employer is party, and such agreement is applicable to Employer's operations on the Project Site and is in effect as of the date that the Employer executes a lease or contract under which it will operate at the Project Site, the terms of such collective bargaining agreement(s) shall take precedence, and this Policy shall not apply to the extent of any such conflict. Where a collective bargaining agreement takes precedence over this Policy as described above, Developer and Port shall make a good faith effort to encourage a meeting to occur promptly following such lease or contract execution date among the Employer, the applicable union(s) and the Port to discuss whether and how to reduce or eliminate conflict between this Policy and future collective bargaining agreements.

## **Schedule 1**

Project Site Plat and Legal Description

**Schedule 2**

Section 349(b) of California Election Code as of the Effective Date of the Lease