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AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Deborah Barnes, Manager
Contracts and Compliance

SUBJECT: Oakland Army Base Construction
Jobs Monitoring and Enforcement

DATE: October 9, 2012

City Administrator
Approval

Date

10/10/12

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the City Council Adopt:

A Resolution Amending The Oakland Army Base Construction Jobs Policies For Public Improvements And Vertical Construction; Establishing Weekly Reporting Requirements For Contractors And Sub-Contractors; Authorizing The Establishment Of A Website Which Will Post Compliance Information In Real Time; Mandate Use Of The City's LCP Tracker Program; And Establishing Sanctions On Contractors And Sub-Contractors For Noncompliance With Oakland's Jobs Policy

EXECUTIVE SUMMARY

The Resolution brought forward in July is attached to this agenda report with staff's recommendation to adopt. In addition, under staff's recommendation to adopt, the Oakland Jobs policy was amended according to the June 19, 2012 letter to Council President Reid and members of the City Council subject to amendment to the Exhibit (Oakland Army Base Jobs Policy). The recommended language was inserted into the version of the Oakland Army Base Jobs policy that was available at the time. While there is a more recent OAB Jobs Policy currently available, staff worked with the June 19, 2012 version to which council referred and is provided at the end of this report as *Attachments A and B*.

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It must be noted that all amendments are predicated on the execution of the Jobs Policy documents (whether the Jobs Policy has been signed) prior to this report and resolution reaching Council. If the Jobs Policy has not been signed at the time this report and resolution are reviewed by Council, then the City Administrator must be authorized to negotiate and include these new requirements in the Jobs Policy. If the Policy has been signed by the time this report is reviewed by the Council, then all amendments to the Policy will require the Developer's consent.

The Office of the City Administrator, Contracts and Compliance has a website that is used to inform the public regarding social equity policies and will be used to report compliance status of the Oakland Army Base Jobs and local business participation. It will be used to report real time data as well as "true-up" (true up means to "bring into alignment" with predetermined criteria or processes) reports that will be available every 4-6 weeks. In addition, the West Oakland Resource Jobs Center will be opening in the very near future and will have a web site that will be available to the public and will include real time status of hiring and contracting data.

This report formally mandates the use of LCPtracker to submit certified payrolls on a weekly basis.

Staff proposes a monetary penalty equal to those currently applied under City policies whereby non-compliances (shortfalls) under both resident hiring and local contracting must be satisfied at a rate of 1.5 times the shortfall. Because the intent is to employ Oakland residents and to contract with local Oakland businesses, non-compliant firms may have 12 months to satisfy the shortfall by hiring Oakland residents and contracting with local Oakland businesses on non-city funded projects. If shortfalls are not satisfied within the 12 month period, a monetary penalty is applied and collected. In addition, the City reserves the right to withhold payments, terminate the contract and debar subject to the City's Debarment Program.

ANALYSIS

In the Agenda report of June 2012, staff reported on the City's real time web-based Labor Compliance Program, LCPtracker. It is used to assess and determine compliance with prevailing wage laws, the 15% Oakland Apprenticeship and the 50% Local Employment Program. Data is entered by prime and subcontractors.

LCPtracker captures the following workforce data:

- | | |
|---------------------------|---|
| *Workers Name and Address | *Social Security Number |
| *Wage & benefits | *Date of Hire |
| *Hours Worked | *Classification (journey or apprentice) |
| *Craft /Job Category | *Gender and Ethnicity |

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The system also includes a sorting capacity so that workforce data may be further separated out to include sorts by:

- *city of residence
- *ethnicity
- *gender
- *craft classification (journey level or apprentice)
- *zip codes

Specific to the Oakland Army Base, certified payroll data will be reported on a weekly basis. However, a true up of that data will be reported and posted every four to six weeks.

Currently, certified payroll (labor) data is reported through this web-based system by prime and subcontractors. In turn, the data is validated according to local, state, or federal Davis-Bacon prevailing wage regulations but extenuating circumstances are not reported via certified payroll data. There are many benefits to using this method of data collection:

- An at-a-glance view of real time data is readily available;
- A complete data audit trail is available for all affected parties;
- Compliance monitoring of data input by prime and subcontractors is most efficient;
- Construction workers are assured of being paid prevailing wages;
- Data is submitted via a standardized format approved by the California Labor Commissioner; and
- Consideration of influencing factors and analysis is supported by real time certified payroll data.

The City will provide a summary of certified payroll data by way of a link to the City's LCP Tracker. Due to confidentiality, only summary data will be reported and will protect the identities of workers. In addition, a separate website "oakjobs.org" supported by the developer will also provide data collected through the West Oakland Jobs Resource Center.

Under the City of Oakland's Local and Small Local Business Enterprise Program (L/SLBE), the City's Local Employment Program (LEP) and the City's 15% Apprenticeship Program, penalties are applied for non-compliance at a rate of 1.5 times the shortfall. In addition, the City reserves the right to apply a penalty of \$1,000 dollars per day or 1% (whichever is less) of the total contract amount if records are requested within a specified timeline and not received. Secondly, because the primary purposes of the City's social equity policies are the employment of Oakland residents and contracting with local Oakland certified firms, the developer, prime contractors and subcontractors are afforded the opportunity to, within one year, make up the shortfall on non-city funded jobs at a rate of 1.5 times the shortfall. If the shortfalls are not satisfied then a monetary penalty applies.

Real time certified payroll data is one side of the compliance monitoring equation. Real time data plus influencing factors and an analysis of both will shape the complete compliance picture.

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Influencing factors include but are not limited to events and outcomes such as “off-site” hours (hours worked by Oaklanders on non-city funded projects), core workforce hours, availability of Oaklanders by trade, and the point at which certain work is performed (schedule of values). The analysis places the real time data in the proper context.

For example, it is possible for real time certified payroll data to show approximately 1,000 hours worked on the project to date. The baseline assumption is that at least 500 of those hours must be worked by Oakland residents. However, the baseline number will be impacted by influencing factors such as exemptions (i.e. core workers) and the availability of Oakland residents. For the sake of discussion approximately 400 hours are exempt due to core workers thus leaving 600 hours subject to the participation requirement. Given this scenario, 300 hours must be worked by Oakland residents. The 300 hours may be further impacted by the particular trade and availability of Oakland residents in that particular trade.

By the same token, the next phase of the schedule of values reflects a different category of work. Real time data shows approximately 5,000 hours and 4,000 of those hours were worked by Oakland residents.

Identifying influencing factors and analyzing the residual impacts are time intensive endeavors. While certified payroll data will be reported on a weekly basis as required by law, the other side of the equation must include the true up provided every 4-6 weeks. Staff will work with the developer and contractors, along with the West Oakland Jobs Resource Center to bring the most recent data into alignment with the predetermined compliance policies and procedures.

The West Oakland Jobs Resource Center will be opened soon and will work closely with the City’s Local Construction Employment Referral Program (LCERP). The Resource Center will be positioned to receive Oakland residents seeking employment, communicate with other resource services such as the City’s LCERP, Cypress Mandela, and Men of Valor, and will refer Oakland residents to job opportunities on the Army Base as well as other projects in the region. The City and the Resource Center staff will work together to prepare a comprehensive true-up every 4-6 weeks.

SUSTAINABLE OPPORTUNITIES

Economic: By closely tracking and monitoring compliance, the City will create a real time status thus creating the ability to take corrective actions before project end. Correct actions will increase opportunities for Oakland residents and businesses.

Environmental: There are no environmental impacts or opportunities anticipated as a result of implementation of the policy changes

Social Equity: Enforcement of social equity policies are supported by the application of sanctions and penalties.

RECOMMENDATION(S) AND RATIONALE

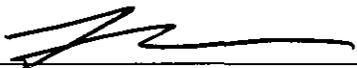
Staff recommends that the Council adopt a resolution amending the Oakland Army Base Construction Jobs Policy-Public Improvements And Vertical Construction; establishing weekly reporting requirements for Contractors And Sub-Contractors; authorizing the establishment of a website which will post non-confidential compliance information in real time; reporting true up data representing influencing factors and data analysis every four to six weeks; mandating use of the City's LCP tracker program; and establishing sanctions on Contractors and Sub-Contractors for noncompliance to include a penalty of 1.5 times the shortfall with Oakland's jobs policy.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council approve the resolution(s) adopting the changes to the Oakland Army Base Job's Policy.

For questions regarding this report, please contact Deborah Lusk-Barnes, Manager, Contracts and Compliance, at (510) 238-6270.

Respectfully submitted,



FRED BLACKWELL,
Assistant City Administrator

Prepared by:

Deborah Lusk-Barnes, Manager
Contracts and Compliance
Office of the City Administrator

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ATTACHMENT A

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 on the former Oakland Army Base, as defined below and further described in that certain Lease Development and Disposition Agreement (“LDDA”) between the City of Oakland (“City”) and Prologis CCIG Oakland Global, LLC (“Developer”) dated _____. 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.

“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.

“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 either described in the Scope of Public Improvements attached to 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 Public Improvements, 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 that Lease Disposition and Development Agreement described above entered into by the City and Developer respecting the development activities at the Oakland Army Base.

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“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 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.

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

“Project Site” shall mean the approximately 170-acre portion of the former Oakland Army Base owned by the city known as the City Gateway Development Area.

“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 fourteen days 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.

“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 therefore, 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.~~

(d) Require all contractors and subcontractors to submit weekly certified workforce charts (certified payrolls) listing workers by name, residential address, craft, job category, hours worked, sex, race. The weekly workforce charts shall be submitted in the format of the certified

payroll; the workforce information shall be posted, in real time, on a website which the public may view. These charts (certified payrolls) will be public records and will include redacted information to protect the privacy of workers.

(2) The City shall have the power, by means of this contract provision, to impose sanctions upon contractors and subcontractors found to be in noncompliance of the Oakland Jobs Policy. Such sanctions shall include, but not be limited to : 1) suspension of payments, ii) termination of the contract, iii) recovery by the City of the contract award prices as liquidated damages, and iv) denial of the right to participate in future projects for up to three years

(3) If Contractor fails to satisfy at least one of the alternative approaches required by Section III.A of this Policy, then as the sole and exclusive remedy therefore, such Contractor shall pay to the City liquidated damages in an amount equal to ~~twenty-dollars-(\$20)~~ 1.5 times the hourly rate (including benefits) for each hour short of the percentage requirement. For example, if there are one thousand (1,000) Project Work Hours, with four hundred fifty (450) Project Work Hours performed by Residents, then the liquidated damages shall be in an amount equal to 1.5 x shortfall rate = liquidated damages.

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, in consultation with the Developer, 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 Developer and the City shall meet and confer with regard to the adapted requirements agreed to by the City and the funding agency, and 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.

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.

I. 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. *Specifically, the prime contractor shall:*

- a. Identify the estimated number of job positions to be created by the contract;*
- b. Developer shall work with the unions to specify training needed for entry level and semi-skilled positions by title;*
- c. Identify the estimated number of apprentice jobs to be created by the contract;*
- d. Identify the estimated Project Hours needed by trade at each stage of the contract.*
- e. Information contained in a-e shall be forwarded to the Job Center and the City's Office of Contracts and Compliance.*
- f. Said prime contractor shall be required to submit to the Jobs Center and City's Office of Contracts and Compliance weekly workforce charts (certified payrolls) listing workers by name, residential address, craft, job category, hours worked, sex and race.*

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 City². Such projection shall indicate number of workers, apprentices, and Project Work Hours needed by trade, at different stages of performance of the contract.~~

- a. identify the estimated number of job positions to be created by the contract;*
- b. developer shall work with the unions to specify training needed for entry level and semi-skilled positions by title;*
- c. identify the estimated number of apprentice jobs to be created by the contractor;*
- d. identify the estimated Project Hours needed by trade at each stage of the contract;*
- e. information contained in a-e above shall be forwarded to the Job Center and the City's Office of Contracts and Compliance;*

- f. said prime contractor shall be required to submit to the Job Center and the City's Office of Contracts and Compliance weekly workforce charts (certified payrolls) listing workers by name, residential address, craft, job category, hours worked, sex and race.*
- g. The weekly workforce chart (certified payrolls) shall be submitted in the format of the state approved certified payroll forms; workforce information shall be posted in real time on the City's and Job Center's websites which the public may view.*
- h. True-ups will be provided every 4-6 weeks and posted on the City's Contracts and Compliance and Job Center's websites which the public may view.*

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 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 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 such Contractor 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. The Jobs Center shall make determinations of Disadvantaged Worker status. The Jobs Center shall make such determinations promptly upon request from a Contractor, a Union, an apprenticeship program, or the City.

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 weekly 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. 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.** The City is an intended third-party beneficiary of any contract that incorporates this Policy for the purposes of enforcing the terms of this Policy. There shall be no other third party beneficiaries. City 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.

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. If this Policy's Resident qualification 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.

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.

ATTACHMENT B

Construction Jobs Policy Oakland Army Base Project Vertical Construction

I. Purpose. This Construction Jobs Policy (“Policy”) sets forth certain requirements regarding hiring and employment related to Vertical Construction, as defined below, on the West, Central and East Gateway lease areas on the Oakland Army Base, as those areas are described in that certain Lease Development and Disposition Agreement (“LDDA”) between the City of Oakland (“City”) and Prologis CCIG Oakland Global, LLC (“Developer”) dated _____. 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 on a national basis with respect to prospective workers’ history of involvement with the criminal justice system. A Contractor’s hiring policies with respect to prospective workers’ history of involvement with the criminal justice system that are uniformly applied in the State of California, rather than on a national basis, may be considered a Background Exception pursuant to written approval of the City Administrator. The City Administrator shall reasonably consider any request for such approval by Developer or the applicable Contractor if Developer or such Contractor reasonably demonstrates that a Background Exception is reasonably necessary in order to avoid significant economic or operational hardship for the Contractor.

“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.

“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 that Lease Disposition and Development Agreement described above and 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 Developer, any Developer affiliate leasing a portion of the Project Site, the City, or a construction manager retained by Developer or its affiliate leasing a portion of the Project Site, 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 the portions of the former Oakland Army Base known as the West Gateway Area, Central Gateway Area and East Gateway Area leased to Developer or its affiliates as further depicted in Attachment 1 of 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 fourteen days 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.

“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, including any interior tenant improvements that have a total estimated construction cost of over \$1,000,000.

“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 Contractors 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, in consultation with the Developer, 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 Developer and the City shall meet and confer with regard to the adapted requirements agreed to by the City and the funding agency, and 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.

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. The City is an intended third-party beneficiary of any contract that incorporates this Policy for the purposes of enforcing the terms of this Policy. There shall be no other third party beneficiaries. City 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.

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 IILB, 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 twenty 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.** Contractors may apply to the City Administrator for a waiver of Sections III.C. or III.D. of this Policy on a temporary basis with regard to a particular portion of a Contractor's work on grounds of a major emergency or serious damage to property, such as natural disaster or fire. The City Administrator may grant such waiver only for a period of time necessary to respond to the emergency or serious property damage and only where the Contractor demonstrates (i) specific evidence of a major emergency the response to which requires rapid hiring of a significant number of temporary workers, (ii) that application of Sections III.C. or III.D. 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 Sections III.C. or III.D. of this Policy.

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. If this Policy's fourteen-day 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.

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.

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