REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

AGENDA REPORT

TO: Office of the Agency Administrator
ATTN: Deanna J. Santana
FROM: Community and Economic Development Agency
DATE: September 13, 2011

RE: City and Agency Resolutions Authorizing the Agency Administrator/City Administrator to Execute a Third Amendment to the Oakland Army Base Exclusive Negotiating Agreement, as Amended ("ENA") with AMB Property, L.P./California Capital Group ("Developer Entity") Consenting to a Change in the Developer Entity to ProLogis Property, L.P./CCIG Oakland Global, LLC, Resulting from: (1) the Reorganization and Merger of AMB Property, L.P. into Prologis Property, L.P.; and (2) California Capital Group's Assignment of All Its Interests and Obligations Under the ENA to CCIG Oakland Global, LLC

SUMMARY

Staff requests that the Agency Board adopt a resolution to change the proposed developer entity under an existing Agency/Developer Exclusive Negotiating Agreement, as amended ("ENA") for the former Oakland Army Base from AMB Property, L.P./California Capital Group ("Developer Entity") to ProLogis Property, L.P./CCIG Oakland Global, LLC (the "Third Amendment" to the ENA). Due to the merger of AMB Property Corporation with ProLogis, AMB Property, L.P. ("AMB") has been renamed ProLogis Property, L.P. In addition, California Capital Group ("CCG") has assigned its interests and obligations under the ENA to CCIG Oakland, LLC ("CCIG"), subject to the Agency's consent.

Because of potential legal issues regarding the ability of the Agency to execute the Third Amendment under recent state legislation and a court challenge thereto, staff is requesting that the City be authorized to enter into the ENA, as amended, and as further amended by the same general language and terms of the proposed Third Amendment.

FISCAL IMPACT

Changing the Developer Entity has no direct fiscal impact. The Agency's commitment of up to $14.1 million for the master planning and design of Army Base infrastructure remains the same. (See "Key Issues and Impact" below for a discussion of potential financial impacts regarding a change in capitalization from the CCG entity to the CCIG entity.)

BACKGROUND

On January 22, 2010, after a Request for Qualifications/Request for Proposals (RFQ/RFP) process, the Agency entered into an ENA with AMB/CCG (the "Original Agreement") to

negotiate the master operation and maintenance, and the design, construction, finance, and lease of facilities on the Agency-owned portion of the Army Base, and to determine the terms of a Lease Disposition and Development Agreement ("LDDA").

On August 10, 2010, the Agency and AMB/CCG entered into a First Amendment to the Original Agreement ("First Amendment") to provide for Agency payment of up to $240,000 for the environmental review and reports required for infrastructure construction on the Army Base.

On April 11, 2011, the Agency and AMB/CCG entered into a Second Amendment to the Original Agreement (the "Second Amendment"). The Second Amendment revised several ENA provisions and additionally provided that the Agency would engage the CCG developer partner only (not AMB) to manage and complete the master planning and design of Army Base infrastructure. The Agency is required to reimburse CCG up to $14.1 million for third-party consultant costs for the infrastructure work.

Collectively, the Original Agreement, as amended by the provisions of the First Amendment and Second Amendment, is referred to as the "ENA."

In June 2011, AMB Property Corporation, the parent company of AMB, merged with ProLogis. AMB Property Corporation is the surviving entity, but was renamed ProLogis, Inc. to capitalize on the more widely known ProLogis brand. Consequently, AMB was renamed ProLogis Property, L.P. ("ProLogis").

In the meantime, CCG has already commenced a portion of the master infrastructure planning work and that work is progressing. CCG subsequently determined that it would assign, subject to the Agency's consent, all of its rights and obligations under the ENA, including its master infrastructure planning work, to a newly-created related entity, CCIG Oakland Global, LLC.

Staff recommends that the Agency Board authorize an amendment to the ENA to recognize a change in the Developer Entity from AMB Property, L.P./Califomia Capital Group to ProLogis Property, L.P./CCIG Oakland Global, LLC ("ProLogis/CCIG").

KEY ISSUES AND IMPACTS

Because of the California Supreme Court's issuance of a partial stay in the matter of California Redevelopment Association v. Matosantos (S194861), the ability of redevelopment agencies to take some actions, including the amendment of existing agreements, may be questionable until that litigation is resolved. Therefore, the resolution provides that this Third Amendment not be executed by the Agency until the Agency Administrator and Agency Counsel determine that it can be entered into under the terms of the stay or subsequent orders or outcomes in the CRA litigation. However, the redevelopment legislation does not affect the ability of the City to execute the amended ENA. Accordingly, staff requests that the City Administrator be authorized to execute the ENA, as amended by the Third Amendment.

The Agency and Port of Oakland recently entered into a Cost Sharing Agreement. In return for the Agency's initial investment of $32 million, the Port agrees to invest up to $62 million of its $242 million allocation of California's Trade Corridor Improvement Fund ("TCIF") for construction activities on the Agency-owned portions of the Army Base. Construction must start by December 2013. Infrastructure design should be completed at least six months, preferably 12 months, prior to that date. It cannot be over emphasized that TCIF funding is over-subscribed and projects not progressing run the risk of being dropped. Without the iinmediate initiation of the infrastructure master plan, which can best be implemented and managed through the private means and methods provided for in the ENA, the Agency and Port risk losing $242 million.

The recommended change of Developer Entity is largely an administrative matter (except for the capitalization issue mentioned below), and does not change the development team selected through the RFQ/RFP process or the developer's personnel working with staff The concept of "One Vision, One Project, One Team" continues to apply to the redevelopment of Agency and Port of Oakland Army Base properties. As a point of reference, the Port recently executed a Predevelopment Agreement with ProLogis and CCIG.

Substitution of ProLogis Property, L.P. for AMB Property, L.P.

Staff considers the substitution of ProLogis for AMB as having no material effect regarding the ENA. Indeed, the combined company of ProLogis is much larger; with owned assets of 600 million square feet of warehouse space in 24 counties around the world and a current working capital fund of more than $2 billion, it is the world's largest owner/developer of logistics space. The CEO and Chairman of AMB is the CEO and Chairman of ProLogis and will maintain its corporate headquarters in San Francisco. The key AMB personnel, with whom the Agency has been working, continue to work on the development.

Substitution of CCIG for CCG.

The proposed substitution of named entities is a common practice, assuming the parties agree the risk assessment for the transaction does not materially change.

CCG is a general partnership, while CCIG is a limited liability company. As a general partnership, the CCG general partners assume full personal liability for the debts and obligations of the partnership. Accordingly, if CCG fails to comply with its obligations under the ENA, particularly regarding its management of the master infrastructure planning, the Agency conceivably would have access to both the CCG entity assets and the general partners' personal assets.

As a limited liability company, the proposed substitute entity CCIG would reduce the limited partners' liability to their investment in the business. Accordingly, substitution of CCIG for CCG conceivably could increase the Agency's risks because the Agency could have access to fewer assets if CCIG failed to comply with ENA obligations. The amendment assigns all of CCG's liabilities to CCIG, even any that arose before the assignment to CCIG, except for those that

were covered by CCG's insurance before the assignment.

Staff believes, for four reasons, that there is little chance that issues raised by levels of capitalization will create problems for the Agency. First, Agency staff is actively engaged and managing on a daily basis CCG's administration of the master planning process. Second, the Amendment gives Agency staff the right to periodically assess the level of capitalization of CCIG to ensure that it is sufficient to handle the business required under the ENA. Third, while not legally binding, CCG has demonstrated and has stated that it will continue to fund any and all of CCIG's financial obligations throughout the current master infrastructure planning and design phase of the ENA. Fourth, the Agency only reimburses CCIG for payments made in its contracting for the infrastructure and then only upon evidence that the consultants have been paid, and as stated above, Agency staff will regularly assess CCIG financial status to be assured that it maintains adequate resources to pay the consultants.

Going forward, assuming that the Agency enters into a Lease Disposition and Development Agreement, it will be appropriate that CCIG provide the Agency with even further evidence of its organization and the capitalization needed to proceed with the development. It should be noted that prior to entering into a Predevelopment Agreement with the new entity, ProLogis/CCIG, the Port reviewed and deemed adequate the financial assets of CCIG Oakland Global LLC.

PROJECT DESCRIPTION

A draft of the Third Amendment is attached as ***Attachment A***. Except as amended by the Third Amendment, all other terms, conditions, and provisions of the ENA will remain unchanged.

SUSTAINABLE OPPORTUNITIES

Economic: The redevelopment of the former Oakland Army Base will create thousands of temporary and permanent jobs, substantially increase the City's tax base, and support the long-term competitiveness of the Port of Oakland.

Environmental: The improvements planned for the development of the former Army Base, including the expansion of rail service and providing a permanent site for truck parking, will help reduce air pollution.

Social Equity: Social equity is ensured through the City's and Port's local hiring and contracting requirements. Community benefits associated with the project will be substantial, including contributions to the West Oakland Community Fund and support for workforce development programs. Staff will return to the Agency Board at a later date with options and recommendations for how to meet most effectively the Agency's, Port's and master developer's community benefits goals and priorities.

DISABILITY AND SENIOR CITIZEN ACCESS

Any projects and programs implemented in this project area will be required to comply with applicable City, State, and Federal disabled access requirements.

RECOMMENDATION AND RATIONALE

Staff recommends that the Agency Board and the City Council adopt the resolutions to execute a Third Amendment to the Oakland Army Base ENA with AMB Property, L.P./Califomia Capital Group to change the Developer Entity to ProLogis Property, L.P./CCIG Oakland Global, LLC. This change allows the Agency and Developer Entity to continue meeting their respective obligations under the ENA.

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that the Agency Board and the City Council adopt the resolutions to authorize the Agency Administrator and City Administrator to execute a Third Amendment to the Oakland Army Base Exclusive Negotiating Agreement, as amended, with AMB Property, L.P./Califomia Capital Group ("Developer Entity") consenting to a change in the Developer Entity to ProLogis Property, L.P./CCIG Oakland Global, LLC, resulting from: (1) the reorganization and merger of AMB Property, L.P. into Prologis Property, L.P.; and (2) Califomia Capital Group's assignment, subject to the Agency's consent, of all its interests and obligations under the ENA to CCIG Oakland Global, LLC

Respectfully submitted,

Walter S. Cohen, Director
Community and Economic Development Agency

Reviewed by:
Gregory D. Hunter, Deputy Director

Prepared by:
Hui Wang, Urban Economic Analyst III
Redevelopment

APPROVED AND FORWARDED TO THE
COMMUNITY & ECONOMIC DEVELOPMENT
COMMITTEE:

Office of the City Administrator

Item: 5
CED Committee
September 13, 2011

ATTACHMENT A

THIRD AMENDMENT TO THE EXCLUSIVE NEGOTIATING AGREEMENT
AMB Property, L.P./California Capital Group

This Third Amendment to the Exclusive Negotiating Agreement ("Third Amendment") is made and entered into this ___day of August, 2011 ("Effective Date"), by and among the REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND, a community redevelopment agency organized and existing under the California Community Redevelopment Law (the "Agency"), ProLogis Property, L.P. ("Prologis"), as successor-in-interest to AMB PROPERTY, L.P., a Delaware limited partnership ("AMB"), CALIFORNIA CAPITAL GROUP, a Califomia general partnership ("CCG"), and CCIG Oakland Global, LLC ("CCIG"), a Califomia limited liability company. Prologis and CCG are referred collectively to herein as "Developer." Together, the Agency and Developer are referred to herein as the "Parties."

RECITALS

A. The Parties have previously entered into that certain Exclusive Negotiating Agreement, dated January 22, 2010, for the potential redevelopment of a portion of the former Oakland Army Base (the "Original Agreement").

B. On August 10, 2010, the Parties entered into a First Amendment to the Original Agreement (the "First Amendment").

C. On April 11, 2011, the Parties entered into a Second Amendment to the Original Agreement (the "Second Amendment"). The Original Agreement, as amended by the provisions of the First Amendment and Second Amendment, is referred to herein as the "ENA". Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the ENA.

D. The Parties have entered into this Third Amendment to memorialize their agreement on: (1) the form of the Approved Contract to be used to engage consultants for master planning of the Agency-oriented Infrastructure as required by the Second Amendment; (2) the substitution of ProLogis, Property, L.P. for AMB under the ENA; and (3) CCG's assignment of all of its right, title, interest and obligations under the ENA to CCIG.

AGREEMENT

NOW THEREFORE, the ENA is hereby amended as follows:

1. Approved Contract. The Parties hereby agree that the form of the Consultant Agreement attached hereto as Exhibit L-1 is the "Approved Contract" pursuant to Section 1(b)(ii) of Exhibit L to the Second Amendment.

2. AMB/Prologis Merger. The Parties acknowledge that AMB Property Corporation, the parent company of AMB, has merged with ProLogis. AMB Property Corporation is the surviving entity and has been renamed "ProLogis, Inc.". As a result of the merger, AMB has been renamed ProLogis Property, L.P. The Parties hereby agree that ProLogis

Property L.P. shall be substituted for AMB under the ENA. Furthermore, ProLogis expressly agrees that it has succeeded to all obligations of AMB under the ENA.

3. CCG/CCIG Assignment and Assumption. CCG and CCIG have provided the Agency with a true and correct copy of that certain ENA Assignment and Assumption, dated July ___, 2011, whereby (subject to the Agency's approval), (a) CCG has assigned all of its right, title and interest in, to and under the ENA and the Port Infrastructure Specialized Service Agreement, dated August ____, 2011 (the "Port Infrastructure Agreement") entered into pursuant to Section 20 of the ENA, to CCIG, and (b) CCIG has expressly assumed all of CCG's obligations under the ENA and the Port Infrastructure Agreement. The Agency hereby approves of the foregoing assignment and assumption. Further, the Agency hereby agrees that, from and after the Effective Date, CCG shall have no further obligations or liability (y) under or with respect to the Master Planning services performed pursuant to Section 20 of the ENA, the corresponding Exhibit L to the Second Amendment or the Port Infrastructure Agreement, whether arising out of or concerning acts occurring prior to or after the Effective Date or (z) with respect to any other matters which first arise under the ENA after the Effective Date. Furthermore, as consideration for the Agency's consent to the ENA Assignment and Assumption, CCIG expressly agrees to assume all obligations and liabilities of CCG under the ENA whether such obligations and liabilities resulted from CCG's acts or failure to act prior to the Effective Date. Notwithstanding the foregoing, the Agency does not waive, release, or otherwise relinquish rights it has as an additional insured under insurance policies that provide coverage for CCG's acts in connection with the ENA.

4. [The parties are currently negotiating language giving the Agency the legal right to require CCIG to provide evidence of additional capitalization if the Agency reasonably determines that the Agency's risks have increased. Staff will provide in the Supplemental Agenda or read into the record the language finally agreed upon by the Parties.]

5. The Parties hereby agree that, except as amended by this Third Amendment, all other terms, conditions, and provisions of the ENA remain unchanged and in full force.

6. The persons signing this Third Amendment on behalf of Developer affirm that they are authorized to execute on Developer's behalf

[Signatures on following page]

IN WITNESS WHEREOF, this Third Amendment to the Exclusive Negotiating Agreement has been executed by the Parties and CCIG as of the date first written above.

PROLOGIS, L.P.,
a Delaware limited partnership

By: _____

Its: _____

Dated: _____

California Capital Group, a California general partnership,

By: _____

Its: _____

Dated: _____

CCIG OAKLAND GLOBAL, LLC, a California limited liability company

By: California Capital & Investment Group, Inc.,
a California corporation
Its: Sole Member

By: _____

Its: _____

Dated: _____

[Signatures continued on next page]

AGENCY:

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND, a community redevelopment agency organized and existing under the California Community Redevelopment Law

By: _____
Deanna J. Santana
Agency Administrator

Approved as to form and legality:

By: _____
Dianne Millner
Agency Counsel

Exhibit L-1
Form of Approved Contract

[See attached]

CONSULTANT AGREEMENT

Agreement Date: _____

Name of Consultant: _____ ("Consultant") Type of Entity: _____

Federal Employer I.D. No. _____ California Professional License No. _____ Type_____

Mailing Address _____ City _____ State CA Zip _____

Office Location Address _____ City _____ State CA Zip _____

Business Phone _____ Facsimile _____ E-mail Address _____

Emergency Phone _____ Cell Phone _____

Project: _____ Tract:_____ Location _____

Type of Services:_____ Contract Number:_____ Contract Amount:_____

City/State/Zip:_____

Consultant is required to provide the Professional Liability insurance according to Section 8.1.5 of this Agreement.

This Consultant Agreement (this "Agreement") is made as the Agreement Date above, between _____, a _____ ("Client"), and the above-described Consultant ("Consultant").

1. AGREEMENT.

Consultant agrees to provide the Services (defined below) for the above described Project for the Contract Price (defined below), and Client agrees to pay Consultant the Contract Price subject to all the terms and conditions contained in this Agreement.

2. THE SERVICES.

2.1 Consultant agrees that Client is party to an Exclusive Negotiating Agreement ("ENA") with the Redevelopment Agency of the City of Oakland ("Agency") for the development of the Oakland Army Base ("OAB"). Pursuant to the applicable provisions of the Second Amendment to the ENA, Client has agreed to oversee and coordinate the planning and design of Master Planning (as defined in the Second Amendment to the ENA) of the OAB. Client will commence overseeing and coordinating the OAB's Master Planning before the Agency and Client have completed negotiations for the final agreement governing the development of the OAB. CCG's agreement with the Agency for Master Planning requires that Client retain third-party consultants to prepare the necessary deliverables for the OAB's Master Planning.

2.2 Consultant agrees to perform and provide all services and materials and perform the work described in **Exhibit** A, attached hereto, including, furnishing any related data, reports, documentation, drawings, Computer Aided Design (CAD) media, models and other instruments of services described therein (the "Services") by providing, at Consultant's cost, all skill, services, labor, materials, supervision, equipment and facilities required to accomplish efficiently and according to the applicable standard of professional care all the Services, in accordance with the schedule to set forth in **Exhibit** A, in a good and professional manner, in compliance with this Agreement, all applicable local, state and federal ordinances, laws, rules and regulations, including but not limited to building codes, safety laws,

applicable FHA and VA requirements and the Occupational Safety and Health Act and Safety Orders (collectively, the "Laws").

2.3 The standard of care applicable to Consultant's performance of the Services shall be the degree of skill and diligence normally employed by experienced professional consultants performing the same or similar services in the same general geographical area as the Project.

2.4 Consultant represents that Consultant has thoroughly examined all applicable existing studies, plans, data, and other materials provided by Client as well as the conditions of approval corresponding to the Project (the "Project Data"). Consultant represents that Consultant is entering into this Agreement solely in reliance upon its review of the Project Data and Consultant's own information and investigations and not upon any statement or representation made by Client. Consultant shall immediately notify Client in writing of any discrepancies between the various Project Data documents or other issues contained in the Project Data actually discovered by Consultant that may adversely affect Consultant's ability to perform the Services.

2.5 Client shall have the right to delete any portion of the Services (a "Task") from the Services by giving at least 24 hours' written notice to Consultant. Upon the deletion of any Task or portion thereof, the parties shall execute a written change order describing the deleted Task or portion thereof and the corresponding reduction in the Contract Price (which reduction shall be reasonably equal to the value of the deleted Task, or if deletion of a portion of a Task, in proportion to the percentage of the Task actually deleted) and the corresponding changes to the schedule and deliverables required in conjunction with the performance of the remaining Services. If the Consultant has incurred expenses in anticipation of completing the deleted Task or portion thereof, then, in addition to payment for any work actually completed on the deleted Task, the written change order shall credit Consultant the actual amount of expenses reasonably incurred in anticipation of completing the deleted Task or portion thereof prior to Consultant's receipt of notice that the Task or portion thereof was being deleted.

3. CONTRACT PRICE.

3.1 Client shall pay Consultant in accordance with the price schedule and payment terms set forth in **Exhibit B**, attached hereto (the "Contract Price"), subject to the terms and conditions set forth in this Agreement.

3.2 The Contract Price shall not be subject to change due to changes in the cost of labor, materials or equipment or otherwise unless agreed to in writing by the parties hereto.

3.3 Consultant agrees that the Contract Price shall include all sales, service and/or use taxes and business license fees that shall incur as a result of Consultant's performing the Services, and any required travel expenses incurred by Consultant to supervise, coordinate, and/or facilitate the proper execution of the manufacturing, shipping, and installation of the Services.

3.4 If the Contract Price is to be paid on a time-and-materials basis and/or for reimbursable expenses, Consultant shall make available to Client, upon Client's request, true, complete and correct copies of Consultant's time and expense records relating to the Project for the purpose of Client's verifying Consultant's invoices. Any payment by Client for Services on a time-and-material basis or for reimbursable expenses shall not be deemed an acceptance of the correcmess of such invoice or a waiver of Client's right to verify such invoice by inspection of Consultant's records. Consultant's failure to promptly provide Consultant's time and job records relating to the Project after Client's request, will be grounds for Client to withhold payment to Consultant until such records reasonably satisfactory to Client have been delivered to Client. If Consultant's time and job records relating to the Project do not substantiate Consultant's invoices for such Services, Client will have no obligation to pay Consultant for any time, material or reimbursable expenses that are not so substantiated, and Consultant will promptly refund upon Client's demand any amount previously paid by Client that was not so substantiated. As used in this Agreement, the term "reimburseable expenses" shall mean the reasonable actual, third party costs incurred by Consultant in performing the Services, including, but not limited to, delivery services, outside reproductions, auto mileage (outside of Alameda County), other travel, meals and governmental fees. The term "reimburseable expenses" expressly excludes Consultant's overhead costs and any portion of the Services that has been properly delegated to a Sub-Tier Consultant (defined below) pursuant to the terms of this Agreement. Consultant shall be required to obtain Client's and the Agency's written consent prior to incurring any single reimburseable expense over $500.00 and aggregate reimburseable expenses for any month in excess of $2,000.00. If

Consultant fails to obtain the required prior written consent, Client shall have no obligation to reimburse Consultant for the applicable reimburseable expense.

4. PAYMENT OF CONTRACT PRICE.

4.1 No portion of the Contract Price shall be due until (i) Consultant has delivered to Client waivers and release of all liens, and stop notice and bond claim rights for material, labor and other services furnished in connection with the Services, as required in Section 4.3; (ii) Consultant's work is acceptable to Client and the Agency; (iii) Client and Consultant mutually agree upon the percentage of work completed or stage of completion of the Services for the month prior to billing; (iv) the payment request, invoices and supporting documents are submitted by Consultant in accordance with the provisions of **Exhibit B**; (v) Consultant is in compliance with the all insurance requirements set forth in Section 8: (vi) Consultant has submitted to Client an **IRS Form W9** containing Consultant's taxpayer identification number, (vii) Consultant has delivered completed forms attached as **Exhibits D** and **E** (and when applicable **Exhibit F**) in furtherance of Client's compliance with the City of Oakland and the Agency's Local Hire Ordinance, (viii) in the case of the final payment, Consultant has delivered to Client all reports, drawings and other instruments of services generated by Consultant for the Services and all deliverables comply fully with the requirements of this Agreement. Once the foregoing conditions have been met, Client shall pay Consultant in accordance with the terms of this Agreement.

4.2 Consultant shall submit invoices and Client's "Progress **B**illing Worksheet" executed and filled out properly with requests for progress payments then due, along with Client's "Payment **R**equest Coversheet" for progress payments for Work performed for the preceding billing period, and the other documentation required by this Agreement to Client's main office no later than the 5th day of each month. All invoices and requests for payment must include the name of the Project, the date of completion of the Services, Client's contract number, description of work performed, and the number assigned by Client for this Agreement or any applicable Change Order or Purchase Order.

4.3 As a condition precedent to any obligation of Client to make payments to Consultant under this Agreement, Consultant shall furnish written evidence satisfactory to Client that all claims or demands of Consultant's consultants and their consultants (collectively "Sub-**T**ier Consu**l**tants"), and any other person or entity furnishing labor, services, materials, equipment, tools, supplies or employee benefits (all collectively, "Potential Lien Claimants"), have been paid and, if required by Client, an affidavit that so far as Consultant is able to ascertain, no person or entity has a right to any lien, stop notice or bond claim for materials, labor, supplies, equipment, tools or other services in connection with the Services to be performed by Consultant or any Sub-Tier Consultant. Such written evidence, including but not limited to lien and stop notice and bond claim releases, waivers and affidavits shall be furnished upon such forms and in such manner as may be requested by Client and all statements made by Consultant relative thereto shall be made under penalty of perjury. All requests for progress payment will be accompanied by a conditional waiver and release on progress payment substantially in the form required by Client and Califomia Civil Code section 3262 and any request for any final payment, will be accompanied by a conditional waiver and release on final payment substantially in the form required by Client and Califomia Civil Code section 3262.

4.4 If Client receives any notice of any liens or levies that affect Consultant or arise out of Consultant's Services, Client may withhold the payment of any monies to which Consultant would otherwise be entitled to receive, until such time that Client has reasonable evidence that such liens or levies have been discharged.

4.5 Consultant shall pay to Client upon demand all amounts that Client may pay in connection with the discharge and release of any such lien, stop notice, bond claim or claim therefor, including but not limited to all Legal Costs (as hereafter defined in Section 7.2, below).

4.6 No payment or advance made to Consultant pursuant to this Agreement shall be construed as evidence of acceptance of any such work or compliance by Consultant with the terms of this Agreement, and shall not be construed as a waiver by Client as to work later found to be defective or incomplete and shall not release the Consultant from its obligations to correct defective or incomplete work. When in the sole opinion of Client it is advisable: (i) payments to Consultant may be made by checks payable jointly to Consultant and any Potential Lien Claimants; or (ii) payments (including but not limited to Consultant's payroll obligations) may be made directly to one or more of the Potential Lien Claimants. Any amounts so paid shall be deducted from the amounts owed to Consultant under this Agreement. Consultant's acceptance of the last payment with respect to work performed on a particular completed structure shall constitute a waiver of all claims by Consultant as to that structure and the lot upon which it is constructed.

4.7 Consultant will submit all invoices and other requests for payment, including, but not limited to, those for extra work and change orders approved by Client, no later than ninety (90) days after the completion of Consultant's work. Client will be under no obligation to pay any invoices or other requests for payment that are given to Client more than 90 days after the completion of Consultant's work.

4.8 Client will have the right to deduct from any payment that is due Consultant any amount as a deduction, offset or backcharge, to complete or correct any of the Services, to cure any default of Consultant under this Agreement or as otherwise authorized by this Agreement ("**B**ackcharge").

4.9 This contract is subject to the Prompt Payment Ordinance of Oakland Municipal Code, Title 2, Chapter 2.06 (Ordinance 12857 C.M.S, passed January 15, 2008 and effective February 1, 2008). The Ordinance requires that, unless specific exemptions apply, Client shall pay the undisputed invoices of Consultant and Consultant shall pay undisputed invoices of its immediate Sub-Tier Consultants for goods and/or services within twenty (20) business days of submission of invoices unless the Client and Consultant notify the City of Oakland Liaison in writing within five (5) business days of receipt of the disputed invoice that there is a bona fide dispute between the Client and the Consultant (or Consultant and its immediate Sub-Tier Consultants) and claimant, in which case the Client or Consultant may withhold the disputed amount but shall pay the undisputed amount.

Disputed late payments are subject to investigation by the City of Oakland Liaison, Office of Contract Compliance, upon the filing of a complaint. If a claimant files a claim with the City of Oakland Liaison, Client or Consultant opposing payment shall provide security in the form of cash, certified check or bond to cover the disputed amount and penalty during the investigation. If Client or Consultant fails or refuses to deposit security, the Agency will withhold an amount sufficient to cover the claim from the next Client progress payment. The Agency, upon a determination that an undisputed invoice or payment is late, will release security deposits or withholds directly to claimants for valid claims.

Client shall not withhold from Consultant and Consultant shall not withhold from its immediate Sub-Tier Consultants any monies for retention associated with Consultant's or Sub-Tier Consultants' rendering of goods. Client may withhold from Consultant and Consultant may withhold from its immediate Sub-Tier Consultants monies for retention associated with Consultant's or Sub-Tier Consultants' rendering of services; provided, that they are required to release such retention in proportion to the Consultant or Sub-Tier Consultant services rendered, for which payment is due and undisputed, within five (5) business days of payment by the Agency to Client or Client to Consultant, as applicable. Client and Consultant shall each be required to pass on to and pay Consultant or Sub-Tier Consultant mobilization fees within five (5) business days of being paid such fees by the Agency. For the purpose of posting on the City's website, Client and Consultant, are required to file notice with the City of release of retention and payment of mobilization fees, within five (5) business days of such payment or release; and, Client is required to file an affidavit, under penalty of perjury, that he or she has paid Consultant, within five (5) business days following receipt of payment from the City. The affidavit shall provide the names and address of Consultant and the amount paid.

If any amount due by Client or Consultant to any claimant for goods and/or services rendered in connection with a purchase contract is not timely paid in accordance the Prompt Payment ordinance, Client or Consultant shall owe and pay to the claimant interest penalty in the amount of ten percent (10%) per annum of the improperly withheld amount for every month that payment is not made, provided the claimant agrees to release the Consultant or Sub-Tier Consultant from any and all further interest penalty that may be claimed or collected on the amount paid. Claimants that receive interest payments for late payment Prompt Payment ordinance may not seek further interest penalties on the same late payment in law or equity.

Consultant and its Sub-Tier Consultants shall include the same or similar provisions as those set forth above in this section in any contract with another Consultant or Sub-Tier Consultant that delivers goods and/or services pursuant to or in connection with this Agreement.

Prompt Payment invoice and claim forms are available at the following City of Oakland website: http://cces.oaklandnet.com/cceshome/ by clicking on the rightmost upper tab labeled Prompt Payment Ordinance. Invoice and claim inquiries should be directed to City of Oakland Liaison, 510-238-6261, Office of Contract Compliance, 250 Frank H. Ogawa Plaza, Suite 3341, Oakland, CA 94612.

4.10 Consultant shall certify in its Progress Billing Worksheet that it has complied with the City of Oakland's local hire ordinance and shall also state the number of Oakland residents that Consultant employs at the time it submits its Progress Billing Worksheet.

4.11 During and upon completion of the Consultant's work under this Agreement, the Agency may request documentation certifying that Client has paid Consultant (not more frequently than once a month). The Agency reserves the right to issue, and Consultant agrees to accept as payment, joint checks payable to Client and the Consultant. Consultant agrees that neither this provision, any joint-check issued by Agency nor any other provision of this Agreement creates any contractual relationship between Consultant and Agency. Consultant also agrees that neither this provision, any joint-check issued by Agency nor any other provisions of this Agreement will render Consultant a third-party beneficiary of the ENA or any other agreement between Client and the Agency.

5. TERM.

5.1 This Agreement shall be effective as of the Agreement Date, above, and shall remain in effect until the Services are complete, or until amended, in writing, by both Client and Consultant or until Client gives Consultant notice of termination.

5.2 Client at its sole option may terminate this Agreement, at any time and for any reason or no reason, by giving Consultant at least five (5) days' prior written notice, and should such termination be made other than for Consultant's failure to perform or Consultant's breach of this Agreement, as provided in Section 7, hereof, Client shall pay Consultant the cost of Services actually completed by Consultant, or other costs actually incurred by Consultant in its anticipated performance of the Services, plus ten percent (10%) of such amount, less all sums paid Consultant prior thereto pursuant to the terms of this Agreement, and any deductions from the Contract Price made by Client in accordance herewith, provided, however, the total amount to be received by Consultant pursuant to this Agreement shall not in the aggregate exceed the Contract Price. As a condition precedent to Consultant's right to receive payment pursuant to this Section, Consultant shall, upon request therefor by Client, provide written evidence satisfactory to Client, including but not limited to canceled checks, paid invoices, and such other documentation as Client may require, substantiating Consultant's claim to such incurred costs. Payment pursuant to this Section shall be subject to all the terms and conditions of, and procedures for, payment as set forth herein.

6. PROJECT DOCUMENTS.

6.1 Upon (a) demand by Client, (b) completion of the Services, or (c) termination of this Agreement and Consultant's receipt of compensation due, Consultant shall deliver to Client any models prepared by Consultant, and originals or reproducible copies of all drawings, data, calculations, plans, specifications, computer aided design (CAD) files or other media prepared by Consultant or at the request of or on behalf of Consultant, in connection with or in any manner arising from Consultant's performance of the Services and this Agreement (the "Project Documents"), whether or not any Project Document is complete. In the event of a dispute as to any amount due to Consultant under this Agreement at the time Consultant is required to deliver the Project Documents to Client pursuant to the immediately preceding sentence, Consultant shall deliver the Project Documents to Client so long as Client has paid any undisputed amounts due Consultant and either party has made a written demand for dispute resolution. Any use of any of the Project Documents for any other project not authorized in writing by Consultant, any changes made by anyone other than Consultant, and any use of incomplete Project Documents shall be at Client's or any other user's sole risk, and Consultant shall bear no liability for any such unauthorized use. Client agrees to indemnify, defend and hold Consultant and its officers, agents and employees harmless, from any claims, losses, damages, costs, including without limitation attorneys' fees, arising out of any such unauthorized use, or change of any of the Project Documents for any other project. However, if this Agreement is for any reason assigned to Agency, the Agency will not be obligated to undertake any indemnity obligations that Client might have to Consultant under this Agreement.

6.2 Consultant agrees that all drawings, plans, specifications and other documents, created by or on behalf of Consultant will be approved for use, certified, signed and stamped, at no additional charge to Client, by a person or persons having the proper license, certification or registration and the applicable governmental body or agency, as required by law, before such drawings, plans, specifications and other documents are used for the Services.

7. DEFAULT AND REMEDIES.

7.1 Should Consultant fail to perform in accordance with any material term of this Agreement or otherwise be in material breach hereunder, Client may give notice of such breach to Consultant, identifying the failure of performance or breach of this Agreement. Such failure of performance or breach by Consultant shall give Client the option (at Client's sole discretion) ofi

7.1.1 Client Performing Work. Without terminating this Agreement or the obligations of Consultant hereunder as to all of the Services required to be performed or furnished by Consultant, require Consultant, at Consultant's expense, to cure such defaults as may exist in the performance of Consultant's obligations, within three (3) business days after such notification, including but not limited to, correcting any documents or other instruments of service determined by Client to be inaccurate, incomplete or not complying with the requirements of this Agreement. Client's failure to give notice to Consultant as herein provided shall not alter, diminish or restrict any of Consultant's obligations or any of Client's rights as set forth in this Agreement. Should Consultant fail to timely correct or complete the work or otherwise cure its defaults hereunder, without further notice, Client may complete or correct the work or otherwise remedy the default by Consultant in which event Consultant shall reimburse Client upon demand for Client's Costs. As used in this Agreement, the phrase "Client's Costs" shall mean the actual cost to Client for all services, materials and other items provided or paid for by Client or its designee(s) plus an amount equal to the lesser of (a) fifteen percent (15%) of such cost or (b) $10,000. Upon the completion of the Services (or portion thereof that is the subject of the default notice) pursuant to this Section 7.1.1 and Consultant's payment of Client's Costs, Consultant shall be entitled to receive payment of the Contract Price (or applicable portion thereof) pursuant to the terms of this Agreement.

7.1.2 Terminating the Agreement. Upon Consultant's failure to cure its default within three (3) business days after receipt of Client's written notice to Consultant that it has defaulted on the Agreement and the basis for Client's assertion that Consultant has defaulted, Client may, at its sole election, terminate this Agreement, with the further option granted to Client of itself completing the Services required to be performed by Consultant or any portion thereof, or having such work in whole or in part completed by others, and in each instance Client shall be entitled to recover all damages suffered by Client.

7.2 Consultant shall be liable for all damages suffered by Client by reason of Consultant's default in any provision of this Agreement, and the exercise by Client of its option to terminate this Agreement shall not release Consultant of such liability. Consultant shall have no right to receive any further payment after default by it of any term of this Agreement until such time as the Services to be performed by it pursuant hereto has been completed and accepted by Client and damages suffered by Client, if any, ascertained. As used in this Agreement and subject to the terms of Section 7.5, the phrase "damages suffered by Client" shall include all damages allowed by law and by way of illustration, but not of exclusion, Client's Costs of completing the Services which exceed the Contract Price, other damages specifically described elsewhere in this Agreement, and Legal Costs. As used in this Agreement the phrase "Legal Costs" shall include, but not be limited to, reasonable attorneys' fees, expert witness fees or professional opinion fees, costs of tests or analyses and all costs of suit, taxable and non-taxable, including, but not limited to, costs of deposition and trial transcript copies.

7.3 The options and rights granted to Client herein shall not be deemed as limitations upon the other rights and remedies of Client in the event of a failure of performance or breach by Consultant, and Client shall be entitled to exercise the rights and remedies hereinabove specified and all other rights and remedies which may be provided in this Agreement or by law or in equity, either cumulatively or consecutively, and in such order as Client in its sole discretion shall determine.

7.4 If Client fails to make payments to Consultant in accordance with this Agreement, such failure shall be considered substantial nonperformance and, in such an event, if Client fails to cure such nonperformance within seven (7) business days after receipt of Consultant's demand for performance, Consultant may elect to either (a) terminate this Agreement or (b) suspend (in whole or in part) performance of the Services under this Agreement. Notwithstanding the provisions of the immediately preceding sentence to the contrary, in the event that (y) Client has paid all undisputed amounts due under this Agreement and (z) either party has made a written demand for dispute resolution, Consultant shall have no right to terminate this Agreement or suspend the performance of the Services until the dispute resolution process has been finally resolved in favor of Consultant.

7.5 If Client terminates this Agreement pursuant to Section 5.2 or this Section 7, Consultant agrees to cooperate with Client in order to provide for an orderly transition of the Services.

8. INSURANCE.

8.1 Consultant represents that it does carry and agrees to continue to carry, as of the date hereof, and will require all its Sub-Tier Consultants to provide for the Project, with insurance companies acceptable to Client, the following insurance coverages continuously during the life of this Agreement.

8.1.1 Commercial General Liability, Bodily Injury and Property Damage:

a. Policy limits of at least the following amounts: $2,000,000 each Occurrence, and $4,000,000 General Aggregate that applies separately to this Project;

b. Occurrence Form Policies Only (Modified Occurrence or Claims Made Insurance is not acceptable);

c. Include Bodily Injury, Broad Form Property Damage, Premises/Operation, Contractual;

d. Provide a separate certificate of insurance for each Project with the name of the Project stated thereon;

e. The words, "endeavor to" and "but failure to mail such notice shall impose no obligation of liability of any kind upon the company, its agents or representatives" shall be lined out or such policy shall contain an endorsement attached to the Certificate of Insurance, that states that the policy may not be cancelled or terminated without at least ten (10) days' prior notice for nonpayment of premiums and not less than thirty (30) days' prior notice for any other reason, to Client; and

f. Such policy shall also contain an endorsement attached to the Certificate of Insurance that states the following: "Consultant's insurance shall be primary insurance as respects to any claims, losses or liability arising directly or indirectly from the Consultant's operations and other insurance maintained by the Project Owner or Client shall be non-contributory with the insurance provided thereunder;" and

g. Such policy shall contain cross-liability coverage as provided under standard ISO forms' separation of insureds clause.

8.1.2 Additional Insured Endorsement (separate endorsement) for General Liability:

a. To name (i) the Agency, the Agency's board members, directors, agents, and employees, the City of Oakland, and the City of Oakland's council members, directors, agents, and employees (collectively, the "City Parties") and (ii) Client (together with the City Parties, the "Additionally Insured Parties"), as additional insureds;

b. Including "insurance is primary and non-contributory" wording; and

c. Form CG 20 10 10 93 or equivalent form that meets the above requirements.

Consultant shall add the Additionally Insured Parties as an additional insured on the above general liability policy by having the insurance carrier issue a CGL-2010 Additional Insured – Premises/Ongoing Operations Endorsement Edition date 10/93, or its equivalent. This extension shall apply to the full extent of the acmal limits of Consultant's coverages even if such actual limits exceed the minimum limits required by this Agreement. The Additionally Insured Parties' additional insured status under the policy(ies) must not be limited by amendatory language to this policy. To the extent umbrella or excess insurance is available above the minimum required limits stated in this Agreement, the protection afforded the Additionally Insured Parties in the umbrella or excess liability insurance shall be as broad or broader than the coverage present in the underlying insurance and in accordance with this Agreement. Each general liability, umbrella or excess policy shall specifically state that the insurance provided by the Consultant shall be considered primary, and insurance of the Additionally Insured Parties shall be considered excess for purposes of responding to claims.

8.1.3 Automobile Liability, Bodily Injury, Property Damage:

a. Policy limits of at least the following amounts: $1,000,000 each Occurrence; and

b. Any Automobile (including owned, non-owned and hired).

8.1.4 Workers Compensation Liability:

a. Employer's Liability with policy limits of $1,000,000;

b. Waiver of Subrogation Endorsement (Separate Endorsement). A separate endorsement is not required on policies issued by State Fund – the endorsement wording can be stated directly on the Certificate of Insurance; and

c. Consultant certifies that it is aware of the provisions of section 3700 of the Califomia Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. Consultant shall comply with the provisions of section 3700 of the Califomia Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.

8.1.5 Professional Liability Insurance:

a. Professional Liability Insurance that shall be on a "claims made basis";

b. Policy limits of at least the following amounts: each claim $2,000,000/Aggregate $2,000,000;

c. If such policy contains a retroactive date for coverage of prior acts, this date will be prior to the date the Consultant begins to perform work under this Agreement; and

e. Consultant shall maintain such coverage for no less than thirty-six months after expiration of this Agreement.

8.1.6 Consultants and Sub-Tier Consultants Involved With Hazardous Materials:

a. Consultant and Sub-Tier Consultants involved with Hazardous Materials must carry a Pollution Liability Policy with minimum limits of $1,000,000 per occurrence and $2,000,000 in the aggregate that applies separately to this Project.

8.2 All insurance companies issuing the above-described insurance policies must have an AM Best rating of A- VII or better. All policy endorsements and certificates of insurance must be received by Client or Client's designated insurance agents, administrators or managers as originals. Faxes and photocopies of such items are not acceptable.

8.3 Prior to commencing work on the Project, Consultant and each Sub-Tier Consultant shall evidence that such insurance is in force by furnishing Client with a Certificate ofInsurance, or if requested by Client, certified copies of policies. The Certificate of Insurance shall accompany and become a part of this Agreement. Each Certificate of Insurance shall (1) contain an unqualified statement that the policy shall not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Client, but in the event of nonpayment of premium, ten (10) days notification will be provided; (2) show the Additionally Insured Parties as Additional Insureds by either referencing or attaching the required endorsement; (3) shall indicate that the Consultant's and the Sub-Tier Consultants' Commercial General Liability coverage is primary and the Additionally Insured Parties' insurance is excess for any Covered Claims (defined in Section 9.1 below); and (4) indicate that the coverage applies in the state where operations are being performed; and (5) Commercial General Liability insurance coverage shall include contractual liability coverage insuring the agreement and obligations of the insured to indemnify the Indemnified Parties and others to the extent set forth in the applicable contract between the insured and Client.

8.4 If the Consultant should subcontract any work to a Sub-Tier Consultant, including, but not limited to, any design of any portion of the Services, Consultant shall require that such Sub-Tier Consultant agree in writing to indemnify the Additionally Insured Parties as set forth in this Agreement and shall carry insurance as set forth in this Agreement prior to permitting such Sub-Tier Consultant to commence its work. Consultant shall obtain a signed agreement from such Sub-Tier Consultant indemnifying the Additionally Insured Parties, as set forth in this Agreement and agreeing to carry insurance as set forth above. In addition, Consultant shall require in its purchase orders that each supplier indemnify Consultant and the Additionally Insured Parties from all losses arising from any materials or supplies included in such work.

8.5 Any attempt by the Consultant or any of Consultant's Sub-Tier Consultants to cancel or modify such insurance coverage, or any failure by the Consultant or any of Consultant's Sub-Tier Consultants to maintain such coverage, shall be a default under this Agreement and, upon such default, Client will have the right to terminate this Agreement and/or exercise any of its rights at law or at equity. In addifion to any other remedies, Client may, at its discretion, withhold payment of any sums due under this Agreement until Consultant provides adequate proof of compliance with all insurance requirements.

8.6 The amounts and types of insurance set forth above are minimums required by Client and shall not substitute for an independent determination by Consultant or any Sub-Tier Consultant of the amounts and types of insurance which Consultant or any Sub-Tier Consultant shall determine to be reasonably necessary to protect itself and its work.

8.7 Consultant agrees that Client, or Client's designated insurance agent, manager or administrator may audit Consultant or any of Consultant's Sub-Tier Consultants' books and records, insurance coverages, insurance cost information, or any other information that Consultant or any Sub-Tier Consultant provides to Client, or Client's designated insurance agent, manager or administrator to confirm the accuracy of such documents and matters.

8.8 In the case of the breach of any of the insurance provisions of this Agreement that are not cured within 10 days of written notice to Consultant, the Client may, at the Client's option, take out and maintain at the expense of Consultant, such insurance in the name of Consultant as is required pursuant to this Agreement, and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Consultant under this Agreement.

8.9 All endorsements, certificates, forms, coverage and limits of liability referted to herein shall have the meaning given such terms by the Insurance Services Office as of the date of this Agreement.

8.10 Any deductible or self-insured retentions must be declared to and approved by the Client and the Agency. At the ophon of the Client or the Agency, either: the insurer shall reduce or eliminate such deductible or self-insured retentions as respects the Additionally Insured Parties; or the Consultant shall provide a financial guarantee satisfactory to the Client and the Agency guaranteeing payment of losses and related investigations, claim administration and defense expenses.

8.11 Consultant waives all rights against the Additionally Insured Parties to the extent these damages are covered by the forms of insurance coverage required above.

8.12 The Client maintains the right to modify, delete, alter or change any of the insurance or indemnity requirements included in this Agreement upon not less than ninety (90) days' prior written notice.

8.13 In the event that Chent exercise its rights under Section 8.10 or 8.12, the parties shall execute a written change order to this Agreement that increases the Contract Price by the amount actually incurted by Consultant in complying with Client's insurance requirements.

9. INDEMNITY.

9.1 Definitions.

9.1.1 Covered Claim. As used in this Agreement, the term "Covered Claims(s)" shall mean any and all liabilities, losses, claims, judgments, suits, or demands for (a) injuries to or death of persons, (b) damage to personal or real property, (c) economic loss brought against or incurred by an Indemnified Party (defined below). Covered Claims include, but are not limited to, claims made by (y) a Consultant's employee or Sub-Tier Consultant and (z) a third party claiming patent, trademark or copyright infringement.

9.1.2 Indemnified Party(ies). The term "Client Parties" means Client and its members, shareholders, partners, managers, officers, directors and employees. The term "Indemnified Parties" means the Client Parties and the City Parties. The term "Indemnified Party" means any one of the Indemnified Parties.

9.2 Consultant's Indemnity Obligations.

9.2.1 Indemnity for Client Parties. Consultant hereby agrees to indemnify, defend and hold harmless the Client Parties against all Covered Claims arising out of, resulting from or relating to the performance of the Services by Consultant or any of its Sub-Tier Consultants; provided, however, Consultant shall not be required to indemnify, defend or hold any one of the Client Parties harmless to the extent (but only to the extent) that the Covered Claim results from the Client Parties' active negligence or willful misconduct. For the purposes of this Agreement and as between the Consultant and the Client Parties, such parties hereby agree that active negligence does not include (a) a party's failure to inspect or (b) a party's failure to identify, warn or take action about a dangerous condition despite such party's inspection. The Client Parties' rights to indemnity from the Consultant are in addition to and cumulative to any benefits that they may have under any policy of insurance.

9.2.2 Indemnity for City Parties. Consultant shall indemnify and defend the City Parties to the extent that the Covered Claims arise out of, pertain to, or relate to the negligence, recklessness, or willful conduct of the Consultant or its Sub-Tier Consultants. The City Parties' rights to indemnity from the Consultant are in addition to and cumulative to any benefits that they may have under any policy of insurance.

9.3 Defense of a Covered Claim. Consultant's duty to defend the Indemnified Parties shall arise at the time notice of a Covered Claim is first provided to Consultant by the Indemnified Parties, regardless of whether the claimant has filed suit on the Covered Claim. Consultant's duty to defend the Indemnified Parties shall arise even if the Indemnified Parties, or any of them, are the only parties identified/sued by the claimant. After tender by Client or another Indemnified Party, Consultant will defend any and all Covered Claims which may be brought or threatened against the Indemnified Parties and will pay on behalf of the Indemnified Parties any expenses incurred by reason of such Covered Claims including, but not limited to, court costs and reasonable attorney fees incurred in defending or investigating such Covered Claims. Such payments on behalf of the Indemnified Parties shall be in addition to any and all other legal remedies available to the Indemnified Parties and shall not be considered the Indemnified Parties' exclusive remedy. Notwithstanding anything to the contrary, if a defense was provided by Consultant, upon final resolution of the Covered Claims by judgment or award, the applicable Indemnified Parties will reimburse Consultant for such defense costs to the extent that:

(a) with respect to the Client Parties, the Covered Claim arises out of, pertains to, or relates to the active negligence or willful misconduct of the individual or entity being indemnified;

(b) with respect to the City Parties, the Covered Claim does not, arise out, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its Sub-Tier Consultants; or

(c) with respect to Client Parties and City Parties, the Covered Claim does not arise out of, pertain to, or relate to the scope of the Services in the written agreement between the parties.

Notwithstanding anything to the contrary, if a defense was provided by Consultant, upon final resolution of the Covered Claims by a settlement agreement, the Indemnified Party shall reimburse Consultant for a percentage of defense costs actually incurred by Consultant, which percentage shall be calculated by dividing the amount that the Indemnified Party agreed to pay pursuant to the settlement agreement by the total amount that both Consultant and the Indemnified Party agreed to pay pursuant to the settlement agreement. Consultant shall not agree to enter into any settlement agreement that requires an Indemnified Party to pay any amount without such Indemnified Party's express, prior consent.

9.4 Nothing contained in Section 9 shall affect (a) the validity of any insurance contract, workers' compensation or agreement issued by an admitted insurer as defined by the Califomia Insurance Code or (b) obligations of an insurance carrier under the holding of *Presley Homes, Inc.* v. *American States Insurance Company* (2001) 90 Cal.App.4th 571.

10. CONSULTANT'S EMPLOYEES AND SUB-TIER CONSULTANTS.

10.1 In the performance of this Agreement, Consultant shall not hire any Sub-Tier Consultants to perform any work on the Project, without the prior written consent of Client, which Client may withhold at Client's discretion. If not

already required pursuant to Exhibit A, Consultant will coordinate its work with all other consultants retained by Client as needed on basis of an hourly-rate approved by Client. It is clearly understood by all parties that while Consultant may coordinate its work with that of other consultants who are retained by Client, these other consultants are licensed professionals and Consultant assumes no liability for the quality of said consultant's work nor for the errors or omissions these consultants may cause. Furthermore, Consultant has an affirmative obligation to review the documents provided to Consultant by Client that concern (a) the work product of other consultants or (b) the work and activity of other consultants and, to the extent that such work product or activity overlap/interact with the Services, provide Client with written notice of any potential or actual conflicts between such materials, documents or activities and the Project Documents. In such an event, this Agreement shall be modified as determined appropriate by the Client.

10.2 In the performance of this Agreement, Consultant shall not employ any person not skilled in work assigned to such person. Any Sub-Tier Consultant or employee who is adjudged by Client to be not in compliance with this Agreement, incompetent, disorderly, unreliable or otherwise unsatisfactory shall immediately be removed and/or replaced from performing any work or services to Consultant, upon notice from Client. Client will have the right to withhold any payment owed to Consultant until Consultant has complied with this section.

10.3 Consultant shall comply fully with all applicable federal, state or local legislation relating to employment. In connection with performance of the Services Consultant agrees not to discriminate against any employee or applicant for employment because of race, color, sex, sexual orientation, age, national origin or disability.

10.4 Consultant shall designate in writing one or more persons as Consultant's authorized agent(s) for the Project. Such agent(s) shall have the authority to accept and execute change orders, acknowledgments of extra work, Backcharge notices, notices or any other documents related to the Project on behalf of the Consultant.

10.5 Consultant shall require each of its Sub-Tier Consultants to be bound to Client and to the Agency by the terms of this Agreement, and also require that Sub-Tier Consultants assume all obligations and responsibilities (including but not limited to insurance, indemnity, prompt payment, local employment reporting, confidentiality, assignment, ownership of deliverables, and other obligations), that the Consultant owes to Client and the Agency under this Agreement. Each Sub-Tier Consultant agreement will preserve and protect the rights of the Client and Agency under this Agreement so that subcontracting will not prejudice such rights. Consultant shall require that sub-consultants enter into identical agreements with second tier sub-consultants.

11. CHANGES.

Consultant shall make no changes in the Services, including but not limited to additions, deletions or substitutions, nor shall Consultant perform any extra work, without the prior written consent of Client, it being understood that Consultant shall receive no payment in addition to the Contract Price without first obtaining such prior written consent of Client, and any such work shall be deemed voluntary. This Agreement may only be modified in writing and may not be modified by the conduct of any party hereto; provided, however, that Client's rights to eliminate portions of the Services or to initiate change orders shall not be limited in any way. Consultant acknowledges that Client cannot approve changes to the Services greater than $24,999 in value without prior written approval by Agency. All such authorization for changes in work required to be performed by Consultant under this Agreement, including performance of extra work in addition to that required hereunder, shall be upon such written forms as shall be provided by Client. Should Client so request, Consultant shall perform such extra work so long as (a) such work is reasonably within Consultant's area of expertise; (b) Client agrees in writing to pay Consultant the cost of such extra work, together with Consultant's reasonable overhead and profit attributable thereto; and (c) where applicable, the Agency consents to such change order. Failure of Consultant to perform such extra work shall constitute a material breach of this Agreement by Consultant, it being understood that any dispute concerning the performance of such extra work or the amount to be paid Consultant by Client shall not affect Consultant's obligation to perform such extra work. Any payment for additional work will be made consistent with the other payment terms in this Agreement.

12. ROYALTIES.

All royalties and license fees applicable to Consultant's performance of this Agreement are included in the Contract Price, and shall be paid by Consultant. Consultant shall, in addition to any other indemnity obligations, indemnify, defend and hold the Indemnified Parties harmless for, from and against all suits or claims for infringement of

copy rights or patent rights involved or otherwise related to the Services of Consultant pursuant to the terms of this Agreement.

13. ASSIGNMENT.

13.1 Subject to the provisions of Section 13.2, neither party shall assign or transfer this Agreement or any part hereof, or make an assignment or transfer of any monies payable to Consultant pursuant to this Agreement, without the prior written consent of the other party, and any attempted assignment or transfer of this Agreement, or of monies payable to Consultant pursuant to this Agreement, shall constitute a material breach of this Agreement.

13.2 Any of the following shall consfitute an "Assignment Event": (a) the termination or expiration of the ENA between Agency and the Client without the parties having entered into a final Lease Development and Disposition Agreement, (b) termination of the Client by the Agency pursuant to the terms of the ENA or for any other reason, or (c) the Client's election, this Agreement shall be assigned to Agency. Client shall notify Consultant in writing within three (3) business days of the occurrence of an Assignment Event, and will concurrently provide to Agency a copy of any notice concerning an Assignment Event Agency may also provide notice to Consultant of an Assignment Event. Within five (5) business days of its receipt of notice of an Assignment Event, Consultant shall provide Agency with a statement of the value of all paid work that has been performed by Consultant prior to its receipt of notice of an Assignment Event for which it has not received payment from Client. The assignment to the Agency shall be effective if and only if the Agency provides Client and Consultant with written notice of the Agency's acceptance of the assignment of this Agreement within forty five (45) business days after the latter of (a) Agency receipt of a copy of Client's notice to Consultant of the occurrence of an Assignment Event or (b) Agency's service of notice of an Assignment Event on Consultant. Consultant agrees that it will immediately suspend its work under this Agreement upon the receipt of written notice from Client or Agency of an Assignment Event. If Agency accepts assignment of the Agreement, Agency will succeed to all rights that Client has under this Agreement and continue to have all other rights provided to the Agency under this Agreement; provided, however, the Agency shall not assume any unfulfilled obligations of Client that arose prior to the date upon which the Agency accepted the assignment. If Agency accepts the assignment, the Agency shall be obligated to pay Consultant for Services performed prior to the date on which the Agency accepts the assignment of this Agreement so long as (x) Consultant has not yet been paid for those Services, (y) the Agency has previously approved the scope of Services pursuant to Section 35(a) below, and (z) Agency has not previously paid Client for such Services, but in no case shall Agency be obligated to pay Consultant any more than what Agency would have been obligated to reimburse Client for Consultant's services. Client shall remain liable to Consultant for payment of that portion of the Contract Price applicable to Services performed prior to the Agency' acceptance of the assignment that is not included within the scope of the preceding sentence. Furthermore, if the Agency accepts the assignment of this Agreement, Consultant shall present to the Agency an invoice for unpaid services performed prior to the assignment of this Agreement within ten (10) business days of receiving notice that the Agency has accepted the assignment. Agency reserves all rights to dispute the invoice that Consultant presents to Agency for unpaid pre-assignment services.

13.3 If Agency accepts assignment of this Agreement, it reserves the right to assign the Agreement to another party that will undertake the responsibilities of Client under this Agreement.

14. NOTICES.

14.1 Any notice to be given to Consultant by Client under this Agreement may, at Client's option, be given by written, electronic mail, facsimile transmission or telegraphic notice to Consultant at its address set forth in this Agreement. Notice shall be deemed given to Consultant upon deposit of such notice in the United States mail, first class, postage prepaid, or upon transmission by electronic mail or facsimile (fax) of such notice, or upon notification to the telegraphic company of such notice, whichever is applicable.

14.2 Any notice to be given to Client by Consultant under this Agreement may, at Consultant's option, be given by written, electronic mail, facsimile transmission or telegraphic notice given to Client at its address set forth above. Notice shall be deemed given to Client upon deposit of such notice in the United States mail, first class, postage prepaid, or upon transmission by electronic mail or facsimile (fax) of such notice, or upon notification to the telegraphic company of such notice, whichever is applicable.

Any party hereto may change its address by written notice to the other party, notifying the other party of its change of address, which notice shall not be effective until actually received by the other party.

15. INDEPENDENT CONTRACTOR.

At all times in the performance of this Agreement, Consultant is and will be acting as an independent contractor and shall be solely responsible for the employment, acts, omission, control and direction of its employees and Consultants. Nothing contained in this Agreement shall authorize or empower Consultant to assume or create any obligation or responsibility whatsoever, express or implied, on behalf of, or in the name of Client, or to bind Client in any manner, or make any representation, warranty or commitment on behalf of Client.

16. TAXES.

Unless Consultant is supplied with the sales (privilege) tax license number of Client and is directed not to pay such taxes, Consultant shall pay all transaction, privilege, sales, use and similar taxes imposed by local, state or federal Laws applicable to the labor, materials and services supplied by Consultant and all Sub-Tier Consultants. Consultant shall be solely responsible for the payment of local, state and federal income taxes, withholding requirements, self-employment taxes, social security taxes and other taxes and employment benefits with respect to payments made to Consultant and payments by Consultant to its Sub-Tier Consultants.

17. COMPLIANCE WITH LAWS AND GOVERNMENTAL GRANT REQUIREMENTS.

Consultant shall give all notices and comply with all Laws related to the performance of the Services under this Agreement. Consultant shall also comply with all requirements of federal and state grants for the Master Planning of the Oakland Army Base. Client shall provide copies to Consultant of the applicable grant requirements. To the extent the grant requirements effect a change order to the scope of Services, the Contract Price shall be adjusted pursuant to Section 11 hereof

18. GOVERNING LAW AND INTERPRETATION.

This Agreement relates to work to be performed by Consultant in the State of Califomia and the Laws of such state shall govem the construction of this Agreement. Each party waives and relinquishes its right to commence or maintain an action at law or in equity arising out of this Agreement in any place other than the County of Alameda, Califomia. This Agreement shall be construed in accordance with its plain meaning and shall not be construed for or against any of the parties hereto. Paragraph or section headings shall be disregarded in construing or interpreting the provisions of this Agreement. If a term, provision, covenant, or condifion of this Agreement is held to be void, invalid or unenforceable, the same shall not affect any other portion of this Agreement and the remainder shall be effective as though all such void, invalid or unenforceable terms, provisions, covenants or conditions had not been contained herein.

19. TIME OF THE ESSENCE.

Time is of the essence in performance of the parties' obligations under this Agreement. In no event shall either party be liable for any delay in performance caused by force majeure events.

20. ENTIRE AGREEMENT.

This written Agreement represents the entire and integrated agreement between the parties hereto and supersede all prior negotiations, representations or agreements, either written or oral, and also supersede any inconsistent standards of practice in the construction industry in the County having jurisdiction. No amendment or supplement to this Agreement shall be effective unless in writing signed by the parties hereto. This Agreement shall be governed by and construed in accordance with the laws of the State of Califomia. All exhibits attached hereto are incorporated herein by reference.

21. THIRD PARTY BENEFICIARIES.

Consultant and Client agree that the Agency is an express third-party beneficiary of this Agreement, and the Agency has standing as such to enforce this Agreement for Agency's benefit. Consultant agrees that it will require all its Sub-Tier

Consultants to agree that the Agency is a third-party beneficiary of any subconsulting agreements. With the exception of rights of the Agency as a third-party beneficiary, Consultant and Client agree that nothing contained in this Agreement shall be construed to be for the benefit of any person not a party to this Agreement, and no third party beneficiary rights are intended to be created by this Agreement. Furthermore, Consultant expressly agrees that it is not a third-party beneficiary of any agreements between Client and the Agency, including, but not limited to, the ENA. Consistent with the foregoing sentence, Consultant expressly agrees that it has no rights under the ENA, and agrees further that it will not assert any claims in any court, arbitral forum, or other adjudicatory proceeding for monetary damages or other relief by asserting any legal theory that it is a third-party beneficiary under the ENA.

22. OWNERSHIP OF PLANS.

Consultant agrees that all drawings, plans, specifications, including any electronic media versions thereof, such as computer aided design (CAD) versions, and other documents, including copies thereof, furnished by Client or created by Consultant or any Sub-Tier Consultant for the Project, whether under this Agreement or under proposals, bids or request for bids are the property of the Agency and are not to be used on other work or given to other parties, except as needed during the course of the Services to be performed hereunder. The Agency shall be deemed the author of these documents furnished by Client and shall retain all common law, statutory and other reserved rights, including the copyright. For any drawings, plans, specifications and other documents created by Consultant or any Sub-Tier Consultant, Consultant shall cause such author to assign to Agency at Client's request, all common law, statutory and other reserved rights, including the copyright. All drawings, specifications and other documents shall be returned or delivered to Client upon completion of the Services or the termination of this Agreement, at Client's request. However, Consultant and Sub-Tier Consultants shall maintain intellectual property and copy rights to their guides, standards and practice information incorporated into any document prepared for the Project and may retain and use copies for reference and as documentation of its experience and capabilities.

23. CONFIDENTIALITY.

Consultant understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Consultant may have access to private or confidential information which may be owned or controlled by the Agency or the City of Oakland and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the Agency or the City of Oakland. Consultant agrees that all information disclosed by the Agency or City of Oakland to Consultant shall be held in confidence and used only in performance of the Agreement. Consultant shall exercise the standard of care to protect such information as a reasonably prudent Consultant would use to protect its own proprietary data. Notwithstanding the foregoing, (a) in the event that Consultant is required pursuant to a final judicial order that is not appealable to disclose any such information, Consultant may do so without liability hereunder and (b) obligations of confidentiality expressed herein shall not apply to any information disclosed which (i) can be shown to be widely known and readily accessible to the public, (ii) can be shown from Consultant's files to have been known to Consultant prior to any disclosure hereunder or (iii) can be shown by Consultant to have been received from Consultant from a third party without obligation of confidentiality.

24. CONFLICT OF INTEREST.

24.1 Consultant hereby agrees to uphold the following protections against conflict of interest:

a. Consultant certifies that no member of, or delegate to the Congress of the United States shall be permitted to share or take part in this Agreement or in any benefit arising therefrom.

b. Consultant certifies that no member, officer, or employee of the City of Oakland or the Agency or its designees or agents, and no other public official of the City who exercises any functions or responsibilities with respect to the programs or projects covered by this Agreement, shall have any interest, direct or indirect in this Agreement, or in its proceeds during his/her tenure or for one year thereafter.

c. Consultant shall immediately notify the Client and Agency of any real or possible conflict of interest between work performed for the Agency and for other clients served by Consultant.

d. Consultant warrants and represents, to the best of its present knowledge, that no public official or employee of City of Oakland or the Agency who has been involved in the making of this Agreement, or who is a member of a City board or commission or Agency board which has been involved in the making of this Agreement whether in an advisory or decision-making capacity, has or will receive a direct or indirect financial interest in this Agreement in violation of the mles contained in Califomia Government Code Section 1090 et seq., pertaining to conflicts of interest in public contracting. Consultant shall exercise due diligence to ensure that no such official will receive such an interest.

e. Consultant further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matters already made by Consultant to Client, the Agency, or the City of Oakland, that (1) no public official of City of Oakland or the Agency who has participated in decision-making concerning this Agreement or has used his or her official position to influence decisions regarding this Agreement, has an economic interest in Consultant or this Agreement, and (2) this Agreement will not have a direct or indirect financial effect on said official, the official's spouse or dependent children, or any of the official's economic interests. For purposes of this paragraph, an official is deemed to have an "economic interest" in any (a) for-profit business entity in which the official has a direct or indirect investment worth $2,000 or more, (b) any real property in which the official has a direct or indirect interest worth $2,000 or more, (c) any for-profit business entity in which the official is a director, officer, partner, tmstee, employee or manager, or (d) any source of income or donors of gifts to the official (including nonprofit entities) if the income or value of the gift totaled more than $500 the previous year. Consultant agrees to promptly disclose to Client, the City of Oakland, and the Agency in writing any information it may receive concerning any such potenfial conflict of interest. Consultant's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Polifical Reform Act (Califomia Government Code Section 87100 et seq.) and its implementing regulations (Califomia Code of Regulations, Title 2, Section 18700 et seq.).

fi Consultant understands that in some cases Consultant or persons associated with Consultant may be deemed a "city officer" or "public official" for purposes of the conflict of interest provisions of Government Code Section 1090 and/or the Polifical Reform Act. Consultant further understands that, as a public officer or official, Consultant or persons associated with Consultant may be disqualified from future City of Oakland or Agency contracts to the extent that Consultant is involved in any aspect of the making of that future contract (including preparing plans and specifications or performing design work or feasibility studies for that confract) through its work under this Agreement.

g. Consultant shall incorporate or cause to be incorporated into all subcontracts for work to be performed under this Agreement a provision governing conflict of interest in substantially the same form set forth herein.

24.2 Nothing herein is intended to waive any applicable federal, state or local conflict of interest law or regulafion.

24.3 In addition to the rights and remedies otherwise available to the City of Oakland or the Agency under this Agreement and under federal, state and local law, Consultant understands and agrees that, if the Client or the Agency reasonably determines that Consultant has failed to make a good faith effort to avoid an improper conflict of interest situation or is responsible for the conflict situation, the Client may (a) suspend payments under this Agreement, (b) terminate this Agreement, or (c) require reimbursement by Consultant to the Client of any amounts disbursed under this Agreement. In addition, the Client may suspend payments or terminate this Agreement whether or not Consultant is responsible for the conflict of interest situation.

25. NON-DISCRIMINATION/EQUAL EMPLOYMENT PRACTICES.

Consultant shall not discriminate or permit discrimination against any person or group of persons in any manner prohibited by federal, state or local laws. During the performance of this Agreement, Consultant agrees as follows:

25.1 Consultant and its Sub-Tier Consultants, if any, shall not discriminate against any employee or applicant for employment because of age, marital status, religion, gender, sexual orientation, gender identity, race, creed, color, national origin, Acquired-Immune Deticiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability. This nondiscrimination policy shall include, but not be limited to, the following: employment, upgrading, failure to promote, demotion or transfer, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

25.2 Consultant and its Sub-tier Consultants shall state in all solicitations or advertisements for employees placed by or on behalf of Consultant that all qualitied applicants will receive consideration for employment without regard to age, marital status, religion, gender, sexual orientation, gender identity, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.

25.3 Consultant and its Sub-Tier Consultants shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act by executing **Exhibit C**, attached hereto and incorporated herein.

25.3 If applicable, Consultant and its Sub-Tier Consultants will send to each labor union or representative of workers with whom Consultant has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of Consultant's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

26. LOCAL AND SMALL LOCAL BUSINESS ENTERPRISE PROGRAM (L/SLBE).

Consultant and its Sub-Tier Consultants shall complete (a) the Ownership, Ethnicity and Gender Questionnaire, attached hereto as **Exhibit D**, and (b) the Project Consultant Team form, attached hereto as **Exhibit E**, and submit both forms with each of its invoices. Failing to provide these completed forms with invoices shall be grounds for Client to reject the invoice. Furthermore, failing to complete the forms completely shall also be grounds for Client to reject the invoices. At the conclusion of Client's work for the Master Planning of the OAB, Consultant shall cooperate with Client in preparing and executing an Exit Report and Aftidavit, a copy of which is attached hereto as **Exhibit F**. Consultant shall cooperate with all Agency requests to audit Consultant's responses in **Exhibits D, E,** and **F**. Consultant shall track and report to Client the number of Oakland residents it employs. Consultant shall submit a report with each invoice and Progress Billing Worksheet. Consultant shall require all Sub-Tier Consultants to comply with the provisions of this Section.

27. LIVING WAGE ORDINANCE.

If the Contract Price of this Agreement is equal to or greater than $25,000 annually, then Consultant (and each Sub-Tier Consultant with a contract with Consultant equal to or greater than $25,000) shall comply with the Oakland Living Wage Ordinance. The Living Wage Ordinance requires that nothing less than a prescribed minimum level of compensation (a living wage) be paid to Consultant's employees who perform services under or related to this Agreement. If this Agreement is subject to the Living Wage Ordinance, Consultant shall submit the Declaration of Compliance attached and incorporated herein as **Exhibit G** and made part of this Agreement, and, unless specitic exemptions apply or a waiver is granted, the Consultant must provide the following to its employees who perform services under or related to this Agreement:

27.1 Minimum compensation – Said employees shall be paid an initial hourly wage rate of $11.15 with health benefits or $12.82 without health benefits. These initial rates shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor. Consultant shall provide written notice of any increase to its employees no later than July 1 of each year)

27.2 Health benetits – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least $1.67 per hour. Consultant shall provide proof that health benetits are in effect for those employees no later than 30 days after execution of this Agreement.

27.3 Compensated days off – Said employees shall be entitled to twelve (12) compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten (10) uncompensated days off per year for sick leave. Employees shall accrue one (1) compensated day off per month of full time employment. Part-fime employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six (6) months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required twelve (12) compensated days off. The required ten (10) uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.

27.4 Consultant shall inform employees that he or she may be eligible for Earned Income Credit (EIC) and shall provide forms to apply for advance EIC payments to eligible employees. Among other sources of information, there are several websites and other sources available to assist Consultant in complying with the requirements of this Section. Such web sites include but are not limited to: (a) http://www.irs.gov for current EIC guidelines as prescribed by the Internal Revenue Service and (b) http://eitcoutreach.org/ for the 2011 Earned Income Tax Outreach Kit.

27.5 Consultant shall provide to all employees and to the City of Oakland's Office of Contract Compliance, written notice of its obligation to eligible employees under the City of Oakland's Living Wage requirements. Said notice shall be posted prominently in communal areas of the work site(s) and shall include the above-referenced information.

27.6 Consultant shall provide all written notices and forms required above in English, Spanish or other languages spoken by a significant number of employees within thirty (30) days of employment under this Agreement.

27.6 Reporting – Consultant shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. Consultant shall provide a copy of said list to the Office of Contract Compliance, on a quarterly basis, by March 31, June 30, September 30 and December 31 for the applicable compliance period. Failure to provide said list within five (5) days ofithe due date will result in liquidated damages of $500.00 for each day that the list remains outstanding. Consultant shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.

27.7 Consultant shall require all Sub-Tier Consultants with contracts equal to or greater than $25,000.00 to comply with the above Living Wage provisions. Consultant shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to the Office of the City Administrator, Contract Compliance & Employment Services Division.

28. EQUAL BENEFITS ORDINANCE.

If the Contract Price for this Agreement is equal to or greater than $25,000.00, this Agreement is subject to the Equal Benefits Ordinance of Chapter 2.232.010 of the Oakland Municipal Code and its implementing regulations. The purpose of the Equal Benefits Ordinance is to protect and further the public, health, safety, convenience, comfort, property and general welfare by requiring that public funds be expended in a manner so as to prohibit discrimination in the provision of employee benefits by City consultants between employees with spouses and employees with domestic partners, and/or between domestic partners and spouses of such employees. (Ord. 12394 (part), 2001)

The Equal Benefits Ordinance shall only apply to those portions of a Consultant's operations that occur (1) within the city; (2) on real property outside the city if the property is owned by the city or ifithe city has a right to occupy the property, and if the contract's presence at that location is connected to a contract with the city; and (3) elsewhere in the United States where work related to a city contract is being performed. The requirements of this chapter shall not apply to subcontracts or Sub-Tier Consultants of any contract or Consultant

The Equal Benefits Ordinance requires among other things, submission of the attached and incorporated herein as Exhibit H, Equal Benefits-Declaration of Nondiscrimination.

Consultant shall require all Sub-Tier Consultants with contracts equal to or greater than $25,000.00 to comply with the Equal Benetits Ordinance. Consultant shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to the Office of the City Administrator, Contract Compliance & Employment Services Division.

29. CITY OF OAKLAND CAMPAIGN CONTRIBUTION LIMITS.

This Agreement is subject to the City of Oakland Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code and its implementing regulations if it requires Council approval. The City of Oakland Campaign Reform Act prohibits Consultants that are doing business or seeking to do business with the City of Oakland or the Agency from making campaign contributions to Oakland candidates between commencement of negotiations and either 180 days after completion of, or termination of, contract negotiations. Consultant shall deliver the completed **Exhibit I** concurrently with the execution of this Agreement. Consultant shall require all Sub-Tier Consultants to comply with the provisions of this Section.

30. NUCLEAR FREE ZONE DISCLOSURE.

Consultant represents, pursuant to **Exhibit C** that Consultant is in compliance with the City of Oakland's restrictions on doing business with service providers considered nuclear weapons makers. Consultant shall deliver the completed **Exhibit C** concurrently with the execution of this Agreement. Consultant shall require all Sub-Tier Consultants to comply with the provisions of this Section.

3L ARIZONA AND ARIZONA-BASED BUSINESSES.

Consultant agrees that in accordance with **Resolution No.** 82727 C.M.S., passed in **May**, 2010, neither it nor any of its subsidiaries, affiliates or agents that will provide services under this Agreement is currently headquartered in the State of Arizona, and shall not establish an Arizona business headquarters for the duration of this Agreement with the City of Oakland or until Arizona rescinds **SB** 1070, whichever is sooner. Consultant acknowledges its duty to notify the Client and the Agency if its business entity or any of its subsidiaries aftiliates or agents subsequentiy relocates its headquarters to the State of Arizona. Such relocation shall be a basis for termination of this agreement. Consultant shall deliver the completed **Exhibit J** concurrently with the execution of this Agreement. Consultant shall require all Sub-Tier Consultants to comply with the provisions of this Section.

32. POLITICAL PROHIBITION.

Subject to applicable State and **Federal** laws, moneys paid pursuant to this Agreement shall not be used for political purposes, sponsoring or conducting candidate's meetings, engaging in voter registration activity, nor for publicity or propaganda purposes designed to support or defeat legislation pending before federal, state or local government.

33. RELIGIOUS PROHIBITION.

There shall be no religious worship, instruction, or proselytization as part of, or in connection with the performance of the Agreement.

34. BUSINESS TAX CERTIFICATE.

Consultant shall obtain and provide proof of a valid City of Oakland business tax certiticate. Said certificate must remain valid during the duration of this Agreement.

35. AGENCY REVIEW OF AGREEMENT.

Consultant agrees that this Agreement shall not be effective unfil this Agreement has been reviewed and approved by Agency, and Agency has been provided the following:

a. a copy of this Agreement that includes a description of the scope of Consultant's services and a schedule for performance of the Services;

b. a copy of Consultant's City business license;

c. proof of all insurance required by this Agreement;

d. Consultant's taxpayer identification number;

e. Consultant's statement and declaration of conflict of interest in compliance with Section 24 of this Agreement shall be evidenced by Consultant's signature on this Agreement; and

f Consultant's completed forms attached hereto as **Exhibit C** ("**ADA Compliance/Nuclear Free Zone Disclosure Form**"), **Exhibit D** ("**Ownership, Ethnicity, and Gender Quesfionnaire**") and **Exhibit E** ("**Project Consultant Team**").

Consultant will immediately notify Client and Agency of any changes in its taxpayer identification number, its business license, its insurance, the certifications in its statements and declaration regarding conflicts of interests, and its responses to the questions posed in **Exhibits D, E,** and **H**.

36. INTERNSHIPS/SUMMER JOBS.

Consultant hereby acknowledges that Client encourages Consultant to create openings for internships and summer jobs for Oakland youth and young adults.

37. HAZARDOUS SUBSTANCES.

All samples and by-products from sampling processes in connection with the Services shall be disposed of by Consultant in accordance with applicable law; provided, however, (a) as between Consultant, Client and the Agency, the Agency shall be deemed to be the owner of any and all such materials, including wastes, that cannot be introduced back into the environment under existing law without additional treatment, and all hazardous wastes, radioactive wastes, or hazardous substances ("**Hazardous Substances**") related to the Services and (b) the Agency shall execute any necessary generator, transporter, or disposer manifests or other documents reasonably required in connection with the disposal of Hazardous Substances.

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT, TO BE EFFECTIVE AS OF THE AGREEMENT DATE.

Client:	Consultant:
Signed: _____	Signed: _____
Print Name _____	Print Name _____
Title _____	Tide _____

EXHIBITS:

A: Scope of Work
B: Contract Price; Payment Terms
C: ADA/Nuclear Free Zone Disclosure
D: Ownership, Ethnicity and Gender Questionnaire
E: Project Consultant Team form
F: Exit Report and Affidavit
G: Declaration of Compliance (Living Wage Ordinance)
H: Declaration of non-Discrimination (Equal Benefits Ordinance)
I: Acknowledgement of Campaign Contribution Limits
J: Declaration of Compliance (Arizona Resolution)

EXHIBIT A: Scope of Work

[Describe services as follows:

(1) Description of Services: (A clear, precise description of the consultant's particular services: clear enough to allow a third party to determine whether the consultant has satisfied its duties);

(2) References: (Appropriate references to the "Scope of Services" in Exhibit HI to the 2nd Amendment to the ENA;) and

(3) Delivery Schedule: (Appropriate references to the "Proposed Delivery Schedule" in Exhibit I to the 2nd Amendment to the ENA).]

EXHIBIT B: Contract Price; Payment Terms

[Describe price schedule and payment terms. Description must contain the following:

(1) Initial not-to-exceed budget:

(2) Basis for payment and milestones for payment:

(3) Schedule of hourly rates for each individual consultant whose time will be billed:

(4) "T&M" payments, if any, (to be used only for consultants working on the early conceptual stages and provisions before fixed fee is finalized);

(5) Consultant's written acknowledgment that CCG does not have authority to approve changes greater than $24,999 in value without prior written approval by Agency;

(6) Completion of Exhibit D ("Ownership, Ethnicity, and Gender Questionnaire"), Exhibit E ("Project Consultant Team"), and when applicable, Exhibit F ("Exit Report and Affidavit"); and

(7) Completion of pay request forms that require Consultant to state percentage of work completed.]

EXHIBIT C: ADA/Nuclear Free Zone Disclosure

[See Attached]

EXHIBIT D: Ownership, Ethnicity and Gender Questionnaire

[See Attached]

EXHIBIT E: Project Consultant Team form

[See Attached]

EXHIBIT F: Exit Report and Affidavit

[See Attached]

EXHIBIT G: Declaration of Compliance (Living Wage Ordinance)

[See Attached]

EXHIBIT H: Declaration of non-Discrimination (Equal Benefits Ordinance)

[See Attached]

EXHIBIT I: Acknowledgement of Campaign Contribution Limits

[See Attached]

CONSULTANT _____ CLIENT _____

EXHIBIT J: Declaration of Compliance (Arizona Resolution)

[See Attached]

5

COMMUNITY & ECONOMIC
DEVELOPMENT CMTE

SEP 19 2011

Approved as to form and legality

D. McElroy
City Attorney

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2011 AUG 29 PM 2:00

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A THIRD AMENDMENT TO THE OAKLAND ARMY BASE EXCLUSIVE NEGOTIATING AGREEMENT, AS AMENDED ("ENA") WITH AMB PROPERTY, L.P./CALIFORNIA CAPITAL GROUP ("DEVELOPER ENTITY") CONSENTING TO A CHANGE IN THE DEVELOPER ENTITY TO PROLOGIS PROPERTY, L.P./CCIG OAKLAND GLOBAL, LLC, RESULTING FROM (1) THE REORGANIZATION AND MERGER OF AMB PROPERTY, L.P. INTO PROLOGIS PROPERTY, L.P.; AND (2) CALIFORNIA CAPITAL GROUP'S ASSIGNMENT OF ALL ITS INTERESTS AND OBLIGATIONS UNDER THE ENA TO CCIG OAKLAND GLOBAL, LLC

WHEREAS, the Redevelopment Agency of the City of Oakland and AMB Property, L.P./Califomia Capital Group (together referred to as the "Parties") entered into an Exclusive Negotiating Agreement, dated January 22, 2010, for the potential redevelopment of a portion of the former Oakland Army Base (the "Original Agreement"); and

WHEREAS, the Parties entered into a First Amendment to the Original Agreement (the "First Amendment") on August 10, 2010, and a Second Amendment to the Original Agreement (the "Second Amendment") on April 11, 2011; and

WHEREAS, the Original Agreement, as amended by the provisions of the First Amendment and Second Amendment, is referred to herein as the ENA; and

WHEREAS, AMB Property Corporation, the parent company of AMB Property, L.P. ("AMB"), has merged with ProLogis, and AMB Property Corporation, the surviving entity, has been renamed "ProLogis, Inc;" and

WHEREAS, as a result of the merger, AMB has been renamed ProLogis Property, L.P; and

WHEREAS, under the Second Amendment, the Parties agreed that Califomia Capital Group ("CCG"), in its role as one of the Developer parties under the ENA, would contract with various consultants and contractors, and oversee and coordinate their activities to complete the planning and design work required for the constmction of infrastructure, public utilities, and public streets on the former Army Base; and

5-1

WHEREAS, CCG wishes to assign all of its rights, title, interests, and obligations in, to and under the ENA to CCIG Oakland Global, LLC, a related limited liability company; and CCIG wishes to assume all of CCG's rights, title, interests and obligations under the ENA, including the contracting and oversight of consultants and contractors for the [illegible] planning and design work; and

COMMUNITY & ECONOMIC DEVELOPMENT CMTE
SEP 19 2011

WHEREAS, the ENA is personal to the Developer Entity and not assignable to any other person or entity without the written consent of the Agency Board, which may be given or refused

in the Agency's sole and absolute discretion;

WHEREAS, because of the California Supreme Court's issuance of a partial stay in the matter of Cahfomia Redevelopment Association v. Matosantos (S194861), the ability of redevelopment agencies to take some actions may be questionable until that litigation is resolved; and

WHEREAS, the Court's stay does not affect the ability of the City to execute the amended ENA; now, therefore, be it

RESOLVED: That the City Council hereby approves of:

1) The assignment of CCG's rights, title, interests, and obligations in, to and under the ENA to CCIG Oakland Global, LLC,
2) CCIG's assumption of all of CCG's rights and obligations under the ENA; and
3) The replacement of AMB with ProLogis Property, L.P. as one of the Developer Parties to the ENA; and be it

FURTHER RESOLVED: That the City Administrator is authorized to negotiate and execute an exclusive negotiating agreement on the same general terms as the ENA, as further amended pursuant to the terms of the agenda report for this item reflecting the change in the Developer Entity to Prologis Property, L.P./CCIG Oakland Global, LLC, and the assumption of ENA obligations by the new entities and be it

FURTHER RESOLVED: That the City Administrator is authorized to take whatever other action is necessary to implement the ENA and the Third Amendment to the ENA; and be it

FURTHER RESOLVED: That the City Attorney shall review and approve the ENA and the Third Amendment authorized hereunder for form and legality, and a copy or copies shall be placed on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

5-1
COMMUNITY & ECONOMIC
DEVELOPMENT CMTE

ATTEST: SEP 19 2011
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

Approved as to form and legality
D. Millain
Agency Counsel

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

Resolution No. _____ C.M.S.

RESOLUTION AUTHORIZING THE AGENCY ADMINISTRATOR TO EXECUTE A THIRD AMENDMENT TO THE OAKLAND ARMY BASE EXCLUSIVE NEGOTIATING AGREEMENT ("ENA") WITH AMB PROPERTY, L.P./CALIFORNIA CAPITAL GROUP ("DEVELOPER ENTITY") CONSENTING TO A CHANGE IN THE DEVELOPER ENTITY TO PROLOGIS PROPERTY, L.P./CCIG OAKLAND GLOBAL, LLC, RESULTING FROM (I) THE REORGANIZATION AND MERGER OF AMB PROPERTY, L.P. INTO PROLOGIS PROPERTY, L.P.; AND (2) CALIFORNIA CAPITAL GROUP'S ASSIGNMENT OF ALL ITS INTERESTS AND OBLIGATIONS UNDER THE ENA TO CCIG OAKLAND GLOBAL, LLC

WHEREAS, the Redevelopment Agency of the City of Oakland and AMB Property, L.P./Califomia Capital Group (together referred to as the "Parties") entered into an Exclusive Negotiating Agreement, dated January 22, 2010, for the potential redevelopment of a portion of the former Oakland Army Base (the "Original Agreement"); and

WHEREAS, the Parties entered into a First Amendment to the Original Agreement (the "First Amendment") on August 10, 2010, and a Second Amendment to the Original Agreement (the "Second Amendment") on April 11, 2011; and

WHEREAS, the Original Agreement, as amended by the provisions of the First Amendment and Second Amendment, is referred to herein as the ENA; and

WHEREAS, AMB Property Corporation, the parent company of AMB Property, L.P. ("AMB"), has merged with ProLogis, and AMB Property Corporation, the surviving entity, has been renamed "ProLogis, Inc;" and

WHEREAS, as a result of the merger, AMB has been renamed ProLogis Property, L.P; and

WHEREAS, under the Second Amendment, the Parties agreed that California Capital Group ("CCG"), in its role as one of the Developer parties under the ENA, would contract with various consultants and contractors, and oversee and coordinate their activities to complete the planning and design work required for the construction of infrastructure, public utilities, and public streets on the former Army Base; and

5-2

WHEREAS, CCG wishes to assign all of its rights, title, interests, and obhgations in to and under the ENA to CCIG Oakland Global, LLC, a related limited liability company; and CCIG wishes to assume all of CCG's rights, title, interests and obligations under the ENA,

including the contracting and oversight of consultants and contractors for the infrastructure planning and design work; and

WHEREAS, the ENA is personal to the Developer Entity and not assignable to any other person or entity without the written consent of the Agency Board, which may be given or refused in the Agency's sole and absolute discretion;

WHEREAS, because of the Califomia Supreme Court's issuance of a partial stay in the matter of Califomia Redevelopment Association v. Matosantos (S194861), the ability of redevelopment agencies to take some actions may be questionable until that litigation is resolved; now, therefore, be it

RESOLVED: That the Agency Board hereby approves of the following subject to Agency Counsel and the Agency Administrator determining if the Agency can take the actions authorized by this resolution under the terms of the partial stay in Califomia Redevelopment Association v. Matosantos:

1) The assignment of CCG's rights, title, interests, and obligations in, to and under the ENA to CCIG Oakland Global, LLC,
2) CCIG's assumption of all of CCG's rights and obligations under the ENA; and
3) The replacement of AMB with ProLogis Property, L.P. as one of the Developer Parties to the ENA; and be it

FURTHER RESOLVED: That the Agency Administrator is authorized to negotiate and execute a third amendment to the ENA reflecting the change in the Developer Entity to Prologis Property, L.P./CCIG Oakland Global, LLC, and the assumption of ENA obligations by the new entities and be it

FURTHER RESOLVED: That the Agency Administrator is authorized to take whatever other action is necessary to implement the Third Amendment to the ENA; and be it

FURTHER RESOLVED: That Agency Counsel shall review and approve the Third Amendment authorized hereunder for form and legality, and a copy or copies shall be placed on file in the Office of the City Clerk.

IN AGENCY, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BRUNNER, KERNIGHAN, NADEL, SCHAAF, DE LA FUENTE, BROOKS, KAPLAN, AND CHAIRPERSON REID

NOES –

ABSENT –

ABSTENTION –

5-2
COMMUNITY & ECONOMIC DEVELOPMENT CMTE

SEP 19 2011

ATTEST:

_____
LATONDA SIMMONS
Secretary of the Redevelopment Agency
of the City of Oakland, California