

**PRIVILEGED AND CONFIDENTIAL  
SUBJECT TO REAL ESTATE NEGOTIATIONS PRIVILEGE**

**LEASE/DISPOSITION AND DEVELOPMENT AGREEMENT  
TERM SHEET**

**NORTH GATEWAY**

Note- This nonbinding term sheet shall serve as the basis for the negotiations of a detailed final Disposition and Development Agreement and Lease Disposition and Development Agreement (“L/DDA”) between City staff and California Waste Solutions (also referred to as “CWS” or the “Developer” for purposes of the L/DDA. The terms hereof are not binding on the City unless and until the Developer and the City Administrator, pursuant to City Council authorization within Council’s sole legislative discretion, have executed a mutually acceptable L/DDA for the proposed project.

<b>1.</b>	<b>CURRENT OWNER</b>	City of Oakland owns 12.02 acres and the State of California (Caltrans) owns 2.36 acres.
<b>2.</b>	<b>DEVELOPER</b>	California Waste Solutions, a California corporation, or an affiliate (“CWS” or “Developer”).
<b>3.</b>	<b>PROPERTY</b>	The “Property” is 14.38 acres and consists of two areas on the former Oakland Army Base: 1) that said parcel which is owned by the City in fee and consisting of approximately 12.02 acres of land, as more particularly described on Exhibit A-1 to the ENA; and 2) those said parcels owned by the State of California Department of Transportation (“Caltrans”), consisting of 2.36 acres of land, and controlled by the City pursuant to that certain easement agreement dated April 22, 2005, executed by and between the City and Caltrans, as amended (the “Caltrans Easement”), as more particularly described on Exhibit A-2 to the ENA.

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4.	<b>PROJECT DESCRIPTION</b>	<p>Subject to the final land use entitlements as may be approved by the City in its regulatory discretion, the Project is anticipated to consist of a Recycling Facility with an approximately 171,000 SF building containing an administrative office, material receiving area, a material recycling and recovery area with processing equipment, a bale storage area, a material shipping area, staff areas, a truck maintenance area and a dispatch area and parking for personnel and collection trucks (the “Improvements”). The Recycling Facility would handle up to 850 tons of material per day and would accept and process material that has been separated for recycling from both commercial and residential customers.</p> <p>City acknowledges that CWS is not precluded from proposing and seeking governmental approvals for future expansion opportunities regarding the quantities and/or types of materials handled at the property and that the L/DDA and related applications for governmental approvals (including a solid waste facilities permit) in no way limit, waive or otherwise impair CWS rights as Property owner/lessee to seek such approvals. CWS acknowledges that City’s willingness to negotiate and consummate the L/DDA is in no way an assurance, commitment or waiver of City’s discretionary authority to process such future approvals and agrees that CWS is not relying on, in the transaction contemplated in this L/DDA, any purported assurance, commitment or waiver by City for such future approvals.</p>
5.	<b>PURCHASE PRICE</b>	<p>The total purchase price to be paid for the fee interest in Parcel 1 and the leasehold interest in Parcel 2 is \$8,268,500.00 (the “Conveyance Price”). This amount is computed as \$575,000 per acre over an estimated total 14.38 acres from Parcels 1 and 2 combined. This Term Sheet is conditioned upon the City confirming the Conveyance Price pursuant to the process outlined in Oakland Municipal Code Chapter 2.42.</p> <p>The Conveyance Price is due and payable in cash and shall be submitted into escrow 3 business days before close of escrow. Escrow to close in accordance with the schedule of performance contained herein.</p>
6.	<b>CALTRANS EASEMENT</b>	<p>The Caltrans Easement will be conveyed at closing via a 99-year lease that is prepaid per the Conveyance Price above and meets the requirements below. The City has the right, pursuant to Section 2 of the Second Amendment to Easement, to transfer a lease of the easement rights to CWS without further consent by Caltrans. However, any such lease must meet the requirements articulated therein (e.g., express assumption by CWS of City’s obligations, insurance certificates, etc.).</p>
7.	<b>TITLE INSURANCE</b>	<p>Developer to secure title insurance policy at its own cost and expense.</p>
8.	<b>CLOSING COSTS</b>	<p>Developer to pay all escrow fees and closing costs including, without limitation, city and any other county transfer and possessory interest taxes.</p>

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9.	<b>LIMITATIONS ON PROPERTY RIGHTS</b>	<p>Developer accepts and acknowledges the Property is subject to deed restrictions and a recorded covenant to restrict use of Property, as described below.</p> <p>Developer to comply with all existing encumbrances on title as well as the new encumbrances anticipated to be recorded pursuant to this Term Sheet.</p>
10.	<b>CONDITION OF PROPERTY AT DELIVERY</b>	<p>The City will deliver the Property free of any stockpiles. Developer agrees to accept the Property “as is,” in its current condition, without warranty express or implied by the City, including without limitation with respect to the presence of hazardous materials known or unknown on or near the Property.</p>
11.	<b>GOOD FAITH DEPOSIT</b>	<p>Upon executing the L/DDA, City will credit the ENA earnest money deposit (\$568,840.00) as the Deposit required under the L/DDA. In addition, CWS shall provide an additional amount of \$250,000.00, within 3 business days of L/DDA execution, to increase the Deposit total to \$818,840.00. Except as otherwise provided herein below, the Deposit shall be credited against the Conveyance Price at Close of Escrow.</p>
12.	<b>SCHEDULE OF PERFORMANCE</b>	<p>City and Developer shall negotiate a Schedule of Performance, which shall be attached to the L/DDA. The Schedule of Performance shall set forth performance milestones for the Developer to meet prior to Close of Escrow. Failure to meet any milestone by the date specified shall be an Event of Default.</p> <p>The City Administrator, in her sole discretion, shall have the right to extend any milestone dates, up to the Outside Closing Date. An extension of the Outside Closing Date shall occur only if approved by formal action of the City Council.</p> <p>Outside Closing Date: The date that is one year from the L/DDA Effective Date.</p>

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13.	<b>CLOSE OF ESCROW: CLOSING CONDITIONS</b>	<p>Developer will be required to satisfy the City’s standard conditions of closing, as well as the following conditions precedent, in addition to any milestones that will be set forth in the Schedule of Performance, as conditions precedent to City’s obligation to close escrow (the “Close of Escrow”):</p> <ul style="list-style-type: none"> <li>a) Developer shall have obtained such discretionary land use entitlements from the City as necessary to proceed with the development of the Project, including satisfaction of environmental review pursuant to the California Environmental Quality Act (“CEQA”) and a major conditional use permit (collectively, the “Discretionary Approvals”);</li> <li>b) Developer shall have obtained all other regulatory approvals and permits for development and operation including, but not limited to the solid waste facility permit (excepting those that can be issued only after completion of construction) of the Project, including final building permits from the City’s Building Department (collectively, the “Regulatory Permits”);</li> <li>c) Developer shall have provided the City with (i) a completion guaranty and (ii) a payment and performance bond, pursuant to Sections 22 and 23;</li> <li>d) Developer shall have provided evidence of required insurance;</li> <li>e) Developer has provided a loan commitment and/or evidence of funding which equals in total the full construction cost of building the entitled project;</li> <li>f) There is no third-party litigation challenging the Project or the City’s authority to sell the Property or enter into a lease for the Caltrans Property;</li> <li>g) Developer has provided the City with the formation documents of the entity taking possession of the land and evidence that such entity has a current City business license;</li> <li>h) Developer has provided the requisite documentation, pursuant to Section 29, as required to cease and restrict operations on its Existing Sites;</li> <li>i) Developer is not in default of its obligations under the L/DDA.</li> </ul>
14.	<b>CITY REMEDIES FOR CWS DEFAULT</b>	<p><u>Prior to Close of Escrow:</u></p> <p>Subject to the notice and cure rights in the L/DDA, if Developer fails to fulfill the conditions set forth in the L/DDA prior to close of escrow, City shall have the following remedies: to retain the Deposit as liquidated damages and terminate the L/DDA without further rights or remedies being available to CWS. Prior to close of escrow, if there is lawful force majeure and it individually or cumulatively exceeds 60 days, either party shall have the right to terminate the agreement. If the City terminates due to force majeure, then the City shall return the Deposit to CWS within 10 days of</p>

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		<p>termination of the agreement. If CWS terminates due to force majeure, then the City shall retain the Deposit.</p> <p><u>Post Close of Escrow:</u></p> <p>Subject to the notice and cure rights described below, if Developer fails to fulfill the conditions or meet the obligations set forth in the L/DDA after the Close of Escrow, City shall have the right to exercise any or all of the following remedies: exercising the City’s rights under the Completion Guaranty and/or Performance Bond; seeking specific performance and other equitable remedies; terminating the L/DDA and seeking damages; and retaining the Deposit.</p> <p>In addition, if Project construction does not start within sixty (60) days after close of escrow, does not diligently continue after commencement, or is not completed within the time period required under the L/DDA (subject in each case to extension for force majeure), then the Developer shall notify the City of the reasons for the delays, and provided that Developer does not cure the purported default per the L/DDA, the City will have the option to repurchase the Property for the original Conveyance Price less the demolition cost of any physical improvements if the City elects to demolish the improvements (the “Repurchase Option”). The City can elect in its sole discretion to demolish or retain the improvements if the City exercises this Repurchase Option.</p> <p>The City will execute and record such instruments as Developer may reasonably request to terminate the Repurchase Option, at such time as the Repurchase Option is no longer exercisable in accordance with its terms.</p>
15.	<b>DEVELOPER REMEDIES FOR CITY DEFAULT</b>	<p><u>Prior to Close of Escrow:</u></p> <p>Subject to the notice and cure rights described in the L/DDA, if during the term of the L/DDA City fails to convey the Property to Developer in accordance with the terms of the L/DDA, or City denies the Project approvals required in Section 13(a)-(b), Developer shall have the following remedies: the City to refund the Deposit to Developer as liquidated damages, and the right to terminate the L/DDA without further rights or remedies being available to the City.</p>
16.	<b>OFF-SITE IMPROVEMENTS / PERMIT CONDITIONS</b>	<p>CWS to be responsible for the cost of any required off-site improvements and all other permit conditions required to be satisfied in connection with the Regulatory Approvals authorizing the development and operation of the Project.</p>
17.	<b>ENVIRONMENTAL / DEED RESTRICTIONS</b>	<p><u>Transfer Subject to EDC Deed and Subaru Lot Deed, Covenant to Restrict Use of Property, Consent Agreement and RWQCB Order.</u> In 2003, the majority of the Army Base was transferred to the City (through its predecessor in interest, OBRA) via No-Cost Economic Development Conveyance (“EDC”) by that certain Quitclaim Deed for No-Cost Economic Development Conveyance Parcel recorded August 8, 2003 (“Army EDC Deed”). The EDC transfer agreement required City to complete the environmental response activities set forth in that certain Consent Agreement between City and DTSC, dated September 27, 2002 (the “Consent Agreement”), and the associated Remedial Action Plan (“RAP”) and Risk Management Plan (“RMP”), each dated September 27, 2002 (collectively, the “RAP/RMP”). The Consent Agreement includes a Covenant to Restrict</p>

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		<p>Use of the Property (“EDC Covenant”), which prohibits certain sensitive land uses, requires notice of a release of Hazardous Materials to future owners or lessees of the land, requires an annual certification be submitted to DTSC attesting to compliance with the EDC Covenant and reserves DTSC’s right of access to the EDC Property.</p> <p>In 2004, the land known as the Subaru Lot was transferred from the Army to the City pursuant to the Subaru Lot Deed and a Finding of Suitability to Transfer, whereby the Army warranted that all remedial action found to be necessary to protect human health and the environment has been taken. Prior to conveyance from the Army, DTSC found that the appropriate remedy for the Subaru Lot was to record land use controls. Accordingly, the Army recorded a Covenant to Restrict Use of Property (“Subaru Lot Covenant”) in the Official Records as Document No. 2004-513848. The Subaru Lot Covenant prohibits certain sensitive land uses, requires notice of a release of Hazardous Materials to future owners or lessees of the land, requires an annual certification be submitted to DTSC attesting to compliance with the covenant and reserves DTSC’s right of access to the EDC Property. After the Subaru Lot was transferred to the City, the Consent Agreement with DTSC was amended on May 5, 2005 to include the Subaru Lot Property and require that future use of the Subaru Lot Property be restricted in accordance with the Covenant.</p> <p>In 2004, the Regional Water Quality Control Board issued Order No. R2-2004-0086 dated November 5, 2004 ("RWQCB Order"). A small portion of the Property is EDC property and the bulk of the Property is Subaru Lot.</p> <p><u>Consent Agreement and RWQCB Order Assignment:</u> The Parties shall obtain at Developer’s sole cost, DTSC’s and RWQCB’s approval of a full assignment of the Consent Agreement and RWQCB Order to Developer and Developer shall indemnify the City and pay all City costs to the extent either agency does not agree to a full release.</p>
<b>18.</b>	<b>INDEMNIFICATION</b>	<p>Developer shall provide standard commercial hold harmless, defend, and indemnification provisions to the City and its council members, employees, officers, directors, and agents, including environmental indemnification. Subject to the provisions of the right of entry to be provided per Section 25, Developer’s obligations shall exclude any matters arising out of or relating to the existing condition of the Property prior to the Close of Escrow, or the indemnified parties’ sole active negligence or willful misconduct.</p>
<b>19.</b>	<b>NO COMMISSION</b>	<p>CWS represents that it has not used any broker for this transaction. City shall not pay or be liable for any commissions or brokerage fees. Developer shall hold harmless and defend City against any claims for commissions or brokerage fees.</p>

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20.	<b>SIGNAGE</b>	CWS may not install or place signage on any existing City street outside the Property or in the public corridor. CWS may install and place signage on the Property in compliance with City codes, or other applicable codes or regulations.
21.	<b>STANDARD OF PROPERTY</b>	CWS will ensure that at no time does the Property violate the City Blight Ordinance or any other applicable City laws, regulations or policies.
22.	<b>FINAL CONSTRUCTION PLANS</b>	CWS must meet or exceed requirements of City’s Green Building Ordinance as it pertains to the Project.
23.	<b>PAYMENT &amp; PERFORMANCE BOND</b>	CWS shall obtain a payment and performance bond, with the City as beneficiary, in an amount not less than 100% of the Project pursuant to the Construction Contract to be executed by CWS.
24.	<b>COMPLETION GUARANTY</b>	At Close of Escrow, Developer to provide City a commercially reasonable completion guaranty for one hundred percent (100%) of the hard costs to complete the Improvements (as evidenced by the approved Budget), a form of which will be attached to the L/DDA.
25.	<b>RIGHT OF ENTRY</b>	<p>CWS to have the right to enter onto the Property prior to transfer of the Property to conduct any investigation, testing, appraisals and other studies, at CWS’ cost, required as part of its due diligence, subject to providing the City with indemnity, insurance and other reasonable conditions to entry pursuant to a right of entry separately executed or incorporated into the L/DDA.</p> <p>This provision does not otherwise limit City’s right to enter the Property under its separate regulatory authority.</p>
26.	<b>PERMITTED TRANSFERS</b>	<p>Developer may not sell, convey, assign, transfer, or alienate all or any of its interest or rights in this Agreement, including any right or obligation to acquire an interest in the Property, construct the improvements, or sell an interest in the legal entity holding the rights to this DDA, or otherwise do any of the above to any person not an affiliate of Developer (each a “Transfer”) without the prior consent of the City which consent shall not be unreasonably withheld, except that in no event will the City approve a Transfer prior to CWS vacating the Existing Sites in accordance with Section 29.</p> <p>Notwithstanding the foregoing, transfers to an affiliate do not require the City’s consent. An affiliate shall mean any entity that is wholly owned and controlled by Developer.</p> <p>In the event that Developer Transfers all or part of the Property to a non-affiliate for any purpose, or to an affiliate for purposes other than the operation of a solid waste or recycling-related business, the City shall receive a Transfer Fee of:</p> <p>a) 35% of the Fair Market Land Value or 15% of the gross lease revenue of the Property if Transferred within 0-5 years of the Close of Escrow; or</p> <p>(b) 20% of the Fair Market Land Value or 10% of the gross lease revenue of the Property if Transferred within 6-10 years of the Close of Escrow.</p>

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		<p>(c) 10% of the Fair Market Land Value or 5% of the gross lease revenue of the Property if Transferred within 11-35 years of the Close of Escrow.</p> <p>“Fair Market Land Value” equals the difference between the fair market value of the land at the time of Transfer and the Conveyance Price established in Section 5 above.</p> <p>Cost of City’s review of any request for a Transfer to be reimbursed by Developer.</p>
27.	<b>STANDARD CONDITIONS</b>	<p>L/DDA to include standard City/OAB conditions:</p> <ol style="list-style-type: none"> <li>1. Developer shall pay a one-time fee of \$16,000/acre into the West Oakland Community Fund (which is anticipated to be \$229,760).</li> <li>2. Developer shall include the Construction Jobs Policy, Attachment A, as a material term of all contracts under which construction may occur, and shall itself comply with the terms of such policy, including paying prevailing wage.</li> <li>3. Prior to Commencement of Construction, Developer shall demonstrate to City that either Developer has entered into a PLA that is consistent with the Construction Jobs Policy, or has used commercially reasonable efforts to do so.</li> <li>4. Developer shall comply with the Operations Jobs Policy, Attachment B, including compliance with the City’s Living Wage Ordinance and Equal Benefits Ordinance.</li> <li>5. Developer shall pay an annual fee equal to \$0.005/month per leasable square foot of building space to support the Jobs Center. The annual fee shall increase consistent with CPI.</li> <li>6. Developer shall make a good faith effort to show conformance with the applicable sections of the current draft of the City's Energy Climate Action Plan.</li> <li>7. Developer shall comply with the OAB CEQA Standard Conditions of Approval and Mitigation Monitoring and Reporting Program requirements to completed construction air quality plan and operations air quality plans, and fund the air quality monitoring program at the City’s three monitoring stations during Construction.</li> <li>8. Developer shall comply with the OAB CEQA Standard Conditions of Approval and Mitigation Monitoring and Reporting Program, as amended by the City Council on July 16, 2013 (Ordinance 13182), and any other mitigations that may be required as a result of the CEQA process undertaken for the Discretionary Permits, including contributing its fair share payment related to CEQA Mitigation Measures, which the City anticipates to be \$375,311.</li> <li>9. Addendum Costs. Developer shall pay its fair share (by acreage of OAB) of CEQA costs related to the preparation of the 2012 Addendum \$46,409.66 (9.7% of \$478,025.94).</li> </ol>



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		<p>10. Subdivision Costs. City is preparing a subdivision map to, among other things, create the 12.02-acre parcel. Developer shall contribute its fair share of \$8,703.19 to the cost of preparing and recording the parcel map.</p>
<p>28.</p>	<p><b>CFD</b></p>	<p>On July 21, 2015, the City formed Gateway Industrial District Community Facilities District No. 2015-1 on the Gateway Development Area, including the Property (“CFD No. 2015-1”). CFD No. 2015-1 shall be responsible for maintaining, operating, repairing, and replacing the overall public infrastructure for the Gateway Development Area to be owned and otherwise maintained by the City. The City is also in the process of negotiating with the Port to annex the Port and reform the CFD. Developer acknowledges that: (1) by this Agreement, the City has notified Developer of the creation of CFD No. 2015-1; (2) the existence of CFD No. 2015-1 and its ability to impose liens shall be a Permitted Title Exception on Closing; and (3) Developer will comply with all continuing obligations imposed by CFD No. 2015-1, including as it may be revised, accruing on Developer’s interest in the Property after Close of Escrow, including paying any and all special taxes, assessments, or other fees accrued after Close of Escrow.</p>
<p>29.</p>	<p><b>RELINQUISHMENT OF EXISTING CUP AND RECORDING LAND USE RESTRICTION PROHIBITING RECYCLING USE ON EXISTING FACILITIES</b></p>	<p>City’s desire to enter into this Agreement with Developer is, in substantial part, to relocate Developer’s existing business operations in West Oakland located at 1819 10<sup>th</sup> Street, 1820 10<sup>th</sup> Street, 3300 Wood Street (collectively, “Existing Sites”) to the Property, and not allow any similar business to operate at the Existing Sites. As such, following City’s approval of the L/DDA and the Project Approvals and issuance of all Non-City Governmental Approvals (including permits to operate), and completion of construction and commencement of operations at the Property, Developer shall unconditionally relinquish and terminate operations at the Existing Sites pursuant to the Conditional Use Permits CM04460 and CM92-222 (“CUPs”) at 1819 10<sup>th</sup> Street and 1820 10<sup>th</sup> Street and its grandfathered nonconforming use at 3300 Wood Street. Developer agrees to record a notice of termination and relinquishment of the grandfathered (legal non-conforming) uses and uses permitted by the CUPs following relocation to the Property. The specific timing, process, and documentation to which the parties mutually agree for effectuating the foregoing as well as default remedies shall be finalized prior to execution of the L/DDA.</p>

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**ATTACHMENT A  
CONSTRUCTION JOBS POLICY**

## **Construction Jobs Policy**

### **California Waste Solutions**

**I. Purpose.** This Construction Jobs Policy (“Policy”) sets forth certain requirements regarding hiring and employment in the construction of Private Improvements on the Project Site, as described in that certain Lease and Disposition and Development Agreement between the City of Oakland and California Waste Solutions, Inc. dated \_\_\_\_\_. Contractors participating in construction of Private Improvements agree to comply with terms of this Policy as a condition of performance of such construction, as more particularly set forth herein.

**II. Definitions.** As used in this Policy, the following capitalized terms shall have the following meanings. All definitions include both the singular and plural form.

“**Apprentice**” shall mean an individual who is enrolled in a Registered Apprenticeship Program.

“**Apprentice Work Hours**” shall mean Project Work Hours performed by Apprentices.

“**Background Check Requirement**” shall mean a law, regulation or policy of any applicable governmental or quasi-governmental body (including, but not limited to, those established under the Transportation Worker Identification Credential (TWIC) program and the Customs Trade Partnership Against Terrorism or by the Port of Oakland or the Department of Homeland Security.

“**City**” shall mean the City of Oakland.

“**Contractor**” shall mean any entity employing individuals to perform Project Construction Work, including Prime Contractors and subcontractors of any tier.

“**Developer**” shall mean California Waste Solutions, Inc. and its successors, assigns, agents, and transferees under the L/DDA.

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

“**L/DDA**” shall mean the Lease and Disposition and Development Agreement entered into by City and Developer respecting development of the Project Site, as may be amended from time to time.

“**L/DDA Effective Date**” shall mean the Effective Date of the L/DDA as defined therein.

“**New Apprentice**” shall mean a Resident who is newly enrolled (less than 3 months) as an Apprentice.

“**Policy**” shall mean this Construction Jobs Policy.

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

“**Private Improvements**” shall mean any construction work on the Project Site, including site improvements and core and shell building improvements, except for any construction project subsequent to completion of initial construction for which all Prime Contracts, in aggregate, are worth less than one million dollars (\$1,000,000), excluding the cost of any furniture fixtures or equipment.

“**Project**” shall mean the redevelopment activities occurring on the Project Site.

“**Project Construction Work**” shall mean construction of any Private Improvements.

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

“**Project Site**” shall mean the Project Site as defined in the Recitals and Attachments to the L/DDA.

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

“**Resident**” shall mean an individual domiciled in the City for at least six months prior to the date such individual is hired or assigned to perform the applicable work, with “domiciled” as defined by Section 349(b) of the California Election Code, as in effect on the L/DDA Effective Date, attached hereto as Schedule 1.

“**Tenant**” shall mean any entity leasing space within the Project Site.

“**Union**” shall mean construction trades union(s).

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

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

**B. Hiring and Referral Processes.**

**1. Contractor Procedures.** Contractors shall undertake the

following steps in the following order, in an effort to retain Residents:

- a. **Step One:** Assign to perform Project Work any current employees who are Residents;
- b. **Step Two:** Utilize name call, rehire, or similar procedures in the relevant collective bargaining agreement to request particular individuals who have been identified, in cooperation with the Unions, as Residents;
- c. **Step Three:** Request that the Union hiring hall refer Residents;
- d. **Step Four:** If the above steps have not enabled satisfaction of the percentage requirement set forth in Section III.C.1 of this Policy, request referral of Residents from the Jobs Center; and
- e. **Step Five:** Fairly consider workers referred by the Jobs Center within three (3) business days of notification.

### C. Percentage Requirements.

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

2. **Bonus for Retention of New Apprentices.** For every 1,000 hours beyond an initial 1000 hours that any one New Apprentice works directly or indirectly for a Prime Contractor (including such Prime Contractor's subcontractors of any tier) during the term of the Prime Contractor's Project Construction Work, such Prime Contractor shall be entitled to 500 "bonus" hours that may be credited against the requirement for Project Work Hours performed by Residents under Section III.C.1.

### D. Apprentices.

1. **New Apprentice Sponsorship Requirements for Prime Contractors.** In each calendar year, for each 20,000 Project Work Hours performed by a Prime Contractor (for the avoidance of doubt, including its subcontractors of any tier), such Prime Contractor and/or any of its subcontractors of any tier shall sponsor one or more New Apprentice(s) and employ such New Apprentice(s) for an aggregate of at least 1000 hours of Project Construction Work and/or construction work on other projects during the term of the Prime Contractor's Project Construction Work.

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

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

**F. Funding Restrictions.** For any portions of the Project Construction Work on which, based on use of federal or state funds, a federal or state agency prohibits application of the requirements described above, the City will, after consultation with Developer, work collaboratively with the funding agency to adapt the requirements of this Policy to the restrictions imposed by the funding agency, advancing the goals of this Policy to the greatest extent permitted by the funding agency. In such cases, Developer and the City shall meet and confer with regard to the adapted requirements agreed to by the City and the funding agency, and such requirements shall be applied to such portions of the Project Construction Work in question for the period required by such agency, and shall automatically become terms of this Policy with respect to such Project Construction Work.

**G. Contact Person.** At least two weeks prior to performance of Project Construction Work, or within two business days after execution of a contract for performance of Project Construction Work, whichever is later, each Contractor shall provide to the City contact information for a contact person for purposes of implementation of this Policy.

**H. Employment Needs Projections.**

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

**2. Contractors.** Each Contractor shall, at least one month before commencing performance of Project Construction Work, or within two business days after execution of a contract for performance of Project Construction Work, whichever is later, project employment needs for performance of the Project Construction Work, and provide such projection to the Jobs Center and the City. Such projection shall indicate number of workers and Apprentices needed by trade, at different stages of performance of the Project Construction Work.

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

this Policy. If such a plan is agreed to by the Prime Contractor and the City, then compliance with the plan shall be compliance with this Policy.

**I. Worker Qualifications.** Unless a criminal background check is required by a Background Check Requirement, an Employer shall neither request from prospective workers, nor independently research prospective workers' history of involvement with the criminal justice system. Where a criminal background check is required by a Background Check Requirement, unless the Background Check Requirement provides otherwise, the Employer shall: (a) include the following statement in the position description: "This position is subject to a background check for any convictions related to its responsibilities and requirements. Only criminal histories (i) related to job requirements and responsibilities will be considered and will not automatically disqualify a finalist candidate."; (b) undertake the background check only after the initial interview (or, if no interview is undertaken, after a candidate has received a conditional offer of employment for the position in question); (c) consider only criminal histories related to job requirements and responsibilities; and (d) take into account the age of the individual at the time of the offense, the time that has passed since the offense, the nature and seriousness of the offense, and any evidence of the individual's rehabilitation. If a criminal background check yields information that is of concern to the Employer, the applicant will be given an opportunity to review the findings and discuss the report with the Employer, including an opportunity for the applicant to present information rebutting the accuracy or relevance of the report. To the extent that a Background Check Requirement conflicts with any of the provisions set forth in this Section, the Background Check Requirement will prevail. Unless a credit history is required by the Background Check Requirement, an Employer shall neither request nor independently research prospective workers' credit histories.

**J. Project Labor Agreement.** As more particularly set forth in the L/DDA, Developer has or will have entered into a Project Labor Agreement (PLA) with the Building and Construction Trades Council of Alameda County covering the Project Construction Work, with all contractors and subcontractors to perform work under terms of such PLA, and such PLA to be consistent with and facilitate compliance with this Policy.

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

**A. Contracts/Subcontracts.** Developer and each Tenant shall include compliance with this Policy as a material term of any contract under which Project Construction Work will be performed (including any lease or applicable construction management agreement). If Developer or Tenant complies with this Section IV.A, such entity shall not be liable for any breach of this Policy by any Contractor. Each Contractor shall include compliance with this Policy as a material term of any subcontract under which Project Construction Work will be performed, with such subcontractor having all rights and responsibilities of a Contractor under this Policy. If a Contractor enters into a

subcontract in violation of this Section IV.A., then such Contractor shall be liable for any breach of this Policy with respect to Project Construction Work performed by such subcontractor. If a Contractor complies with this Section IV.A., such Contractor shall not be liable for any breach of this policy at any sub-tier level.

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

**C. Third Party Beneficiaries.** The City is an intended third-party beneficiary of any contract that incorporates this Policy, but only for the purposes of enforcing the terms of this Policy. There shall be no other third party beneficiaries of this Policy. The City shall not delegate any of its responsibilities to any other third party, require the consent of any other third party or act solely upon the direction of any other third party in performing its obligations or exercising its rights under this Policy.

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

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

**F. Remedies.**

**1. Liquidated Damages for Percentage Requirements.** If a Contractor fails to satisfy at least one of the alternative approaches set forth in Section III.A of this Policy, then as the sole and exclusive remedy therefor, such Contractor shall pay to the City liquidated damages in an amount equal to twenty dollars (\$20) for each hour short of the percentage requirement. For example, if there are one thousand (1,000) Project Work Hours with four hundred fifty (450) Project Work Hours performed by



Residents, then the liquidated damages shall be in an amount equal to  $\$20 \times 50 = \$1,000$ . A Contractor shall not owe liquidated damages if it negotiates a compliance plan with the City pursuant to Section III.H.3, and complies with that plan. Any liquidated damages collected by the City shall be used solely to support training, referral, monitoring, or technical assistance to advance the purposes of this Policy.

**2. Specific Performance.** Except with respect to Contractor's failure to satisfy at least one of the alternative approaches required by Section III.A (for which the sole and exclusive remedy is set forth in Section IV.F.1), the City may bring an action for specific performance to ensure compliance with this Policy.

**3. No Breach of Certain Agreements.** So long as Developer has included compliance with this Policy as a material term of any contract under which Project Construction Work will be performed, a Contractor's noncompliance with this Policy shall not constitute a breach of the L/DDA.

## **G. Exemptions**

**1. For Core Workers.** The requirement of sections III.B and III.C, shall not apply to Project Work Hours performed by members of a Contractor's core workforce (and such hours shall not be considered Project Work Hours for purposes of determining satisfaction of the percentage requirements of Section III.C.1). For a Contractor that is certified by the City of Oakland as a Very Small Local Business Enterprise, a Small Local Business Enterprise, or a Local Business Enterprise, a member of the core workforce is a worker who has appeared on payroll records for at least 750 hours of work in the 180 days prior to that Contractor's commencement of the applicable Project Construction Work. For any other Contractor, a member of the core workforce is a worker who has appeared on payroll records for at least 1,500 hours of work in the 365 days prior to that Contractor's commencement of the applicable Project Construction Work. Exemption of core workforce hours may apply only up to a maximum of 50% of any Contractor's Project Work Hours.

**2. Out-of-State Workers.** The requirements of Sections III.B and III.C shall not apply to Project Construction Work performed by residents of states other than the State of California (and such hours shall not be considered Project Work Hours for purposes of determining satisfaction of the percentage requirements of Section III.C.1). Notwithstanding the above, if, for any calendar year, the percentage of Project Work Hours worked by residents of states other than the State of California exceeds thirty percent of the Project Work Hours in such calendar year, then for all subsequent years of work on the Project, the first sentence of this Section IV.G.2 shall not apply, and the requirements of Sections III.B and III.C shall be applicable to all Project Construction Work, including those performed by residents of states other than the State of California.

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

**I. Severability.** If any of the provisions of this Policy are held by a court of competent jurisdiction to be invalid, void, illegal, or unenforceable, that holding shall in no way affect, impair, or invalidate any of the other provisions of this Policy. If this Policy's six (6)-month requirement for qualification as a Resident is deemed invalid by final decision of a court of competent jurisdiction, then "Resident" shall mean an individual domiciled in the City prior to the date that such individual is hired or assigned to perform the applicable work, with "domiciled" as defined by Section 349(b) of the California Election Code, as in effect on the L/DDA Effective Date.

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

**K. Successors and Assigns.** This Policy shall be binding upon successors, representatives, assigns, agents, and transferees of any party to a contract incorporating this Policy. References in this Policy to any entity shall be deemed to apply to any successor, representative, assign, agent, or transferee of that entity.

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

**PRIVILEGED AND CONFIDENTIAL  
SUBJECT TO REAL ESTATE NEGOTIATIONS PRIVILEGE**

**ATTACHMENT B  
OPERATIONS JOBS POLICY**

## **Operations Jobs Policy**

### **California Waste Solutions**

**I. Purpose.** This Operations Jobs Policy (“Policy”) sets forth certain requirements regarding hiring and employment for jobs related to operation of the development on the Project Site, as described in that certain Lease and Disposition and Development Agreement between the City of Oakland and California Waste Solutions, Inc. dated \_\_\_\_\_. Employers in the Project Site agree to comply with terms of this Operations Jobs Policy as a condition of entry into any agreement to which this Operations Jobs Policy is attached. This Policy does not cover construction hiring or employment.

**II. Definitions.** As used in this Policy, the following capitalized terms shall have the following meanings. All definitions include both the singular and plural form.

“**Background Check Requirement**” shall mean a law, regulation or policy of any applicable governmental or quasi-governmental body (including, but not limited to, those established under the Transportation Worker Identification Credential (TWIC) program and the Customs Trade Partnership Against Terrorism or by the Port of Oakland or the Department of Homeland Security).

“**City**” shall mean the City of Oakland.

“**Developer**” shall mean California Waste Solutions, Inc., and its successors, assigns and transferees.

“**Disadvantaged Worker**” shall mean a Resident who, prior to commencing work at the Project Site, is domiciled in a Targeted Employment Area (as defined in California Government Code section 7072) and can provide written documentation of facing one of the following barriers to employment: (1) being homeless; (2) being a custodial single parent; (3) having received public income assistance or food stamps within the past twelve months; (4) having a criminal arrest or conviction record; (5) having been continuously unemployed for at least 27 weeks; (6) having been emancipated from the foster care system; (7) being a veteran of the U.S. military, or (8) being disabled, as defined in the Americans With Disabilities Act of 1990. The City shall distribute to Employers upon request a list of Targeted Employment Areas within the City.

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

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

“**Large Employer**” shall mean Developer and any other entity that (i) has a total job count of twenty (20) or greater, and (ii) is either leasing space within the Project Site or

performing operations within the Project Site. For purposes of this definition, “total job count” shall mean the number of full-time equivalent individuals working in On-Site Jobs and employed directly by the entity in question, working under a service contract or labor supply contract with the entity in question, or working under any related subcontract or agreement of any tier.

“**L/DDA**” shall have the meaning set forth in Section I, above.

“**L/DDA Effective Date**” shall mean the Effective Date of the L/DDA, as defined therein.

“**Oversight Commission**” shall mean the Community Jobs Oversight Commission established by City ordinance and charged with various functions related to the monitoring and enforcement of the Jobs Policies applicable to the Project and other projects occurring on the former Oakland Army Base site.

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

“**Policy**” shall mean this Operations Jobs Policy.

“**Project**” shall mean the redevelopment activities occurring on the Project Site.

“**Project Site**” shall mean the Project Site as defined in the Recitals and Attachments to the L/DDA.

“**Resident**” shall mean an individual domiciled in the City for at least six (6) months prior to the date that such individual is hired or assigned to perform the applicable work, with “domiciled” as defined by Section 349(b) of the California Election Code, as in effect on the L/DDA Effective Date.

“**Tenant**” shall mean any entity leasing space in the Project Site.

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

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

**1. Long-Range Planning.** As soon as the information is available following a Large Employer’s execution of a contract under which it will operate at the Project Site and within thirty (30) days of each January 1 thereafter, the Large Employer shall provide to the City and the Jobs Center information regarding such Large Employer’s good faith projection of the number and type of On-Site Jobs that such Large Employer reasonably believes it will need to fill during the applicable calendar year and the basic qualifications anticipated to be necessary for such On-Site Jobs.

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

**a. Notification of Job Opportunities.** At least four (4) weeks prior to the date that a Large Employer is anticipated to commence operations in the Project Site, or if such Large Employer executes a contract under which it will operate at the Project Site less than four (4) weeks prior to such anticipated date, within two (2) business days following the execution of such contract and prior to commencing operations, (any such period, the “Initial Notice Period”), such Large Employer shall notify the Jobs Center of openings for non-management On-Site Jobs and provide a clear and complete description of job responsibilities and qualifications therefor, including expectations, salary, minimum qualifications, work schedule, duration of employment, required standard of appearance, and any special requirements (*e.g.* language skills, drivers’ license, required background check, etc.). Job qualifications shall be limited to qualifications directly related to performance of job duties.

**b. Hiring.** After notification as described in Section III.A.2.a, above, the Large Employer shall use normal hiring practices, including interviews, to consider all Residents and Disadvantaged Workers referred by the Jobs Center and meeting the qualifications described in the referral request during the Initial Notice Period, or until all non-management On-Site Jobs are filled, whichever is sooner. The Large Employer shall make best efforts to fill all openings for non-management On-Site Jobs with Residents and Disadvantaged Workers referred by the Jobs Center. If at the conclusion of the Initial Notice Period the Large Employer has been unable to fill all available non-management On-Site Jobs with Residents and Disadvantaged Workers referred by the Jobs Center, the Large Employer may use other recruitment methods to fill the positions(s), although the Employer shall continue to make best efforts to hire Residents and Disadvantaged Workers later referred by the Jobs Center for non-management On-Site Jobs.

**c. Pre-opening Transfer.**

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

**d. Jobs Center Feedback.** Following the completion of the initial hiring process set forth in this Section III.A.2, at the request of the City a Large Employer shall meet and confer with the City Administrator and the Jobs Center to provide feedback on the initial hiring process so as to ensure that the Jobs Center may meet the future employment needs of the Large Employer and any future Employer, as relevant, and ensure the maximum hiring of Residents and Disadvantaged Workers feasible given the opportunities to be created by the Project.

**3. Ongoing Hiring Process.**

**a. Notification of Job Opportunities.** After a Large Employer has commenced operations at the Project Site, it shall continue to use the Jobs Center in accordance with this Section III.A.3 as a resource to fill On-Site Jobs. When a Large Employer has an opening for an On-Site Job available, the Large Employer shall notify the Jobs Center of such job openings and provide a clear and complete description of job responsibilities and qualifications, including expectations, salary, minimum qualifications, work schedule, duration of employment, required standard of appearance, and any special requirements (*e.g.* language skills, drivers' license, required background check, etc.). Job qualifications shall be limited to qualifications directly related to performance of job duties.

**b. Hiring.** After notification pursuant to Section III.A.3.a., above, a Large Employer shall use normal hiring practices, including interviews, to consider all Residents and Disadvantaged Workers referred by the Jobs Center and meeting the qualifications described in the referral request during a five (5)-day period after initial notification to the Jobs Center, or until all open On-Site Jobs are filled, whichever is sooner. The Large Employer shall make good faith efforts to fill all available On-Site Jobs with Residents and Disadvantaged Workers referred through the Jobs Center. If at the conclusion of the five (5)-day period the Large Employer has been unable to fill all available positions with Residents and Disadvantaged Workers referred by the Jobs Center, the Large Employer may use other recruitment methods, although the Large Employer shall continue to make good faith efforts to hire Residents and Disadvantaged Workers later referred by the Jobs Center for non-management On-Site Jobs.

**4. Priorities for Initial and Ongoing Hiring.** In exercising its efforts required by this Policy to fill all available On-Site Jobs with Residents and Disadvantaged Workers referred by the Jobs Center, each Large Employer shall apply the following priorities in hiring Residents:

- i. First Priority: Residents of zip codes 94607, 94612, 94608, and 94609;
- ii. Second Priority: Residents of the Oakland Enterprise Zone Targeted Employment Area as designated on the L/DDA Effective Date, attached hereto as Schedule 3; and
- iii. Third Priority: other Residents of the City of Oakland.

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

**6. Worker Qualifications.** Unless a criminal background check is required by a Background Check Requirement, an Employer shall neither request from prospective workers, nor independently research prospective workers' history of involvement with the criminal justice system. Where a criminal background check is required by a Background Check Requirement, unless the Background Check Requirement provides otherwise, the Employer shall: (a) include the following statement in the position description: "This position is subject to a background check for any convictions related to its responsibilities and requirements. Only criminal histories (i) related to job requirements and responsibilities will be considered and will not automatically disqualify a finalist candidate."; (b) undertake the background check only after the initial interview (or, if no interview is undertaken, after a candidate has received a conditional offer of employment for the position in question); (c) consider only criminal histories related to job requirements and responsibilities; and (d) take into account the age of the individual at the time of the offense, the time that has passed since the offense, the nature and seriousness of the offense, and any evidence of the individual's rehabilitation. If a criminal background check yields information that is of concern to the Employer, the applicant will be given an opportunity to review the findings and discuss the report with the Employer, including an opportunity for the applicant to present information rebutting the accuracy or relevance of the report. To the extent that a Background Check Requirement conflicts with any of the provisions set forth in this Section, the Background Check Requirement will prevail. Unless a credit history is required by the Background Check Requirement, an Employer shall neither request nor independently research prospective workers' credit histories. To the extent that this Section III.A.6 conflicts with any requirements of this Policy related to Disadvantaged Workers, this Section III.A.6 shall control.

**B. Monitoring and Enforcement.**

**1. Safe Harbor Provision.** Any Large Employer for whom at least fifty percent (50%) of workers hired for On-Site Jobs during a particular year were Residents, and for whom at least twenty-five percent (25%) of workers hired for On-Site Jobs during a particular year were Disadvantaged Workers, shall be deemed to be in compliance with Sections III.A.2, and III.A.3 of this Policy, for all hiring during that year. For purposes of determining the percentages of workers hired for On-Site Jobs during a particular year that were Residents and Disadvantaged Workers, a Disadvantaged Worker shall be counted as both a Resident and a Disadvantaged Worker.

**2. Credit for Hiring at Other Locations.** Large Employers shall receive credit toward achievement of the Safe Harbor percentages set forth in Section III.B.1 for any hires of Residents and/or Disadvantaged Workers to perform jobs at other locations, so long as such Residents and/or Disadvantaged Workers are compensated in an amount equal to or in excess of that set forth in the Oakland Living Wage Ordinance (Oakland Municipal Code Section 2.28.010 *et seq.*) (e.g., if a Large Employer hires ten (1) workers for On-Site Jobs in a year, and six (6) are Residents, and such Large Employer also hires one Resident to perform a job at another location with such compensation, then, for purposes of Section III.B.1, seven (7) of such ten (10) workers will be deemed to be Residents.



**3. Retention Incentive.** For every 2,000 hours that any one Resident and/or Disadvantaged Worker who performs an On-Site Job works for a Large Employer, that Large Employer shall be entitled to a “bonus” hiring credit of one individual/position for the applicable category towards achievement of the Safe Harbor percentages set forth in Section III.B.1, above. For example, if a Large Employer hires ten (10) workers for On-Site Jobs in a year, and six (6) are Residents, and a Resident works his or her two thousandth (2000<sup>th</sup>) hour for such Large Employer, then, for purposes of Section III.B.1, seven (7) of such ten (10) workers will be deemed to be Residents. For any employee that does not work on an hourly basis, hours shall be counted towards this threshold on the basis of forty (40) hours per week of full time employment, so long as that employee actually works or is otherwise paid for at least forty hours in all weeks in question.

**4. Liquidated Damages.** Each Large Employer agrees that, if during a particular year it has not complied with the hiring process requirements of Sections III.A.2 and III.A.3, above, or satisfied the Safe Harbor percentage set forth in Section III.B.1, above, then as the sole and exclusive remedy therefor, it shall pay to the City liquidated damages in the amount of \$5,000.00 per On-Site Job short of the Safe Harbor percentage set forth in Section III.B.1, above. For example, if a Large Employer hires ten workers for On-Site Jobs in a year, and four are Residents and two are Disadvantaged Workers, then the liquidated damages shall total seven thousand five hundred dollars (\$7,500). Of this amount, five thousand dollars (\$5,000) is based on failure to meet the fifty percent (50%) Safe Harbor percentage for hiring of Residents, with safe harbor in this case requiring five Residents to be hired, and actual performance having been four hires. The remaining two thousand five hundred dollars (\$2,500) is based on failure to meet the twenty-five percent (25%) Safe Harbor percentage for Disadvantaged Workers, with safe harbor amount in this case requiring at least two and one half (2.5) Disadvantaged Workers to be hired, and actual performance having been two hires; as shortfall in this case would be one-half of a single hire, liquidated damages would be half of one On-Site Job, or two thousand five hundred dollars (\$2,500). Any liquidated damages collected by the City shall be used solely to support training, referral, monitoring, or technical assistance to advance the purposes of this Policy.

**5. Compliance Records.** Each Large Employer shall make available to the City on an annual basis (as of January 1 each year), and each Employer shall make available upon written request by the City, records sufficient to determine compliance with this Policy. City shall keep such records confidential except as required to be released pursuant to applicable law. Prior to such documents being released to the public pursuant to applicable law, the City will redact identifying information to any extent required by law.

**6. Additional Enforcement Mechanisms.** Except as set forth in Section III.B.4 above, the City shall be entitled to all remedies at law or in equity for any failure to comply with this Policy. Further, Employers who repeatedly violate this Policy may be debarred from future City contracts.

**IV. Temporary Employment Agencies.** No Large Employer may enter into any contract or other arrangement to supply workers for the performance of more than thirty percent (30%) of the On-Site Jobs within that Large Employer's control at any given time with any person or entity other than the Jobs Center unless granted approval to do so by the City Administrator.

The City Administrator shall reasonably consider any request for approval to obtain workers other than through the Jobs Center by the applicable Large Employer if such Large Employer reasonably demonstrates that compliance with this Section IV may reasonably be expected to create significant economic or operational hardship for the Large Employer.

**V. Living Wages**

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

**VI. Miscellaneous.**

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

**B. Determination of Residency Status.** A Large Employer's determination of (i) whether any individual is a Resident or (ii) any individual's status within the priorities set forth in Section III.A.4 shall be binding in determining whether the requirements of this Policy have been satisfied, including the requirements of Sections III.A and III.B, provided that such Large Employer obtains reasonable written documentation demonstrating that such individual's status at the time that such individual is assigned or hired and such Large Employer such documentation and makes it available to City for inspection at reasonable times.

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

**D. Assignments, Subleases and Contracts.** Developer and each Tenant shall include compliance with this Policy as a material term of any assignment or sublease of all or a portion of its interest in any portion of the Project Site. If a Developer or Tenant complies with this Section IV.D, such Developer or Tenant shall not be liable for any breach of this Policy by a party receiving such assignment or entering into such sublease where that breach is (i) related to the interest so assigned or subleased and (ii) first arises after the date of such assignment or sublease. Developer and each Employer shall include compliance with this Policy as a material term of any contract or other agreement under

which any On-Site Jobs may be performed. If an Employer complies with this Section VI.D, such Employer shall not be liable for any breach of this Policy by another entity acting pursuant to such contract or other agreement. If the Developer, an Employer, or a Tenant enters into a contract in violation of this Section VI.D., then upon request from the City, it shall either amend that contract to include all requirements of this Policy, or terminate that contract.

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

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

**G. Third Party Beneficiaries.** The City is an intended third-party beneficiary of any contract that incorporates this Policy, but only for the purposes of enforcing the terms of this Policy. There shall be no other third party beneficiaries of this Policy. The City shall not delegate any of its responsibilities to any other third party, require the consent of any third party, or act solely upon the direction of any third party in performing its obligations or exercising its rights under this Policy.

**H. Out-of-State Workers.** The requirements of Section III of this Policy shall not apply to positions filled by residents of states other than the State of California, and such positions shall not be considered for purposes related to the percentage requirement of Section III.B.1 and the liquidated damages calculation of Section III.B.4.

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

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

**K. Severability.** If any of the provisions of this Policy are held by a court of competent jurisdiction to be invalid, void, illegal, or unenforceable, that holding shall in no way affect, impair, or invalidate any of the other provisions of this Policy. If this Policy's six (6)-month requirement for qualification as a Resident is deemed invalid by final decision of a court of competent jurisdiction, then "Resident" shall mean an individual domiciled in the City prior to the date that such individual is hired or assigned to perform the applicable work, with "domiciled" as defined by Section 349(b) of the California Election Code, as in effect on the L/DDA Effective Date, attached hereto as Schedule 2.

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

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

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

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