

**Construction Jobs Policy**  
**Oakland Army Base Project**  
**Public Improvements**

**I. Purpose.** This Construction Jobs Policy sets forth certain requirements regarding hiring and employment for the construction of the Public Improvements on the former Oakland Army Base, as defined below and further described in that certain Lease Development and Disposition Agreement between the City of Oakland and Prologis CCIG Oakland Global, LLC dated \_\_\_\_\_. Contractors participating in the construction of the Public Improvements agree to comply with terms of this Construction Jobs Policy as a condition of operation, as more particularly set forth herein.

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

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

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

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

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

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

“**Developer**” shall mean Prologis CCIG Oakland Global, LLC and its approved successors, assigns and transferees, as set forth in the LDDA.

“**Disadvantaged Worker**” shall mean a Resident meeting eligibility criteria for California Enterprise Zone Hiring Credits, as set forth in Cal. Rev. & Tax Code Sec. 23622.7(b)(4)(A), as in effect on the LDDA Execution Date, a copy of which is attached hereto as Schedule 1.

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

“**LDDA**” shall mean that Lease Disposition and Development Agreement described in Section I, above, and entered into by the City and Developer respecting the development activities at the Oakland Army Base, as may be amended from time to time.

“**LDDA Execution Date**” shall mean the date the LDDA is signed by all parties as set forth in Section I, above.

“**Manager**” shall mean the City's construction project manager, California Capital & Investment Group, Inc., as set forth in Article III of the LDDA and in the Property Management Agreement.

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

“**PLA**” shall mean a project labor agreement between the City and the Unions addressed in Section IV.B, below.

“**Policy**” shall mean this Construction Jobs Policy for Public Improvements.

“**Prime Contractor**” shall mean a Contractor awarded a contract directly by Developer, the City, Manager, or a construction manager to one of those parties, for performance of Project Construction Work. The parties acknowledge that, as of the LDDA Execution Date, the only contracts for Project Construction Work that are expected to be issued by Developer are the contracts related to the Developer Funded Wharf Improvements (and then only if Developer exercises its option to construct the same pursuant to Section 3.5.1 of the LDDA).

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

“**Project Construction Work**” shall mean construction work performed on the Project Site and in furtherance of the Public Improvements.

“**Project Site**” shall mean the portion of the former Oakland Army Base owned by the City known as the Gateway Development Area and consisting of the East Gateway, Central Gateway, West Gateway, North Gateway and AMS Site parcels, as described in the LDDA.

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

“**Property Management Agreement**” shall mean that agreement between California Capital & Investment Group, Inc., and the City, which defines the duties of the Manager, including acting as the City's construction project manager for the Public Improvements.

“**Public Improvements**” shall mean construction work described in the Scope of Public Improvements attached to the LDDA and performed on the Project Site pursuant to Article III of the LDDA and Section 4 of the Property Management Agreement.

“**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 (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 as of the LDDA Execution Date attached, as hereto as Schedule 2.

“**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 requirements 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, Disadvantaged Workers, and Apprentices:

- a. Step One:** Utilize the Contractor’s discretion to assign to perform Project Construction Work any current employees who are Residents, identified Disadvantaged Workers, Apprentices;
- b. Step Two:** If the Contractor utilizes a Union hiring hall to retain workers, utilize name call, rehire, or similar procedures in the relevant collective bargaining agreement to request particular individuals who have been identified as Residents, Disadvantaged Workers, or Apprentices;
- c. Step Three:** If the Contractor utilizes a Union hiring hall to retain workers, request that the hiring hall refer Residents, Disadvantaged Workers, or Apprentices;
- d. Step Four:** If the above steps have not enabled satisfaction of the percentage requirements set forth in Section III.C of this Policy related to hiring of Residents, Disadvantaged Workers, or Apprentices, request referral of needed categories of workers from the Jobs Center;
- e. Step Five:** Fairly consider workers that have been referred by the Jobs Center within three (3) business days of request

therefor.

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

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

**1. Residents.** For each construction trade in which a Contractor performs Project Construction Work, at least fifty percent (50%) of Project Work Hours are performed by Residents.

**2. Disadvantaged Workers.** For each construction trade in which a Contractor performs Project Construction Work, at least twenty-five percent (25%) of hours worked by Apprentices are performed by Disadvantaged Workers.

**3. Apprentices.** For each construction trade in which a Contractor performs Project Construction Work, twenty percent (20%) of Project Work Hours are performed by Apprentices.

**4. Credit for Hours Worked on Other Projects.** For purposes of determining the percentage of Project Work Hours performed by Residents under Section III.C.1 or Disadvantaged Workers under Section III.C.2, any hours of construction work performed by Residents or Disadvantaged Workers on other construction projects performed by a Contractor (or, if the Contractor is a joint venture, by the entities that comprise the joint venture) during the term of the Project Construction Work (i.e., the period commencing on the Contractor's execution of a contract for the performance of Project Construction Work and expiring on the substantial completion of the work required under such contract) shall be credited as Project Work Hours performed by Residents or Disadvantaged Workers, as applicable, in the applicable construction trade (and shall not increase the total number of Project Work Hours, including those applicable to such construction trade).

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

**D. New Apprentice Sponsorship Requirements for Prime Contractors.** In each calendar year, for each twenty thousand (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 (1) or more New Apprentice(s) and employ such New Apprentice(s) for an aggregate total of at least one thousand

(1,000) hours of Project Construction Work and/or construction work on other projects during the term of the Prime Contractor's Project Construction Work.

**E. Funding Restrictions.** For any portion of the Project Construction Work on which, based on use of federal or state funds, a federal or state agency prohibits application of any 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 the City shall meet and confer with regard to the adapted requirements agreed to by the City and the funding agency, and such requirements shall be applied to portions of the Project Construction Work in question performed after the imposition of the adapted requirements, and shall automatically become terms of this Construction Jobs Policy, to which all Contractors agree.

**F. Contact Person.** At least two (2) weeks prior to performance of Project Construction Work, or within two (2) 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.

**G. Employment Needs Projections.**

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

**2. Subcontractors.** Each Contractor shall, at least one (1) month before commencing performance of Project Construction Work, or within two (2) business days after execution of a contract for performance of Project Construction Work, whichever is later, project employment needs for performance of the contract, and provide such projection to the Jobs Center and the City. Such projection shall indicate number of workers, apprentices, and Project Work Hours needed by trade, at different stages of performance of the contract.

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

**H. Determination of Status.** The applicable Contractor's determination of whether any individual is a Resident or New Apprentice shall be binding in determining whether the requirements of this Policy have been satisfied, including the requirements of Sections III.B and III.C, provided that such Contractor obtains reasonable documentation demonstrating that such

individual is a Resident or New Apprentice at the time that such individual is assigned or hired and such Contractor retains such documentation and makes it available to City for inspection at reasonable times. The City shall keep all documentation provided pursuant to this Section III.H confidential, subject to applicable law. The Jobs Center shall make determinations of Disadvantaged Worker status. The Jobs Center shall make such determinations promptly upon request from a Contractor, a Union, an apprenticeship program, or the City.

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

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

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

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

**C. Contract/Subcontracts.** Manager under the Property Management Agreement shall include compliance with this Policy as a material term of any contract entered into by the

Manager under which Project Construction Work will be performed. If Manager complies with this Section IV.C, Manager shall not be liable for any breach of this Policy by any Contractor (or any Contractor's subcontractors at any sub-tier level). Each Contractor shall include compliance with this Policy as a material term of any subcontract under which Project Construction Work will be performed (including, as applicable, any construction management agreement), with such subcontractor having all rights and responsibilities of a Contractor. If a Contractor enters into a subcontract in violation of this Section III.C, then such Contractor shall be liable for any breach of this policy at any sub-tier level(s). If a Contractor complies with this Section III.C, such Contractor shall not be liable for any breach of this policy at any sub-tier level.

**D. 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.

**E. 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 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.

**F. Remedies.**

**1. Liquidated Damages for Percentage Requirements.** If a Contractor fails to satisfy at least one of the alternative approaches required by Section III.A of this Policy, then as the sole and exclusive remedy 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.G.3, and complies with such negotiated compliance 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.

**G. Out-of-State Workers.** The requirements of Sections III.B (with respect to the hiring of Residents and Disadvantaged Workers), III.C.1 and III.C.2 shall not apply to Project

Work Hours 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 and III.C.2). 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 (30%) of 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. shall not apply, and the requirements of Section III.B (with respect to the hiring of Residents and Disadvantaged Workers), and the percentage requirements of Sections III.C.1 or III.C.2, shall be applicable to all Project Work Hours, 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 Resident qualification is deemed invalid by final decision of a court of competent jurisdiction, then "Resident" shall mean an individual domiciled in the City prior to the date that such individual is hired or assigned to perform the applicable work, with "domiciled" as defined by Section 349(b) of the California Election Code, as in effect on the LDDA Execution 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 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.

**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.

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

**I. Purpose.** This Construction Jobs Policy sets forth certain requirements regarding hiring and employment related to Vertical Construction, as defined below, on portions of the Oakland Army Base to be leased and developed pursuant to that certain Lease Development and Disposition Agreement between the City of Oakland and Prologis CCIG Oakland Global, LLC dated \_\_\_\_\_. Contractors participating in Vertical Construction will agree to comply with terms of this Policy as a condition of construction, as more particularly set forth herein.

**II. Definitions.** As used herein, 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 Exceptions**” shall mean: (i) law, regulation or policy of any applicable governmental or quasi-governmental body (including, but not limited to, those established under the Transportation Worker Identification Credential program and the Customs Trade Partnership Against Terrorism); (ii) the Contractor’s good faith determination that the position is of such sensitivity that individuals with particular types of criminal convictions or histories are ineligible; and (iii) the Contractor’s hiring policies that are uniformly applied on a national basis with respect to prospective workers’ history of involvement with the criminal justice system. A Contractor’s hiring policies with respect to prospective workers’ history of involvement with the criminal justice system that are uniformly applied in the State of California, rather than on a national basis, may also be considered a Background Exception pursuant to written approval of the City Administrator. The City Administrator shall reasonably consider any request for such approval by Developer or the applicable Contractor if Developer or such Contractor reasonably demonstrates that a Background Exception is reasonably necessary in order to avoid significant economic or operational hardship for Developer or the Contractor.

“**Billboard Agreement**” shall mean that certain agreement between the City and Prologis CCIG Oakland Global, LLC, to construct and operate up to five (5) billboards on the Oakland Army Base, as authorized under the LDDA, as may be amended from time to time.

“**Billboard Tenant**” shall mean the sublessee and any successors and assigns under the Billboard Agreement.

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

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

“**Developer**” shall mean Prologis CCIG Oakland Global, LLC and its approved successors, assigns and transferees, under the LDDA.

“**Ground Lease**” shall mean, as applicable, (a) that certain Army Base Gateway Redevelopment Project Ground Lease for the East Gateway, by and between the City of Oakland and Prologis CCIG Oakland Global, LLC, or its permitted designee, (b) that certain Army Base Gateway Redevelopment Project Ground Lease for the Central Gateway, by and between the City of Oakland and Prologis CCIG Oakland Global, LLC, or its permitted designee; or (c) that certain Army Base Gateway Redevelopment Project Ground Lease for the West Gateway, by and between the City of Oakland and Prologis CCIG Oakland Global, LLC, or its permitted designee; each agreement as amended from time to time.

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

“**LDDA**” shall mean that Lease Disposition and Development Agreement described in Section I, above, and entered into by the City and Developer respecting the development activities at the Oakland Army Base, as may be amended from time to time.

“**LDDA Execution Date**” shall mean the date the LDDA is signed by all parties as set forth in Section I, above.

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

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

“**Prime Contractor**” shall mean a Contractor awarded a contract directly by Developer, any Tenant, Billboard Tenant, or a construction manager to one of those parties, for performance of Project Construction Work.

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

“**Project Construction Work**” shall mean Vertical Construction performed on the Project Site.

“**Project Site**” shall mean the portions of the former Oakland Army Base that may be leased to Developer or its affiliates, successors or assigns pursuant to the LDDA.

“**Project Work Hours**” shall mean hours of Project Construction Work.

“**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 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 as of the LDDA Execution Date attached hereto as Schedule 1.

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

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

“**Vertical Construction**” shall mean construction work related to (i) initial construction under the Billboard Agreement; (ii) initial construction of private site improvements and core and shell building improvements; (iii) subsequent construction or maintenance under the Billboard Agreement for which the contracts with all Prime Contractors responsible for such work are worth, in the aggregate, over one million dollars (\$1,000,000); or (iv) subsequent construction or maintenance of tenant improvements under a Ground Lease or other leasing arrangement between the City and the Developer, or sublease thereof, for which the contracts with all Prime Contractors responsible for such work are worth, in the aggregate, over one million dollars (\$1,000,000); in all events excluding the cost of any furniture, fixtures or equipment.

“**Vertical PLA**” shall mean any project labor agreement governing Vertical Construction and executed by the Alameda County Building Trades Council and Developer and/or Billboard Tenant.

### **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 Construction 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 of this Policy related to hiring of Residents, request referral of Residents from the Jobs Center.

**e. Step Five:** Fairly consider workers that have been referred by the Jobs Center within three (3) business days of the request therefor.

#### **C. Percentage Requirement.**

**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 fifty percent (50%) of the Project Work Hours in such construction trade are performed by Residents.

**2. Credit for Hours Worked on Other Projects.** For purposes of determining the percentage of Project Work Hours performed by Residents under Section III.C.1, any hours of construction work performed by Residents on other construction projects performed by a Contractor (or, if the Contractor is a joint venture, by the entities that comprise the joint venture) during the term of the Contractor's Project Construction Work (i.e., the period commencing on the Contractor's execution of a contract for the performance of Vertical Construction and expiring on the substantial completion of the work required under such contract) shall be considered Project Work Hours performed by Residents in the applicable construction trade (and shall not increase the total number of Project Work Hours, including those applicable to such construction trade).

**3. Bonus for Retention of New Apprentices.** For every one thousand (1,000) hours beyond an initial one thousand (1,000) hours that any one New Apprentice works, directly or indirectly, for a Prime Contractor (including for 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 five hundred (500) "bonus" hours that shall 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 twenty thousand (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 (1) or more New Apprentice(s) and employ such New Apprentice(s) for an aggregate total of at least one thousand (1,000) 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 twenty percent (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 portion 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 above requirements to the restrictions imposed by the funding agency, advancing the goals of this Policy to the greatest extent permitted by the funding agency. In such cases, Developer and the City shall meet and confer with regard to the adapted requirements agreed to by the City and the funding agency, and such requirements shall be applied to portions of the Project Construction Work in question 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 (2) weeks prior to performance of Project Construction Work, or within two (2) 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 (1) 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 Project Construction Work.

**2. Contractors.** Each Contractor shall, at least one (1) month before commencing performance of Project Construction Work, or within two (2) 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 to complete the Project Construction Work.

**3. Compliance Plan.** Prior to commencement of construction, Prime Contractors may request participation from the City in negotiation of a proactive compliance plan with regard to requirements of this Policy. The City shall negotiate in good faith in an attempt to reach agreement on such a plan. Negotiated compliance plans may streamline and clarify responsibilities under this Policy, but may not conflict with this Policy. If such a plan is agreed to by Prime 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 any of the Background Exceptions, a Contractor shall neither request from prospective workers, nor independently research prospective workers' history of involvement with the criminal justice system. Where a criminal background check is required by any Background Exception, subject to the requirements of such Background Exception the Contractor shall: (a) include the following statement in the position description: "This position is subject to a background check for any convictions related to its responsibilities and requirements. Only criminal histories (i) related to job requirements and responsibilities or (ii) related to violent acts will be considered and will not automatically disqualify a finalist candidate."; (b) undertake the background check only after the initial interview (or, if no interview is undertaken, after a candidate has received a conditional offer of employment for the position in question); (c) consider only criminal histories (i) related to job requirements and responsibilities or (ii) related to violent acts; and (d) take into account the age of the individual at the time of the offense, the time that has passed since the offense, the nature and seriousness of the offense, and any evidence of the individual's rehabilitation. Unless a credit history is required by any of the Background Exceptions or Contractor's good faith determination that the position is of such sensitivity that individuals with particular types of credit histories are ineligible, a Contractor shall neither request from prospective workers, nor independently research prospective workers' credit histories.

**J. Project Labor Agreement.** As more particularly set forth in the applicable Ground Lease or the Billboard Agreement, Developer and Billboard Tenant, respectively, will have entered into a Vertical PLA with the Alameda County Building and Construction Trades Council covering the Project Construction Work, with all contractors and subcontractors to perform work under terms of such Vertical PLA, and such Vertical PLA to be consistent with and facilitate compliance with this Policy.

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

**A. Contracts/Subcontracts.** Developer and each Tenant or Billboard Tenant shall include compliance with this Policy as a material term of any contract under which Project Construction Work will be performed (including any applicable construction management agreement). If Developer, Tenant or Billboard 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 (including any applicable construction management agreement), 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 third party or act solely upon the direction of any third party in performing its obligations or exercising its rights under this Policy.

**D. Reporting Requirements.** Contractors shall submit monthly certified payroll records to the City, with an indication as to which 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.B and III.C, 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 Requirement.** If a Contractor fails to satisfy at least one of the alternative approaches required by Section III.A of this Policy, then as the sole and exclusive remedy 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 such negotiated compliance 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 and Billboard Tenant have 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 LDDA or its related agreements (ground leases and Billboard Agreement, as applicable).

**G. Exemptions.**

**1. For Core Workers.** The requirements of Sections III.B and III.C shall not apply to hours of Project Construction Work 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 seven hundred fifty (750) hours of work in the one hundred eighty (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 one thousand five hundred (1,500) hours

of work in the three hundred sixty five (365) days prior to that Contractor's commencement of the applicable Project Construction Work.

**2. For Out-of-State Workers.** The requirements of Sections III.B and III.C shall not apply to hours of 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 (30%) of all 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 or III.C shall be applicable to all hours of 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. Emergency.** Developer, Tenant, Billboard Tenant or Contractors may apply to the City Administrator for a waiver of Sections III.B, III. C, III.D(2) and III(H)(1) of this Policy on a temporary basis with regard to a particular portion of the requesting party's work on grounds of a major emergency or risk of serious damage to property, such as natural disaster or fire. The City Administrator may grant such wavier only for a period of time necessary to respond to the emergency or serious property damage and only where the requesting party demonstrates (i) specific evidence of a major emergency or risk of serious property damage, the response to which requires rapid hiring of a significant number of temporary workers, (ii) that application of Sections III.B and III.C of this Policy would necessarily lead to an inability to address the emergency within the necessary timeframe or without substantial risk to safety of workers or serious damage to property, and (iii) that such inability or such risk cannot be avoided through changes to staffing, supervision, or operations in conjunction with application of Sections III.B, III.C, III.D(2) and III(H)(1) of this Policy. If Developer, Tenant, Billboard Tenant or any Contractor reasonably and in good faith believes that such a major emergency or risk of serious damage to property requires, and such entity undertakes, immediate action prior to obtaining any such waiver, then the City shall reasonably consider granting any requested waiver on a retroactive basis with respect to such actions.

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

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

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

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

**M. Warranties and Representation.** Each party to a contract incorporating this Policy agrees not to either affirmatively or by way of defense seek to invalidate or otherwise avoid application of the terms of this Policy in any judicial action or arbitration proceeding; has had the opportunity to 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.

**Operations Jobs Policy**  
**Oakland Army Base Project**  
**West Gateway**

**I. Purpose.** This Operations Jobs Policy sets forth certain requirements regarding hiring and employment for jobs related to operation of the development on the Project Site associated with the West Gateway Ground Lease, as described in that certain Lease Disposition and Development Agreement between the City of Oakland and Prologis CCIG Oakland Global, LLC 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 Policy is attached. This Operations Jobs Policy does not cover construction hiring or construction employment.

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

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

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

“**Developer**” shall mean Prologis CCIG Oakland Global, LLC and its approved successors, assigns and transferees, as set forth in the LDDA.

“**Disadvantaged Worker**” shall mean a Resident meeting eligibility criteria for California Enterprise Zone Hiring Credits, as set forth in Cal. Rev. & Tax Code Sec. 23622.7(b)(4)(A), as in effect on the LDDA Execution Date, a copy of which is attached hereto as Schedule 1, on the date that such individual is hired or assigned to perform the applicable work.

“**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 any entity having a total job count of forty (40) or greater, and either leasing space within the Project Site or performing services within the Project Site pursuant to one or more service or labor supply contracts. For purposes of this definition, “total job count” shall mean the number of individuals working in On-Site Jobs and employed directly by the entity in question, working under a service contract or labor supply contract with the entity in question, or working under any related subcontract or agreement with the entity in question.

“**LDDA**” shall mean the Lease Disposition and Development Agreement described in Section I, above, and entered into by City and Developer respecting the development of the Oakland Army Base, as may be amended from time to time.

“**LDDA Execution Date**” shall mean the date the LDDA is signed by all parties as set forth in Section I, above.

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

“**Policy**” shall mean this Operations Jobs Policy for the West Gateway.

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

“**Project Site**” shall mean the parcels of land to be leased pursuant to the West Gateway Ground Lease, as may be amended (or as those parcels may be otherwise leased or conveyed in the future).

“**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 LDDA Execution Date, attached hereto as Schedule 2.

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

“**West Gateway Ground Lease**” means that certain ground lease, the form of which is Attachment 3 to the LDDA, that the City intends to lease to CCIG Oakland Global LLC or its affiliate pursuant to the terms of the LDDA.

### **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 Employers’ 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 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.** 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 open positions for 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 position(s).

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

**e.**

### 3. Ongoing Hiring Process.

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

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

**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 LDDA Execution 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 any of the Background Exceptions, an Employer shall neither request from prospective workers, nor independently research prospective workers' history of involvement with the criminal justice system. Where a criminal background check is required by any Background Exception, subject to the requirements of such Background Exception the Employer shall: (a) include the following statement in the position description: "This position is subject to a background check for any

convictions related to its responsibilities and requirements. Only criminal histories (i) related to job requirements and responsibilities or (ii) related to violent acts will be considered and will not automatically disqualify a finalist candidate.”; (b) undertake the background check only after the initial interview (or, if no interview is undertaken, after a candidate has received a conditional offer of employment for the position in question); (c) consider only criminal histories (i) related to job requirements and responsibilities or (ii) related to violent acts; and (d) take into account the age of the individual at the time of the offense, the time that has passed since the offense, the nature and seriousness of the offense, and any evidence of the individual’s rehabilitation. Unless a credit history is required by any of the Background Exceptions or Employer’s good faith determination that the position is of such sensitivity that individuals with particular types of credit histories are ineligible, 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 the avoidance of doubt, for purposes of determining the percentages of workers hired for On-Site Jobs during a particular year that were Residents and Disadvantaged Workers, a Disadvantaged Worker shall be counted as both a Resident and a Disadvantaged Worker.

**2. Credit for Hiring at Other Locations.** Large Employers shall receive credit toward achievement of the Safe Harbor threshold set forth in Section III.B.1 for any hires of Residents or Disadvantaged Workers to perform jobs at other locations, so long as such Residents or Disadvantaged Workers are compensated in an amount equal to or in excess of that set forth in the Oakland Living Wage Ordinance (Oakland Municipal Code Section 2.28.010 *et seq.*). For example, if a Large Employer hires ten (10) workers for On-Site Jobs in a year, and six (6) are Residents, and in that year such Large Employer also hires one (1) 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 two-thousand (2,000) hours that any one Resident or Disadvantaged Worker hired pursuant to this Policy works for a Large Employer, that Large Employer shall be entitled to a “bonus” hiring credit towards achievement of the Safe Harbor threshold set forth in Section III.B.1, above. For example, if a Large Employer hires ten (10) workers for On-Site Jobs in a year, and six (6) are Residents, and a Resident works his or her two thousandth (2,000<sup>th</sup>) hour for such Large Employer, then, for purposes of Section 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 (40) hours in all weeks in question.

**4. Liquidated Damages.** Each Large Employer agrees that, if during a particular year it has not either complied with the hiring process requirements of Sections III.A.2 and III.A.3 above or satisfied the safe harbor percentage set forth in Section III.B.1 above, then as the sole and exclusive remedy therefor, it shall pay to the City liquidated damages in the amount of five thousand dollars (\$5,000.00) per job short of the Safe Harbor threshold 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 Employer shall make available to the City on an annual basis (as of January 1 of each calendar year), or upon request, records sufficient to determine compliance with this Policy. The City shall keep all documentation provided pursuant to this Section III.B.5 confidential, subject to applicable 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.**

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

#### **V. Living Wages.**

**A. Compliance with Ordinance.** Each Employer shall provide compensation required of covered employers under, and shall otherwise comply with, the Oakland Living

Wage Ordinance. (Oakland Municipal Code Section 2.28.010 *et seq.*)

## **VI. Miscellaneous.**

**A. Contact Person.** Within thirty (30) days after having entered into any contract (including any assignment of all or any portion of any 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 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 Section III.A and III.B, provided that such Large Employer obtains reasonable documentation demonstrating that such individual is a Resident at the time that such individual is assigned or hired, and such Large Employer retains such documentation and makes it available to City for inspection at reasonable times. The City shall keep all documentation provided pursuant to this Section IV.B confidential, subject to applicable law. The Jobs Center shall make determinations of Disadvantaged Worker status. The Jobs Center shall make such determinations promptly upon request from an Employer, a worker, or the City.

**C. 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 the Project Site. If a Developer or Tenant complies with this Section VI.C, such Developer or Tenant shall not be liable for any breach of this Policy that is (i) related to the interest so assigned or subleased and (ii) first arises after the date of such assignment or sublease. Each Employer shall include compliance with this Policy as a material term of any subcontract or other agreement under which any On-Site Jobs may be performed. If a Developer, Employer, or Tenant enters into a contract in violation of this Section VI.C, then upon request from the City it shall either amend that contract to include all requirements of this Policy, or terminate that contract.

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

**E. Funding Restrictions.** For any portion of operations on the Project Site for which, based on use of federal or state funds, a federal or state agency prohibits application of the requirements of this Policy, the 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 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.

**F. 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.

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

**H. 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 LDDA Execution Date, attached hereto as Schedule 2.

**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 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.

**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 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.

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

**N. 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.

**Operations Jobs Policy**  
**Oakland Army Base Project**  
**East and Central Gateway**

---

**I. Purpose.** This Operations Jobs Policy sets forth certain requirements regarding hiring and employment for jobs related to operation of the development on the Project Site associated with the East Gateway and Central Gateway Ground Leases, as described in that certain Lease Disposition and Development Agreement between the City of Oakland and Prologis CCIG Oakland Global, LLC 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, as more particularly set forth herein. This Operations Jobs Policy does not cover construction hiring or construction employment.

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

“**Background Exceptions**” shall mean: (i) law, regulation or policy of any applicable governmental or quasi-governmental body (including, but not limited to, those established under the Transportation Worker Identification Credential program and the Customs Trade Partnership Against Terrorism); (ii) the Employer’s good faith determination that the position is of such sensitivity that individuals with particular types of criminal convictions or histories are ineligible; and (iii) the Employer’s hiring policies that are uniformly applied on a national basis with respect to prospective workers’ history of involvement with the criminal justice system. An Employer’s hiring policies with respect to prospective workers’ history of involvement with the criminal justice system that are uniformly applied in the State of California, rather than on a national basis, may be considered a Background Exception pursuant to written approval of the City Administrator. The City Administrator shall reasonably consider any request for such approval by Developer or the applicable Employer if Developer or the applicable Employer reasonably demonstrates that a Background Exception is reasonably necessary in order to avoid significant economic or operational hardship for Developer or applicable Employer.

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

“**Developer**” shall mean Prologis CCIG Oakland Global, LLC and its approved successors, assigns and transferees, as set forth in the LDDA.

“**Disadvantaged Worker**” shall mean a Resident meeting eligibility criteria for California Enterprise Zone Hiring Credits, as set forth in Cal. Rev. & Tax Code Sec. 23622.7 (b)(4)(A), as in effect on the LDDA Execution Date, a copy of which is attached hereto as Schedule 1.

“**East Gateway and Central Gateway Ground Leases**” shall mean those certain ground leases, the form of which is Attachment 3 to the LDDA, that the City intends to lease to a Prologis controlled entity or its affiliate pursuant to the terms of the LDDA.

“**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 any entity having a total job count of 40 or greater, and either leasing space within the Project Site or performing services within the Project Site pursuant to one or more service or labor supply contracts. For purposes of this definition, “total job count” shall mean the number of individuals working in On-Site Jobs and employed directly by the entity in question, working under a service contract or labor supply contract with the entity in question, or working under any related subcontract or agreement with the entity in question.

“**LDDA**” shall mean the Lease Disposition and Development Agreement described in Section I, above, and entered into by City and Developer respecting the development of the Oakland Army Base, as may be amended from time to time.

“**LDDA Execution Date**” shall mean the date the LDDA is signed by all parties as set forth in Section I, above.

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

“**Policy**” shall mean this Operations Jobs Policy for the East and Central Gateway.

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

“**Project Site**” shall mean the parcels of land to be leased pursuant to the East and Central Gateway Ground Leases, as those leases may be amended (or as those parcels may be otherwise leased or conveyed in the future).

“**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 LDDA Execution Date, attached hereto as Schedule 2.

“**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 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.** 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 open positions for 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 position(s), although the Large Employer shall continue to make best efforts to hire Residents and Disadvantaged Workers later referred by the Jobs Center for non-management On-Site Jobs.

**c. Pre-opening Transfer.** Provisions of Section III.A.2 are not applicable to a Large Employer that is closing a facility located outside Oakland and is transferring the majority of its staff from the previous facility to a new facility within Oakland. Upon commencing operation in the new facility, such a Large Employer is covered by Section III.A.3, below. Provisions of this Section III.A.2 are applicable to Large Employers who hire for positions in facilities located outside Oakland with the intention of transferring such hires to a new facility at the Project Site upon commencement of operations for the new facility. All such hires shall be made consistent with 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 openings for On-Site Jobs. When a Large Employer has an opening for an On-Site Job available, the Large Employer shall notify the Jobs Center of such job openings and provide a clear and complete description of job responsibilities and qualifications, including expectations, salary, minimum qualifications, work schedule, duration of employment, required standard of appearance, and any special requirements (*e.g.* language skills, drivers' license, required background check, etc.). Job qualifications shall be limited to qualifications directly related to performance of job duties.

**b. Hiring.** The Large Employer shall then use normal hiring practices, including interviews, to 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 openings for On-Site Jobs with Residents and Disadvantaged Workers referred by the Jobs Center, the Large Employer may use other recruitment methods, although the Large Employer shall continue to make good faith efforts to hire Residents and Disadvantaged Workers later referred by the Jobs Center for non-management On-Site Jobs.

**4. Priorities for Initial and Ongoing Hiring.** In 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 LDDA Execution 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 status as a Resident, status as a Disadvantaged Worker, or on any prohibited basis in any terms and conditions of employment, including retention, promotions, job duties, shift assignments, and training opportunities.

**6. Worker Qualifications.** Unless a criminal background check is required by any of the Background Exceptions, an Employer shall neither request from prospective workers, nor independently research prospective workers' history of involvement with the criminal justice system. Where a criminal background check is required by any

Background Exception, subject to the requirements of such Background Exception the Employer shall: (a) include the following statement in the position description: “This position is subject to a background check for any convictions related to its responsibilities and requirements. Only criminal histories (i) related to job requirements and responsibilities or (ii) related to violent acts will be considered and will not automatically disqualify a finalist candidate.”; (b) undertake the background check only after the initial interview (or, if no interview is undertaken, after a candidate has received a conditional offer of employment for the position in question); (c) consider only criminal histories (i) related to job requirements and responsibilities or (ii) related to violent acts; and (d) take into account the age of the individual at the time of the offense, the time that has passed since the offense, the nature and seriousness of the offense, and any evidence of the individual’s rehabilitation. Unless a credit history is required by any of the Background Exceptions or Employers’ good faith determination that the position is of such sensitivity that individuals with particular types of credit histories are ineligible, an Employer shall neither request, nor independently research, prospective workers’ credit histories. To the extent that this Section III.A.6 conflicts with any requirements of this Policy related to Disadvantaged Workers, this Section III.A.6 shall control.

## **B. Monitoring and Enforcement.**

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

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

**3. Retention Incentive.** For every two thousand (2,000) hours that any one Resident and/or Disadvantaged Worker who performs an On-Site Job works for a Large Employer, that Large Employer shall be entitled to a “bonus” hiring credit of one individual/position for the applicable category towards achievement of the safe harbor percentages set forth in Section III.B.1. For example, if a Large Employer hires ten (10) workers for On-Site Jobs in a year, and six (6) are Residents, and a Resident works his or her two thousandth (2,000<sup>th</sup>) hour for such Large Employer, then, for purposes of Section 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 (40) hours in all weeks in question.

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

**5. Compliance Records.** Each Employer shall make available to the City on an annual basis (as of January 1 each year), or upon request, records sufficient to determine compliance with this Policy. An Employer may redact names and social security numbers from requested records in order to protect the privacy of individual employees.

**6. Additional Enforcement Mechanisms.** Except as set forth in Section III.B.4 above, the 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.**

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

## V. Living Wages

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

## VI. Miscellaneous.

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

**D. Assignments, Subleases and Contracts.** Each Developer or Tenant shall include compliance with this Policy as a material term of any assignment or sublease of all or a portion of its interest in a lease of any portion of the Project Site. If 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. 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 a Developer, Employer or 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 such a 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.

**F. Funding Restrictions.** For any portion of operations on the Project Site for which, based on use of federal or state funds, a federal or state agency prohibits application of the requirements of this Policy, the 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 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. Retaliation Prohibited.** An Employer shall not discharge, reduce the compensation of, or otherwise discriminate against any person for making a complaint to the City or participating in any proceedings related to enforcement of this Policy against the Employer.

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

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

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

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

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

**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 consult counsel regarding terms of this Policy, and has agreed to such terms voluntarily as a condition of entering into a contract that incorporates this Policy. This Policy shall not be strictly construed against any entity, and any rule of construction that any ambiguities be resolved against the drafting party shall not apply to this Policy.

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

**P. 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.