

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.