

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.

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 (2,000th) 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.