

# Operations Jobs Policy

## OMSS Project

**I. Purpose.** This Operations Jobs Policy (“Policy”) sets forth certain requirements regarding hiring and employment for jobs related to operation of the development on the Project Site, as described in that certain Lease Disposition and Development Agreement between the City of Oakland and OMSS, 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. This Policy does not cover construction hiring or employment.

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

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

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

“**Developer**” shall mean OMSS, LLC, and its successors, assigns and transferees.

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

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

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

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

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

“**LDDA**” shall have the meaning set forth in Section I, above.

“**LDDA Effective Date**” shall mean the Effective Date of the LDDA, as defined therein.

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

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

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

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

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

“**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 Effective Date.

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

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

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

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

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

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

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

**c. Pre-opening Transfer.**

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

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

**3. Ongoing Hiring Process.**

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

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

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

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

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

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

**B. Monitoring and Enforcement.**

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

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

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

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

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

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

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

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

**V. Living Wages**

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

**VI. Miscellaneous.**

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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