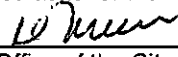


FILED
OFFICE OF THE CITY CLERK
OAKLAND

2014 NOV 25 AM 10:58

REVISED

Approved as to form and legality


Office of the City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE, WITHOUT RETURNING TO THE CITY COUNCIL, A RAIL ACCESS AGREEMENT AND RELATED AGREEMENTS WITH THE PORT OF OAKLAND FOR A TERM UP TO 66 YEARS, TO ENABLE SHARED RAIL ACCESS FOR THE CITY'S DEVELOPMENT AT THE FORMER OAKLAND ARMY BASE

WHEREAS, in 2003, the U.S. Department of the Army transferred the former Oakland Army Base ("Base") to the City of Oakland ("City") and the City, in turn, then transferred a portion the Base to the Port of Oakland ("Port"); and

WHEREAS, on or about July 27, 2011, the Port, the Redevelopment Agency of the City of Oakland, and the City entered into a Cost Sharing Agreement for the Oakland Army Base (CSA) to support each agency's economic development goals for their respective portions of the former Oakland Army Base; and

WHEREAS, on or about June 19, 2012 the City and Port amended the CSA to, among other things: (1) add the City as a grant recipient of State of California Trade Corridor Improvement Funds ("TCIF") funds; (2) cooperatively allocate \$242 million in TCIF funds to develop rail, street and utility infrastructure to replace aged, obsolete and non-code compliant infrastructure at the former Oakland Army Base to facilitate development and redevelopment of an important transportation, rail and port area within the City of Oakland; (3) acknowledge that the Redevelopment Agency's interests in the former Oakland Army Base transferred to the City; (4) redefine the respective roles and responsibilities between the Port and City; and (5) include an obligation of the Port to enter into a 20-year rail access agreement with the City for the City and the City's developer(s) to access the Port's to-be-constructed Phase One rail yard; and

WHEREAS, the City and Port have executed TCIF Grant Agreements with the State of California totaling \$242 million that require matching funds totaling \$242 million; and

WHEREAS, the City has executed a 66-year Lease Disposition and Development Agreement ("LDDA") with CCIG Prologis Oakland Global, LLC for private development of the Central, East and West Gateway Areas of the City-owned portion of the Base, and a 55-year LDDA with Oakland Maritime Support Services ("OMSS") for private development of the Ancillary Maritime Services ("AMS") site within the Central and North Gateway Areas of the City-owned portions of the Base; and

WHEREAS, the City has executed an exclusive negotiating agreement with California Waste Solutions and CASS, Inc., relating to potential development of the remaining portion of the North Gateway Area of the City-owned portion of the Base not within the OMSS LDDA; and

WHEREAS, the City has caused its agent to execute a Design-Build contract for construction of infrastructure on the Base (the "City Project"), and construction of the City Project commenced in November 2013; and

WHEREAS, the City, the City Project and the City's LDDA developments will provide \$50 million of the Port's \$65 million in required TCIF matching funds; and

WHEREAS, the City's developments in the Central, East, North and West Gateway Areas, including the AMS site, will rely on rail access across the Port's Phase One rail yard to the main rail line at the Port; without this rail access, portions of the contemplated development of the City-owned portions of the Base by private developers may become infeasible; now, therefore be it

RESOLVED: that the City Administrator is authorized to negotiate and execute, without returning to City Council, a Rail Access Agreement and any related agreement with the Port of Oakland for a term up to 66-years to enable rail access to the City-owned Central, East, North and West Gateway Areas at the Base; and be it

FURTHER RESOLVED, that the City Council, based upon its own independent review, consideration, and exercise of its independent judgment, hereby finds and determines, on the basis of substantial evidence in the entire record before the City, that none of the circumstances necessitating further CEQA review are present. Thus, prior to approving the Rail Access Agreement, the City Council finds and determines that it can continue to rely on the previously adopted 2012 OARB Initial Study/Addendum for the reasons stated in the June 12, 2012, May 28, 2013, and December 2, 2014 City Council Agenda Reports and related attachments/exhibits. The (Final and Corrected) Standard Conditions of Approval/Mitigation Monitoring and Reporting Program, dated October 15, 2012, is also hereby reaffirmed/readopted, including the clarifying corrections discussed at the June 4, 2013 City Council hearing (Mitigation Measure 4.4-3b, West Gateway Rail and Maritime Emissions Reductions Program) and in the Agenda Report for the July 2, 2013 City Council meeting (Mitigation Measure 4.3-10, Parking Demand Study), and the revisions discussed at the July 2, 2013 City Council meeting (Mitigation Measure PO-1, Stakeholder Review of Air Quality and Trucking Plans; and be it

FURTHER RESOLVED, that the City Council finds and determines that this action complies with CEQA and the Environmental Review Officer is directed to cause to be filed a Notice of Determination with the appropriate agencies; and be it

FURTHER RESOLVED, that the City Administrator or his or her designee is hereby authorized, without returning to City Council, to take any and all steps necessary to implement and/or effectuate this Resolution, which are consistent with the basic purpose and intent of this Resolution; provided, however, any legal agreements shall be subject to the review and approval of the Office of the City Attorney; such steps may

include, without limitation, negotiation and execution of such other additions, amendments or other modifications to the Rail Access Agreement (including, without limitation, preparation and attachment of, or changes to, any or all of the exhibits) or of other documents that the City Administrator or his or her designee is hereby authorized, without returning to City Council, to take any and all steps necessary to implement and/or effectuate this Resolution, which are consistent with the basic purpose and intent of this Resolution; provided, however, any legal agreements shall be subject to the review and approval of the Office of the City Attorney; such steps may include, without limitation, negotiation and execution of such other additions, amendments or other modifications to the executed Rail Access Agreement (including, without limitation, preparation and attachment of, or changes to, any or all of the exhibits) or of other documents that the City Administrator, in consultation with the City Attorney's Office, determines are in the best interests of the City, do not materially increase the obligations or liabilities of the City, and are necessary or advisable to complete the transactions which this Resolution contemplates.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2014

PASSED BY THE FOLLOWING VOTE.

AYES - BROOKS, GALLO, GIBSON McELHANEY, KALB, KAPLAN, REID, SCHAAF, AND PRESIDENT KERNIGHAN

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2014 NOV 25 AM 10:58

REVISED

Approved as to form and legality

[Signature]

Deputy City Attorney

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A THIRD AMENDMENT TO THE ARMY BASE GATEWAY REDEVELOPMENT PROJECT LEASE DISPOSITION AND DEVELOPMENT AGREEMENT (“LDDA”) WITH PROLOGIS CCIG OAKLAND GLOBAL, LLC (“DEVELOPER”) SUBSTANTIALLY IN CONFORMANCE WITH THE ATTACHED TERM SHEET, WITHOUT RETURNING TO THE CITY COUNCIL, TO: (1) DIVIDE THE CENTRAL GATEWAY BETWEEN DEVELOPER AFFILIATES PROLOGIS, L.P. (“PROLOGIS”) AND CCIG OAKLAND GLOBAL, LLC (“CCIG”); (2) EXCLUDE FROM THE CENTRAL GATEWAY GROUND LEASE AN APPROXIMATELY 14.63 ACRE PARCEL KNOWN AS MH-1; (3) CHANGE THE CENTRAL GATEWAY LESSEE TO PROLOGIS; (4) NEGOTIATE AND EXECUTE A NEW GROUND LEASE WITH CCIG FOR THE MH-1 PARCEL; (5) PROVIDE THE OPTION TO LEASE THE EAST GATEWAY PARCELS, CE1 AND CE2, IN SEPARATE PHASES; AND (6) AMEND THE LEASES AS NECESSARY TO REFLECT THE TERM SHEET

WHEREAS, on June 19, 2012, the Oakland City Council, via Resolution No. 83930 C.M.S., approved the amended Oakland Army Base (OARB) Reuse Plan (Master Plan), including adopting the 2012 OARB Initial Study/Addendum (IS/Addendum), making related California Environmental Quality Act (CEQA) findings, and adopting the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCA/MMRP); and

WHEREAS, on July 3, 2012, the Oakland City Council approved via Ordinance No. 13131 C.M.S., a Lease Disposition and Development Agreement (“LDDA”) and related documents between the City of Oakland (the “City”) and Prologis CCIG Oakland Global, LLC (“Developer”), for the development of approximately 130 acres of the Gateway Development Area of the former Oakland Army Base; and

WHEREAS, Developer entity is a joint venture consisting of Prologis, L.P. (“Prologis”) and CCIG Oakland Global, LLC (“CCIG”); and

WHEREAS, the LDDA contemplates that upon satisfaction of conditions precedent the City shall enter into ground leases for portions of the Gateway Development Area in three Phases as follows: Phase 1: Central Gateway with the Prologis/CCIG joint venture as Developer, Phase 2: East Gateway with Prologis, and Phase 3: West Gateway with CCIG; and

WHEREAS, to enable the private development (the “Private Improvements”) of the three Phases, the City committed to building Public Improvements consisting of new underground utilities, new on-surface roads and other transportation improvements to serve the

entire Gateway Development Area, as well as improvements to the land underlying the Private Improvements; and

WHEREAS, completion of the Public Improvements for each Phase is a condition precedent to Developer's obligation to close escrow on the Phase; and

WHEREAS, on May 7, 2013 the City and the State of California Department of Transportation ("State") entered into a Trade Corridor Improvement Fund ("TCIF") Grant Agreement (the "Grant Agreement") to provide the City with \$176,341,000 from the TCIF program for constructing the Public Improvements segment of the TCIF Project (the "Project"); and

WHEREAS, the Grant Agreement defines the Project as consisting of Segments 1 (Remediation), 3 (Public Improvements: City Site Prep Work and Backbone Infrastructure:), 4 (Recycling Facilities), and 5 (Private Improvements: City Trade & Logistics Facilities), and excludes Segments 2 and 6, which consist of rail improvements to be delivered by the Port of Oakland (Segment 2 of which is required for completion of the Private Improvements); and

WHEREAS, the Grant Agreement requires the City to match the TCIF grant amount with an equal amount of local, federal or private investment in the Project; and

WHEREAS, the City is relying on the Private Improvements and other public investments to provide the required match; and

WHEREAS, the City is entering into a Rail Access Agreement with the Port to enable the Private Improvements; and

WHEREAS, the Grant Agreement requires the City to provide the State with a final report on the Public Improvements by April 16, 2019, and a final report on the Private Improvements by June 30, 2020; and

WHEREAS, on October 23, 2012 the City entered into a Property Management Agreement with California Capital & Investment Group, Inc. as its agent (the "Property Manager") to provide the City with property management services for the Gateway Development Area that include contracting for and overseeing the construction of the Public Improvements; and

WHEREAS, on October 17, 2013, the Property Manager on behalf of the City, executed a Design-Build Contract with a joint venture contractor for the construction of the Public Improvements; and

WHEREAS, the Design-Build Contract includes a Guaranteed Maximum Price ("GMP") which, absent change orders, caps the amount payable under the contract for completion of the Public Improvements, and

WHEREAS, on October 18, 2013, the City and Developer executed a First Amendment to the LDDA to clarify certain provisions of the LDDA, including the scope of the Public Improvements, the funding available for completing them, and the amount of the GMP allocated to Public Improvements for each Phase; and

WHEREAS, since November 2013, when construction of the Public Improvements began, more environmental and geotechnical issues have surfaced in the Central Gateway than can be addressed under the GMP, thereby preventing the City from completing Public Improvements for the Central Gateway and satisfying a condition precedent to closing escrow on that Phase; therefore, the City and Developer re-sequenced the Project to allow for completion of Public Improvements for the other Gateway areas; and

WHEREAS, the East Gateway is comprised of two parcels, CE1 and CE2, which the LDDA contemplates being ground leased in a single East Gateway Phase; and

WHEREAS, the East Gateway has geotechnical issues in both CE1 and CE2; and

WHEREAS, the geotechnical issues in CE1 and CE2 appear to be manageable under the GMP if the resources that were allocated to the Central Gateway are redirected to the East Gateway; and

WHEREAS, if the geotechnical issues cannot be resolved in both CE1 and CE2 under the GMP, the City wishes to have the option to ground lease CE1 and CE2 in separate phases; and

WHEREAS, the Central Gateway is proposed to be divided into two parcels to, among other things, accommodate moving Caltrans for an interim period; and

WHEREAS, Caltrans has a construction easement at the West Gateway for the deconstruction of the Bay Bridge, an effort which Caltrans estimates could take until 2018; and

WHEREAS, the City cannot deliver the West Gateway Phase to CCIG until Caltrans vacates the site; and

WHEREAS, an approximately 14.63-acre parcel in the Central Gateway known as MH-1 and the Port's Berth 9 provide Caltrans with an alternative location for its deconstruction activities; and

WHEREAS, Caltrans' deconstruction activities do not require a long-term resolution to the geotechnical issues in the Central Gateway, and, pursuant to the parties' voluntary agreement, can be moved to the MH-1 parcel as an interim use; and

WHEREAS, Developer has requested that the Central Gateway be divided between Prologis and CCIG, allowing CCIG to directly lease the MH-1 parcel and Prologis to lease the approximately 30.02 acre remainder of the Central Gateway; and

WHEREAS, CCIG has agreed to waive and pay for certain Public Improvements on the West Gateway and MH-1 to facilitate completion of the Public Improvements on the East Gateway in exchange for reimbursement of such costs by prepaid rent; and

WHEREAS, the City and Developer, having executed on December 3, 2013 an administrative Second Amendment to the LDDA, now desire to negotiate and execute a Third Amendment to the LDDA substantially in conformance with the attached term sheet; and

WHEREAS, the City Council finds that the Third Amendment to the LDDA will facilitate accelerating the delivery and development of the North, East and West Gateways and implement the goals and objectives of the Reuse Plan; now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. The City Council, based upon its own independent review, consideration, and exercise of its independent judgment, hereby finds and determines, on the basis of substantial evidence in the entire record before the City, that none of the circumstances necessitating further CEQA review are present. Thus, prior to approving the changes to the terms and conditions, the City Council finds and determines that it can continue to rely on the previously adopted 2012 OARB Initial Study/Addendum for the reasons stated in the June 12, 2012, May 28, 2013, and December 2, 2014 City Council Agenda Reports and related attachments/exhibits. The (Final and Corrected) Standard Conditions of Approval/Mitigation Monitoring and Reporting Program, dated October 15, 2012, is also hereby reaffirmed/readopted, including the clarifying corrections discussed at the June 4, 2013 City Council hearing (Mitigation Measure 4.4-3b, West Gateway Rail and Maritime Emissions Reductions Program) and in the Agenda Report for the July 2, 2013 City Council meeting (Mitigation Measure 4.3-10, Parking Demand Study), and the revisions discussed at the July 2, 2013 City Council meeting (Mitigation Measure PO-1, Stakeholder Review of Air Quality and Trucking Plans).

Section 2. The City Council finds and determines that this action complies with CEQA and the Environmental Review Officer is directed to cause to be filed a Notice of Determination with the appropriate agencies.

Section 3. The recitals contained in this Ordinance: (1) are incorporated in this Ordinance by reference including, without limitation, the definitions referenced therein; and (2) are true and correct, and are an integral part of the City Council's decision.

Section 4. The City Administrator or his or her designee is hereby authorized to negotiate and execute a third amendment ("Third Amendment") to the Army Base Gateway Redevelopment Project Lease Disposition and Development Agreement ("LDDA") with Prologis CCIG Oakland Global, LLC ("Developer") substantially in conformance with the term sheet attached hereto, subject to modification pursuant to Sections 5 and 6 of this Ordinance ("Term Sheet"), without returning to the City Council, to: (1) divide the Central Gateway between Developer affiliates Prologis, L.P. ("Prologis") and CCIG Oakland Global, LLC ("CCIG"); (2) exclude from the Central Gateway ground lease an approximately 14.63-acre parcel known as MH-1; (3) change the Central Gateway lessee to Prologis; (4) negotiate and execute a new ground lease with CCIG for the MH1 parcel; (5) provide the option to lease the East Gateway parcels, CE1 and CE2, in separate phases; and (6) amend the leases as necessary to reflect the Term Sheet.

Section 5. While the Term Sheet sets forth the City's preferred provisions, the City and Developer have not reached final agreement on some of the terms set forth in the Term Sheet for the Third Amendment to the LDDA. The City Administrator is authorized to negotiate and reach mutual resolution with the Developer on the final terms of the Term Sheet, and execute the Third Amendment to the LDDA consistent with the negotiated final terms, without returning to City Council.

Section 6. The City Administrator or his or her designee is hereby authorized, without returning to City Council, to take any and all steps necessary to implement and/or effectuate this Ordinance, which are consistent with the basic purpose and intent of this Ordinance; provided, however, any legal agreements shall be subject to the review and approval of the Office of the City Attorney; such steps may include, without limitation, negotiation and execution of such other additions, amendments or other modifications to any other document that the City Administrator, in consultation with the City Attorney's Office, determines are in the best interests of the City, do not conflict with the terms of the Cooperation Agreement (as defined in the LDDA), do not materially increase the obligations or liabilities of the City, and are necessary or advisable to complete the transactions which the Third Amendment contemplates.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, and PRESIDENT KERNIGHAN

NOES-

ABSENT-

ABSTENTION-

ATTEST _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION _____

Term Sheet
Third Amendment to Lease Disposition and Development Agreement (“LDDA”)
Oakland Army Base
December 2, 2014

Item	Terms (Unless otherwise noted, capitalized terms are as defined in the LDDA)
1. Parties	City of Oakland (“City”), Prologis CCIG Oakland Global, LLC (“Prologis/CCIG”), Oakland Bulk and Oversized Terminal, LLC (“OBOT”)
2. Modifications to LDDA	The LDDA, including but not limited to the conditions precedent to closing and lease forms, shall be modified as appropriate to reflect these terms.
Generally Applicable Terms	
3. Modifications to City Spending Priorities for Additional Funds	<p>The Developer commitment of \$25.9M towards Wharf Improvements may be spent by Developer on Wharf Improvements or Rail Improvements and shall be deemed satisfied upon the satisfaction of the City’s matching obligation under the TCIF Funding Agreement.</p> <p>The spending priority would be revised as follows:</p> <p>a. 100% to the Pre-Closing Off-Site Improvements;</p> <p>then</p> <p>b. 100% to the completion of (A) the Site Preparation Work for the CE2 portion of the East Gateway and the Site Preparation Work for the New Central Gateway Lease Area (collectively, the “Prologis Site Work”), (B) the City’s contingent \$22M obligation toward the Wharf Improvements (“Contingent Wharf Improvements”), and (C) the Waived Improvements (each \$1.00 applied to this tier shall be applied 1/3 to each scope of work).</p> <p>The funds allocated to Prologis Site Work would be applied first to the East Gateway and then to the New Central Gateway Lease Area.</p> <p>The City’s contribution of \$22M, towards Wharf Improvements remains contingent on finding third party funds and may be spent by Developer on Wharf Improvements and other West Gateway Improvements (subject to any third party</p>

	<p>funding restrictions).</p> <p>Amend the Property Management Agreement to include a fee and reimbursement of third party expenses payable to CCIG as compensation for its future time, efforts and costs necessary to pursue and secure Additional Funds for the project. The amount of the fee is to be negotiated, but to be based on actual time and expenses and subject to an agreed upon not to exceed amount.</p>
4. Modification to Public Improvements Schedule of Performance/Outside Closing Date	The Public Improvements Schedule of Performance and Outside Date will be amended consistent with the mid-project budget revision dated November 4, 2014 ("MPBR").
5. Soil Use/Relocation	The lease forms shall be modified to provide each lessee with the right to relocate and place soil excavated from the any of the lease areas within the New Central Gateway Lease Area if such soil is permitted to remain on site under the RAP/RMP and is suitable for incorporation into Site Preparation Work. This right will be subject to a reasonable notification and review process by the City and shall terminate the earlier of (1) close of escrow for the Central Gateway or (2) upon notice from the City that such activity would interfere with the City's completion of the Public Improvements.
6. Use of Water Treatment Facility	The lease forms shall be modified to provide each lessee with the right, if the City is still operating its groundwater treatment facility in conjunction with the construction of the Public Improvements, to use such system for the disposal of groundwater from Premises in return for an initial charge of \$0.03/gallon, subject to a final "true-up" (additional payment by Developer or reimbursement to Developer) of Developer's actual pro rata cost. City will retain the right, in its sole discretion, to terminate the use of such facility at any time; however, the Developer shall have the right to continue the operation of the system upon assumption of all applicable third party agreements so long as such operation does not delay the City's construction of the Public Improvements.
7. Notch and Sliver Lease Extension	The City shall have the right to extend the existing Notch and Sliver Lease with the Port through December 31, 2019.
8. Allocation of Payment for Certain Waived Public Improvements	Consistent with the reallocation of funds implemented by the MPBR, Developer agrees to waive the requirement for the City to perform the Site Preparation Work on West Gateway

	<p>Lease and MH-1 Lease Area (defined below), as a condition to Lease closing, which hard and soft costs total approximately \$4.86M (the “Waived Improvements”). The applicable lease form (WGW or MH-1) shall be modified to provide that the applicable portion of the cost of such Waived Improvements shall be applied as pre-paid rent. The outstanding amount of pre-paid rent is subject to reduction to the extent the City secures Additional Funds (including potential Caltrans lease payments under the Caltrans lease of MH-1 pursuant to the priority of use of such funds set forth in the agreed upon relocation summary) and makes the funds available to the lessee for the construction of Waived Improvements in conjunction with the private improvements.</p>
<p>9. Waived Public Improvements and Hazardous Materials</p>	<p>Once the leases are executed, the City will cooperate in continuing to seek Additional Funds for Waived Improvements, but as to such Waived Improvements and Wharf Improvements only, the lessee takes the site in an “AS IS” condition as provided in the leases, but the City’s obligations related to hazardous materials remediation for said Waived Improvements and Wharf Improvements would not apply, except to the extent the City obtains specified Additional Funds as provided in the next term.</p>
<p>10. Additional Funds related to Remediation of Hazardous Materials on OAB</p>	<p>To the extent that the West Gateway Lease or the MH-1 Lease is taken down with Waived Improvements and the City secures new third party public funds related to the remediation of Hazardous Materials on OAB, and such funds are not required for the remediation associated with the City’s delivery of the backbone infrastructure associated with the Public Improvements or any other on-going City obligations, the City shall make such funds available to the lessee for remediation costs in conjunction with the construction of any said Waived Improvements and Wharf Improvements (subject to any terms and conditions of such funding). In no event will the City be responsible for Regulatory Reopeners associated with the Wharf Improvements during the term of the lease.</p>
<p>Rail Access Agreement</p>	
<p>11. East of Realigned Wake Avenue Improvements; Potential Rent Abatement for Railroad R/O/W Property.</p>	<p>If the City fee is included in the Rail Access Agreement, the rail improvements located (i) east of realigned Wake Avenue and (b) not included in the G-Max Price Budget will be private vertical improvements pursuant to the West Gateway Lease.</p>

	<p>If the City Fee is not included in the Rail Access Agreement:</p> <p>(a) the parties agree that the third party costs for the design and construction of the rail improvements (i) located east of realigned Wake Avenue and (ii) not included in the G-Max Price Budget will be allocated as follows: 50% to the City and 50% to OBOT.</p> <p>(b) OBOT shall be entitled to an abatement of Base Rent for the Railroad R/O/W Property only for any time period in which an Affiliate of OBOT is not the Rail Operator.</p>
12. Rail Operator	To ensure coordinated and safe operation of the rail system serving the OAB, the City and Port shall provide for one rail operator and a coordinated process for replacing said operator.
13. City Fee	To ensure the infrastructure costs associated with rail improvements on the City property are recaptured, the Rail Access Agreement shall include a City Fee to be paid by the rail operator, commensurate with the Port Fee. The City Fee will be allocated 2/3 to the Railroad R/O/W Property lessee through the West Gateway Lease and 1/3 shall be retained by the City until such time as the City and the Railroad R/O/W lessee's costs have been fully amortized and thereafter allocated based on a percentage split to be negotiated by the City and OBOT.
East Gateway Amendments	
14. Potential Division of East Gateway Lease Area	<p>If by December 31, 2014 the parties can agree that the MPBR allocation of \$9.8M is adequate to perform the required Site Preparation work for the East Gateway, then the East Gateway would be taken down as currently contemplated in the LDDA. If by December 31, 2014, the parties agree on the following items, then the East Gateway lease area would be divided into two separate lease areas, CE-1 and CE-2, and closing on the lease of CE-1 can then proceed independent of the CE-2:</p> <p>a. that the \$9.8 million available for the East Gateway Site Preparation Work is adequate to complete the Site Preparation Work for CE-1 but not CE-2,</p> <p>b. the cost for the CE-1 Site Preparation Work;</p>

	<p>c. a revised Outside Closing Date for CE2, which may be accelerated prior to the current 1-31-18 date to provide additional security for the City that it will meet its matching obligations under the TCIF Funding Agreement; and</p> <p>d. an equitable reduction in the Minimum Project square footages for the East and Central Gateways to account for matters that affect the build out of the project, including, but not limited to, the impact of edge conditions (required set back from existing Port buildings, etc.), the delay in the delivery of the premises subject to the “notch” and “sliver” leases, adverse soils conditions such as the debris field 99, and the timing of any Additional Funds necessary to deliver the Public Improvements.</p> <p>The parties would continue to work to secure Additional Funds to address the costs of addressing CE-2. If the parties have agreed upon the foregoing items, but thereafter are unable to secure the required Additional Funds for CE-2 or otherwise agree to modifications to the required Site Preparation Work for CE-2 that can be completed with available funding prior to the agreed upon Outside Closing Date, then either party shall have the right (but not the obligation), each in its sole discretion, terminate the LDDA with respect to the CE-2 site only at any time.</p>
<p>15. Pro Rata Allocations</p>	<p>If the East Gateway Lease Area is divided into CE-1 and CE-2, all rights and obligations for the East Gateway in the LDDA and corresponding East Gateway lease form shall be allocated on a pro rata basis based on acreage and site-specific information, including the following:</p> <ul style="list-style-type: none"> • Premises • Permitted Uses* • Minimum Project • Security Deposit • Liquidated Damages • Permitted Title Exceptions <p>*The lessees for the CE-1 and CE-2 shall have the right to assign/transfer unused Trade and Logistics square footage between the two lease areas and the New Central Gateway Lease Area, subject to otherwise applicable City land use regulations.</p>
<p>16. Modification to Cross-Defaults</p>	<p>If East Gateway Lease is divided, there shall be a cross-default under LDDA between CE-1 and CE-2 (unless the City or Developer has exercised its right to terminate as to CE-2 as</p>

	set forth above) and between CE-1 and CE-2 (unless terminated) and the New Central Gateway Lease for failure to timely close escrow.
17. Relocation of Rail Improvements Serving the East Gateway	Prologis may request a realignment of rail improvements serving the East Gateway (including rail crossings and rail spurs), so long as such realignment (a) does not delay the Close of Escrow on the East Gateway Lease, the City's Completion of the Public Improvements, or OBOT's completion of its minimum project for the West Gateway Lease Area and (b) Prologis performs the realignment at its sole cost. The City, at no third party cost and subject to compliance with its CEQA obligations, shall assist Prologis in securing any governmental or third party approvals/consents necessary for such realignment.
18. Allocation of any Savings on \$9.8M Available Under the MPBR	In the event that the \$9.8M allocated for completion of the Site Preparation Work for the East Gateway in the MPBR exceeds the actual cost of such work, Prologis may allocate the savings to fund (a) additional improvements to the East Gateway that qualify for a permitted cost under the TCIF Funding Agreement or (b) the completion of the Site Improvement Work for the New Central Gateway Lease Area.
Central Gateway Amendments	
19. Central Gateway Lease Area Division	To address the shortfall in available public funding identified in the MPBR, the Central Gateway Lease Area would be divided into separate ground leases, the "MH-1 Lease Area" and the balance of the Central Gateway (the "New Central Gateway Lease Area").
20. Permitted Transfer to CCIG Affiliate Controlled by CCIG for MH-1 Lease Area	CCIG Oakland Global, LLC (CCIGOG) may be the Tenant under the Ground Lease for MH-1 as a Permitted Transfer as defined in the LDDA. OBOT would have a right to cause a partial transfer under the LDDA with respect to MH-1 when CCIGOG satisfies the partial transfer requirements.
21. Outside Closing Date for MH-1	The Outside Closing Date for MH-1 shall be the later of (1) the Outside Closing date as set forth in the MPBR or (2) the expiration or termination of the existing Caltrans lease of MH-1.
22. Pro Rata Allocation	All rights and obligations in the LDDA and corresponding lease forms for the Central Gateway shall be allocated on a pro rata basis between MH-1 and New Central Gateway Lease Area based on acreage and site-specific information,

	<p>including the following:</p> <ul style="list-style-type: none"> • Premises • Permitted Use* • Minimum Project • Security Deposit • Liquidated Damages • Permitted Title Exceptions <p>*The lessees for the MH-1 and New Central Gateway shall have the right to assign/transfer unused Trade and Logistics square footage between the two lease areas, subject to otherwise applicable City land use regulations. Any rail maintenance and ancillary administration facilities would be permitted uses under the MH-1 Lease.</p>
<p>23. Modifications to Cross Defaults</p>	<p>There shall be a cross-default between West Gateway Lease and MH-1 Lease for failure to timely close escrow. There shall no longer be a cross-default between MH-1 and East Gateway (whether divided into CE-1 and CE-2 or not as described above).</p>
<p>24. Right to Convert MH-1 to Maritime Terminal Use</p>	<p>Lessee of MH-1 shall have the right to convert some or all of the MH-1 premises to a maritime terminal use upon written notice to City. Upon conversion, Base Rent for converted portion of the premises will be equal to then current Base Rent for West Gateway (initially \$.04/sq. ft.), subject to future escalations of Base Rent under WGW Lease.</p>
<p>25. Timing of Rail Maintenance Facility on MH-1</p>	<p>The parties anticipate that certain rail maintenance and administration facilities will be necessary for the operation of the Port Rail Terminal and may be needed earlier than the Caltrans vacation of the applicable portions of the MH-1 site. Therefore, CCIG may close escrow on the MH-1 site, deliver these rail improvements early (as matching funds under TCIF), subject to an abatement of rent and other lessee obligations on the portion of the premises occupied by Caltrans, adjustment of the balance of the minimum project timeline and with an extension of the term to 66 years after Caltrans' vacation (such that CCIG would have no obligation under the ground lease with respect to the portion of the MH-1 occupied by Caltrans (during the term of such occupancy).</p>