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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. 13283 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, DEC 16 2014

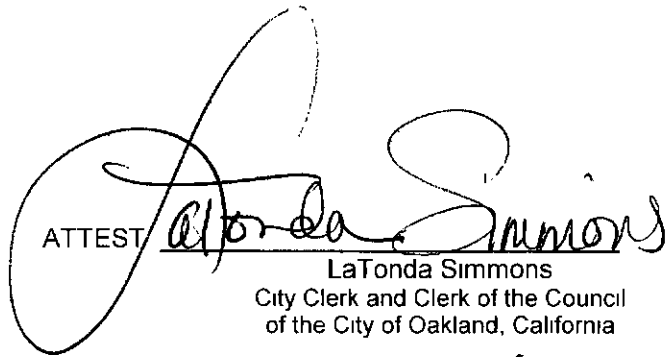
PASSED BY THE FOLLOWING VOTE:

AYES- ~~Brooks~~, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, and PRESIDENT KERNIGHAN - 7

NOES- 0

ABSENT- 0

ABSTENTION- Brooks, -1

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

Introduction Date

DEC 09 2014

DATE OF ATTESTATION

12/16/14

NOTICE AND DIGEST

ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A THIRD AMENDMENT TO THE ARMY BASE GATEWAY REDEVELOPMENT PROJECT LEASE DISPOSITION AND DEVELOPMENT AGREEMENT 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, PROPERTY 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; AND (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

In 2012, the City entered into the Army Base Gateway Redevelopment Project Lease Disposition and Development Agreement (“LDDA”) with Prologis CCIG Oakland Global, LLC (“Developer”) for the development of approximately 140 acres of the former Oakland Army Base. There were two administrative amendments to the LDDA. This ordinance authorizes the City Administrator to negotiate and execute a Third Amendment to the LDDA, substantially in conformance with the attached term sheet, to:

- (1) Divide the Central Gateway between the Developer Affiliates Prologis L.P. and CCIG Oakland Global, LLC
- (2) Exclude from the Central Gateway Ground Lease a 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 City with the option to lease the East Gateway parcels, CE1 and CE2, in separate phases
- (6) Amend the leases attached to the LDDA as necessary to reflect the term sheet

These actions are intended to accelerate the delivery and private development of the Army Base.