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OAKLAND

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# AGENDA REPORT

**TO:** HENRY L. GARDNER  
INTERIM CITY ADMINISTRATOR

**FROM:** Doug Cole

**SUBJECT:** Oakland Army Base Development

**DATE:** November 19, 2014

City Administrator  
Approval

Date

11-20-14

**COUNCIL DISTRICT:** #3

## RECOMMENDATION

Staff recommends that the City Council adopt the following legislation:

- 1) **An 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, 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**
- 2) **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**
- 3) **An Ordinance Authorizing the City Administrator to Negotiate and Execute, Without Returning to the City Council, an Amendment to the Lease between the City and Port of Oakland for Berth 9 Dated June 28, 2013 to Extend the Term up to March 2020, Expand the Use and Lease Premises, and Include Additional Related Amendments**
- 4) **Ordinance Authorizing the City Administrator to Negotiate and Execute, Without Returning to the City Council, an Agreement and Related Lease and Sublease with CCIG Oakland Global, LLC and/or Caltrans, Regarding Caltrans’: (1) Move from the West Gateway at the Former Oakland Army Base to City-Owned Land at the**

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**Base Commonly Known as MH-1; and (2) Sublease from the City of Berth 9 at the Port Of Oakland**

- 5) An Ordinance Authorizing the City Administrator to Negotiate and Execute, Without Returning to the City Council, an Amendment to the Memorandum of Agreement with the East Bay Municipal Utility District and CCIG Oakland Global, LLC, Substantially in Conformance with the Attached Term Sheet, Relating to Property Rights, Timing and Construction of Engineers Road in the Former Oakland Army Base**

**EXECUTIVE SUMMARY**

On October 23, 2012, the City entered into a Lease Disposition and Development Agreement (“LDDA”) with Prologis CCIG Oakland Global, LLC (“Developer”) for the development of approximately 140 acres of the Gateway Development Area at the former Oakland Army Base (“OAB”). The Developer entity is a joint venture consisting of CCIG Oakland Global, LLC, a California limited liability company (“CCIG”) and Prologis, L.P., a Delaware limited partnership (“Prologis”). The LDDA currently contemplates development of the West Gateway by a CCIG affiliate; development of the East Gateway by a Prologis affiliate; and development of the Central Gateway by the CCIG/Prologis joint venture. Additionally, the LDDA requires the City to construct certain public infrastructure and site improvements (“Public Improvements”) and to make the Port’s rail yard available to support vertical development and is a pre-condition to the takedown of property within the Central, East, North, West Gateways and Ancillary Maritime Services (“AMS”) site.

The City and Developer have cooperated in re-sequencing the Public Improvements to accelerate delivery of all City portions of the OAB, except Central Gateway, which has additional geotechnical work required. Developer has requested that the LDDA be amended to allow the Central Gateway be divided between CCIG and Prologis. Prior to delivery of the Public Improvements on the Central Gateway, CCIG proposes to directly lease a 14.63-acre portion of the Central Gateway (MH-1), and sublease that property to Caltrans for an interim period. With an alternative location available, Caltrans would be able to relocate its operations related to the deconstruction of the Bay Bridge off the West Gateway and allow CCIG an early take-down of the West Gateway Lease. Caltrans, however, requires use of the Port-owned Berth 9 Area, which is adjacent to MH-1 and provides access to the water, to be fully functional at the new location. Therefore the City also seeks to amend its lease with the Port for the Berth 9 Area to extend the term and include Caltrans’ operations among the allowed uses. This arrangement is integral to the re-sequencing of site improvements away from the Central Gateway to enable an earlier delivery of the East and North Gateway areas and the AMS site than originally scheduled.

The City is constructing the Public Improvements with an award of approximately \$176.3 million from the Trade Corridor Improvement Fund ("TCIF") and additional City funds, including the anticipated land sales proceeds from the sale of the North Gateway parcels. The TCIF grant agreement obligates the City to match the TCIF funds prior to June 2020 with local, federal, or private investments in the OAB. The bulk of the match is sourced from the private improvements on the OAB.

The original schedule for completing the Public Improvements called for the delivery of the East Gateway and Central Gateway by the fourth quarter of 2016, and the delivery of the North Gateway and AMS site prior to the end of the second quarter of 2017. The Central Gateway, however, has more environmental and geotechnical issues than can be addressed with existing funding. Re-sequencing the Public Improvements, as described in this report, would enable earlier delivery of the North Gateway and AMS site during the third quarter of 2016. It would also enable the development of at least a portion of East Gateway (parcel CE1) during the third quarter of 2016, with an option to delay the remaining parcel (parcel CE2), depending on the geotechnical site costs, which are currently being evaluated. CCIG intends to take down the West Gateway Lease in 2015 prior to the completion of Public Improvements and to assume the responsibility for completion of such improvements on site. To allow CCIG to take down the West Gateway Lease, the City must relocate Caltrans as discussed above and also enter into a Rail Access Agreement with the Port.

### **OUTCOME**

Dividing the Central Gateway enables the relocation of Caltrans' bridge deconstruction operations and, along with the Rail Access Agreement, accelerates the development of the West Gateway. Deferring site improvements in the Central Gateway allows the re-sequencing of Public Improvements which facilitates earlier delivery of the East and North Gateways and AMS site. Collectively, these actions help ensure that the City is able to meet the City/Port TCIF match requirements and advance return benefits to operators, the City and region. Additionally, in order to facilitate development of the North Gateway, the City and East Bay Municipal Utilities District ("EBMUD") will need to amend the terms of an existing Memorandum of Agreement ("MOA").

### **BACKGROUND/LEGISLATIVE HISTORY**

The City has entered into or is negotiating the following agreements to enable the development of the OAB.

### **Lease Disposition and Development Agreement**

In October 2012, the City entered into an LDDA with Developer, a joint venture entity consisting of Prologis and CCIG, for the development of approximately 140 acres of the Gateway Development Area at the OAB. To enable the private development (the "Private Improvements") of the Gateway Areas, the City committed to provide the Public Improvements outlined in Attachment 6 of the LDDA (attached to this report as *Attachment A*). In addition to new underground utilities and new surface roads, the City agreed to remediate the soils in the Gateway Areas to lessen the potential for liquefaction during earthquakes and for differential settlement and displacement of buildings over time ("Site Preparation Work").

The LDDA currently contemplates development of the West Gateway by a CCIG affiliate; development of the East Gateway by a Prologis affiliate; and development of the Central Gateway by the Developer (the CCIG/Prologis joint venture). Developer has requested that the LDDA be amended to allow the Central Gateway be divided between CCIG and Prologis. CCIG would directly lease 14.63 acres of the Central Gateway, MH-1 for either trade and logistics or commodities export, while Prologis would continue to lease the remaining 30.02 acres of the Central Gateway for trade and logistics. The LDDA Amendment will require a revised Lease for the smaller Central Gateway parcel for Prologis and a new Lease to CCIG for the MH-1 parcel, both of which will be based on the terms of the existing leases in the LDDA, including revisions to the guarantees and guarantors. CCIG will take responsibility for the approximately \$4.86 million in Site Preparation Work that had been budgeted as part of the original Public Improvements, and, if no other public funding comes available, through the MH-1 and West Gateway leases CCIG will be credited a pre-paid rent credit up to that amount. Having CCIG assume those costs allows the City to complete the re-sequencing necessary to permit the other development areas to move forward.

The LDDA Amendment would also include the option for dividing the East Gateway lease into two parcels, CE1 and CE2, to allow CE1 and CE2 to be developed separately, if necessary should the City require additional funds to remediate soils conditions on CE2. Finally, the LDDA Amendment would provide for an option to amend the West Gateway Lease to allow the City to remove CCIG's exclusive right over a portion of the rail to allow for operation of the Port's rail yard. If needed, this amendment would allow for a reduction in rent to accommodate the change needed for the Port's rail yard.

### **Trade Corridor Improvement Fund Grant Agreement**

In October 2013, the City entered into a grant agreement with the California Transportation Commission ("CTC") for approximately \$176.3 million in TCIF grant funding for the OAB Project. The grant agreement defines the Project as comprised of Segments. Segment 1 includes hazardous materials remediation, Segment 3 includes Public Improvements

consisting of City site preparation work and backbone infrastructure, Segment 4, Private Improvements consisting of recycling facilities, and Segment 5, Private Improvements consisting of trade and logistics facilities. While the City Project excludes Segments 2 and 6, which consist of rail improvements to be delivered by the Port of Oakland, both Segments 2 and 6 rail access and storage yard improvements are necessary to serve the City's Project.

The grant agreement requires the City to match the TCIF award with at least an equal amount of local, federal, or private investment in the OAB. As currently planned, the City is constructing the Public Improvements with the TCIF grant money to leverage private investment to provide most of the match funding required by the grant agreement. Per the LDDA, the City is responsible for constructing the Public Improvements, which include the following components: (a) environmental remediation, (b) backbone infrastructure improvements necessary to serve the City's Gateway Development Area, (c) geotechnical site preparation to address settlement and liquefaction, and (d) wharf improvements conditioned upon the receipt of additional funding. Once the Public Improvements are completed, the City will be able to effect the following transactions:

- Sell the North Gateway under a separate Disposition and Development Agreement (not part of this LDDA) for development of recycling facilities
- Lease the AMS site to OMSS for development of a truck services center under a separate LDDA approved by Council (not part of the LDDA)
- Lease the West Gateway to Developer affiliate CCIG for development of a break-bulk terminal
- Lease the East Gateway to Developer affiliate Prologis for development of trade and logistics uses
- Lease the Central Gateway to Developer for development of trade and logistics uses (contingent upon securing additional to fund additional environmental remediation and site preparation)

The TCIF grant agreement further requires the City to provide the state with a final report on the Public Improvements prior to April 16, 2019 and a final report on the Private Improvements prior to June 30, 2020. To have these reports ready in time, the Public and Private Improvements must be completed at least six months prior to each report's due date.

### **Design-Build Contract and Mid-Project Budget Revision**

In October 2013, CCIG, on behalf of the City, executed a Design-Build Contract with a joint-venture general contractor for construction of the Public Improvements. The Design-Build Contract includes a Guaranteed Maximum Price ("GMP") for completion of the Public Improvements. The original schedule for the Public Improvements called for the delivery of the Central and East Gateways by the fourth quarter of 2016, the North Gateway and AMS site prior to the end of second quarter of 2017.

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Since construction began in November 2013, the environmental and geotechnical issues are more expensive than anticipated, particularly in the Central Gateway, and cannot be addressed under the GMP with existing funding. While there are also geotechnical issues in the East Gateway, these have more to do with City/Port edge conditions which are currently under investigation. They are more manageable and can be dealt with using resources originally intended for the Central Gateway. Nonetheless, it is prudent to have the option to divide the East Gateway into two parcels, to allow at least a portion of the East Gateway to get under development earlier.

Under the terms of the LDDA, Developer has agreed to the Mid-Project Budget Revision re-sequencing, which will be accomplished through a series of change orders within the existing GMP and existing sources for funding. The Mid-Project Budget Revision essentially reallocates site improvements away from the Central Gateway towards the East and North Gateways. While the Central Gateway would be deferred until additional funding becomes available, under the Mid-Project Budget Revision delivery of the East, and North Gateways and the AMS site would be accelerated to the end of the second quarter of 2016.

### **West Gateway Lease**

Another crucial component of the Mid-Project Budget Revision and leveraging sufficient private investment to help the City meet the City/Port TCIF match obligation is CCIG's early take down of the West Gateway Lease (i.e., before completion of the Public Improvements). CCIG is prepared to take down the West Gateway Lease consistent with the terms of the Lease attached as an exhibit to the LDDA. CCIG is willing to waive certain conditions precedent, such as the completion of the Public Improvements (which include wharf improvements), and elect to construct the wharf improvements and complete approximately \$500,000 of Site Preparation Work, which is the City's obligation under the existing LDDA. All Public Improvements to be completed by CCIG would continue to be subject to the terms of the Public Improvements Construction Jobs Policy. Under the existing lease terms, CCIG's election to build the wharf improvements provides deferral of rental payments for two years during which time CCIG will be designing, permitting and building those improvements. Taking down the Lease prior to completion of the Public Improvements would accelerate the start of this two year period. If needed to complete the Rail Access Agreement with the Port, the City may need to amend the West Gateway Lease to remove the exclusive right to the portion of the rail needed for the Port's rail yard and make other corresponding changes as a result of the Rail Access Agreement, as discussed below.

To enter into the lease with CCIG for the West Gateway, the City needs to (a) complete a Rail Access Agreement with the Port and (b) relocate Caltrans off the West Gateway, both of which are discussed below.

***Rail Access Agreement:*** The City and the Port previously executed an Oakland Army Base Amended and Restated Cost Sharing Agreement (the "CSA"). The CSA requires the City and Port to enter into a Rail Access Agreement regarding the City's access to the Port's rail yard and provision of rail services. Consistent with provisions under the CSA, the Rail Access Agreement would provide the City with rights to use the rail yard currently being constructed by the Port as their element of the TCIF Project. The Rail Access Agreement will grant the City rights to 50% of the rail yard capacity for at least 20 years and first come-first serve rights thereafter.

A portion of the West Gateway property which the City has agreed to ground lease to CCIG under the LDDA includes land east of Wake Avenue slated for rail to be constructed and paid for by CCIG. The Port has requested an easement over this area ("Rail Easement"). The Port needs the Rail Easement for its Port rail yard operations, and the City needs an operating Port rail yard for its development. Because the Rail Easement constitutes a portion of the West Gateway Lease premises, if the City gives the Port its requested Rail Easement, the City would need CCIG to relinquish its exclusive right to that portion of the West Gateway premises for the Rail Easement. In that event, the City would also be required to fund construction of the rail improvements totaling approximately \$1.7 million and give CCIG an annual rent reduction of approximately \$23,000/year. Those sums collectively equate to a net present value impact of approximately \$2.1 million. As a result, staff is looking for opportunities to provide the Port with what it needs under equal and similar terms under the CSA. These commitments will be memorialized in the Rail Access Agreement and/or West Gateway Lease.

***Caltrans Relocation:*** Caltrans has a construction easement on the West Gateway, which remains in effect until Caltrans completes deconstruction of the Bay Bridge. Caltrans originally anticipated this effort would take until 2016, but now needs potentially up to five more years. As a result, the City would enter into an interim lease with CCIG to move Caltrans to MH-1 and Berth 9 under a sub-lease arrangement. The sooner Caltrans is able to vacate the West Gateway, the earlier CCIG will be able to take down the West Gateway ground lease to begin to construct the West Gateway development, which will enable the City to meet a significant portion of the City's City/Port TCIF match obligation.

To realize an earlier vacation date, CCIG proposes that the City enter into a three-way agreement in which 1) Caltrans agrees to terminate its construction easement at the West Gateway, 2) the City agrees to enter into an interim lease with CCIG for MH-1, a 14.63-acre portion of the Central Gateway, and a sublease for Berth 9 for three years with two one-year options, and 3) CCIG enters into a sublease with Caltrans in which CCIG agrees to build out the site for Caltrans. Under the terms of this agreement, CCIG would assume the costs of the site preparations for MH-1 and Berth 9 to serve Caltrans, currently estimated at approximately \$9 million, the cost of which would be amortized by Caltrans through rental payments over the first three years to be prepaid to CCIG by Caltrans. To the extent that Caltrans exercises

its option to extend the lease, the additional lease revenues under years 4 and 5 not needed to reimburse CCIG's costs would go to the City and may be credited towards the City Public Improvements required for site preparation of the MH-1 site, thereby reducing the amount of prepaid rent credit owed to CCIG.

### **Central Gateway and East Gateway Leases**

Developer proposes to divide the Central Gateway into two parcels: (1) the MH-1 parcel to be leased by CCIG, and which may be used for commodities export, consistent with the West Gateway uses; (2) the remainder parcel to be leased to Prologis for the trade and logistics uses. To facilitate the Mid-Project Budget Revision and earlier delivery of the remainder of the OAB development areas, CCIG has proposed to pay for the site preparation work at MH-1 and West Gateway, totaling approximately \$4.86 million, which amount will be reimbursed through prepaid rent to the extent the City does not procure additional third party funds.

Allowing MH-1 to be used as a commodities export use, consistent with the remainder of the West Gateway, would mean a change in lease terms to increase the lease and tariff revenues for the City. Dividing the site requires allocation of responsibilities as shown in the term sheet. The City also proposes to preserve an option to divide the East Gateway lease into two parcels. This would allow the City and Prologis to proceed with development of CE1 first, in the event the geotechnical costs for CE2 exceed the GMP and no additional funding is available to address those costs.

### **East Bay Municipal Utilities District (EBMUD) Memorandum of Agreement**

Relocation of Recycling Facilities or Recyclers (CWS and CASS) from their respective West Oakland locations onto the former OAB within the North Gateway area requires the creation of two parcels large enough to accommodate both Recyclers totaling approximately 24 acres, including 1.6-acres to be acquired from the Port of Oakland. In order to facilitate development of the parcels, the City, CCIG Oakland Global, LLC, and EBMUD executed the MOA which contemplated the following major activities:

1. Realignment of Wake Avenue as proposed by the Project
2. Quitclaim of the existing EBMUD access
3. Approval of a new rail road crossing
4. Widening of Engineers Road
5. Design and Construction of Engineer's Road
6. Providing for limitation on Rail Traffic

To effectuate the MOA terms, it was necessary to secure the approval of Burlington Northern Santa Fe ("BNSF") railroad to relocate its existing rail easement in order to widen Engineers Road within the existing BNSF easement. After multiple good faith collective efforts by the City, CCIG and the Port, BNSF nevertheless has refused to relocate its easement.

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Accordingly, it is now necessary to amend the MOA. To enable the City to meet its goal of relocating the Recyclers to the OAB in the North Gateway, the amendment would allow for the relocation of Engineers Road onto EBMUD property.

The revised term sheet for the amendment to the existing MOA addresses re-assigned responsibility for the following: Encroachment (Real Estate ROW); Re-Design; Demolition; Construction; and Re-Approval of Rail Road Crossings, all of which represent an increase in City costs, from approximately \$2 million, which was funded, to approximately \$4.5 million, for which additional funding will be needed to reallocate or new funding secured. Staff is currently in the process of finalizing responsibility and associated costs that would enable the Project to move forward as originally proposed and enable the timely relocation of both recycling facilities within the North Gateway area.

### ANALYSIS

Under the TCIF grant agreement, the City is allowed to undertake the Project using its own documented management, project delivery procedures and practices. To better position the City to complete the Project and meet the deadlines set forth in the TCIF grant agreement, the City and the Developer have agreed to a Mid-Project Budget Revision, which re-sequences Phases 1 and 2 of the Public Improvements (currently referenced as funded "above the line" and not funded "below the line" scopes of work covered by the GMP of the Design Build Contract). The final budget revision for the re-sequenced Phase 1 must remain within the GMP and sources of funds currently available, and the sources and uses must balance. There are no additional monies required of the City.

The re-sequencing of the completion of the Public Improvements is necessitated by the shortfall in funds to do the geotechnical site preparation on the Central Gateway. That work, currently estimated to cost approximately \$25 million to \$30 million, will have to wait until additional grant funds are available. Given the shortfall, it is prudent to focus on completing work in the North and East Gateways, where it is anticipated that the necessary site preparation work can be completed with the funds in hand.

The North Gateway and AMS development sites will continue to be rough graded as part of Phase 1. The West and Central Gateways will be rough graded as part of Phase 1 but geotechnical site preparation work on those areas will be re-sequenced to Phase 2, to the below the line GMP. Resources will be directed instead toward Site Preparation Work on the East Gateway to accelerate its delivery. Prologis is actively designing and marketing two major logistics warehouse developments, totaling approximately 450,000 square feet that will be built on the East Gateway, which could be underway with construction in mid to late 2015. If geotechnical costs for remediating the entire East Gateway exceed the GMP, then the City will divide the East Gateway into two leases to allow Prologis to proceed with CE1 in

advance of CE2. This reallocation/re-sequencing will not delay delivery of the West Gateway but will help to advance delivery of the North Gateway and AMS site for development. The cost of the Private Improvements on the delivered sites will satisfy the match funding required by TCIF.

The relocation of Caltrans from the West Gateway to the now delayed Central Gateway opens the way for the early take down of the West Gateway Lease by CCIG. CCIG's agreement to pay for and construct the geotechnical site improvements on MH-1 and the West Gateway will allow the re-sequencing to proceed and also allow private development on the West Gateway to proceed without the need to seek third party funds. CCIG will be repaid through prepaid rent, unless the City is able to secure third party funds. The early takedown of the West Gateway Lease, enabled by the relocation of Caltrans, would position the City to secure the entire required TCIF private investment match in one development and get to revenue years earlier than originally planned.

The parties are negotiating the general terms of the requested LDDA amendment that are attached hereto as **Attachment B** ("LDDA Amendment Term Sheet"). While the Term Sheet sets forth the City's preferred provisions for the LDDA Amendment, 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. Staff is seeking authorization for the City Administrator 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.

Staff also asks Council to authorize the City Administrator, without returning to Council, to negotiate and execute the Rail Access Agreement; an agreement among the City, Caltrans and CCIG, and related leases or subleases related to the existing Caltrans easement, Berth 9 and MH-1; and an amendment to the Memorandum of Understanding with EBMUD pursuant to terms attached hereto as **Attachment C** ("EBMUD MOA Amendment Term Sheet") - all of which collectively will facilitate advancement of the Project and enable that City to meet the City/Port TCIF match obligations within the required time limits.

### **COORDINATION**

The Oakland Army Base Project Implementation staff with direction from the City Administrator and legal advice provided by the City Attorney's Office negotiated with Developer and Developer affiliates Prologis and CCIG on the terms of the LDDA Amendment and Mid-Project Budget Revision, with the Port on the terms of the Rail Access Agreement and the amendment to the lease for the Berth 9 Area, and with EMBUD on the terms of the amendment to the MOA. This report has been reviewed by the City Attorney's Office and by the Budget Office.

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## **COST SUMMARY/IMPLICATIONS**

The Project lacks the funding to address all of the environmental and geotechnical remediation required to deliver the Central Gateway for the use contemplated under the Master Plan. The Mid-Project Budget Revision re-sequencing is revenue and cost neutral while it advances the delivery of Public Improvements that would help the City meet its obligations under the TCIF grant agreement. Staff, however, requires assistance from the City Attorney's Office to help negotiate, draft and review the various amendments, leases and agreements. These additional legal costs will be covered with Project lease revenues. Advancing delivery of the various development parcels through the Mid-Project Budget Revision and amendments to related agreements will also assist in generating earlier land sales proceeds and longer term and applicable tariff and lease revenues from the East, North, West Gateway Areas, MH-1 and the AMS site.

The Oakland Army Base Project currently has funds available in OBRA Environmental Remediation Fund (5673) Oakland Army Base Redevelopment Org (85244) Project (0000000), Joint Infrastructure Development Fund (5672) CIP Oakland Army Base Org (94879) Project (C415720), and OBRA Leasing & Utility Fund (5671) Oakland Army Base Redevelopment Org (85244) Project (C466910) for the construction of Engineers Road. Additional grant funding may be required to address the encroachment of Engineer's Road onto EBMUD property, which may require Engineers Road to be public versus private.

## **SUSTAINABLE OPPORTUNITIES**

***Economic:*** The more quickly the City can deliver sites at the OAB for private development, the more quickly the sites will start generating revenue for the City. In addition, the private development has the potential to create thousands of construction and permanent jobs for Oakland residents and multi-million dollar contracting opportunities for local businesses.

***Environmental:*** The Project will use, to the greatest extent possible, best management practices that not only reduce health and safety impacts to local residents, but also aim towards improving air quality, safe pedestrian and bike access, reduce water usage, and use alternative energy options to the extent they are commercially viable to reduce green-house gas emissions.

***Social Equity:*** The development and operation of the Project are subject to Jobs Policies, which address the City's commitment to social equity by way of jobs for local residents, contracts for local businesses, and quality of life improvements for West Oakland residents

## CEQA

An Environmental Impact Report (EIR) was certified in 2002 when the Oakland Army Base Area Redevelopment Plan was adopted. An Initial Study/Addendum (IS/Addendum) was prepared in 2012 for the current OAB master plan, which includes the project. The City Council approved the master plan in conjunction with the LDDA with Prologis CCIG Oakland Global, LLC.<sup>1</sup> The environmental analysis identified significant and unavoidable environmental impacts related to transportation, air quality, cultural resources, visual effects, and biological resources. The environmental analysis contains a number of standard conditions of approval and mitigations measures to reduce the potential impacts of the project. The City Council adopted the standard conditions of approval and mitigation measures in 2012. On July 16, 2013, the City Council approved adding to the standard conditions of approval and mitigation measures two mitigation measures, Mitigation 4.4-3b (West Gateway Rail and Maritime Emissions Reduction Program) and Mitigation PO-1 (Stakeholder Review of Air Quality and Trucking Plans).

Since the approval of the Initial Study/Addendum in 2012, none of the circumstances that require a supplemental or subsequent EIR pursuant to CEQA Guidelines Section 15162 have occurred; specifically:

- There are no substantial changes proposed in the project which would result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- There are no substantial changes with respect to project circumstances which would result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and
- There is no new information of substantial importance which would result in new significant environmental effects, a substantial increase in the severity of previously identified significant effects, previously infeasible mitigation measures or alternatives now found to be feasible, or new mitigation measures or alternatives which are considerably different from previous ones that would substantially reduce environmental effects.

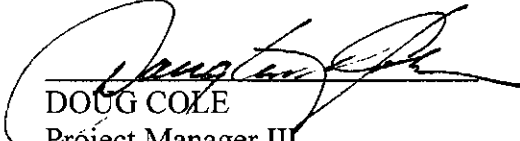
Since none of the circumstances described above have occurred since 2012, CEQA requires that no further supplemental or subsequent EIR shall be prepared to amend the general terms of the LDDA and enter into the agreements above.

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<sup>1</sup> The 2002 EIR and 2012 Addendum are available in the City Planning offices located at 250 Frank H. Ogawa Plaza, Suite 3315, and on the City's website at <http://www2.oaklandnet.com/Government/o/PBN/OurServices/Application/DOWD009157>.

For questions regarding this report, please contact John Monetta, Project Manager, at (510) 238-7125.

Respectfully submitted,

  
DOUG COLE  
Project Manager III  
Project Implementation  
Oakland Army Base Project

Prepared by:  
John Monetta, Project Manager I  
Project Implementation  
Oakland Army Base Project

***Attachment A*** – Attachment 6 of LDDA Scope of Development for Public Improvements

***Attachment B*** – LDDA Amendment Term Sheet

***Attachment C*** – EBMUD MOA Amendment Term Sheet

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## **ATTACHMENT A**

Attachment 6 of the Army Base Gateway Redevelopment Project  
Scope of Development for the Public Improvements

## Attachment 6

### Scope of Development for the Public Improvements

The future vertical development of the OAB requires improvements to the underlying land and infrastructure before vertical improvements can be realized. Vertical improvements are dependent upon the land being retrofitted along with new underground utilities and new on-surface roads and improvements. Vertical development, defined as buildings and above-ground structures, requires the following improvements at large and by Gateway Area. The improvements described in further detail in the April 2, 2012 *Oakland Army Base Master Plan Design Set*, as amended from time to time. The definition of Public Improvements for the purposes of the LDDA expressly excludes "Materials Handling Operations" as that term is defined in the Property Management Agreement.

#### **At Large/Applicable to Lease Property.**

Deconstruction/demolition of the existing improvements on the Lease Property.

Import of clean fill material, with compaction to standards recommended by the Geotechnical Engineer, to raise the existing roadways to a new elevation (rough pad) that conforms with current drainage regulations.

New drainage piping to accept surface rain water and channel it to outfalls to the Bay including enlargement of some of the outfalls.

New recycled water piping to serve the landscaping throughout the site, if such water is made available to the North Gateway by EBMUD.

New on-site and off-site road work, including but not limited to building a new realigned Burma Road both east and west of Maritime Avenue, to rebuild Maritime Avenue from Engineer's Road to the south at the intersection of 7<sup>th</sup> Street including new signal improvements at intersections.

New on-site street lighting for the roads mentioned above including new electrical improvements to serve the lights.

New on-site traffic signals for the roads mentioned above including new electrical improvements to serve the signals.

New domestic water piping to serve the vertical development for both domestic use and fire protection.

New sanitary sewer piping to serve the vertical development including pump stations due to low elevations of the system.

New electrical conduits, duct banks, conductors, vaults and switches to distribute power to vertical development and road related improvements.

New conduits and vault boxes for communication systems to facilitate connectivity for phones and IT systems.

New public safety features such as sidewalks, ramps, and crosswalks to facilitate pedestrian and bike mobility through the site.

Rail crossings, including the required gates and other structures, at the realigned Wake Avenue and West Burma Road.

Implementation of Mitigation Measures 3.16-1 through 3.16-33, inclusive, and related Standard Conditions of Approval as set forth in the Standard Conditions of Approval and Mitigation Monitoring and Reporting Program for the EIR Addendum for the 2012 OARB Project.

### **East Gateway**

Import of clean fill material, with compaction to standards recommended by the Geotechnical Engineer, to raise the existing site to a new elevation (rough pad) that conforms with current drainage regulations.

Remediation of existing sand fill layer on the site to lessen future liquefaction during seismic events.

Remediation of existing native subsoil (Bay mud) to densify the material to lessen differential settlement and displacement of buildings.

New drainage piping to accept surface rain water and channel it to outfalls to the Bay including enlargement of some of the outfalls.

New recycled water piping to serve the landscaping throughout the site, if such water is made available to the North Gateway by EBMUD.

New road work to rebuild Maritime Avenue and construct a new East Burma Road.

New street lighting for the roads mentioned above including new electrical improvements to serve the lights.

New traffic signals for the roads mentioned above including new electrical improvements to serve the signals.

New domestic water piping to serve the vertical development for both domestic use and fire protection.

New sanitary sewer piping to serve the vertical development including pump stations due to low elevations of the system.

New electrical conduits, duct banks, conductors, vaults and switches to distribute power to vertical development and road related improvements.



New conduits and vault boxes for communication systems to facilitate connectivity for phones and IT systems.

New public safety features such as sidewalks, ramps, and crosswalks to facilitate pedestrian and bike mobility through the site.

Completion of contamination remediation RAP/RMP on subsoils by City and Port.

Grading and drainage work to facilitate construction of new rail tracks and related equipment to be constructed by the Developer.

### **Central Gateway**

Import of clean fill material, with compaction to standards recommended by the Geotechnical Engineer, to raise the existing site to a new elevation (rough pad) that conforms with current drainage regulations.

Remediation of existing sand fill layer on the site to lessen future liquefaction during seismic events.

Remediation of existing native subsoil (Bay mud) to densify the material to lessen differential settlement and displacement of buildings.

New drainage piping to accept surface rain water and channel it to outfalls to the Bay including enlargement of some of the outfalls.

New recycled water piping to serve the landscaping throughout the site, if such water is made available to the North Gateway by EBMUD.

New road work to rebuild Maritime Avenue and construct a new West Burma Road.

New street lighting for the roads mentioned above including new electrical improvements to serve the lights.

New traffic signals for the roads mentioned above including new electrical improvements to serve the signals.

New domestic water piping to serve the vertical development for both domestic use and fire protection.

New sanitary sewer piping to serve the vertical development including pump stations due to low elevations of the system.

New electrical conduits, duct banks, conductors, vaults and switches to distribute power to vertical development and road related improvements.

New conduits and vault boxes for communication systems to facilitate connectivity for phones and IT systems.

New public safety features such as sidewalks, ramps, crosswalks and rail crossing gates to facilitate pedestrian and bike mobility through the site.

Completion of contamination remediation RAP/RMP on subsoils by City and Port.

Grading and drainage work to facilitate construction of new rail tracks and related equipment.

Reconstruction of storm water outfalls to the Bay to facilitate receipt of increased size of drain piping and related water flow.

### **West Gateway**

Import of clean fill material, with compaction to standards recommended by the Geotechnical Engineer, to raise the existing site to a new elevation (rough pad) that conforms with current drainage regulations.

Remediation of existing sand fill layer on the site to lessen liquefaction during seismic events.

Remediation of existing native subsoil (Bay mud) to densify the material to lessen differential settlement and displacement of buildings.

New drainage piping to accept surface rain water and channel it to outfalls to the Bay including enlargement of some of the outfalls.

New recycled water piping to serve the landscaping throughout the site, if such water is made available to the North Gateway by EBMUD.

New road work to rebuild Maritime Avenue and construct a new West Burma Road.

New street lighting for the roads mentioned above including new electrical improvements to serve the lights.

New traffic signals for the roads mentioned above including new electrical improvements to serve the signals.

New domestic water piping to serve the vertical development for both domestic use and fire protection.

New sanitary sewer piping to serve the vertical development including pump stations due to low elevations of the system.

New electrical conduits, duct banks, conductors, vaults and switches to distribute power to vertical development and road related improvements.

New conduits and vault boxes for communication systems to facilitate connectivity for phones and IT systems.

New public safety features such as sidewalks, ramps, crosswalks and rail crossing gates to facilitate pedestrian and bike mobility through the site.

Completion of contamination remediation RAP/RMP on subsoils by City and Port.

Grading and drainage work to facilitate construction of new rail tracks and related equipment.

Wharf improvements to Berths 7 and 8.

**North Gateway** (\*For avoidance of doubt, the Completion of the Public Improvements allocated solely to the North Gateway shall not be a condition precedent to the City or Developer's obligation to Close Escrow with respect to any Phase.)

**All of the following improvements shall be designed and constructed in consultation with any party with a contractual interest in a portion of the North Gateway, including EBMUD and the two recycler developers CASS and CWS.**

Import of clean fill material, with compaction to standards recommended by the Geotechnical Engineer, to raise the existing site to a new elevation (rough pad) that conforms with current drainage regulations.

Remediation of existing sand fill layer on the site to lessen liquefaction during seismic events.

Remediation of existing native subsoil (Bay mud) to densify the material to lessen differential settlement and displacement of buildings.

New drainage piping to accept surface rain water and channel it to outfalls to the Bay including enlargement of some of the outfalls.

New recycled water piping to serve the landscaping throughout the site, if such water is made available to the North Gateway by EBMUD.

New road work to build a new Wake Avenue, consistent with the requirements in the EBMUD MOA.

New street lighting for the roads mentioned above including new electrical improvements to serve the lights.

New off-site domestic water piping to serve the vertical development for both domestic use and fire protection.

New off-site sanitary sewer piping to serve the vertical development including pump stations if needed due to low elevations of the system.

New off-site electrical conduits, duct banks, conductors, vaults and switches to distribute power to the North Gateway for road improvements and future vertical development.

New conduits and vault boxes for communication systems to facilitate connectivity for phones and IT systems.

New public safety features such as sidewalks, ramps, crosswalks and the rail crossing gates and other Rail crossing safety measures at the intersection of the realigned Wake Avenue and

Engineers Road, as called for in the EBMUD MOA to facilitate vehicular, pedestrian and bike mobility through the North Gateway. This includes rebuilding that portion of Engineers Road on EBMUD property necessary for a safe rail crossing.

Completion of contamination remediation RAP/RMP on subsoils by City and Port.

Grading and drainage work to facilitate construction of new rail tracks and related equipment.

**AMS Site** (For avoidance of doubt, the Completion of the Public Improvements allocated solely to the AMS Site shall not be a condition precedent to the City or Developer's obligation to Close Escrow with respect to any Phase.)

**All of the following improvements shall be designed and constructed in consultation with any party with a contractual interest in leasing the AMS Site.**

Import of clean fill material, with compaction to standards recommended by the Geotechnical Engineer, to raise the existing site to a new elevation (rough pad) that conforms with current drainage regulations.

Remediation of existing sand fill layer on the site to lessen liquefaction during seismic events.

Remediation of existing native subsoil (Bay mud) to densify the material to lessen differential settlement and displacement of buildings. New drainage piping to accept surface rain water and channel it to outfalls to the Bay including enlargement of some of the outfalls.

New recycled water piping to serve the landscaping throughout the site, if such water is made available to the AMS Site by EBMUD.

New road work to build a new Wake Avenue, consistent with the requirements in the EBMUD MOA.

New street lighting for the roads mentioned above including new electrical improvements to serve the lights.

New off-site domestic water piping to serve the vertical development for both domestic use and fire protection.

New off-site sanitary sewer piping to serve the vertical development including pump stations if needed due to low elevations of the system.

New off-site electrical conduits, duct banks, conductors, vaults and switches to distribute power to the AMS Site for road improvements and future vertical development.

New conduits and vault boxes for communication systems to facilitate connectivity for phones and IT systems.

New public safety features such as sidewalks, ramps, crosswalks and the rail crossing gates and other Rail crossing safety measures at the intersection of the realigned Wake Avenue and

Engineers Road, as called for in the EBMUD MOA to facilitate vehicular, pedestrian and bike mobility through the AMS Site. This includes rebuilding that portion of Engineers Road on EBMUD property necessary for a safe rail crossing.

Completion of contamination remediation RAP/RMP on subsoils by City and Port.

Grading and drainage work to facilitate construction of new rail tracks and related equipment.

**ATTACHMENT B**

LDDA Amendment Term Sheet

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

<b>Item</b>	<b>Terms</b> (Unless otherwise noted, capitalized terms are as defined in the LDDA)
<b>1. Parties</b>	City of Oakland (“City”), Prologis CCIG Oakland Global, LLC (“Prologis/CCIG”), Oakland Bulk and Oversized Terminal, LLC (“OBOT”)
<b>2. Modifications to LDDA</b>	The LDDA, including but not limited to the conditions precedent to closing and lease forms, shall be modified as appropriate to reflect these terms.
<b>Generally Applicable Terms</b>	
<b>3. Modifications to City Spending Priorities for Additional Funds</b>	<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>
<b>4. Modification to Public Improvements Schedule of Performance/Outside Closing Date</b>	The Public Improvements Schedule of Performance and Outside Date will be amended consistent with the mid-project budget revision dated November 4, 2014 ("MPBR").
<b>5. Soil Use/Relocation</b>	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.
<b>6. Use of Water Treatment Facility</b>	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.
<b>7. Notch and Sliver Lease Extension</b>	The City shall have the right to extend the existing Notch and Sliver Lease with the Port through December 31, 2019.
<b>8. Allocation of Payment for Certain Waived Public Improvements</b>	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><b>9. Waived Public Improvements and Hazardous Materials</b></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><b>10. Additional Funds related to Remediation of Hazardous Materials on OAB</b></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><b>Rail Access Agreement</b></p>	
<p><b>11. East of Realigned Wake Avenue Improvements; Potential Rent Abatement for Railroad R/O/W Property.</b></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>
<b>12. Rail Operator</b>	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.
<b>13. City Fee</b>	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.
<b>East Gateway Amendments</b>	
<b>14. Potential Division of East Gateway Lease Area</b>	<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><b>15. Pro Rata Allocations</b></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"> <li>• Premises</li> <li>• Permitted Uses*</li> <li>• Minimum Project</li> <li>• Security Deposit</li> <li>• Liquidated Damages</li> <li>• Permitted Title Exceptions</li> </ul> <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><b>16. Modification to Cross-Defaults</b></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.
<b>17. Relocation of Rail Improvements Serving the East Gateway</b>	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.
<b>18. Allocation of any Savings on \$9.8M Available Under the MPBR</b>	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.
<b>Central Gateway Amendments</b>	
<b>19. Central Gateway Lease Area Division</b>	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").
<b>20. Permitted Transfer to CCIG Affiliate Controlled by CCIG for MH-1 Lease Area</b>	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.
<b>21. Outside Closing Date for MH-1</b>	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.
<b>22. Pro Rata Allocation</b>	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"> <li>• Premises</li> <li>• Permitted Use*</li> <li>• Minimum Project</li> <li>• Security Deposit</li> <li>• Liquidated Damages</li> <li>• Permitted Title Exceptions</li> </ul> <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><b>23. Modifications to Cross Defaults</b></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><b>24. Right to Convert MH-1 to Maritime Terminal Use</b></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><b>25. Timing of Rail Maintenance Facility on MH-1</b></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>

**ATTACHMENT C**

EBMUD MOA Amendment Term Sheet

**Term Sheet**  
**First Amendment to Memorandum of Agreement with East Bay Municipal Utility District**  
**Oakland Army Base**  
**December 2, 2014**

<b>Item</b>	<b>Terms</b> (Unless otherwise noted, capitalized terms are as defined in the LDDA)
<b>Parties</b>	City of Oakland ("City") East Bay Municipal Utility District ("EBMUD"), and CCIG Oakland Global, LLC ("CCIG")
<b>Modifications to MOA</b>	The MOA including but not limited to the mitigations and obligations, shall be modified as appropriate to reflect these terms and considerations.
<b>Applicable Terms and Considerations</b>	
<b>General</b>	With exception to the following terms, the City and EBMUD are subject to all other obligations in the existing MOA.
<b>Redesign</b>	Cost for redesign to be borne by City Project. City will use available Project funding to fund redesign of the Engineers Road Widening Project to address all changes related to the re-alignment of Engineers Road, the Wake Avenue and Engineers Road intersection and railroad crossings.
<b>Acquisition</b>	1. City to either acquire or equitably compensate EBMUD, with current available Project funding City for the widening of Engineers Road or related improvement that impact EBMUD property.
	2. City shall consider the proposal by EBMUD to convey 0.7 acres of property as originally contemplated in the original MOA contingent upon relinquishment or relocation of the BNSF easement.
<b>Demolition</b>	Cost for the demolition of two buildings on EBMUD property which would be affected by the re-alignment of Engineers Road to be borne by the City.
<b>Construction</b>	City to fund the cost for the entire segment of Engineers Road subject to the availability and qualification of ACTC or other grant funding. Construction of Wake Avenue is included within the existing OAB Project GMP funded from TCIF grant funds.

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OAKLAND

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Approved as to form and legality

  
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<sup>9</sup> (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 West 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**

<b>Item</b>	<b>Terms</b> (Unless otherwise noted, capitalized terms are as defined in the LDDA)
<b>1. Parties</b>	City of Oakland (“City”), Prologis CCIG Oakland Global, LLC (“Prologis/CCIG”), Oakland Bulk and Oversized Terminal, LLC (“OBOT”)
<b>2. Modifications to LDDA</b>	The LDDA, including but not limited to the conditions precedent to closing and lease forms, shall be modified as appropriate to reflect these terms.
<b>Generally Applicable Terms</b>	
<b>3. Modifications to City Spending Priorities for Additional Funds</b>	<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>
<b>4. Modification to Public Improvements Schedule of Performance/Outside Closing Date</b>	The Public Improvements Schedule of Performance and Outside Date will be amended consistent with the mid-project budget revision dated November 4, 2014 ("MPBR").
<b>5. Soil Use/Relocation</b>	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.
<b>6. Use of Water Treatment Facility</b>	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.
<b>7. Notch and Sliver Lease Extension</b>	The City shall have the right to extend the existing Notch and Sliver Lease with the Port through December 31, 2019.
<b>8. Allocation of Payment for Certain Waived Public Improvements</b>	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><b>9. Waived Public Improvements and Hazardous Materials</b></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><b>10. Additional Funds related to Remediation of Hazardous Materials on OAB</b></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><b>Rail Access Agreement</b></p>	
<p><b>11. East of Realigned Wake Avenue Improvements; Potential Rent Abatement for Railroad R/O/W Property.</b></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>
<b>12. Rail Operator</b>	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.
<b>13. City Fee</b>	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.
<b>East Gateway Amendments</b>	
<b>14. Potential Division of East Gateway Lease Area</b>	<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>



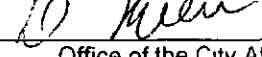
	<p>c. a revised Outside Closing Date for CE2, which may be accelerated prior to the current 1-31-18 date to provide additional security for the City that it will meet its matching obligations under the TCIF Funding Agreement; and</p> <p>d. an equitable reduction in the Minimum Project square footages 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><b>15. Pro Rata Allocations</b></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"> <li>• Premises</li> <li>• Permitted Uses*</li> <li>• Minimum Project</li> <li>• Security Deposit</li> <li>• Liquidated Damages</li> <li>• Permitted Title Exceptions</li> </ul> <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><b>16. Modification to Cross-Defaults</b></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.
<b>17. Relocation of Rail Improvements Serving the East Gateway</b>	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.
<b>18. Allocation of any Savings on \$9.8M Available Under the MPBR</b>	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.
<b>Central Gateway Amendments</b>	
<b>19. Central Gateway Lease Area Division</b>	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").
<b>20. Permitted Transfer to CCIG Affiliate Controlled by CCIG for MH-1 Lease Area</b>	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.
<b>21. Outside Closing Date for MH-1</b>	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.
<b>22. Pro Rata Allocation</b>	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"> <li>• Premises</li> <li>• Permitted Use*</li> <li>• Minimum Project</li> <li>• Security Deposit</li> <li>• Liquidated Damages</li> <li>• Permitted Title Exceptions</li> </ul> <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><b>23. Modifications to Cross Defaults</b></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><b>24. Right to Convert MH-1 to Maritime Terminal Use</b></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><b>25. Timing of Rail Maintenance Facility on MH-1</b></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>

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

Approved as to form and legality

  
Office of the City Attorney

2014 NOV 20 PM 2:58

# OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C.M.S.

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**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 complaint 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/readepted, 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 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

*RD Miller*

Deputy City Attorney

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

# OAKLAND CITY COUNCIL

2014 NOV 20 PM 2:58

ORDINANCE NO. \_\_\_\_\_ C.M.S.

**ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE, WITHOUT RETURNING TO THE CITY COUNCIL, AN AMENDMENT TO THE LEASE BETWEEN THE CITY AND PORT OF OAKLAND FOR BERTH 9 DATED JUNE 28, 2013 TO EXTEND THE TERM UP TO MARCH 2020, EXPAND THE USE AND LEASE PREMISES, AND INCLUDE ADDITIONAL RELATED AMENDMENTS**

**WHEREAS**, on June 28, 2013, the City and Port of Oakland (“Port”) entered into a lease for approximately 3.7-acres of Port-owned property located at Berth 9 (the “Berth 9 Lease”). The consideration for the Berth 9 Lease was the concurrent execution by the City of a no-cost lease by and between the City and the Port for the City-owned property on the former Oakland Army Base commonly referred to as the Notch (the “Notch Lease”); and

**WHEREAS**, Caltrans has a temporary construction easement (TCE) for use of the West Gateway Area property on the City-owned portion of the former Oakland Army Base to support the construction of the new eastern span of the Bay Bridge and the deconstruction of the old eastern span, which includes use of the wharf structures at the West Gateway Area property commonly referred to as Berth 7 or Pier 7; and

**WHEREAS**, the City and Caltrans have agreed that Caltrans will move from the West Gateway Area to property within the Central Gateway Area of the City-owned land on the former Oakland Army Base commonly referred to as MH-1 to facilitate the development of the West Gateway Area; and

**WHEREAS**, the deconstruction of the old eastern span of the Bay Bridge requires Caltrans, its contractors and its project have access to a wharf immediately adjacent to the new Caltrans facility within the Central Gateway Area at the MH-1 property; and

**WHEREAS**, the City and Caltrans have agreed that use of Berth 9 is acceptable for Caltrans’ project requirements, and the City plans to sublease Berth 9 for Caltrans’ use; and

**WHEREAS**, the Port has agreed to: (1) extend the term of the Berth 9 Lease to March 2020; (2) expand the permitted uses; (3) increase the size of the leased premises; and (4) allow the City to sublease for Caltrans’ uses; in return for which the City will administratively extend the term of the Notch Lease to March 2020; now therefore

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

**Section 1.** The City Administrator is authorized to negotiate and execute an amendment to the Berth 9 Lease with the Port to: (1) extend the term to March 2020; (2) expand the permitted uses; (3) increase the size of the leased premises (paying any rent therefor from rent paid by Caltrans or any other third party); and (4) obtain the Port’s consent to the City’s sublease

for Caltrans' use.

**Section 2.** In return for the Port's execution of the Berth 9 amendment, the City will administratively extend the term of the Notch Lease to March 2020.

**Section 3.** 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 amendment to the Berth 9 Lease, 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 4.** 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 5.** 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 the Berth 9 Lease (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 the proposed Berth 9 Lease 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 \_\_\_\_\_



*W. M. M.*

Deputy City Attorney

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2014 NOV 20 PM 2:58

# OAKLAND CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_ C.M.S.

**ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE, WITHOUT RETURNING TO THE CITY COUNCIL, AN AGREEMENT AND RELATED LEASE AND SUBLEASE WITH CCIG OAKLAND GLOBAL, LLC AND/OR CALTRANS, REGARDING CALTRANS': (1) MOVE FROM THE WEST GATEWAY AT THE FORMER OAKLAND ARMY BASE TO CITY-OWNED LAND AT THE BASE COMMONLY KNOWN AS MH-1; AND (2) SUBLEASE FROM THE CITY OF BERTH 9 AT THE PORT OF OAKLAND**

**WHEREAS**, on June 28, 2013, the City and Port of Oakland ("Port") entered into a lease for approximately 3.7-acres of Port-owned property located at Berth 9 (the "Berth 9 Lease"); and

**WHEREAS**, Caltrans has a temporary construction easement for use of the West Gateway Area property on the City-owned portion of the former Oakland Army Base to support the construction of the new eastern span of the Bay Bridge and the deconstruction of the old eastern span, which includes use of the wharf structures at the West Gateway Area property commonly referred to as Berth 7 or Pier 7; and

**WHEREAS**, the City and Caltrans have agreed that it would be beneficial for Caltrans to move from the West Gateway Area to property within the Central Gateway Area of the City-owned land on the former Oakland Army Base commonly referred to as MH-1 to facilitate the development of the West Gateway Area; and

**WHEREAS**, the City is obligated to ground lease, among other properties, MH-1 under a separate Lease Disposition and Development Agreement ("LDDA") with Prologis CCIG Oakland Global, LLC ("Master Developer"); and

**WHEREAS**, by a separately adopted concurrent Ordinance, the City has authorized the City Administrator to negotiate and execute an LDDA amendment with the Master Developer that, among other things, allows the City to ground lease MH-1 to CCIG Oakland Global LLC ("CCIG"); and

**WHEREAS**, the City and CCIG have mutually agreed to allow Caltrans to move to MH-1; and

**WHEREAS**, the deconstruction of the old eastern span of the Bay Bridge requires Caltrans, its contractors and its project have access to a wharf immediately adjacent to the proposed new Caltrans facility within the Central Gateway Area at the MH-1 property; and

**WHEREAS**, Berth 9 is adjacent to the new Caltrans facility to be constructed at MH-1, and City and Caltrans have agreed that use of Berth 9 is acceptable for Caltrans' project requirements; and

**WHEREAS**, the City has authorized by a separately adopted concurrent Ordinance to execute a Berth 9 Lease amendment with the Port to facilitate Caltrans' use of Berth 9; and

**WHEREAS**; the City, Caltrans, and CCIG desire to document Caltrans' move from the West Gateway to MH-1, and Caltrans' sublease of Berth 9; now therefore

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

**Section 1.** The City Administrator is authorized to negotiate and execute, without returning to City Council, an agreement and related lease and sublease with CCIG and/or Caltrans regarding Caltrans': (1) move from the West Gateway at the former Oakland Army Base to City-owned land at the Base commonly known as MH-1; and (2) sublease from the City of Berth 9 at the Port of Oakland.

**Section 2.** 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 agreement and related lease and sublease, 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 3.** 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 4.** 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 the MH-1 Lease or the Berth 9 Sublease (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 the Ordinance 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: \_\_\_\_\_

*[Signature]*

Deputy City Attorney

2014 NOV 20 PM 2:59 **OAKLAND CITY COUNCIL**

ORDINANCE NO. \_\_\_\_\_ C.M.S.

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**ORDINANCE, AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE, WITHOUT RETURNING TO THE CITY COUNCIL, AN AMENDMENT TO THE MEMORANDUM OF AGREEMENT WITH EAST BAY MUNICIPAL UTILITY DISTRICT AND CCIG OAKLAND GLOBAL, LLC, SUBSTANTIALLY IN CONFORMANCE WITH THE ATTACHED TERM SHEET, RELATING TO PROPERTY RIGHTS, TIMING AND CONSTRUCTION OF ENGINEERS ROAD IN THE FORMER OAKLAND ARMY BASE**

**WHEREAS**, the City owns approximately 160 acres of land located at the former Oakland Army Base, including land commonly known as the North Gateway Area; and

**WHEREAS**, the City wishes to realign and relocate existing Wake Avenue in the North Gateway Area to facilitate the relocation of California Waste Solutions and CASS, Inc., both now located in West Oakland (the "West Oakland Recyclers"), by constructing two development pads in the North Gateway Area; and

**WHEREAS**, the East Bay Municipal Utility District (EBMUD) expressed concerns with the City's planned development; and

**WHEREAS**, on June 19, 2012, the City and EBMUD entered into a memorandum of agreement (EBMUD MOA) to address the concerns of EBMUD, as authorized by Resolution No. 83931 C.M.S.; and

**WHEREAS**, the EBMUD MOA allows the City to realign and relocate existing Wake Avenue if the City complies with specified conditions; one condition requires the City to work in good faith to relocate an easement area, in favor of BNSF railroad, twenty feet to allow the construction and improvement of existing Engineers Road into a standard two lane city street; and

**WHEREAS**, after approximately two years of discussions, BNSF railroad notified the City that it was not amenable to relocating or relinquishing its easement area; and

**WHEREAS**, in order for the City to realign and relocate existing Wake Avenue to facilitate the relocation of the West Oakland Recyclers to the North Gateway Area, the City must address the previously raised concerns of EBMUD; and

**WHEREAS**, the City and EBMUD are negotiating new terms and conditions to allow the realignment and relocation of Wake Avenue; 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 amendment to the EBMUD MOA, 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 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 an amendment to the EBMUD MOA substantially in conformance with the term sheet attached hereto ("Term Sheet"), without returning to the City Council, providing for: (1) City, at its cost, to pay for: (a) redesign, re-engineering, and construction of Engineers Road outside of the BNSF easement area; (b) demolition of two buildings on EBMUD property within the new Engineers Road right-of-way; and (c) construction of an additional portion of Engineers Road west of new, realigned Wake Avenue; and/or (2) City's acquisition of, or reimbursement for, right-of-way or fee title to EBMUD property required to build Engineers Road outside of the BNSF easement area.

**Section 5.** The City Administrator or his or her designee is hereby authorized, without returning to City Council, to negotiate, execute, accept or cause to be recorded any document conveying or transferring an interest in real property including, without limitation, a deed, quitclaim deed, acceptance of a deed, easement, license or any other form of conveyance that is required to be accomplished under the amendment to the EBMUD MOA as described in this Ordinance.

**Section 6.** The City Administrator or his or her designee is hereby authorized, without returning to City Council, to apply for and accept third party funds, grant or otherwise, and to appropriate and allocate said funds to Joint Infrastructure Development Fund (5672) CIP Oakland Army Base Org (94879) into a Project to be established.

**Section 7.** The City Administrator or his or her designee is hereby authorized, without returning to City Council, to appropriate and allocate \$2.2 million in funding from (1)

OBRA Environmental Remediation Fund (5673) OARB Org (85244) Undetermined Project (0000000), (2) OBRA Leasing & Utility Fund (5671) OARB Org (85244) Project (C466910), or (3) Joint Army Base Infrastructure Fund (5672) Infrastructure Master Plan Project (C415720), to Joint Infrastructure Development Fund (5672) CIP Oakland Army Base Org (94879) into a Project to be established, and to appropriate and expend said funds on the contemplated actions, purposes and intent of this Ordinance.

**Section 8.** 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 the Term Sheet (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 transaction(s) which the 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**  
**First Amendment to Memorandum of Agreement with East Bay Municipal Utility District**  
**Oakland Army Base**  
**December 2, 2014**

<b>Item</b>	<b>Terms</b> (Unless otherwise noted, capitalized terms are as defined in the LDDA)
<b>Parties</b>	City of Oakland ("City") East Bay Municipal Utility District ("EBMUD"), and CCIG Oakland Global, LLC ("CCIG")
<b>Modifications to MOA</b>	The MOA including but not limited to the mitigations and obligations, shall be modified as appropriate to reflect these terms and considerations.
<b>Applicable Terms and Considerations</b>	
<b>General</b>	With exception to the following terms, the City and EBMUD are subject to all other obligations in the existing MOA.
<b>Redesign</b>	Cost for redesign to be borne by City Project. City will use available Project funding to fund redesign of the Engineers Road Widening Project to address all changes related to the re-alignment of Engineers Road, the Wake Avenue and Engineers Road intersection and railroad crossings.
<b>Acquisition</b>	1. City to either acquire or equitably compensate EBMUD, with current available Project funding City for the widening of Engineers Road or related improvement that impact EBMUD property.
	2. City shall consider the proposal by EBMUD to convey 0.7 acres of property as originally contemplated in the original MOA contingent upon relinquishment or relocation of the BNSF easement.
<b>Demolition</b>	Cost for the demolition of two buildings on EBMUD property which would be affected by the re-alignment of Engineers Road to be borne by the City.
<b>Construction</b>	City to fund the cost for the entire segment of Engineers Road subject to the availability and qualification of ACTC or other grant funding. Construction of Wake Avenue is included within the existing OAB Project GMP funded from TCIF grant funds.