

CITY OF OAKLAND

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OFFICE OF THE CITY CLERK
OAKLAND

2019 APR 11 PM 5:44

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Elizabeth Lake
Deputy City Administrator

SUBJECT: Assignment of Billboard Sublease to
Outfront Foster Interstate Oakland
LLC

DATE: April 4, 2019

City Administrator Approval

Date:

4/11/19

RECOMMENDATION

Staff Recommends That The City Council Adopt A Resolution Authorizing The City Administrator To Issue A Letter That Consents To An Assignment And Assumption Agreement That Assigns All Of The Interests Of Foster Interstate Media, Inc., As Subtenant, Under That Certain Billboard Sublease Agreement Dated October 23, 2012 To Outfront Foster Interstate Oakland LLC.

EXECUTIVE SUMMARY

The proposed Assignment and Assumption Agreement would allow Foster Interstate Media, Inc. to assign its rights and obligations under that certain Billboard Sublease Agreement by and between Prologis CCIG Oakland Global, LLC ("Prologis CCIG" or "Tenant"), as "Sublandlord", and Foster Interstate Media, Inc., ("Foster" or "Subtenant"), dated October 23, 2012 (the "Billboard Sublease") to Outfront Foster Interstate Oakland LLC. The Billboard Sublease is a sublease to that certain Billboard Franchise and Lease Agreement by and between the City of Oakland, as successor-in-interest ("Landlord"), and Prologis CCIG, as "Tenant", dated October 23, 2012 (the "Billboard Lease"). Under Section 19 of the Billboard Sublease, any assignment by Subtenant requires City consent in its sole and absolute discretion.

BACKGROUND / LEGISLATIVE HISTORY

On July 3, 2012, the City Council enacted Ordinance No. 13131 C.M.S., which authorized the City Administrator, among other things, to negotiate and execute the Army Base Gateway Redevelopment Project Lease Disposition and Development Agreement with Prologis CCIG (the "LDDA") and the Billboard Lease in substantially the forms attached as an exhibit to the Ordinance and the LDDA, respectively. The LDDA included as part of the redevelopment of the Oakland Army Base ("OAB"), development of five billboards, which, together with their sites, would be leased by Tenant pursuant to the Billboard Lease and subleased by Subtenant pursuant to the Billboard Sublease. The Billboard Lease expressly contemplated the Billboard Sublease with Foster as Subtenant. Ordinance No. 13131 C.M.S. did not specifically authorize the City Administrator to approve assignments of either the Billboard Lease, or the Billboard

Item: _____
CED Committee
April 23, 2019

Sublease, without returning to the City Council. The Billboard Lease and the Billboard Sublease were entered into as of October 23, 2012.

Foster constructed and is operating all five of the contemplated billboards on the former OAB in compliance with the Billboard Sublease. There are no events of default under the Billboard Sublease.

ANALYSIS AND POLICY ALTERNATIVES

On January 31, 2019, Foster requested the City's consent to the assignment of Foster's interests in the Billboard Sublease to Outfront Foster Interstate Oakland LLC ("Assignee"), a joint venture between Foster and Outfront Media LLC ("Outfront"), which is a wholly-owned subsidiary of Outfront Media Inc. (formerly CBS Outdoor), which Foster described as one of the largest out-of-home media companies in North America. Under the proposed joint venture, Outfront will own the majority of the economic interests in and control day-to-day management of Assignee, including marketing and sale of advertising space on the five billboards pursuant to the Billboard Sublease. Staff requested additional information regarding the assignment, met with Foster and Outfront representatives on March 13, 2019 and reviewed financial information and background information provided by Outfront.

Foster originally requested a waiver of any breach or default under the Billboard Sublease; however, Section 19 of the Billboard Sublease specifically provides that "No assignment or sublease shall release Subtenant of any liability or obligation under this Agreement." Additionally, there is a dispute with Prologis CCIIG under the Billboard Lease with respect to the method of calculation under the Billboard Lease and the Billboard Sublease. Therefore, no waiver is included in the proposed Assignment and Assumption Agreement and will not be included in the City's consent.

Under the Assignment and Assumption Agreement, the assignment and assumption by Subtenant and Assignee expressly includes the following: (i) performance of, and compliance with, (A) the community benefits plan pursuant to Section 22 and Exhibit I of the Billboard Sublease, (B) Section 27(b) of the Billboard Sublease, including the designation of a Project Manager with a local office, and (C) the notice requirements of Section 29 and Exhibit J of the Billboard Sublease; (ii) acknowledgement of the dispute between the Landlord and Tenant regarding lease revenue and the covenant that Assignee shall collect and distribute rent under the Billboard Sublease in accordance with the terms of the Billboard Sublease; (iii) that the Billboard Sublease remain unmodified and in full force and effect; and (iv) express acknowledgement that pursuant to the Billboard Sublease, the Sublease may only be amended or modified with the City's consent.

Staff recommends adoption of the Resolution to consent to the Assignment and Assumption Agreement. The proposed Assignee is comprised of experienced billboard operators and sales revenue is expected to continue.

If the Resolution is not approved, Foster will remain the Subtenant under the Billboard Sublease.

FISCAL IMPACT

There are no fiscal impacts for the consent of the Assignment and Assumption Agreement.

PUBLIC OUTREACH / INTEREST

The proposed action does not change the terms of the Billboard Sublease. No additional outreach was deemed necessary other than the standard posting of the Agenda.

COORDINATION

This action has been coordinated with City Budget Bureau and City Attorney's Office.

SUSTAINABLE OPPORTUNITIES

Economic: The proposed Assignment and Assumption Agreement would assign all of Foster's interests in the Billboard Sublease to a joint venture comprised of experienced partners, with the majority interest owned by Outfront Media LLC, which is wholly owned by Outfront Media, Inc. Both Foster and the Outfront entities are experience billboard operators, and intend that continued advertising revenue be generated

Environmental: The authorization to consent to the Assignment and Assumption Agreement will not include any physical changes to the environment. As a result, the authorization will not cause either a direct change in the environment, or a reasonably foreseeable change in the environment.

Social Equity: The Assignment and Assumption Agreement will not change any terms of the Billboard Sublease, which will remain subject to the community benefits plan incorporated into the Billboard Sublease, which includes compliance with the City Living Wage Ordinance and City Equal Benefits Policy.

California Environmental Quality Act (CEQA)

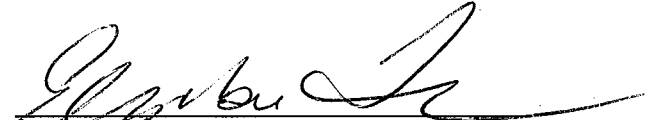
The authorization to consent to the Assignment and Assumption Agreement is exempt from CEQA because it is not a "project" as defined in California Public Resources Code Section 21065 (and CEQA Guidelines Section 15060(c)) as the authorization will not cause either a direct change in the environment, or a reasonably foreseeable change in the environment.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That City Council Adopt A Resolution Authorizing The City Administrator To Issue A Letter That Consents To An Assignment And Assumption Agreement That Assigns All Of The Interests Of Foster Interstate Media, Inc., As Subtenant, Under That Certain Billboard Sublease Agreement Dated October 23, 2012 To Outfront Foster Interstate Oakland LLC.

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

Respectfully submitted,



ELIZABETH LAKE
Deputy City Administrator

Prepared by:
John Monetta
Project Manager

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2019 APR 11 PM 5:44

Approved as to Form and Legality:
DRAFT
Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO ISSUE A LETTER THAT CONSENTS TO AN ASSIGNMENT AND ASSUMPTION AGREEMENT THAT ASSIGNS ALL OF THE INTERESTS OF FOSTER INTERSTATE MEDIA, INC., AS SUBTENANT, UNDER THAT CERTAIN BILLBOARD SUBLEASE AGREEMENT DATED OCTOBER 23, 2012 TO OUTFRONT FOSTER INTERSTATE OAKLAND LLC.

WHEREAS, On July 3, 2012, the City Council enacted Ordinance No. 13131 C.M.S., which authorized the City Administrator, among other things, to negotiate and execute the Army Base Gateway Redevelopment Project Lease Disposition and Development Agreement with Prologis CCIG Oakland Global, LLC ("Prologis CCIG" or "Tenant") (the "LDDA") and the Billboard Franchise and Lease Agreement by and between City of Oakland, as successor-in-interest ("City" or "Landlord"), and Tenant, dated October 23, 2012 (the "Billboard Lease"). The LDDA included as part of the redevelopment of the Oakland Army Base ("OAB"), development of five billboards, which together with their sites, would be leased by Tenant pursuant to the Billboard Lease; and

WHEREAS, the Billboard Lease expressly contemplated a sublease with Foster Interstate Media, Inc., ("Foster" or "Subtenant") and Subtenant entered into the Billboard Sublease Agreement by and between Sublandlord, and Subtenant" dated as of October 23, 2012 (the "Billboard Sublease") pursuant to which Sublandlord subleased the five billboard sites; and

WHEREAS, Foster constructed and is operating all five of the contemplated billboards on the former OAB in accordance with the Billboard Sublease; and

WHEREAS, on January 31, 2019, Foster requested the City's consent to the assignment of Foster's interests in the Billboard Sublease to Outfront Foster Interstate Oakland LLC ("Assignee"), a joint venture between Foster and Outfront Media LLC ("Outfront"), which is a wholly-owned subsidiary of Outfront Media Inc. (formerly CBS Outdoor); and

WHEREAS, City staff requested additional information regarding the assignment, met with Foster and Outfront representatives on March 13, 2019, and reviewed financial information and background information provided by Outfront; and

WHEREAS, the authorization to issue a letter that consents to the Assignment and Assumption Agreement is not a "project" as defined in California Public Resources Code Section 21065 (and CEQA Guidelines Section 15060(c)) because the authorization will not

cause either a direct physical change in the environment or a reasonably foreseeable indirect change in the environment; now, therefore, be it

RESOLVED: That the City Council hereby authorizes the City Administrator or his/her designee, to issue a letter that consents to the Assignment and Assumption Agreement in the form approved by the City Attorney, and take all other actions necessary with respect to the letter that consents to the Assignment and Assumption Agreement consistent with this Resolution and its basic purpose; and be it

FURTHER RESOLVED: That the City finds and determines, after independent review and consideration, that the authorization to issue a letter that consents to the Assignment and Assumption Agreement is exempt from CEQA because it is not a "project" as defined in California Public Resources Code Section 21065 (and CEQA Guidelines Section 15060(c)) because the authorization will not cause either a direct physical change in the environment or a reasonably foreseeable indirect change in the environment; and be it

FURTHER RESOLVED: That the City Administrator or his/her designee shall cause to be filed with the County of Alameda a Notice of Exemption from CEQA requirements.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BAS, GALLO, GIBSON McELHANEY, KALB, REID, TAYLOR, THAO and PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

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