

REVISED

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OFFICE OF THE CITY CLERK
OAKLAND

2009 AUG 10 PM 12:28

Approved as to form and legality:


Agency Counsel

REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND

Resolution No. 2009 - 0081 C.M.S.

RESOLUTION AUTHORIZING THE AGENCY ADMINISTRATOR TO NEGOTIATE AN EXCLUSIVE NEGOTIATING AGREEMENT FOR A TERM OF 360 DAYS FROM AGENCY APPROVAL, BETWEEN THE OAKLAND REDEVELOPMENT AGENCY AND AMB PROPERTY CORPORATION / CALIFORNIA CAPITAL GROUP REGARDING A PROPOSED DEVELOPMENT OF A MIXED-USE PROJECT CONSISTING OF LOGISTICS, INDUSTRIAL, OFFICE, PROJECT-SERVING RETAIL AND OTHER USES MANDATED BY THE AGENCY ON UP TO 135 ACRES OF THE FORMER OAKLAND ARMY BASE

WHEREAS, the Redevelopment Agency of the City of Oakland ("Agency") owns approximately 165 acres of real property located in the former Oakland Army Base, which is depicted in Exhibit A attached hereto; and

WHEREAS, the Redevelopment Agency adopted the Redevelopment Plan for the Oakland Army Base Redevelopment Project ("Oakland Army Base Redevelopment Plan") on July 11, 2000; and

WHEREAS, one of the proposed actions included in the Oakland Army Base Redevelopment Plan was the redevelopment of land by private enterprise; and

WHEREAS, the Agency Board directed staff on July 15, 2008 to issue a Request for Proposals to four development teams recommended by a review panel following a Request for Qualifications process; and

WHEREAS, two of the four teams selected to submit full proposals did so on January 22, 2009; and

WHEREAS, the Agency conducted a comprehensive proposal review process with technical review and input from a variety of internal and external experts; and

WHEREAS, an interview panel consisting of six City officials and five external stakeholders interviewed both prospective development teams on April 2, 2009 and April 3, 2009; and

WHEREAS, the interview panel voted ten (10) to one (1) in favor of the Agency entering into an Exclusive Negotiating Agreement with AMB Property Corporation/California Capital Group based upon its proposal for logistics, industrial, office and project-serving retail development; and

WHEREAS, in 2002 the Oakland City Planning Commission certified the Oakland Army Base Redevelopment Plan Environmental Impact Report and the Oakland City Council, Oakland Base Reuse Authority, and Oakland Redevelopment Agency adopted all appropriate California Environmental Quality Act (“CEQA”) findings; and

WHEREAS, the City certified a Final Supplemental Environmental Impact Report for an auto mall at the former Oakland Army Base on December 5, 2006, and also adopted an Addendum on December 18, 2007; now, therefore be it

RESOLVED, that the Agency Administrator is authorized to negotiate an Exclusive Negotiating Agreement with AMB Property Corporation/California Capital Group for the purposes of studying and evaluating the feasibility of and negotiating terms and conditions for the possible development of logistics, industrial, office, and project-serving retail projects on up to 135 acres of the East, Central and West Gateway Areas in the Oakland Army Base Redevelopment Area as depicted in Exhibit B; and be it

FURTHER RESOLVED, that the planned development shall exclude the 15-acre site within the East Gateway Area approved by the Agency Board on November 6, 2007 (Resolution No. 2007-0076) for the development of truck parking and related services with Oakland Maritime Support Services (“OMSS”) in compliance with the San Francisco Bay Conservation and Development Commission’s requirement and intent for ancillary maritime support services on the Agency’s portion of the former Oakland Army Base, unless alternative accommodations are agreed to by required parties; and be it

FURTHER RESOLVED, that the planned development shall include accommodations as mandated by the Agency Board on July 15, 2008 and as articulated in the Request for Proposals document for a Produce Market, Film Center, and Joint Apprenticeship Training Council center; and be it

FURTHER RESOLVED, that the material terms of the Exclusive Negotiating Agreement will be consistent with the Term Sheets attached as Exhibits C and D hereto; and be it

FURTHER RESOLVED, that the term of the Exclusive Negotiating Agreement shall be for three-hundred and sixty days (360 days) from the date that the Agency Board approves the proposed deal points, with the option to extend said period by an additional ninety (90) days with the approval of the Agency Administrator in his sole and absolute discretion; and be it

FURTHER RESOLVED, that the Agency has independently reviewed and considered the environmental determination, and the Agency finds and determines that this action complies with CEQA because this action on the part of the Agency is exempt from CEQA pursuant to Section 15262 (feasibility and planning studies), Section 15306 (information collection) and Section 15061(b)(3) (general rule) of the CEQA Guidelines; and be it

FURTHER RESOLVED, that the Agency Administrator or his designee shall cause to be filed with the County of Alameda a Notice of Exemption for this action; and be it

FURTHER RESOLVED, that the Exclusive Negotiating Agreement shall be reviewed and approved as to form and legality by Agency Counsel prior to execution and be it

FURTHER RESOLVED, that the Agency shall return to closed session in September 2009 with the proposed deal points for the Exclusive Negotiating Agreement to work with the Agency Board on developing the deal points and the Agency Administrator will have authority to execute the Exclusive Negotiating Agreement only after the Agency Board has approved the proposed deal points.

IN AGENCY, OAKLAND, CALIFORNIA, JUL 28 2009, 2009

PASSED BY THE FOLLOWING VOTE:

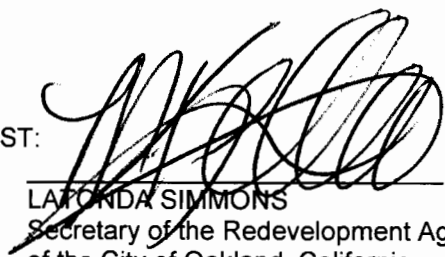
AYES – BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID AND
CHAIRPERSON BRUNNER - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:



LAFONDA SIMMONS
Secretary of the Redevelopment Agency
of the City of Oakland, California

GATEWAY DEVELOPMENT AREA



EXHIBIT A

Proposed Development Area



Approximate Boundary Line



EXHIBIT B

Exhibit C

COMMUNITY BENEFITS TERM SHEET

1	Landlord:	Redevelopment Agency of the City of Oakland (Agency)
2	Lessee:	To be designated by Developer
3	Agreed Uses:	Film Center, Produce Market, logistics facilities, Class A office, research and development facilities, project-serving retail, waterfront open space, JATC job training facility, recycling facilities, or as Negotiated
4	Community Fund	Lessee shall pay two million dollars (\$2,000,000) into the Landlord-designated Community Fund on or before August 7, 2010.
5	City / Agency Contracting Requirements	Lessee to comply with all City/Agency social justice contracting programs in both construction and operations phases, including, without limitation: prevailing wages, living wages, local and small local business, disadvantaged business program, equal benefits, disabled access, and apprenticeship/job training/first source hiring programs. Lessee must agree to comply with compliance monitoring by Agency.
6	Local Hire, Retention, Job Training & Apprenticeships for Construction Jobs	To ensure that project construction provides the strongest possible training and employment opportunities for targeted residents, a Labor Peace Agreement for project construction shall include requirements for a share of project hours to be worked by targeted residents and by apprentices. The Agency will require all general contractors to develop a plan for satisfying these requirements, and to obtain approval from the Agency of that plan prior to commencement of work. Targeted hiring requirements will be monitored and enforced, perhaps through the Ports MAPLA program.

7	Local Hire and First Source Hiring for Permanent Jobs	<p>In order to advance the Agency’s goal of providing economic opportunities to residents of communities that have borne the brunt of social, economic and health impacts, the Agency will require Lessee to ensure that all project employers participate in a First Source hiring program for operations-phase jobs (i.e., non-construction jobs). This program will require employers to designate a first source system, prior to hiring; consider targeted applicants referred by the first source system; and hire a percentage of targeted applicants. The Agency will designate one or more nonprofit entities to refer applicants as part of the first source system. Targeted hiring requirements will be monitored and enforced through a process to be established by the Agency and similar to the Port of Oakland’s MAPLA program, through which employers and contractors report progress, and challenges are addressed in a collaborative manner by various stakeholders from a particular industry, including community representatives and any relevant labor union(s).</p>
8	Labor Peace	<p>Lessee is required to agree to the following language in its lease agreement with the Agency: The parties recognize that in order to protect the Agency’s proprietary interests in uninterrupted receipt of the income and public services promised under this contract, labor disputes must be prevented. The parties agree that as a material condition of this agreement, Lessee shall cause each employer of employees rendering Services on the premises to sign a labor peace agreement with any labor organization which has informed the Agency that it represents or seeks to represent such employees, unless the Alameda Labor Council advises that such labor organization is not actively organizing in such industry.</p> <p>A “labor peace agreement” means any written agreement which (a) waives the right of the labor organization and its members to engage in picketing, work stoppages, boycotts, or other economic interference with the Agency’s proprietary interests in the premises for the duration of the Agency’s lease; and (b) provides that any services to be performed by employees of the employer’s tenants, subtenants, contractors, or subcontractors will also be done under agreements containing the same labor peace assurance. “Services” for these purposes means janitorial, security, building and grounds maintenance, warehousing and distribution, industrial, mechanics and truck services, retail, hotel (and any restaurant connected thereto), and grocery sales.</p>

9	Performance Standards and Reporting	To assist the Agency in assuring that project development is proceeding in a timely manner towards the Agency's goals, Lessee will be required to submit regular progress reports on satisfaction of various project requirements, including construction progress, financial goals, local hire, employment retention, and small/local business utilization, air quality and environmental health. In the Lease Development & Disposition Agreement (LDDA), the Agency will set goals in each of these areas for each phase of construction and operation of the project. The LDDA will stipulate penalties if goals are not met and incentives if goals are exceeded.
10	Workforce Training	Lessee should be prepared to coordinate with labor, community colleges and local workforce training programs to train workers for both construction and relevant permanent jobs and ensure that programs have resources to advance the Agency's goal of sustainable economic development of surrounding neighborhoods.
11	Community Outreach & Engagement	Lessee is required to create and maintain a program of ongoing communication and collaboration with relevant community stakeholders to ensure that there is community understanding and support for the project.
12	Community Services & Amenities	Lessee should describe how project will result in creation of community services and amenities such as grocery stores, banks and other retail, community centers or child care centers, on or off-site, to benefit the surrounding neighborhoods.
13	Relocation of Polluting and Other Hazardous Uses from West Oakland	Lessee should describe plan to relocate polluting and other hazardous uses from the adjacent West Oakland neighborhoods onto the project area, including recycling facilities and trucking activities. Plan should include analysis of how project will decrease or increase communities' exposure to pollution.
14	Gateway Development	The GDA development should capitalize on the property's waterfront location and result in a stunning gateway to the East Bay.
15	Urban Design Principles & Coherent Development Plan	The design of the GDA should be coherent, incorporate distinctive, innovative architecture, ensure a mix of uses, and be flexible enough to evolve over time.
16	Green Industries	Project should indicate types, numbers and timing of green businesses and industries to be included in project, establish recruitment incentives, and describe potential synergies among industries and how they will interact with whole development.

17	<p>Green, Clean Building</p>	<p>The GDA should be a model for sustainable development in every respect. “Green” development principles should meet or exceed City of Oakland’s Green Building Ordinance and related policies, including design, construction, building materials, use of alternative energy sources, resource efficiency, waste stream diversion, communications technology and transportation. Development plans must meet these standards, including energy generation and/or savings and details of carbon-neutral program.</p> <p>All major facilities constructed on the Project site should achieve energy efficiency levels at least 20% better than Title 24 requirements, and receive certification under the U.S. Green Building Council’s LEED program at a minimum of the LEED Silver level. Project plans should demonstrate higher levels of green building achievement, including potential certification of the Project as a whole under the LEED for Neighborhood Development rating system and/or achievement of additional credits as prescribed under that rating system and other guiding documents such as the Alameda County Waste Management Authority’s Bay-Friendly Landscape Guidelines. A significant portion of the Project’s ongoing energy requirements should be met with on-site clean, renewable energy technologies.</p> <p>Infrastructure should be installed to enable all facilities to use recycled grey water as an alternative to potable water for uses not requiring potable water (e.g., sewage conveyance). Systems should be designed to treat 100% of stormwater on site, and to make use of rainwater and/or recycled water on-site where possible. Potable water should not be used for site irrigation.</p> <p>Project should describe anticipated vehicle use associated with operations and should provide strategies for reducing transportation-related impacts and local air pollution. Studies estimating air pollution from proposed uses of the project site, including associated vehicle travel, and of cumulative impact with adjacent Port uses should be performed and analyzed to increase perspective on the potential air quality impacts of project.</p> <p>All roof and pavement surfaces should have a solar reflectivity index in order to minimize the urban heat island effect.</p> <p>In compliance with the City’s Construction and Demolition ordinance, 100% of concrete and asphalt and a minimum of 65% of all other materials generated should be targeted for reuse or recycling.</p>
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18	Public, Accessible Open Space at Waterfront	Project should demonstrate plan for publicly-accessible connection – by bicycle, foot, and vehicle – from Central Gateway area to future development of the 16.5-acre shoreline open space mandated by the California State Lands Commission and for coordination with the 15-acre Gateway Park being developed by East Bay Regional Park District to help create a world-class destination and amenity.
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Exhibit D

REAL ESTATE TERM SHEET

1	LANDLORD:	Redevelopment Agency of the City of Oakland
2	LESSEE:	To be designated by Developer
2A	GUARANTOR FOR LDDA COMPLETION GUARANTY	[Note- Guarantor must be financially strong entity with significant assets to guarantee LDDA Project completion obligation, as determined by Agency]
3	PROPERTY:	Approximately 135 acres of Army Base Property, excluding the OMSS Parcel.
4	AGREED USE:	Film Center, Produce Market, logistics facilities, Class A office, research and development facilities, project-serving retail, waterfront open space, JATC job training facility, recycling facilities, or as Negotiated
5	INITIAL TERM:	66 years Term shall commence on lease execution ("Lease Commencement Date")
5A	TERMINATION RIGHTS	Lessee has no right to terminate Lease. Landlord has right to terminate Lease due to Developer default or breach.
6	LEASE COMMENCEMENT DATE	Lease execution date.
7	RENT COMMENCEMENT DATE	One hundred twenty (120) days from execution of the lease.
8	EXTENDED TERM:	Landlord shall grant, at its sole and absolute discretion one (1) additional thirty-three (33) year option to extend the Lease. Option is at Landlord's sole and absolute discretion and may be exercised at least one (1) year in advance of the end of the current term.
9	POSSESSION:	Upon lease execution and no later than eighteen (18) months after execution of an ENA.
10	RENT:	Fair Market Rent to be determined by an independent MAI Appraiser acceptable to both parties, but in any event not less than \$_____ annually.
11	PAYMENT OF RENT:	Rent shall be paid annually on or before July 1 of each and every year of the term. Lessee shall pay prorated annual rent for Year 1 on the Rent Commencement Date.

12	RENTAL RATE ADJUSTMENT	Rent shall be adjusted each year after the stabilization period or the 5 th year, whichever comes first. Years 6-9 shall increase 3% each year. Every 10 th year of the lease the rent will be determined by an MAI Appraisal and adjusted annually by the CPI Index, however, the rent increase will not exceed 4% annually. In no event shall rent be decreased below the rate at end of immediately preceding rent adjustment period.
13	TAXES/ EXPENSES	Lessee shall pay any and all taxes, including, but not limited to, possessory interest tax. Lessee shall pay any and all expenses associated with the Property.
14	INSURANCE	Lessee pays. Commercial General Liability: \$5,000,000 Worker's Compensation: Statutory Limits (no less than \$1,000,000) Employer's Liability: \$1, 000,000 Automobile Business Liability: \$1,000,000 Pollution Limited Liability: \$1,000,000 All coverages are subject to periodic increase as determined by the City's Risk Manager
15	CONDITION OF PROPERTY AT DELIVERY	Lessee shall take delivery of the premises in an As-Is condition subject to any and all existing title exceptions, encumbrances, liens, and real property agreements including, but not limited to, three quitclaim deeds recorded in 2002 by the State of California Department of Transportation and the following unrecorded tenancy agreements: 1) Oakland Maritime Support Services Lease, 2) City of Oakland Winter Shelter License, 3) Oakland Film Center Licenses (sixteen total), 4) Pacific Coast Container Lease, 5) Urban Recycling Solutions, Inc. Lease. Lessee is responsible for identifying and transferring three acres of land in the OARB to JATC per the MOA between Agency and JATC. Any alternative to the transfer of OARB land to JATC is at the sole expense of Lessee.
16	ENVIRONMENTAL REMEDIATION	Lessee shall complete any and all environmental remediation at, on, under or in the Property, including, but not limited to, remediating and removing existing utility infrastructure, and receiving closure letters from environmental regulatory agencies, all no later than August 7, 2013. Agency will reimburse specified costs on terms to be detailed in the LDDA.
17	INDEMNIFICATION	Lessee shall agree to provide standard commercial hold harmless and defend provisions to the City of Oakland and the Redevelopment Agency of the City of Oakland and its employees, officers, directors, shareholders, partners and agents

18	DEED RESTRICTIONS & ENVIRONMENTAL USE RESTRICTITONS	Lessee accepts and acknowledges the Property is subject to: 1) deed restrictions in the transfer deeds, 2) a recorded covenant to restrict use of property, and 3) right of access across the Property to allow for remediation or monitoring by federal and state agencies.
19	UTILITY INFRASTRUCTURE	Landlord does not warrant or guarantee utility service to the Property. Landlord will coordinate with Lessee, Port of Oakland and any other utility service provider the use of existing utility infrastructure. Landlord shall cooperate with Lessee in the development of new utility infrastructure to serve the Property on terms to be negotiated.
20	SECURITY DEPOSIT	To be negotiated
21	LANDLORD'S MAINTENANCE	None. Lessee is responsible for all maintenance.
22	COMMISSION:	Landlord shall not pay or be liable for any commissions or brokerage fees. Lessee shall hold harmless and defend Landlord against any claims for commissions or brokerage fees.
23	SIGNAGE	Lessee may not install or place signage on any existing City street on the Property or within any City street to be created or the public corridor. Lessee may install and place signage on the remaining Property in compliance with City codes
24	TAXES & PUBLIC IMPROVEMENTS MAINTENANCE & INSURANCE	Lessee shall pay all operating expenses to operate the Project in a manner outlined in the lease agreement. Lessee's operation expenses to include all capital expenditures, security and insurance for the Property and Project. Lessee to maintain the Property and Project in first-class condition.
25	FAIR SHARE	Lessee shall be responsible for paying a fair share of any required off-site traffic improvements and/or other mitigations, as determined by the Oakland Army Base Fair Share Allocation Report, pursuant to the Mitigation Monitoring & Reporting Report of the Oakland Army Base Redevelopment Area Plan Environmental Impact Report.
26	COMMUNITY FUND	Lessee shall pay two million dollars (\$2,000,000) into the Landlord-designated Community Fund on or before August 7, 2010.
27	LANDLORD ACCESS	Landlord has the right to enter and inspect the Property and Project after reasonable notification to Lessee.

28	CITY/AGENCY PROGRAMS	Lessee to comply with all City/Agency social programs in both construction and operations including, without limitation, labor peace agreement, prevailing wages, living wages, local and small local business, equal benefits, disabled access, and apprenticeship/job training/first source hiring programs. Lessee must agree to comply with compliance monitoring by Agency.
29	GOOD FAITH DEPOSIT	Developer shall deposit with Agency a _____dollars (\$_____) Good Faith Deposit in the form of certified funds or a letter of credit in favor of Agency. If the Parties enter into an LDDA, or Developer negotiates in good faith but fails to reach agreement with Agency, or Agency otherwise declines, in its sole and absolute discretion, to enter into an LDDA, Agency shall return the Good Faith Deposit to Developer. If Developer fails to negotiate in good faith with Agency or fails to fulfill the conditions or meet the obligations set forth in this Agreement as reasonably determined by Agency, Agency may exercise its option to retain the Good Faith Deposit as liquidated damages.
30	PROJECT EXPENSE PAYMENT	Developer shall deposit with Agency _____dollars (\$_____) in the form of certified funds from Developer to Agency. Developer shall deposit with the Agency _____Dollars (\$_____) of the PEP within three (3) days of the Effective Date of the ENA, and the remaining _____Dollars (\$_____) of the PEP in increments of _____ Dollars (\$_____) within seven (7) days after Agency advises Developer that the PEP balance has fallen below _____Dollars (\$_____).
31	EQUITY PARTICIPATION WITH AGENCY	Agency has invested approximately \$27,000,000 in readying the Property for development. Lessee shall match that investment with a minimum equity participation amount of \$27,000,000 prior to any request for Agency funding. Match may include work conducted on project prior to execution of ENA that adds specific value to project going forward. Developer shall match future Agency investment in the development of the Property on a dollar for dollar basis.