



# AGENDA REPORT

**TO:** Edward D. Reiskin  
City Administrator

**FROM:** Elizabeth Lake  
Deputy City Administrator

**SUBJECT:** Oakland Army Base Billboard  
Franchise and Lease Agreement  
Amendment

**DATE:** October 20, 2020

City Administrator Approval 

Date: Oct 9, 2020

## RECOMMENDATION

**Staff Recommends That The City Council Adopt An Ordinance Amending Ordinance No 13131, That Among Other Things, Authorized The Lease Of Property At Oakland Army Base For Billboards Under The Oakland Army Base Billboard Franchise And Lease Agreement Dated October 21, 2012 ("Master Agreement") Between The City Of Oakland ("City") And Prologis CCIG Oakland Global, LLC ("Master Tenant"), To: (2) Authorize The Settlement Of A Dispute Regarding The Methodology For Calculating Certain Percentage Rent By Splitting The Difference Between The City's And Master Tenant's Positions, Commencing As Of October 1, 2020 And Continuing Through The End Of The Master Agreement Term ("Settlement"); And (2) Approve And Authorize The City Administrator To Execute A First Amendment To The Master Agreement And Such Other Documents Necessary To Effectuate The Settlement**

## EXECUTIVE SUMMARY

Staff is recommending that the City Council adopt an ordinance to (1) approve a settlement agreement resolving a dispute over the methodology for calculating percentage rent under the Oakland Army Base Billboard Franchise and Lease Agreement Dated October 23, 2012 (Master Agreement) Between the City of Oakland (City) and Prologis CCIG Oakland Global, LLC (Master Tenant) in the form attached as **Attachment A** (Lease Amendment) and (2) approve and authorize the City Administrator to execute an amendment to the Master Agreement to effectuate the settlement as well as other requisite documents to effectuate the settlement, including a Settlement Agreement in the form attached as **Attachment B** (Settlement Agreement).

After many years of dispute, the parties have reached a settlement to "split the difference" in the percentage rent calculation methodology required in the Master Lease, as shown in the spreadsheet attached as **Attachment C** and further described below.

## BACKGROUND / LEGISLATIVE HISTORY

On October 23, 2012, pursuant to Ordinance No. 13131 C.M.S., the City and Master Tenant entered into the Master Agreement, and concurrently on that date, Master Tenant entered into a sublease with Foster Interstate Media LLC (Sublessee) in the form approved by the City

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(Sublease) to erect, market and manage certain billboards on the Oakland Army Base.<sup>[1]</sup> Under the terms of the Master Agreement and Sublease, the Sublessee calculates the rent owed to Master Tenant and City and directly pays the City the rent owed under the Master Agreement. Rent varies from year to year, depending upon the revenue generated by the Sublessee; however, the City always receives the Minimum Annual Guaranteed payment, known as the MAG, which is increased by the Consumer Price Index. The MAG currently is \$331,959.28.

The dispute over the fee owed to the City has arisen because language describing the methodology to calculate the percentage rent owed is slightly different between the Master Agreement and the Sublease. Under the Sublease and the City's interpretation of the Master Agreement, Sublessee must subtract the MAG from the gross percentage rent before splitting the proceeds to the City 75 percent and Master Tenant 25 percent (Method 1). Based on the language in the Master Agreement, the Master Tenant has interpreted the formula to require Sublessee to split the proceeds to the City 75 percent and Master Tenant 25 percent first and then subtract the MAG from the City's split amount (Method 2). For reference, a numerical depiction of the two methods and the proposed settlement is attached as **Attachment C**.

Beginning in September 2017, Master Tenant submitted its first claim for overpayment of percentage rent to the City, for the year 2017 and in February 2018, it submitted a request for a credit of \$77,700.01 for 2017.

On July 20, 2018, Master Tenant submitted a demand letter for the alleged overpayment of rent. Master Tenant stated that the Sublease calculation methodology was inconsistent with the methodology in the Master Agreement, and that its interpretation of the Master Agreement methodology (Method 2) should be used. The City disagreed. Throughout this time, the Sublessee has continued to pay the City in accordance with the methodology in the Sublease and the City's interpretation (Method 1), and the Master Tenant has documented a reservation of its rights to adjudicate its claim.

Between 2018 and the present, Master Tenant and City staff met on multiple occasions to discuss the dispute. The parties were unable to reach agreement on the interpretation of the language or the calculation methodology. Through negotiations, the Master Tenant has agreed to resolve the dispute without litigation with a fair result: the parties would adopt a "splitting of the difference" methodology in future years. Essentially, the Sublessee would calculate the percentage rent under both methodologies (the City's way/Method 1 and the Master Tenant's way/Method 2) and then would split the difference of the two amounts (in other words, by calculating the average of the two amounts). The settlement would become effective only as of October 1, 2020, and the Master Tenant would sign a full release of all claims related to this dispute. The City would continue to keep its MAG and would not pay any claims of past overpayment of rent.

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<sup>[1]</sup> On May 14, 2019, the City approved a transfer of the Sublease to Outfront Foster Interstate Oakland LLC, who agreed to the assignment with the express acknowledgment of this pending dispute.

## **ANALYSIS AND POLICY ALTERNATIVES**

The City could approve the proposed settlement or litigate the claim.

### **Option 1: Approve Proposed Settlement**

Pro: Approving the settlement proposal would forever resolve a long-standing dispute between the parties and the result is fair.

Con: If the City were to prevail at litigation, City would receive more payments over time.

### **Option 2: Litigate the Claim**

Pro: The City may prevail at litigation and could receive more payments over time if the annual revenues exceed the MAG.

Con: Litigation outcome is uncertain and entails additional costs.

## **FISCAL IMPACT**

Under the terms of the Settlement Agreement, the City would not make any payments to the Master Tenant or refund any past rent payments. To date, the City has received total rent from Sublessee of \$2,521,000. If Master Tenant's approach were adopted (or adjudicated to be correct), the City would owe the Master Tenant approximately \$221,000 thus far. The amount of future rental payments are unknown, but there would be some diminution in annual payments, in years when the revenue exceeds the MAG. The proposed settlement would also avoid litigation costs.

## **PUBLIC OUTREACH / INTEREST**

No outreach was deemed necessary for the proposed policy action beyond the standard City Council agenda noticing procedures.

## **COORDINATION**

This report and legislation have been reviewed by the City Attorney's Office and the Budget Bureau.

## **SUSTAINABLE OPPORTUNITIES**

**Economic:** See Fiscal Impact section above.

**Environmental:** The proposed settlement would not have environmental impacts.

***Race and Equity:*** The proposed action is to settle an existing dispute; no racial equity opportunities or impacts have been identified.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

This action is exempt from the California Environmental Quality Act (CEQA) under the following, each as a separate and independent basis, including but not limited to: CEQA Guidelines §15301 (Existing Facilities), §15061(b)(3) (no significant effect on the environment), and §15183 (projects consistent with a community plan, general plan, or zoning).

### **ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That The City Council Adopt An Ordinance Amending Ordinance No 13131, That Among Other Things, Authorized The Lease Of Property At Oakland Army Base For Billboards Under The Oakland Army Base Billboard Franchise And Lease Agreement Dated October 21, 2012 ("Master Agreement") Between The City Of Oakland ("City") And Progois CCIG Oakland Global, LLC ("Master Tenant"), To: (2) Authorize The Settlement Of A Dispute Regarding The Methodology For Calculating Certain Percentage Rent By Splitting The Difference Between The City's And Master Tenant's Positions, Commencing As Of October 1, 2020 And Continuing Through The End Of The Master Agreement Term ("Settlement"); And (2) Approve And Authorize The City Administrator To Execute A First Amendment To The Master Agreement And Such Other Documents Necessary To Effectuate The Settlement.

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

Respectfully submitted,



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ELIZABETH LAKE  
Deputy City Administrator for Real Estate  
and Major Projects

Prepared by:  
John Monetta, Project Manager I  
Office of the City Administrator

Attachments (3):  
A: Lease Amendment  
B: Settlement Agreement  
C: Percentage Rent Methodology