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REVISED APRIL 5, 2011

Approved as to form and legality:



Agency Counsel

REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND

2011-0035

Resolution No. _____ C.M.S

RESOLUTION AUTHORIZING:

- (1) THE AGENCY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A SECOND AMENDMENT TO THE EXCLUSIVE NEGOTIATING AGREEMENT (ENA) WITH AMB PROPERTY, L.P./CALIFORNIA CAPITAL GROUP ("AMB/CCG") FOR A DEVELOPMENT ON THE FORMER OAKLAND ARMY BASE ("BASE") TO:
 - A. EXTEND THE ENA TERM FROM APRIL 22, 2011 TO THE EARLIER OF APRIL 22, 2012 OR THE EXECUTION OF A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT, WITH THE PROVISION FOR AN AUTOMATIC EXTENSION OF THE TERM OF UP TO APRIL 22, 2013 IF THERE IS A DELAY IN COMPLETING A CERTIFICATION FOR THE PROJECT UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT OR THE NATIONAL ENVIRONMENTAL POLICY ACT; AND
 - B. PROVIDE FOR: (A) REIMBURSEMENT TO CALIFORNIA CAPITAL GROUP ("CCG") OF UP TO A MAXIMUM AMOUNT OF \$14,100,000 FOR THE THIRD PARTY CONSULTANTS COST OF THE PLANNING AND DESIGN WORK FOR THE BASE'S INFRASTRUCTURE, PUBLIC UTILITIES, AND PUBLIC STREETS; (B) APPROVAL OF CCG'S PROPOSAL FOR A DEVELOPMENT TEAM, SCOPE OF WORK, BUDGET, AND SCHEDULE FOR THE PLANNING AND DESIGN WORK; (C) ELIMINATION OF THE REQUIREMENT TO ACCOMMODATE THE OAKLAND PRODUCE MARKET AND THE OAKLAND FILM CENTER AS PART OF THE DEVELOPMENT; (D) EXPANSION OF THE DEVELOPMENT AREA TO INCLUDE THE FORMER OAKLAND MARITIME SUPPORT SERVICES ENA SITE IN THE EAST GATEWAY AREA; AND (E) RELEASE OF AMB PROPERTY, L.P. FROM RESPONSIBILITY FOR THE PLANNING AND DESIGN WORK, AND DESIGNATING CCG

AS THE SOLE PARTY RESPONSIBLE FOR THE PLANNING AND DESIGN WORK

(2) A WAIVER OF THE ADVERTISING AND REQUEST FOR PROPOSAL/QUALIFICATIONS PROCESS AND AN AWARD OF THE PLANNING AND DESIGN OF INFRASTRUCTURE IMPROVEMENTS FOR THE PORT-ORIENTED RAILYARD AND 7TH STREET OVERPASS WORK, IN AN AMOUNT NOT-TO-EXCEED \$3,850,212, TO CCG

WHEREAS, the Oakland Army Base Reuse Plan and 2002 Environmental Impact Report document the need to install all new public utilities and streets to serve new development of the former Oakland Army Base; and

WHEREAS, the Request for Proposals issued by the Agency that subsequently led to the selection of AMB Property, L.P./California Capital Group (“AMB/CCG”) clearly articulated the expectation that the master developer would be responsible for all aspects of the development of the Army Base site including site planning, engineering, and other pre-development activities; and

WHEREAS, on January 19, 2009, the Agency executed an Exclusive Negotiating Agreement (“ENA”) with AMB/CCG for the potential redevelopment of a portion of the former Army Base identified as the Gateway Development Area and which included all of the Central and West Gateway Areas and part of the East Gateway Area; and

WHEREAS, extensive planning and design work for areas outside the ENA Development Area is required for the planning and design of the ENA Development Area; and

WHEREAS, the infrastructure improvements for the Port-oriented Railyard and 7th Street Overpass are not essential to the planning and design of the ENA Development Area but are necessary to preserve the \$242,000,000 in Trade Corridor Improvement Funds (“TCIF”) which were awarded to the Port of Oakland but may be lost if the Railyard and the 7th Street Overpass are not designed in a timely manner; and

WHEREAS, the Amended and Restated Memorandum of Agreement between the Agency and the Port contemplates a unified approach to the design of the Army Base; and

WHEREAS, the Cost Sharing Agreement pending between the Agency and the Port calls for the Agency to invest \$14,100,000 toward the design of the entire Army Base, including the Railyard and the 7th Street Overpass, in exchange for the Port supporting a \$62,000,000 allocation of the TCIF award for infrastructure development in the Agency-owned portion of the Base; and

WHEREAS, planning and design work that is not essential to the ENA Development Area should be awarded pursuant to the Agency’s purchasing processes—advertising and request for proposal/qualifications requirements – unless the Agency Board determines that it is in the Agency’s best interests to waive such processes; and

WHEREAS, the ENA required AMB/CCG to propose a Development Team, Scope, Schedule, and Budget for the planning and design work required for the construction of infrastructure, public utilities, and public streets on the former Army Base; and

WHEREAS, the partnership agreement between AMB and CCG designates CCG as the party responsible for the planning and design work for the Base's infrastructure, public utilities, and public streets; and

WHEREAS, CCG has submitted the required proposal that includes a Budget of \$14,100,000 for master planning public infrastructure improvements for the former Army Base; and

WHEREAS, the Budget includes \$3,850,212 for the planning and design of infrastructure improvements for the Port-oriented Railyard and the 7th Street Overpass; and

WHEREAS, the Agency established a Joint Infrastructure Development Fund (9572) with \$16,300,000 for the development of the former Oakland Army Base, including the planning and design of public improvements; and

WHEREAS, CCG's proposed Development Team is ready to begin preparing infrastructure planning and design documents for the Army Base and use of this Development Team is the surest and most timely way to accomplish the work and meet state and federal funding deadlines; and

WHEREAS, Oakland Municipal Code section 2.04.051.B authorizes the Agency Board to dispense with advertising and the request for proposal/qualifications process for planning and design services upon a finding that it is in the Agency's best interests to do so; and

WHEREAS, staff recommends that it is in the Agency's best interests to waive the advertising and request for proposal/qualifications process for the planning and design of infrastructure improvements for the Port-oriented Railyard and 7th Street Overpass work because the work will help the Port preserve its TCIF award and secure for the Agency a \$62,000,000 allocation of the award; and

WHEREAS, the Agency Administrator has determined that the Port planning and design work awarded hereunder is of a professional, scientific or technical and temporary nature and shall not result in the loss of employment or salary by any person having permanent status in the competitive service; and

WHEREAS, on July 20, 2010, the Agency and AMB/CCG entered into a First Amendment to the ENA to allow the Agency to contract with a consultant to prepare all documentation necessary for environmental review under the California Environmental Quality Act (CEQA), and to share the costs of that contract with AMB/CCG; and

WHEREAS, the environmental review which is necessary for final approval to redevelop the Army Base is still underway; and

WHEREAS, the ENA, as amended, expires April 22, 2011; now, therefore be it

RESOLVED: That the Agency Administrator is authorized to negotiate and execute a Second Amendment to the ENA on the general terms set forth in the Agenda Report and the Supplemental Agenda Report for this item, and specifically including the following terms:

- (1) Extension of the ENA term from April 22, 2011 to the earlier of April 22, 2012 or the execution of a Lease Disposition and Development Agreement, with the provision for an automatic extension of the term of up to April 22, 2013 if there is a delay in completing a certification for the project under the California Environmental Quality Act or the National Environmental Policy Act; and
- (2) As to the infrastructure master planning and design work, approval of the CCG's proposed team of consultants, scope of work, schedule, and budget, as represented in the Second Amendment to the ENA; and
- (3) Agreement to reimburse CCG's third party consultant costs for Army Base infrastructure master planning and design work up to a maximum amount of \$14.1 million through the Agency's Joint Infrastructure Development Fund and TIGER II grant funding. CCG will receive no reimbursements or fees for its own costs in the management of the design consultant team. All final design decisions for the public infrastructure portions shall be made by the Agency and other City departments. The Developer will be responsible for all costs related to the vertical development planning and any site improvement planning on the development sites; and
- (4) Elimination of the requirement to accommodate the Film Center and the Produce Market as part of the development, and expansion of the Developer's development site to include approximately 15 acres of the East Gateway that formerly was covered by the now-expired ENA with Oakland Maritime Support Services (OMSS); and
- (5) Terms specifying how the Agency and Developer will coordinate regarding outside agency negotiations, ongoing property management during the design phase, and securing additional other government funding; and
- (6) Release of AMB Property, L.P. from responsibility for the planning and design work, and designating CCG as the sole party responsible for the planning and design work;
- (7) Terms limiting CCG's liability for the design professionals' design errors or omissions, but retaining indemnity provisions against CCG for its negligence in performing its obligations for coordinating and managing the design and planning work; and
- (8) Additional terms as follows:
 - (A) The Agency, CCG and Oakland Maritime Support Services (OMSS) shall work together locating a site for OMSS as soon as possible within the master planning process;

(B) CCG will require its third party consultants to track and report to the Agency the number of Oakland residents the consultants employ;

(C) CCG will encourage its third party consultants to voluntarily create openings for internships and summer jobs for Oakland youth and young adults; and

(D) CCG will continue to negotiate a market rate lease with the Oakland Film Center in the master planning process; and

FURTHER RESOLVED: That Agency staff shall bring back to the CED Committee and the Agency Board a progress report regarding ENA implementation approximately six (6) months before the ENA Term is set to expire; and

FURTHER RESOLVED: That up to \$14,100,000 for infrastructure planning and design work will come from the following sources and be appropriated into new Projects to be established in Fund (9572):

- \$9,490,000 from the Joint Infrastructure Development Fund (9572), Oakland Army Base Organization (88679), Army Base Joint Infrastructure Development Project (S415810)
- \$3,010,000 from the Joint Infrastructure Development Fund (9572), Oakland Army Base Organization (88679), Infrastructure Master Plan Project (S415820)
- \$1,600,000 from the OBRA Federal and State Grant Fund (9577), Oakland Army Base Organization (88679), Infrastructure Master Plan Project (S433810)

and be it

FURTHER RESOLVED: That the Agency shall maintain control over the infrastructure master planning process and CCG cannot proceed with planning for Port elements, such as the Railyard and 7th Street Overpass, until directed to do so by Agency staff; and be it

FURTHER RESOLVED: That pursuant to Oakland Municipal Code section 2.04.051.B and for the reasons stated above and in the Agency Administrator's report accompanying this Resolution, the Agency Board finds that it is in the Agency's best interests to waive advertising and the request for proposal/qualifications process for the planning and design of infrastructure improvements for the Railyard and the 7th Street Overpass work and so waives the requirements; and be it

FURTHER RESOLVED: That the planning and design of infrastructure improvements for the Railyard and the 7th Street Overpass work is awarded to CCG in an amount not-to-exceed \$3,850,212 and be it

FURTHER RESOLVED: This action is exempt from the requirements of the California Environmental Quality Act (CEQA) for the reasons stated in the Agency Board Agenda Report and the Environmental Review Officer shall cause to be filed appropriate Notices of Exemption/Determination; and be it

FURTHER RESOLVED: That the Agency Administrator is authorized to take whatever other action is necessary to implement the Second Amendment to the ENA; and be it

FURTHER RESOLVED: That the Agency Counsel shall review and approve the agreement(s) authorized hereunder for form and legality and a copy or copies shall be placed on file in the Office of the City Clerk.

IN AGENCY, OAKLAND, CALIFORNIA, APR 5 2011, 2011

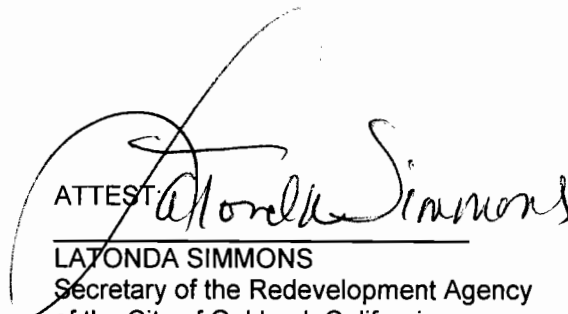
PASSED BY THE FOLLOWING VOTE:

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

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST: 
LATONDA SIMMONS
Secretary of the Redevelopment Agency
of the City of Oakland, California