



City Attorney's Office

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

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 23, 2012 (“MASTER AGREEMENT”) BETWEEN THE CITY OF OAKLAND (“CITY”) AND PROLOGIS CCIG OAKLAND GLOBAL, LLC (“MASTER TENANT”), TO: (1) 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 EFFECUATE THE SETTLEMENT

WHEREAS, the City and the Redevelopment Agency of the City of Oakland (“Redevelopment Agency”) and Master Tenant entered into that certain Billboard Franchise and Lease Agreement, dated as of October 23, 2012, for a portion of the former Oakland Army Base defined therein as the “Premises” (the “Lease”); and

WHEREAS, the Oakland Redevelopment Successor Agency (“ORSA”) became the successor-in-interest to the Redevelopment Agency and, subsequently, pursuant to ORSA Resolution No. 2013-020, approval of the Oakland Oversight Board, Department of Finance, and California State Lands Commission, on August 30, 2013 by quitclaim deed recorded as Document No. 2013-295093, ORSA transferred Parcel E to the City along with all of its rights and obligations relating to the former Oakland Army Base including the Lease and the Premises. leaving the City and the Master Tenant as the remaining parties to the Lease; and

~~**WHEREAS**~~, pursuant to Section 1.7 of the Lease, the Master Tenant and Foster Interstate Media, LLC (“Foster”) entered into the Foster Sublease; and

WHEREAS, the Parties disagree on the methodology for calculating percentage rent due to the City under Section 5.2(a) of the Lease. The dispute has arisen due to varying language

and interpretations of said language between the Lease and the Foster Sublease (the “Percentage Rent Dispute”); and

WHEREAS, on May 14, 2019, the City approved a transfer of the Foster Sublease to Outfront Foster Interstate Oakland LLC (“Sublessee”), who agreed to the assignment with the express acknowledgment of this Percentage Rent Dispute; and

WHEREAS, the Parties have negotiated a resolution to the Percentage Rent Dispute that would essentially require the Sublessee to “split the difference” between the two methods and remit that amount to the City as its share of the percentage rent, as more specifically outlined in the form of an amendment to the Lease, attached as Exhibit A (“Lease Amendment”); and

WHEREAS, the Parties have also agreed to forever settle the Percentage Rent Dispute and enter into a settlement agreement in the form attached as Exhibit B (“Settlement Agreement”); and

WHEREAS, subject to approval by the Council of the Lease Amendment, Sublessee will enter into an amendment to the Foster Sublease with conforming changes; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby approves the settlement of a dispute regarding the methodology for calculating certain Percentage Rent under the Master Agreement between the City and Master Tenant 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 term, as more specifically articulated in the Lease Amendment (“Settlement”).

SECTION 2. The City Council hereby approves and authorizes the City Administrator or his or her designee to execute the Lease Amendment and Settlement Agreement, substantially in the forms attached, and execute such other documents and take such other actions necessary to effectuate the Settlement.

SECTION 3. The City Council independently reviewed and considered this environmental determination, and the Council finds and determines that 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, ~~the following~~: 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).

SECTION 4. The Lease Amendment, Settlement Agreement and such other documents necessary to effectuate the Settlement shall be approved as to form and legality by the City Attorney’s Office and a copy shall be filed with the Office of the City Clerk.

SECTION 5. This Ordinance shall become effective immediately on the final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after the final adoption.

SECTION 6. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional

SECTION 7. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR,
THAO AND PRESIDENT KAPLAN

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

ASHA REED
Acting City Clerk and Clerk of the
Council of the City of Oakland,
California

Date of Attestation: _____

NOTICE AND DIGEST

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 23, 2012 (“MASTER AGREEMENT”) BETWEEN THE CITY OF OAKLAND (“CITY”) AND PROLOGIS CCIG OAKLAND GLOBAL, LLC (“MASTER TENANT”), TO: (1) 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 EFFECUATE THE SETTLEMENT

This Ordinance authorizes approval of the settlement of a dispute regarding the methodology for calculating certain Percentage Rent under the Master Agreement between the City and Master Tenant by splitting the difference between the City’s and Master Tenant’s positions and the execution of a first amendment to the Master Agreement and such other documents necessary to effectuate the Settlement.

This Ordinance authorizes the City Administrator or her designee to sign the first amendment to the Master Agreement, and makes associated findings with respect to the California Environmental Quality Act and other matters.