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OAKLAND

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## AGENDA REPORT

**TO:** HENRY L. GARDNER  
INTERIM CITY ADMINISTRATOR

**FROM:** Doug Cole

**SUBJECT:** OMSS LDDA Terms and Conditions

**DATE:** June 16, 2014

City Administrator  
Approval

Date

6/25/14

**COUNCIL DISTRICT:** #3

### RECOMMENDATION

Staff recommends that the City Council adopt:

**An Ordinance Amending Ordinance No. 13201 C.M.S. (that Authorized the City Administrator, Without Returning to the City Council, to Negotiate and Execute a Lease Disposition and Development Agreement ("LDDA") and Ground Lease Between the City of Oakland and Oakland Maritime Support Services, LLC, or its Affiliate ("OMSS"), for the Development of Truck Parking and Truck-Related Services on Approximately 17 Acres of the Former Oakland Army Base) to Amend the General Terms of the LDDA as Follows: (1) Modify the Financial Requirements for the Project Guarantor; and (2) Grant OMSS an Exclusive Right to Sell Truck Fuel on the City-Owned Portions of the Army Base for Ten (10) Years.**

### EXECUTIVE SUMMARY

On December 3, 2013, by way of Ordinance No. 13201 C.M.S., the City Council authorized staff to negotiate and execute a Lease Disposition and Development Agreement ("LDDA") and Ground Lease with Oakland Maritime Support Services, LLC ("OMSS") for the development of a truck parking facility on the former Oakland Army Base. The terms and conditions of the LDDA and Ground Lease were contained in the real estate term sheet attached to the Ordinance (as Exhibit B). Following the City's completion of a draft LDDA and ensuing negotiations, staff and OMSS negotiated the following changes to the terms and conditions: (1) For the LDDA Guaranty, mirror the modified Guarantor provisions for the Master Developer's West Gateway development<sup>1</sup> and accept as a Guarantor an entity which is registered and qualified to transact

<sup>1</sup> The City's general policy requires a developer to provide a guarantor with assets sufficient to cover the full cost of the proposed development (plus some additional amount for contingencies and project changes) if the guarantor needs to step in and complete the project.

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business in California and which can substantiate that it has on hand at least 35% of the estimated project development cost in cash or cash equivalents; and (2) As a condition of the City's participation in fuel sales, grant OMSS the exclusive right to the retail sale of truck fuel within the City-owned portions of the Army Base for a period of ten years. Staff recommends accepting the changes.

### **OUTCOME**

Adoption of the proposed legislation will allow the conclusion of negotiations and execution of the LDDA by OMSS and the City. OMSS can then move ahead with developing a truck parking and truck-related services facility. A permanent trucking facility with truck-related services and parking will help address the West Oakland community's issues with truck activity in the neighborhoods. The facility also enables the City to fulfill on a permanent basis its San Francisco Bay Conservation and Development Commission ("BCDC") obligation to reserve 15 acres of Army Base land for port-related truck parking and services.

### **BACKGROUND/LEGISLATIVE HISTORY**

The San Francisco Bay Conservation and Development Commission (BCDC), which has jurisdiction over the San Francisco Bay, required the Oakland Base Reuse Authority (OBRA) and the Port of Oakland (Port), as a condition for reconfiguring land at the Port and the former Army Base, each to reserve 15 acres of land on or adjacent to the Army Base for truck-related Ancillary Maritime Support (AMS) services.

After taking ownership of 170 acres of the Army Base in 2006, the Redevelopment Agency of the City of Oakland (the "Agency") proceeded to move forward with meeting the obligations attached to the property. In June 2007 staff issued a Request For Proposals for AMS industries to lease 15 acres within the East Gateway Area of the Gateway Development Area (GDA) of the Army Base. The East Gateway parcel was adjacent to land the Port had identified as the site of its 15-acre commitment. The Agency received seven proposals. Two of the respondents were eliminated as being nonresponsive. A seven-person review panel, which consisted of representatives from the Mayor's Office, City Council District 3, Port of Oakland, West Oakland Community Advisory Group (WOCAG), and Agency/City staff representing Planning, Real Estate, and Redevelopment/Economic Development/Workforce Development, interviewed the remaining five respondents. The review panel ranked the proposals using a standardized scoring matrix and gave the highest score to OMSS' proposal to develop a facility providing truck

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The City modified this general requirement for the Master Developer by reducing the guarantor's required asset coverage to about one-third of the project costs.

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parking and trucking services. As a result of this competitive process, the Agency in November 2007 entered into an Exclusive Negotiating Agreement (ENA) with OMSS.

Although staff and OMSS came to agreement on the general terms of an LDDA and ground lease, a number of factors—including a lawsuit filed against the City by the East Bay Municipal Utility District (EBMUD) regarding a proposed auto mall in the North Gateway and use of a 15” sanitary sewer line—precluded the City from finalizing an LDDA with OMSS. In the meantime, the Agency entered into an ENA with AMB/CCG (now Prologis/CCIG through assignment and succession of the entities) for the development of 105 acres of the GDA. Discussions with AMB/CCG, the subsequent GDA Master Developer, suggested higher and better uses than truck parking for the East Gateway parcel. The Agency also recognized that infrastructure improvements, which are integral to the development of the Army Base, could not be piecemealed, but had to be master planned.

Staff assured OMSS that negotiation of an LDDA would resume once a more appropriate site for AMS uses had been identified. The master plan, which located the new AMS site on approximately 17 acres in the Central and North Gateway Areas of the GDA, was completed in June 2012, and staff and OMSS began renegotiating the terms of an LDDA in September 2012. Staff brought the proposed real estate terms of an LDDA and Ground Lease before the City Council, and on December 3, 2013, by way of Ordinance 13201 C.M.S., the City Council authorized staff to negotiate and execute an LDDA and Ground Lease with OMSS.

Following the City’s completion of a draft LDDA and the ensuing negotiations, staff and OMSS negotiated the following changes to the terms and conditions: (1) For the LDDA Guaranty, mirror the modified Guarantor provisions for the Master Developer’s West Gateway development and accept as a Guarantor an entity which is registered and qualified to transact business in California and which can substantiate that it has on hand at least 35% of the estimated project development cost in cash or cash equivalents; and (2) As a condition of the City’s participation in fuel sales, grant OMSS the exclusive right to the retail sale of truck fuel within the City-owned portions of the Army Base for a period not to exceed ten years from take-down of the OMSS ground lease.

**ANALYSIS**

The Guarantor provisions for the West Gateway bulk terminal development only requires that the Guarantor substantiate that it has on hand \$9 million in cash or cash equivalents, or approximately 35% of the vertical development cost. The standard LDDA Guaranty, as is standard for a guaranty, requires a Guarantor, who can fund the entire project, to unconditionally guarantee the performance of the developer; that is, the Guarantor agrees to give up any rights and defenses that may be available to the developer. The Guarantor has no recourse but to perform the obligations of the developer in the event of a default. The removal of any flexibility

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is the essence of the Guaranty and the means by which the City assures that a project gets developed. In practice, the Guaranty may reduce the owner's equity because a business savvy Guarantor will require a much higher return on its investment if it is taking on unconditional risk. Mirroring the modified Guarantor provisions for the Master Developer's West Gateway development provides OMSS with parity of treatment and ensures that the City does not impose on OMSS a higher cost for financing than it did for the Master Developer.

Exclusivity of retail fuel sales would not prohibit the Master Developer's tenants from providing necessary on-site fueling required for tenant operations. OMSS' concept is to provide fuel and other trucking-related services to Port truckers who normally travel through West Oakland in search of these services. Meanwhile granting OMSS the exclusive right to the retail sale of truck fuel ensures that the City benefits from fuel sales at the GDA. The City will receive \$0.01 on every gallon of truck fuel the OMSS sells. The projected annual revenue from participation is \$102,000. The City does not have a similar agreement with the other Army Base developers.

### **PUBLIC OUTREACH/INTEREST**

Public outreach is not part of the negotiation process. However, WOCAG, which was initially established as the official citizen advisory for the redevelopment of the former Oakland Army Base, has been a long-term supporter of the OMSS project and has been following its progress. This body has repeatedly advocated for the removal of incompatible uses such as trucking activities out of West Oakland. Several of WOCAG's members were among those who lobbied BCDC to reserve Army Base land for truck parking and services.

Besides WOCAG's interest in the project, staff has an ongoing dialog with BCDC, and has addressed specific inquiries from East Bay Alliance for a Sustainable Economy (EBASE) and the Gateway Park Working Group (GPWG). EBASE wanted to know whether or not OMSS would abide by Jobs Policies similar to the policies in the Master Developer's Community Benefits package. OMSS' LDDA will include similar Jobs Policies. The GPWG was interested in the OMSS development as a potential landing spot for a bike path leading to the new Bay Bridge and regional park. OMSS was excited by the idea and looks forward to coordinating with the GPWG.

### **COORDINATION**

The Army Base Project staff, under the City Administrator's Office with direction from the City Administrator and with legal advice provided by the City Attorney's Office, negotiated the LDDA terms with OMSS, along with Revive Oakland and California Capital and Investment Group, the City's agent responsible for coordinating the infrastructure improvements at the former Oakland Army Base. This report has also been reviewed by the Budget Office.

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### **COST SUMMARY/IMPLICATIONS**

The change in terms would not require additional staff time to implement the LDDA, and OMSS will continue to be responsible for all project costs, estimated to be \$25 million, and for other project obligations such as a fair share of off-site mitigation costs, a \$50,000 security deposit for the LDDA and a separate security deposit for the Ground Lease.

Guarantor provisions that mirror the modified Guarantor provisions for the Master Developer's West Gateway development do not provide the City with the same assurance of getting a completed project should the developer default. However staff believes that default would only result in a delay in completing the project. Although not guaranteed, staff believe that is unlikely that the City would incur any additional costs. The City could retain OMSS' security deposit and secure another developer.

Granting OMSS the exclusive right to the retail sale of truck fuel could negatively impact the City's ability to negotiate during the 10-year exclusivity period with any future tenants who might be interested in selling retail truck fuel. However staff is currently negotiating for the rest of the Army Base with only two other potential tenants, both of whom are not interested in retail fuel sales. Staff also believes that it is unlikely that the City will need to negotiate with other potential tenants during the exclusivity period. Accordingly, granting the exclusive right ensures that the City benefits from fuel sales at the GDA. The City will receive \$0.01 on every gallon of truck fuel the OMSS sells. The projected annual revenue from participation is \$102,000.

### **SUSTAINABLE OPPORTUNITIES**

***Economic:*** OMSS' project would generate revenue for the City in the form of rent, participation in fuel sales, sales and parking taxes, and possessory interest tax. In addition, OMSS hopes to function as an incubator for small local businesses which provide services to truckers and need affordable spaces near the truckers.

***Environmental:*** By providing services, such as food, fuel, and truck maintenance to truckers, OMSS' project would divert trucks out of the West Oakland neighborhoods and reduce the impact of diesel emissions and traffic on the community.

***Social Equity:*** The development and operation of the project will be subject to Jobs Policies which address OMSS' commitment to social equity by way of jobs for local residents, contracts for local businesses, and quality of life improvements for West Oakland residents.

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## CEQA

An Environmental Impact Report (EIR) was certified in 2002 when the Oakland Army Base Area Redevelopment Plan was adopted. An Initial Study/Addendum (IS/Addendum) was prepared in 2012 for the current OAB master plan, which includes the OMSS project. The City Council approved the master plan in conjunction with the LDDA with Prologis CCIG Oakland Global, LLC.<sup>2</sup> The environmental analysis identified significant and unavoidable environmental impacts related to transportation, air quality, cultural resources, visual effects, and biological resources. The environmental analysis contains a number of standard conditions of approval and mitigations measures to reduce the potential impacts of the project. The City Council adopted the standard conditions of approval and mitigation measures in 2012. On July 16, 2013, the City Council approved adding to the standard conditions of approval and mitigation measures two additional mitigation measures, Mitigation 4.4-3b (West Gateway Rail and Maritime Emissions Reduction Program) and Mitigation PO-1 (Stakeholder Review of Air Quality and Trucking Plans).

Since the approval of the Initial Study/Addendum in 2012, none of the circumstances that require a supplemental or subsequent EIR pursuant to CEQA Guidelines Section 15162 have occurred, specifically:

- There are no substantial changes proposed in the project which would result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- There are no substantial changes with respect to project circumstances which would result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and
- There is no new information of substantial importance which would result in new significant environmental effects, a substantial increase in the severity of previously identified significant effects, previously infeasible mitigation measures or alternatives now found to be feasible, or new mitigation measures or alternatives which are

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<sup>2</sup> The 2002 EIR and 2012 Addendum are available in the City Planning offices located at 250 Frank H. Ogawa Plaza, Suite 3315, and on the City's website at <http://www2.oaklandnet.com/Government/o/PBN/OurServices/Application/DOWD009157>.

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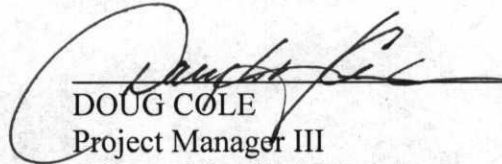


considerably different from previous ones that would substantially reduce environmental effects.

Since none of the circumstances described above have occurred since 2012, no further environmental review is required to amend the general terms of the LDDA, and in fact, under CEQA the City is precluded from preparing a supplemental or subsequent EIR.

For questions regarding this report, please contact Hui Wang, Urban Economic Analyst, at (510) 238-7693.

Respectfully submitted,



DOUG COLE  
Project Manager III  
Office of the City Administrator  
Oakland Army Base Project

Prepared by:  
Hui Wang, Urban Economic Analyst  
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Oakland Army Base Project

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# OAKLAND CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_ C.M.S.

AN ORDINANCE AMENDING ORDINANCE NO. 13201 C.M.S. (THAT AUTHORIZED THE CITY ADMINISTRATOR, WITHOUT RETURNING TO THE CITY COUNCIL, TO NEGOTIATE AND EXECUTE A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT ("LDDA") AND GROUND LEASE BETWEEN THE CITY OF OAKLAND AND OAKLAND MARITIME SUPPORT SERVICES, LLC, OR ITS AFFILIATE ("OMSS"), FOR THE DEVELOPMENT OF TRUCK PARKING AND TRUCK-RELATED SERVICES ON APPROXIMATELY 17 ACRES OF THE FORMER OAKLAND ARMY BASE) TO AMEND THE GENERAL TERMS OF THE LDDA AS FOLLOWS: (1) MODIFY THE FINANCIAL REQUIREMENTS FOR THE PROJECT GUARANTOR; AND (2) GRANT OMSS AN EXCLUSIVE RIGHT TO SELL TRUCK FUEL ON THE CITY-OWNED PORTIONS OF THE ARMY BASE FOR TEN (10) YEARS

**WHEREAS**, on June 19, 2012, the Oakland City Council, via Resolution No. 83930 C.M.S., approved the amended Oakland Army Base (OARB) Reuse Plan (Master Plan), including adopting the 2012 OARB Initial Study/Addendum (IS/Addendum), making related California Environmental Quality Act (CEQA) findings, and adopting the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCA/MMRP); and

**WHEREAS**, on December 4, 2012, the City entered into a Lease Disposition and Development Agreement (the "Master Developer LDDA") with Prologis CCIG Oakland Global, LLC (the "Master Developer") for the development of approximately 130 acres of the OARB ; and

**WHEREAS**, the Master Plan identified approximately 17 acres of the OARB for the development of a trucking facility proposed by Oakland Maritime Support Services, LLC, ("OMSS") to provide truck parking and truck-related services, including fuel sales to automobiles and trucks (the "Project"); and

**WHEREAS**, on December 3, 2013, the Oakland City Council, via Ordinance No. 13201 C.M.S., authorized the City Administrator, without returning to the City Council, to negotiate and execute a Lease Disposition and Development Agreement (the "LDDA") and related Ground Lease ("Ground Lease") between the City and OMSS, or its affiliate , for the development of the Project; and

**WHEREAS**, the terms and conditions of the LDDA and Ground Lease were contained in the real estate term sheet attached to the Ordinance as Exhibit B; and

**WHEREAS**, following the Council's approval of Ordinance No. 13201 C.M.S., City staff and OMSS negotiated the following changes to the terms and conditions: (1) accept as a



Guarantor an entity which is registered and qualified to transact business in California and which can substantiate that it has on hand at least 35% of the estimated Project development cost in cash or cash equivalents; and (2) grant OMSS the exclusive right to the retail sale of truck fuel within the City-owned portions of the Army Base for a period not to exceed ten years from the execution date of the Ground Lease; and

**WHEREAS**, the City finds that the Project with the negotiated changes to the terms and conditions will implement the goals and objectives of the Reuse Plan; now, therefore

**THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**Section 1.** The City Council, based upon its own independent review, consideration, and exercise of its independent judgment, hereby finds and determines, on the basis of substantial evidence in the entire record before the City, that none of the circumstances necessitating further CEQA review are present. Thus, prior to approving the changes to the terms and conditions, the City Council finds and determines that it can continue to rely on the previously adopted 2012 OARB Initial Study/Addendum for the reasons stated in June 12, 2012, and May 28, 2013, City Council Agenda Report and related attachments/exhibits. The (Final and Corrected) Standard Conditions of Approval/Mitigation Monitoring and Reporting Program, dated October 15, 2012, is also hereby reaffirmed/readopted, including the clarifying corrections discussed at the June 4, 2013 City Council hearing (Mitigation Measure 4.4-3b, West Gateway Rail and Maritime Emissions Reductions Program) and in the Agenda Report for the July 2, 2013 City Council meeting (Mitigation Measure 4.3-10, Parking Demand Study), and the revisions discussed at the July 2, 2013 City Council meeting (Mitigation Measure PO-1, Stakeholder Review of Air Quality and Trucking Plans).

**Section 2.** The City Council finds and determines that this action complies with CEQA and the Environmental Review Officer is directed to cause to be filed a Notice of Determination with the appropriate agencies.

**Section 3.** Exhibit B to Ordinance No. 13201 is hereby amended as follows:

(A) Section 3 of Exhibit B is amended by adding a sentence at the end thereof which reads: The City may accept as a Guarantor an entity which is registered and qualified to transact business in California and which can substantiate that it has on hand at least 35% of the estimated Project development cost in cash or cash equivalents; and

(B) Add a new Section 37 which reads as follows:

Section 37	City to grant Developer an exclusive right to sell truck fuel at retail on the City-owned portion of the Army Base for a period not to exceed ten (10) years from the execution date of the Ground Lease
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**Section 4.** Except as amended herein, in all other respects Ordinance No. 13201 C.M.S. remains in effect.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, and PRESIDENT KERNIGHAN

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

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

DATE OF ATTESTATION: \_\_\_\_\_