

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: August 22, 2012

Reference No.: 4.4
Action

From: BIMLA G. RHINEHART
Executive Director

Subject: **TRADE CORRIDOR IMPROVEMENT FUND (TCIF)– PROJECT BASELINE AGREEMENT AMENDMENT**
RESOLUTION TCIF-P-1213-03B

ISSUE:

Should the Commission approve the TCIF Project Baseline Agreement Amendment for TCIF Project 3: *Outer Harbor Intermodal Terminals* submitted in accordance with the Commission's TCIF Guidelines and establish this amended Project Baseline Agreement as the new baseline for project delivery monitoring?

RECOMMENDATION:

Commission staff recommends that the Commission approve the TCIF Project Baseline Agreement Amendment for TCIF Project 3: *Outer Harbor Intermodal Terminals* submitted in accordance with TCIF Guidelines and establish this amended Project Baseline Agreement as the new baseline for project delivery monitoring.

BACKGROUND:

In accordance with Commission's TCIF Guidelines, the Port of Oakland, the sponsoring agency for TCIF Project 3: *Outer Harbor Intermodal Terminals*, has submitted an executed Project Baseline Agreement Amendment which documents the revisions to Project Baseline Agreement approved by the Commission.

SMITH & BROCKHAGE, LLP

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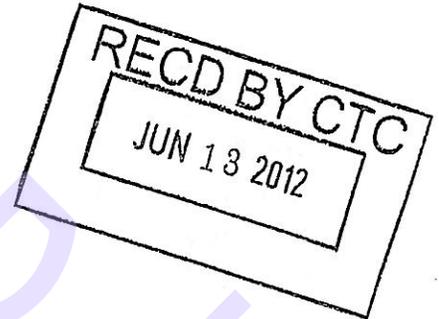
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TAB 18 & 19

RANDALL M. SMITH
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June 11, 2012

City Council
City of Oakland
One Frank Ogawa Plaza
One City Hall Plaza, 2nd Floor
Oakland, CA 94612



Re: Oakland Army Base Development

Honorable Members of the City Council:

We represent Gallagher & Burk, Inc., a long-time Oakland contractor. My client is very concerned about the fact that there are not adequate provisions for competitive bidding with regard to the design and construction of the public improvements which are planned in connection with the Oakland Army Base Development. The construction of the public infrastructure improvements for the Oakland Army Base Development is estimated to cost approximately \$247.2 million. (See, Page No. 12 of the Agenda Report from Fred Blackwell to the City Administrator dated May 30, 2012 (the "Administrator's Agenda Report")). Yet, there are no provisions in the proposed ordinance, a copy of which is enclosed (the "Proposed Ordinance"), for the competitive bidding of any of this public infrastructure work.

The California legislature has enacted a host of statutes requiring that public works contracts over certain dollar amount thresholds be procured by competitive bidding. (See, e.g., Public Contract Code section 10100, et. seq., (State), Public Contract Code section 20120, et. seq., (Counties), Public Contract Code section 20160, et. seq. (Cities)). Similarly, the City of Oakland's Municipal Code provides that, with certain limited exceptions, competitive bidding is required for public works projects exceeding \$50,000. (See, Municipal Code section 2.04.010, et. seq.).

Competitive bidding is a safeguard for the protection of the public, and the public fisc. Its purpose is to guard against favoritism, imprudence, extravagance, fraud and corruption, to prevent the waste of public funds, and to obtain the best economic result for the public. *Kajima/Ray Wilson v. Los Angeles County Metropolitan Transportation Authority*, 23 Cal.4th 305, 314 (2000); *Great West Contractors, Inc. v. Irvine Unified School District*, 187

Cal.App.4th 1425, 1445-1449 (2010); *Marshall v. Pasadena Unified School District*, 119 Cal.App.4th 1241, 1256 (2004); *Boydston v. Napa Sanitation District*, 222 Cal.App.3d 1362, 1368 (1990); *Konica Business Machines, USA, Inc. v. Regents of the University of California*, 206 Cal.App.3d 449, 456-457 (1988). Competitive bidding also serves to stimulate advantageous marketplace competition. *Dorrian Electric, Inc. v. City of Los Angeles*, 9 Cal.4th 161, 173 (1994); *Konica Business Machines, USA, Inc. v. Regents of the University of California*, *supra*.

Instead of requiring competitive bidding, the Proposed Ordinance, in Sections 7 and 12, simply authorizes the City Administrator or her designee to negotiate and execute a contract for the design-build of the public improvements with CCIG Oakland Global, LLC ("Developer"). The Proposed Ordinance, in Section 6, provides that "for the reasons set forth above and in the City's Administrator's Agenda Report accompanying this Ordinance, the City Council finds that it is in the best interests of the City to waive advertising and bidding and request for proposal processes for the selection of a qualified contractor to design and construct the Public Improvements, and so waives the requirements."

In the recitals on Page No. 4 of the Proposed Ordinance, the stated reason for waiving the requirement for competitive bidding is that conducting a competitive bid process for this project "would require four to six months" and "to be able to begin construction by the TCIF [California Transportation Commission ("CTC")] funding deadline of December 2013, the selected contractor would have to use more resources on the project than usual at a higher cost to the City." If the competitive bid process were to take four to six months, as claimed, construction work could easily begin by December 2013. Moreover, the statement that to begin work "the contractor would have to use more resources on the project than usual at a higher cost" is not substantiated. We have not seen any evaluation of what the amount of this "higher cost" would be, much less how such a claimed "higher cost" compares with the lower costs to the City resulting from putting the design-build contract out for competitive bid.

The stated reason given in the Administrator's Agenda Report (on Page 13) for waiving competitive bidding requirements for the Design-Build Contract is as follows: "There is simply not enough time to accomplish a more traditional 100% design/bid/build process and be assured to be under construction by the end of 2013." Accordingly, the Administrator's Agenda Report would have one believe that the only two choices are to (1) complete a 100% design, put the project as designed out for bid, and build the project,

or (2) award a design-build contract to Developer and allow the Developer to contract with a Design-Build Contractor of its choice. There are more than these two choices available to the City.

The other choices are to put the design-build contract out for competitive bid now (before the design is complete), so that the City can obtain bids from other entities in addition to the Developer for the design-build contract, and/or include strict requirements in the design-build contract between the City and the Developer to require that all of the public infrastructure construction work be competitively bid by the Design-Build Contractor. Indeed, the City Administrator's Report, on Page 13, states: "The next stage of the design/build process is to complete the design document to the approximately 35% level, at which point the scope of work can be accurately priced and a Gross Maximum Price (GMP) Contract awarded to a design/build general contractor." Accordingly, the City could put a design-build contract out for competitive bid once the design has reached approximately the 35% level. Such a method of procurement is specifically authorized in Section 2.04.180 of the City's Municipal Code.

We recognize the City's need for certainty that work will commence on the public infrastructure by the CTC deadline of December 2013. While that need for certainty may justify the City entering into a design-build contract for the public improvements with the Developer, it does not justify the City's action to allow the Developer to enter into a design-build contract with a Design-Build Contractor which may be one or more of its "team members". Without competitive bidding for the public infrastructure work, issues arise concerning favoritism and conflict of interest, particularly if the Design-Build Contractor awards contracts for the work to "team members". The CTC, which is expected to provide nearly a quarter billion dollars of public funds for the project, has its Guidelines for Conflicts of Interest. While focusing on design professionals, the goal of the Guidelines requirements are "... to promote fairness and impartiality ...". Here, nothing less than competitive bidding by the Design-Build Contractor of all the public infrastructure construction work will assure fairness and impartiality. Our suggestion is that if the Council decides at this time to enter into the design-build contract with the Developer it should include in that design-build contract "pass through" provisions requiring that the Developer mandate that the Design-Build Contractor use competitive bidding for all of the public infrastructure construction work.

In short, the preferred alternative would be to include in the City/Developer agreements (e.g. the Design-Build Contract and the Lease Development and Disposition Agreement) requirements that all the public infrastructure work be competitively bid. In the Administrator's Report, on Page 13, it states that "as much as 75% of the construction contracting will be competitively bid, with at least three valid bids associated with every subcontract." Yet, we have searched, in vain, for any such requirement in the Proposed Ordinance or in any of the documents attached to the Proposed Ordinance. Indeed, we have not been able to find any provision in any of these documents which would require the Developer or its Design-Build Contractor to put any of the work out for competitive bid.

It certainly is not in the City's best interests to waive all requirements for competitive bidding with regard to this project. Indeed, because of the economic times, contractors are now especially competitive in their bids. Many bids on public works projects in California have recently come in substantially under the owner's projected construction costs. In order to lessen the cost of the project to the City and taxpayers (as well as to further the other policies which are advanced by competitive bidding), it would be in the City's best interests to maximize competitive bidding on this project.

We respectfully request that, in moving forward on this important project, the City Council maximize the use of competitive bidding.

Thank you for your consideration of this important issue.

Very truly yours,

SMITH & BROCKHAGE, LLP



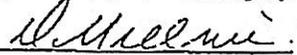
Randall M. Smith, Esq.

RMS/mt

cc: California Transportation Commission

2012 MAY 31 PM 4:40

Approved as to Form and Legality:


Deputy City Attorney

CITY OF OAKLAND

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE: (1) AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A LEASE DISPOSITION AND DEVELOPMENT/BILLBOARD FRANCHISE AGREEMENT, GROUND LEASES, SITE MANAGEMENT PASS-THROUGH LEASE, AND RELATED DOCUMENTS (COLLECTIVELY "LDDA") BETWEEN THE CITY OF OAKLAND, AND PROLOGIS CCIG OAKLAND GLOBAL, LLC, A DELAWARE LIMITED LIABILITY COMPANY (OR ITS RELATED ENTITIES OR AFFILIATES), FOR THE DEVELOPMENT OF A MIXED-USE INDUSTRIAL (WAREHOUSING AND LOGISTICS), COMMERCIAL, INCLUDING BILLBOARD, MARITIME, RAIL, AND OPEN SPACE PROJECT ON APPROXIMATELY 130 ACRES IN THE CENTRAL, EAST, AND WEST GATEWAY AREAS OF THE FORMER OAKLAND ARMY BASE ("PROJECT"); (2) AMENDING IN PART THE CITY'S EMPLOYMENT AND CONTRACTING PROGRAMS FOR THE ARMY BASE PROJECT; AND (3) WAIVING THE ADVERTISING AND REQUEST FOR PROPOSAL PROCESS FOR A DESIGN-BUILD CONTRACT FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS AS DESCRIBED IN THE LDDA ("PUBLIC IMPROVEMENTS"), AND AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO A CONTRACT FOR THE DESIGN-BUILD OF THE PUBLIC IMPROVEMENTS WITH CCIG OAKLAND GLOBAL, LLC, IN AN AMOUNT TO BE DETERMINED PURSUANT TO THE TERMS OF THE LDDA; ALL OF THE FORGOING DOCUMENTS TO BE IN A FORM AND CONTENT SUBSTANTIALLY IN CONFORMANCE WITH THE ATTACHED DOCUMENTS, WITHOUT RETURNING TO CITY COUNCIL

WHEREAS, in 2003, in order to enable local economic redevelopment and job creation and ease the economic hardship on the local community caused by the base closure per Section 2903 of Title XXIX of Public Law 101-510, the U.S. Department of the Army ("Army") transferred via No-Cost Economic Development Conveyance ("EDC") certain real property (the "EDC Property") located in the City of Oakland, County of Alameda, State of California, to the Oakland Base Reuse Authority ("OBRA"), a joint powers authority composed of the City of Oakland ("City") and the Redevelopment Agency of the City of Oakland ("Agency") under the California Joint Exercise of Powers Act as set forth in Title 1, Division 7, Chapter 5, Article 1 of the Government Code of the State of California (Government Code § 6470 *et seq.*) by that certain Quitclaim Deed for No-Cost Economic Development Conveyance Parcel, ("Army EDC

Deed") recorded August 8, 2003, as Doc. 2003-466370 in the Office of the Recorder of Alameda County, California (the "Official Records"); and

WHEREAS, immediately thereafter, OBRA transferred portions of the EDC Property to the Port of Oakland ("Port"), such that the Port now owns approximately 241 acres (the "Port Development Area"), and the City owns approximately 170 acres, (the "Gateway Development Area"), which EDC Property is generally depicted on the site map attached as Exhibit A; and

WHEREAS, in 2006, pursuant to the Oakland Army Base Title Settlement and Exchange Agreement between the State of California, acting by and through the State Lands Commission ("State"), the Port, OBRA and the City dated June 30, 2006, the City and Port completed the exchange of public trust lands, such that the public trust was terminated on all of the City owned EDC Property (see State of California Patent and Trust Termination recorded August 7, 2006, as Doc. 2006-301853 in the Official Records), except on one approximately 16.7 acre parcel conveyed from the State to the City by State of California Patent and Trust Termination recorded August 7, 2006, as Doc. 2006-301850 ("Parcel E"); and

WHEREAS, also in 2006 and 2007, the portions of the EDC Property owned by OBRA that were not subject to the public trust were conveyed by OBRA to the Agency by the following Quitclaim Deeds, recorded September 19, 2006 as Docs. 2006-354006 and 2006-354007 and May 17, 2007 as Doc. 2007-190760 in the Official Records; and

WHEREAS, pursuant to a March 3, 2011 Purchase and Sale Agreement, the Agency sold and conveyed the Agency-owned portions of the EDC Property, excepting Parcel E, to the City by grant deed recorded January 31, 2012 as Doc. 2012-30757 in the Official Records; Parcel E, was transferred to the City as successor agency on February 1, 2012, pursuant to ABx1 26, the law dissolving redevelopment agencies; and the City desires to continue the redevelopment efforts in the Gateway Development Area; and

WHEREAS, the City of Oakland Charter Section 305 authorizes the City's Mayor to actively promote economic development to broaden and strengthen the commercial and employment base of the City; and

WHEREAS, pursuant to City Planning Code Section 17.104.060, advertising signs are permitted under the terms and conditions of a franchise agreement authorized by the City; and

WHEREAS, to guide redevelopment of the EDC Property, the City adopted the Oakland Army Base Area Redevelopment Plan in 2000, as most recently amended and restated March 21, 2006 per City Ordinance No. 12734 C.M.S ("Redevelopment Plan"), and adopted the Base Reuse Plan in July 31, 2002, which plans affect and control the development of the EDC Property; and

WHEREAS, in 2008, the City issued a Request for Qualifications to identify potential development teams for redevelopment of a portion of the Gateway Development Area, including all aspects of the planning and development of the site; and

WHEREAS, the City selected Prologis Property, L.P. ("Prologis") (successor-in-interest to AMB Property, L.P., a Delaware limited partnership), and CCIG Oakland Global, LLC ("CCIG"), a California limited liability company (successor-in-interest to California Capital

Group, a California general partnership) (Prologis and CCIG referred to herein collectively as "Developer") to negotiate with regarding development of a portion of the Gateway Development Area the ("Project Site" or "Property"), generally depicted on the site map attached as Exhibit B; and

WHEREAS, the City and Developer entered into an Exclusive Negotiating Agreement ("ENA") on January 22, 2010, a first amendment on August 10, 2010 and a second amendment on April 11, 2011; a third amendment is pending execution by June 12, 2012, regarding the Project Site; and

WHEREAS, to support redevelopment of the EDC Property and serve the Gateway Development Area, including the Project Site, beginning in 2008, the Port, then the City and the Port, began pursuing Trade Corridor Improvement Fund ("TCIF") grant monies under the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 for infrastructure improvements to serve the EDC Property, known as the Outer Harbor Intermodal Terminals ("OHIT") improvements; and

WHEREAS, the development contemplated in the ENA is dependent on infrastructure described and funded in part by the TCIF grant monies, including a rail yard, and to that end, the City and Port have entered into an agreement that describes how the City and Port will cooperate on developing the shared infrastructure and related costs, known as the Cost Sharing Agreement, dated July 27, 2011, which agreement may be amended from time to time; and

WHEREAS, during the ENA period, the City entered into a Professional Services Agreement with the California Capital Group, to design the OHIT infrastructure improvements for the EDC Property and related necessary off-site intersection improvements ("Public Improvements") to support the timeline required by the application for TCIF monies; and

WHEREAS, consistent with the terms developed through the ENA period, the City desires to have the Developer, through its affiliate and assignee, CCIG: (a) act as the franchisee/licensee for the construction and operation of billboards on the Project Site; (b) manage the Project Site for pre-construction work and the Public Improvements work through a pass-through lease, and (c) manage the construction, through a design-build contract, of the Public Improvements; and

WHEREAS, during the ENA period, the City and the Developer evaluated the design and financial feasibility of a proposed mixed-use industrial (warehousing and logistics), commercial, including billboards, maritime, rail, and open space project on the Project Site; and

WHEREAS, Developer desires to lease the Project Site for billboard use and development of approved uses ("Private Improvements") in five lease areas - Billboard Sites, West Gateway, Rail Right of Way, Central Gateway and East Gateway; and

WHEREAS, together, the Public Improvements and Private Improvements on the Project Site are considered the "Project;" and

WHEREAS, staff and Developer have negotiated the terms of a Lease Disposition and Development Agreement ("LDDA") and its exhibits, including Ground Leases related to the four lease areas for the lease of the Project Site for development of the Private Improvements, a

Billboard Franchise/Lease Agreement, a Site Management Pass-Through Lease to allow for management of the Project Site for the Public Improvement work, a Design-Build Contract for construction of the Public Improvements, and related documents which set forth the terms and conditions of the development of the Project and the use of the Property by the Developer and any successors to the Property; copies of the LDDA and its attachments are attached hereto as Exhibit C; and

WHEREAS, pursuant to Oakland Municipal Code Sections 2.04.050.1, 2.04.051.B, and 2.04.180, the City Council may waive advertising and bidding and request for proposal processes to select a contractor for award of a contract to design and construct a design-build project upon a finding that it is in the best interests of the City to do so; and

WHEREAS, conducting a competitive bid process for a design-build project as complex as the Public Improvements would require four to six months and entail developing a scope and Request for Proposals, advertising the project, holding at least two pre-bid meetings, evaluating submissions, negotiating the contract, and seeking the City Council's authorization to enter into the contract; and

WHEREAS, to be able to begin construction by the TCIF deadline of December 2013, the selected contractor would have to use more resources on the project than usual at a higher cost to the City; and

WHEREAS, the City Administrator recommends that it is in the best interests of the City to waive the advertising and bidding and request for proposal processes for the contract to design and construct the Public Improvements because it enables TCIF project timelines to be met and helps ensure retention of the TCIF grant monies, which are necessary for the construction of Public Improvements; and

WHEREAS, consistent with the purposes of the EDC transfer from the Army to create local jobs, the City and Developer desire to implement a Community Benefits Program as set forth in the LDDA that commits to, among other things, creating jobs for the local community in West Oakland, and to that end includes employment policies and procedures that are intended to strengthen existing City policies and expressly supersede the employment portions of City Council Ordinance No. 12389 (12/18/01), as amended by City Council Ordinance 13101 (12/20/11), and the program Guidelines in the Local and Small Local Business Enterprise Program guidance dated February 1, 2012 with regard to Local Employment Program, Local Construction Employment Referral Program, and Apprenticeship Program; and

WHEREAS, consistent with the purposes of the EDC transfer from the Army, the City has amended the Base Reuse Plan to reflect development of the Project; and

WHEREAS, the City finds that the Project will implement the goals and objectives of the Redevelopment Plan and the Base Reuse Plan; and

WHEREAS, the City previously prepared and certified/adopted the 2002 Oakland Army Base ("OARB") Redevelopment Plan Environmental Impact Report, which was a "project level" EIR pursuant to California Environmental Quality Act ("CEQA") Guidelines section 15180(b); the 2006 OARB Auto Mall Supplemental EIR and 2007 Addendum; and the 2009 Addendum for the Central Gateway Aggregate Recycling and Fill Project; while the Port prepared and adopted

the Port's 2006 Maritime Street Addendum (collectively called "Previous CEQA Documents); and

WHEREAS, in addition to any grant funds, City funds will be available for the construction of the Public Improvements pursuant to the Design-Build contract from: (1) Joint Army Base Infrastructure Fund (5672) Infrastructure Master Plan Project (C415720); (2) OBRA Leasing & Utility Fund (5671) Leasing & Utility Project (P294110); (3) OBRA Utility & Leasing Fund (5671) Tidelands Tmst Related Project (C437310); (4) Oakland Army Base Joint Remediation Fund (5674); and (5) scheduled land sales; and

WHEREAS, the funds in the Oakland Army Base Remediation Fund (5674) shall be used solely for the environmental remediation of the Project Site, and if funds remain after environmental remediation has been completed, staff will recommend that the City Council reprogram the funds remaining in Oakland Army Base Remediation Fund (5674) for other Public Improvements; and

WHEREAS, in return for the City's agreement to franchise and lease up to five billboard sites to Developer, Developer is required to pay billboard proceeds to the City on the terms and conditions set forth in the Billboard Franchise/Lease Agreement; and

WHEREAS, in return for the City's lease of the Property to Developer, Developer is required to pay rent to the City on the terms and conditions as set forth in the Ground Leases; and

WHEREAS, the initial terms of the Ground Leases shall commence on the date possession is delivered under the LDDA, and continue for 66 years from the commencement date, all on the terms and conditions as described in the respective Ground Leases; and

WHEREAS, under the Ground Leases, the City shall retain ownership of the Project Site at all times; and

WHEREAS, the LDDA requires that the Developer construct and operate the Project consistent with the Redevelopment Plan and restricts the use of the Property to specified uses as set forth in the "Scope of Development" attached to the LDDA; and

WHEREAS, the LDDA incorporates a Community Benefits Program that addresses environmental, contracting and jobs requirements consistent with the so-called "Areas of Agreement" as set forth in that certain City Council meeting report dated December 13, 2011.

WHEREAS, consistent with the Areas of Agreement, the City has adopted a resolution authorizing the City Administrator to use reasonable efforts in good faith to negotiate and execute a Cooperation Agreement with specified Community Groups, the Alameda County Building and Construction Trades Council, and the Alameda County Central Labor Council (collectively the "Coalition"), an unincorporated association of employment and contracting advocacy organizations that, among other things, in return for the Coalition's release of claims regarding the Project, requires the City to include (a) a Construction Jobs Policy as a material term of any contract that the City awards for work to be performed on the Project Site; and (b) an Operations Jobs Policy as a material term of certain leases or service contracts that the City enters into with any entity that may employ workers on the Project Site; and

WHEREAS, a copy of the proposed LDDA and its exhibits with the related agreements is on file with the City Clerk;

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 Project, the City can rely on the Previous CEQA Documents and the 2012 OARB Initial Study/Addendum.

Section 2: Specifically, the City Council affirms and adopts as its own, the findings and determinations the June 12, 2012, City Council Agenda Report, including without limitation the discussion, findings, conclusions, specified conditions of approval (including the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program ("SCA/MMRP")), and the CEQA findings contained in *Attachment C* to the Agenda Report, each of which is hereby separately and independently adopted by this Council in full, as if fully set forth herein.

Section 3: 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 4: The record before this Council relating to this action, includes without limitation those items listed in *Attachment C* to the Agenda Report for this item, as if fully set forth herein, which are available at the locations listed in said Exhibit.

Section 5: The City hereby finds and determines that the lease of the Property through the Site Management Pass-through Lease for the Public Improvements, the Billboard Franchise/Lease Agreement and the Ground Leases by the City to the Developer for the Project furthers economic development in the City, conforms to and furthers the goals and objectives of the Redevelopment Plan in that: (1) the Project, once developed, will create permanent jobs for low and moderate income people, including jobs for area residents; (2) the Project will enhance the City's and Port's competitiveness and enable it to capture more of the growth in the global logistics industry; and (3) the Project, once developed, will enhance depreciated and stagnant property values in the surrounding areas, and will encourage efforts to alleviate economic and physical blight conditions in the area, including high business vacancy rates, excessive vacant lots, and abandoned buildings, by enhancing the development potential and overall economic viability of neighboring properties.

Section 6: Pursuant to Oakland Municipal Code Sections 2.04.050.1, 2.04.051.B, and 2.04.180 and for the reasons set forth above and in the City Administrator's Agenda Report accompanying this Ordinance, the City Council finds that it is in the best interests of the City to waive advertising and bidding and request for proposal processes for the selection of a qualified contractor to design and construct the Public Improvements, and so waives the requirements.

Section 7: The City Administrator or her designee is authorized to negotiate and execute a contract for the design-build of the Public Improvements with CCIG in an amount to be determined pursuant to the terms of the LDDA.

Section 8: The City Administrator or her designee is authorized to lease the Property to Developer, subject to and on the terms and conditions of the LDDA and the respective Site Management Pass-Through Lease, and Ground Leases/Billboard Franchise/Lease Agreement.

Section 9: The City Administrator or her designee is authorized to allocate funding in the amount of \$54,500,000 for the implementation of the Project from (1) Joint Army Base Infrastructure Fund (5672) Infrastructure Master Plan Project (C415720); (2) OBRA Leasing & Utility Fund (5671) Leasing & Utility Project (P294110); (3) OBRA Utility & Leasing Fund (5671) Tidelands Trmst Related Project (C437310); (4) Oakland Army Base Joint Remediation Fund (5674); and (4) scheduled land sales to Fund (5672) and Project (to be established).

Section 10: The funds in Oakland Army Base Remediation Fund (5674) shall be used solely for the environmental remediation of the Project Site, and if funds remain after environmental remediation has been completed, staff will recommend that the City Council reprogram the funds remaining in Oakland Army Base Remediation Fund (5674) for other Public Improvements.

Section 11: The City and the Developer have agreed to a Community Benefits Program that includes environmental, contracting and jobs provisions as set forth in the LDDA. The environmental requirements are set forth in the SCA/MMRP attached to the LDDA. The contracting requirements follow the City's Contracting Policy (Council Ordinance 13101 (12/20/11)), as amended by this LDDA to provide for a capacity study/good faith compliance provisions and special conditions for contracting with West Oakland businesses. The Developer has agreed to implement a Construction Jobs Policy and an Operations Job Policy, both of which strengthen existing City employment policies. The Construction Jobs Policy and the Operations Job Policy expressly supersede the employment portions of City Ordinance No. 12389, as amended by Council Ordinance 13101 (12/20/11), and the program Guidelines in the Local and Small Local Business Enterprise Program guidance dated February 1, 2012 with regard to Local Employment Program, Local Construction Employment Referral Program, and Apprenticeship Program. The City has agreed to make good faith efforts to enter into a Cooperation Agreement with the Community Groups and a Project Labor Agreement for the Public Infrastructure that incorporates the Construction Jobs Policy and Operations Jobs Policy

Section 12: The City Administrator or her designee is hereby authorized to negotiate and execute, in form and content substantially in conformance with the LDDA and its attachments, as set forth in Exhibit C, without returning to City Council: (1) the LDDA with the Developer for the Project, (2) upon satisfaction or waiver of the conditions precedent, the Ground Lease(s); (3) the exhibits to the LDDA including, without limitation, the Billboard Franchise/Lease Agreement, Site Management Pass-Through Lease, and the Design-Build Contract; and (4) such other additions, amendments or other modifications to the LDDA (including, without limitation, preparation and attachment of, or changes to, any or all of the exhibits) that the City Administrator, in consultation with the City Attorney's Office, determines are in the best interests of the City, do not materially increase the obligations or liabilities of the City, and are necessary or advisable to complete the transactions which the LDDA contemplates to be conclusively evidenced by the execution and delivery by the City Administrator of the LDDA and any such amendments thereto; and (5) such other documents as necessary or appropriate, in consultation with the City Attorney's Office, to facilitate the lease and development of the Property for the Project in order to consummate the transaction under the LDDA in accordance with this

Ordinance, or to otherwise effectuate the purpose and intent of this Ordinance and its basic purpose.

Section 13: The City Council authorizes City staff to amend the LDDA and related documents if required by the CTC to preserve TCIF funds for the development of the 2012 OARB Project without returning to City Council; and be it

Section 14: The City Administrator shall determine satisfaction of conditions precedent under the LDDA to the conveyance of the leasehold estates in the Project, such determination to be conclusively evidenced by the execution and delivery by the City Administrator of the respective Site Management Pass-Through Lease or Ground Lease(s).

Section 15: All documents related to this transaction shall be reviewed and approved by the City Attorney's Office prior to execution, and copies will be placed on file with the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2012

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF, and PRESIDENT REID

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____