

BOARD MTG. DATE: 02/13/2014

SUPPLEMENTAL AGENDA REPORT

TITLE: Exclusive Negotiating Agreement with Prologis, L.P. and California Capital & Investment Group, CCIG Oakland Global, LLC, and Oakland Global Rail Enterprise, LLC for Redevelopment of the Former Oakland Army Base

AMOUNT: \$300,000

PARTIES INVOLVED:

Corporate Name/Principal	Location
Prologis, <u>L.P.</u> / Mark Hansen	San Francisco, CA
<u>California Capital and Investment Group</u> <u>CCIG Oakland Global, LLC</u> / Phil Tagami, Mark McClure	Oakland, CA
<u>Oakland Global Rail Enterprise, LLC</u>	<u>Oakland, CA</u>

TYPE OF ACTION: Resolution
SUBMITTED BY: John C. Driscoll, Maritime Director
APPROVED BY: J. Christopher Lytle, Executive Director

SUMMARY

This agenda report recommends entering into exclusive negotiations with Prologis, L.P. ("Prologis") and California Capital & Investment Group CCIG Oakland Global, LLC ("CCIG") and Oakland Global Rail Enterprise, LLC ("OGRE") for development and lease rights to certain Port lands. If approved by the Board, Port staff would agree to negotiate in good faith for the redevelopment of the former Oakland Army Base ("OAB") for a period of six months. If these negotiations are successful, Port staff would then request the Board's authorization to enter into the negotiated lease and related agreements with Prologis, OGRE and CCIG.

FACTUAL BACKGROUND

Port staff has formally negotiated with Prologis & CCIG and their affiliated companies twice previously for the redevelopment of its OAB lands. These negotiations occurred from July 2009 through October 2010, and again from April 2011 through December 2011. These negotiations did not result in the parties reaching agreement.

In parallel, the Oakland Redevelopment Agency ("ORA" or "City") conducted its own master developer solicitation for its adjacent OAB lands. On July 28, 2009, the ORA selected AMB Property Corporation (which later merged with Prologis) and California Capital Group (an affiliate of CCIG) to redevelop the City's OAB property into a modern trade and logistics center for maritime-related transportation activities. During the negotiations, the City and its private development partners prepared a development master plan and conducted a California Environmental Quality Act ("CEQA") review for both City and Port OAB lands.

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The master plan and the CEQA certifications were completed in June 2012. In September 2012, the City entered into a Lease Disposition and Development Agreement (“LDDA”) with Prologis & CCIG to redevelop its portion of the OAB.

Both the Port’s and City’s current development activities are funded in large part by a \$242 million Trade Corridor Improvement Fund (“TCIF”) grant from the California Transportation Commission (“CTC”). Approximately \$65.8 million of the TCIF grant is allocated towards the Port’s development of new rail infrastructure on Port OAB lands, and \$176.3 million is allocated towards the City’s road, utility and land development program. The TCIF grant is matched by investments from Prologis & CCIG, the City, the Port, and two recycling companies. Separately, the Port was selected for a federal TIGER 2012 transportation grant, providing an additional \$15 million in funding for eight support tracks as part of the Port’s rail infrastructure development on Port OAB lands.

The Port and the City commenced construction in 2013. Work on the Port lands will provide much needed rail, road and utility infrastructure for the Port OAB lands, and is scheduled for completion in late 2015.

ANALYSIS

The current development program (the “phase 1 development”) will provide much needed rail, road and utility infrastructure for the Port OAB lands. However the Port does not yet have specific commitments in place with development partners or operators to deliver new state-of-the-art logistics facilities and a new intermodal rail terminal after the infrastructure work is completed (the “phase 2 development”). Port staff recommends an aggressive strategy to deliver these new facilities in order to more quickly grow activity and revenues at the seaport. The proposed development would include state-of-the-art import and export transload, consolidation, deconsolidation, refrigerated and other logistics buildings for rapid transfer of goods for key customers, and an intermodal rail terminal on approximately 170 acres of Port OAB lands. To successfully deliver these state-of-the-art facilities and bring in additional customers, cargo activity and revenues, the Port must engage key private sector partners.

To develop these new facilities, the Port could (i) build the facilities itself, (ii) lease all its OAB land to the City’s developer, (iii) lease all its land to another developer, or (iv) divide the lands into separate sites and lease each one to an interested developer(s) and/or operator(s). While each of the options could lead to a successful development and achieve the Port’s objectives, the second option (i.e., leasing the property to a single developer entity) is Port staff’s recommendation.

As discussed above, the City embarked on a very similar effort on its adjacent OAB lands and entered into an LDDA with Prologis and CCIG, a team with years of experience planning, design, and analyzing the OAB lands and the market demand for this development. If the Port also works with Prologis, OGRE & CCIG on the phase 2 development, there is an opportunity for the Port and City to present the OAB redevelopment to potential users and customers in a cohesive manner rather than as competing opportunities, allowing for simplified branding, messaging and marketing to

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potential users and customers, as well as more efficient and coordinated development activities.

Port staff is aware that the progress made to date on OAB redevelopment is not guarantee of successful negotiations with Prologis, OGRE & CCIG. However, the alternative approaches are likely to take more time or have a lower probability of success. Staff does not wish to delay the phase 2 development, but rather to leverage improved economic conditions and the progress made to date (for example, completion of CEQA review and interest generated among key customers) to bring new cargo and revenues to the seaport. The proposed Exclusive Negotiating Agreement would commit the Port to negotiate solely with Prologis, OGRE & CCIG in good faith on all transaction documents necessary for the lease and development of the Port OAB lands as described in the 2012 Master Plan, including those lands being developed currently as part of the phase 1 development. The proposed Exclusive Negotiating Agreement would ~~last for a period of 6 months from the date of execution~~ expire no later than June 30, 2014. Staff is also requesting that the Board delegate authority to the Executive Director to (a) extend the ENA for up to two (2) periods of thirty (30) days each and (b) to issue interpretations, waive provisions, and enter into certain amendments of the ENA on behalf of the Port as long as the actions do not materially change the development uses or costs incurred by the Port. A copy of the proposed draft Exclusive Negotiating Agreement is attached to this Agenda Report as Attachment A. If the parties reach agreement during the ENA period, the transaction documents would be recommended by Port staff to the Board for approval.

STRATEGIC PLAN ALIGNMENT

Entering into this contract is consistent with the following goals and objectives of the Port's strategic plan:

STRATEGIC PRIORITY AREAS	GOAL	OBJECTIVE	HOW + WHEN THIS PROJECT IMPLEMENTS
Sustainable Economic and Business Development	Goal A: Create Sustainable Economic Growth For the Port and Beyond	2. Affirm Port identity as a public enterprise 4. Pursue strategic partnerships at all levels: local, regional, national, and international	This contract will allow the Port to explore potential development partnerships with the objective of driving additional cargo through the Port as quickly as possible. Partnering with the Prologis team will bring private capital to the project rather than require direct investment and development risk be managed by the Port.

BUDGET & FINANCIAL IMPACT

The negotiation and (potential) drafting of the transaction documents requires significant legal effort, as well as analytical support from various technical advisors. Port staff estimates \$300,000 is necessary for financial, legal and other advisory services if the parties are to earnestly negotiate the terms and conditions of a lease. These funds are anticipated to be expended in FY2013-14 and FY 2014-15. The Port's FY 2014 Operating

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Budget does not include any funds for this purpose. As a result, Port staff is requesting from the Board, additional budget authorization of \$300,000 for the purpose of negotiating and drafting (as applicable) transaction documents. Amounts needed in FY 2014-15 will be included in the Port's FY 2015 Operating Budget.

STAFFING IMPACT

The proposed action is not currently anticipated to require additional Port staff; however, it will require the dedication of one staff person from the Port Attorney's office, and one staff person in the Maritime Division. Various divisions and departments will be engaged on an as-needed basis, including engineering, environmental, commercial real estate, finance, social responsibility, etc. Given current staffing levels, this need places pressure on staffing for other Port projects and priorities.

SUSTAINABILITY

While the proposed action does not itself provide sustainability opportunities, the OAB redevelopment is expected to incorporate design and operational elements that will promote environmental sustainability.

ENVIRONMENTAL

The proposal to authorize an Exclusive Negotiating Agreement with Prologis and CCIG for development and lease rights at the former Oakland Army Base was reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA), and the Port CEQA Guidelines. The general rule in Section 15061(b)(3) of the CEQA Guidelines states that CEQA applies only to activities that have a potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility that undertaking negotiations to enter into a subsequent agreement will result in a physical change in the environment, and therefore this action is not subject to CEQA. If negotiations are successful, staff will return to the Board with the final transaction documents for the Board's consideration and approval before they are executed.

Projects envisioned to be part of the long term lease and development of the OAB were included in the project description analyzed by the Oakland Army Base Area Redevelopment Plan Final Environmental Impact Report ("EIR"), which was certified on July 31, 2002, by the City of Oakland, as the Lead Agency under CEQA. On September 17, 2002 (Resolution No. 02317), the Board, acting as a Responsible Agency under CEQA, approved the Port's reuse of the OAB as described in the EIR. In June 2012, the Board considered the 2012 OAB Project Initial Study/Addendum and adopted mitigation measures applicable to the Port from the City's OAB Standard Conditions of Approval/Mitigation Monitoring and Reporting Program ("SCA/MMRP") with Resolution No. 12-76. The project described by the EIR includes the construction and operation of an intermodal rail facility, seaport-related cargo logistics facilities, and the 7th Street grade separation that may be the subject of the Exclusive Negotiating Agreement. Other projects, if any, that may be proposed as part of a potential agreement will be reviewed for CEQA compliance at that time.

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MARITIME AND AVIATION PROJECT LABOR AGREEMENT (MAPLA)

Authorizing the Executive Director to enter into an Exclusive Negotiating Agreement does not fall within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) and the provisions of the MAPLA do not apply to this action. However, it is intended that MAPLA will apply to the future OAB redevelopment construction work.

OWNER CONTROLLED INSURANCE PROGRAM (OCIP)

The negotiation of a contract is not subject to the OCIP. However, any subsequent public works agreements for the project would require the contractors to enroll in the Port's OCIP.

GENERAL PLAN

This action relates to professional services and does not approve a specific project. No conformity determination is required.

LIVING WAGE

Living wage requirements, in accordance with the Port's Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the "Living Wage Regulations"), do not apply because the requested action is not an agreement, contract, lease, or request to provide financial assistance within the meaning of the Living Wage Regulations.

OPTIONS

Staff has identified the following options:

1. Authorize the Executive Director to Enter into an Exclusive Negotiating Agreement with Prologis .L.P., CCIG Oakland Global, LLC, and Oakland Global Rail Enterprise, LLC ~~and California Capital and Investment Group~~, for the lease and development of approximately 170 acres of the former Oakland Army Base for the purpose of developing new logistics buildings and an intermodal rail terminal; or
2. Not Authorize the Executive Director to Enter into an Exclusive Negotiating Agreement with Prologis .L.P., CCIG Oakland Global, LLC, and Oakland Global Rail Enterprise, LLC ~~and California Capital and Investment Group~~ for the subject work. Under this option, the Board could direct staff to pursue an alternative method to redevelop its OAB lands.

RECOMMENDATION

Staff recommends that the Board Authorize an Exclusive Negotiating Agreement with Prologis .L.P., CCIG Oakland Global, LLC, and Oakland Global Rail Enterprise, LLC ~~and~~

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| ~~California Capital & Investment Group~~ for the lease and development of approximately 170 acres of the former Oakland Army Base for the purpose of developing new logistics buildings, an intermodal rail terminal and related improvements as part of the Redevelopment of the former Oakland Army Base.

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ATTACHMENT A

PROPOSED EXCLUSIVE NEGOTIATING AGREEMENT

Exclusive Negotiating Agreement

THIS EXCLUSIVE NEGOTIATING AGREEMENT (this "Agreement") is dated for reference purposes as of February __, 2014, is entered into by and among the CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port Commissioners (the "**Port**"); PROLOGIS, L.P. ("**Prologis**"); CCIG Oakland Global, LLC ("**CCIG**"); and the Oakland Global Rail Enterprise, LLC ("**OGRE**"). Prologis, CCIG and OGRE are collectively referred to herein as the "**Developer**" and are individually referred to herein as a "**Developer Party**."

THIS AGREEMENT IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES ("**Recitals**"):

A. WHEREAS, the Port owns certain lands (the "**Port Lands**") located on, adjacent or proximate to the former Oakland Army Base ("**OAB**"). The Port Lands are depicted in Exhibit A, attached hereto. The Developer has requested long term leases for Port Lands for trade and logistics uses (the "**T&L Property**"), rail terminal uses (the "**Rail Terminal Property**") and port bulk and oversized terminal uses ("**Berths 9 and 10**").

B. WHEREAS, the Port and the Developer are entering into this Agreement to negotiate the form of certain transaction documents related to the Port Lands, and the use and development of such Port Lands.

AGREEMENT

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Port and the Developer agree as follows:

1.00 **Negotiations:** During the Term of this Agreement, the Port and the Developer agree to negotiate exclusively with each other and in good faith for the purpose of attempting to reach an agreement on the following matters: (a) a ground lease of a portion of the T&L Property between the Port and Prologis, (b) a ground lease of a portion of the T&L Property between the Port and CCIG, (c) an agreement to operate rail terminal facilities on the Rail Terminal Property or, alternatively, ground lease of the Rail Terminal Property between the Port and OGRE, (d) subject to Section 1.02 below, a ground lease for Berths 9 and 10 between the Port and CCIG, and (e) an agreement regarding the financing and construction of identified public improvements between the Port and each of the Developer Parties. The documents listed in clauses (a) through (e) of the preceding sentence are collectively referred to herein as the "**Transaction Documents**." The parties acknowledge that the Transaction Documents shall include the terms of any community benefits agreed to by the parties and the definitive form of the ground lease. The parties agree that they may reach agreement on one or more, but not all, of the Transaction Agreements and that the Port and the applicable Developer Party(ies) may proceed to enter into one or more Transaction Documents without having reached agreement on the balance of the Transaction Documents. The parties further acknowledge that time is of the essence with respect to the negotiations under this Agreement and agree to conduct such negotiations pursuant to the Schedule of Performance set forth in Exhibit B, attached hereto. The parties further agree that

the Port's ability to enter into the Transaction Documents is subject to the provisions of Sections 1.02, 2.00 and 9.00 below. During the term of this Agreement, the Port will be performing due diligence on each Developer Party. The Developer agrees to provide information requested by the Port for each Developer Party, including, without limitation, ownership of each Developer Party entity and financial statements.

1.01 Parameters for Negotiations. With respect to the proposed use and development of the Port Lands (the “**Project**”), the following nonexclusive list of items related to the Project shall be the subject of negotiations during the term of this Agreement:

- (A) consistent with the Master Plan, dated June 15, 2012 (subject to any outstanding comments by the Port or the City of Oakland), a preliminary Site Plan for the Port Land and Project (designating T&L Property for each proposed Developer Party, Rail Terminal Property and Berths 9 and 10) depicting total proposed lease acreage, proposed uses, building locations, elevations, building square footages, parking, access points, public improvements, private improvements and vehicular circulation (each on a preliminary/schematic level);
- (B) price for the grant of options to ground lease, term of options, and conditions precedent for the exercise of any options (if the parties elect to option lease of the T&L Property or Rail Property);
- (C) term of ground leases;
- (D) scope and definitions of “public improvements” and proposed “private improvements”;
- (E) preliminary marketing/branding plan for the Project;
- (F) a procedure for the proposal, review and approval of proposed tenants for the Project, including Developer proposal for determination of maritime-related uses;
- (G) preliminary financing plan for the Project (addressing the proposed methods of construction and permanent financing, and amounts and sources of financing, including financing for each of site preparation, public improvements and private improvements);
- (H) development schedule for the Project and performance milestones, including termination of ground leases for failure to meet performance milestones;
- (I) the rent which the Developer will pay for the lease of Port Land;
- (J) each party’s environmental obligations, including green technologies, responsibilities for toxic or hazardous materials, and cleanup of contamination and releases, including responsibilities for pre-existing contamination encountered during construction;
- (K) conditions for assignment and sublease; and
- (L) if applicable, the identity, composition and financial capability of any proposed affiliate of a Developer Party that would enter into the applicable Transaction Document with the Port.

Within 30 days of the commencement of the Term, Developer shall deliver to the Port an initial proposal on the matters set forth in items (A)-(E) and (G)-(L) above). Within 30

days of the commencement of the Term, the Port shall deliver to Developer an initial proposal on the matter set forth in item (F) above. Each party shall provide its comments on such initial proposals within 15 days after receipt thereof and thereafter the parties shall negotiate with each other in good faith for the purpose of attempting to reach an agreement on such matters.

1.02 Berth 21 ROFO. The parties acknowledge that Berths 9 and 10 are affected by a right of first offer granted in favor of Ports America Outer Harbor LLC (the “**Berth 21 ROFO**”). The parties hereby agree that this Agreement does not constitute a letter of intent with respect to the portion of the Port Lands affected by the Berth 21 ROFO as this Agreement does not contain defined terms on which the Port has determined it is willing to enter into a transaction with respect to the property affected by the Berth 21 ROFO. The parties further agree that the Port’s obligation under this Agreement related to Berths 9 and 10 is contingent upon the Port’s receipt of written confirmation from Ports America Outer Harbor, LLC that this Agreement does not conflict with or otherwise violate the terms of the Berth 21 ROFO. If the Port does not receive such written confirmation, the Port shall have no obligation under this Agreement with respect to Berths 9 and 10. To the extent the Port and CCIG are able to reach an agreement regarding the terms of the proposed Berth 9 and 10 Transaction Documents, the parties’ ability to enter into such an agreement is expressly subject to the Berth 21 ROFO.

2.00 Threshold Conditions and Limitations.

2.01 Port Discretion: The Developer acknowledges and agrees that under this Agreement the Port is not committing itself or agreeing to enter into the Transaction Documents or undertake any exchange or lease of real property, or to grant any disposition of any real property interests to the Developer, approve any land use entitlements or undertake any other acts or activities relating to the subsequent independent exercise of discretion by the Port or the Port Board. This Agreement does not constitute the disposition of property or exercise of control by the Port over property, and other than the obligation set forth in Section 1.00 above, the Port shall have no legal obligation to Developer with respect to the Port Lands or the proposed Transaction Documents unless and until the parties have negotiated, executed, and delivered mutually acceptable Transaction Documents based upon information produced from the CEQA environmental review process and upon other public review and hearing processes and all applicable governmental approvals, including, without limitation, the approval of the Port Board in its sole and absolute discretion. The Port retains the absolute discretion before the Port Board's final action under CEQA with respect to the Project to (a) make such modifications to the Project as may be necessary to mitigate significant environmental impacts or as may otherwise be necessary or appropriate, (b) review, consider and select other feasible alternatives to avoid significant environmental impacts, or (c) balance the benefits against any significant environmental impacts prior to taking final action if such significant impacts cannot otherwise be avoided. Notwithstanding the foregoing to the contrary, the parties acknowledge the CEQA work conducted to date related to the Project and agree to rely upon the same consistent with applicable laws and regulations.

2.02 Developer Discretion: By entering into this Agreement, the Developer does not commit itself to enter into binding Transaction Documents. The parties agree that, other than the obligation set forth in Section 1.00 above, the Developer shall have no legal obligation to the Port with respect to the Port Lands or the proposed Transaction Documents unless and until the parties have negotiated, executed, and delivered mutually acceptable Transaction Documents.

2.03 Conflicts of Interest: Each Developer Party represents and warrants that it is familiar with the provisions of Section 1090 and Sections 87100 et seq. of the California Government Code, which provides that no member, official, or employee of the Port may have any personal interest, direct or indirect, in this Agreement nor shall any such member, official, or employee participate in any decision relating to this Agreement that affects her or his personal interest or the interests of any corporation, partnership or association in which she or he is interested directly or indirectly. As to the provisions referred to in the previous sentence, the Developer does not know of any facts that constitute a violation of Section 1090 or Sections 87100 et seq. of the California Government Code. Each Developer Party further warrants that its entering into and execution of a Transaction Document or any combination of Transaction Documents, and its performance under any such Transaction Document will not result in or constitute a violation of Section 1090 or Section 87100 et seq. of the California Government Code.

3.00 Term and Termination: The Term (defined below) of this Agreement shall commence upon the last to occur of: the date that the Port Board authorizes and approves this Agreement, the date that the authorized representatives of the Developer and the Port have signed this Agreement, and the Port Attorney or his designee has approved the Agreement as to form and legality. This Agreement shall terminate on the earlier to occur of (a) the execution of the Transaction Documents by the applicable Developer Party and the Port following authorization and approval thereof by the Port Board, or (b) June 30, 2014 (the “**Term**”). The Parties, by written agreement of the Developer and the Executive Director of the Port (and approved as to form by the Port Attorney) may extend the Term of this Agreement for up to two (2) additional periods of thirty (30) days each. In the event that the Port and Developer reach substantial agreement on the essential terms of one or more of the Transaction Documents by the end of the Term, but the Port Board has not yet taken a final action to approve or disapprove the applicable Transaction Document(s), then the Term shall be automatically extended with respect to the portion of the Port Lands subject to such Transaction Document(s) until the earlier of the date that the Port Board considers and acts on the final form of the applicable Transaction Document(s) or 60 days after the end of the Term, as it may be extended pursuant to this Section 3.00.

4.00 Port Acting as Owner of Real Property: The Developer acknowledges that the Port is acting in its capacity as a property owner with a proprietary interest in the Port Lands and not as a regulatory agency with police powers. Nothing in this Agreement shall limit in any way the Developer's obligation to obtain any regulatory approvals from any governmental agency having jurisdiction over the Port Lands or the operations proposed to be conducted thereon, including, but not limited to, the Port.

5.00 Amendments: This Agreement may be amended or modified only by a written instrument executed by the Port and the Developer.

6.00 Severability: If any provision of this Agreement or its application to any person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Agreement or the application of such provision to any other person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so modified by, and in response to, such invalidation would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the fundamental purposes of this Agreement. Without limiting the foregoing, in the event that any applicable federal or state law prevents or precludes compliance with any material term of this Agreement the parties shall promptly modify, amend, or suspend this Agreement, or any portion of this Agreement, to the extent necessary to comply with such provisions in a manner that preserves to the greatest extent possible the benefits to each of the parties to this Agreement before such conflict with federal or state law. However, if such amendment, modification, or suspension would deprive the Port or the Developer of the substantial benefits derived from this Agreement or make performance unreasonably difficult or expensive, then the affected party may terminate this Agreement upon written notice to the other party. In the event of such termination, neither party shall have any further rights nor obligations under this Agreement except as otherwise provided herein.

7.00 Non-Waiver: No waiver made by either party with respect to the performance, or manner or time of performance, or any obligation of the other party or any condition to its own obligation under this Agreement shall be considered a waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived to the extent of such waiver, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

8.00 No Presumption Against Drafter: This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

9.00 Agreements Subject to Tidelands Trust, Environmental Review and Governmental Approvals: In addition to the provisions of Section 2.01 above, the Developer acknowledges that the Port cannot enter into or be bound by any documents or agreements that shall cause or result in any future work by the Developer on the Port Lands (including, without limitation, the Transaction Documents) or a grant of any rights with respect to any development or use of the Port Lands that is inconsistent with the Port's obligations under state Tidelands Trust requirements and principles and until all environmental reviews required by CEQA or the National Environmental Policy Act, or any other necessary regulatory approvals, are completed.

10.00 Governing Law: This Agreement shall be deemed to be made in and shall be construed in accordance with the laws of the State of California.

11.00 Relationship of the Parties: The Developer is and shall at all times be and remain independent from the Port and shall not be an agent of the Port. Nothing herein contained shall be construed to place the parties in the relationship of partners or joint ventures. Neither party shall have any right or power to obligate or bind any other party in any manner whatsoever except as expressly authorized in this Agreement. This Agreement is not intended, nor shall it be construed, to create any third party beneficiary rights in any third party, unless otherwise expressly provided. No party is a fiduciary to any other party under this Agreement and no party has any special responsibilities to any other party to this Agreement beyond any obligations expressly set forth herein.

12.00 Survival: Notwithstanding anything to the contrary in this Agreement, any indemnity or other obligation that arises and was not satisfied before termination shall survive any termination of this Agreement, except to the extent otherwise provided herein.

13.00 Mutual Confidentiality, Trade Secret, Personal, Financial and Other Proprietary Information: To the extent permitted by applicable law, the parties shall maintain all information concerning this Agreement and any pending or subsequent negotiations between the parties as confidential, disclosing information only to those individuals and representatives as designated by the other party, provided that such individuals acknowledge and agree to maintain the confidentiality of such information. The parties enter into this Agreement with the understanding that in the course of the negotiations the Port may require or request that the Developer provide certain information that is proprietary. Such information may be necessary for the Port to verify financial, operational, or trade secret information that is relevant to the negotiation of the Transaction Documents and that will serve the public interest in assisting the Port to negotiate effectively. To the extent that Developer agrees to provide such information, provided that as to such information the Developer designates as confidential or proprietary by clearly marking and labeling such information "CONFIDENTIAL", the Port shall not disclose such information publicly without the Developer's consent, except to the extent that the Port is required to make such a disclosure under applicable law, as determined in the Port's reasonable discretion. The Port agrees to notify the Developer of any public records request that involves information that the Developer has designated as confidential or proprietary under this Agreement. The Developer agrees to bear all the costs of any litigation that is filed to determine the applicability of the public records law to documents submitted by the Developer and designated as confidential or proprietary under this Section. The Developer acknowledges that the Port's disclosure of any Developer information designated as confidential or proprietary to third party consultants retained by the Port to assist the Port in its negotiations with the Developer or to otherwise advise the Port with regard to the Port's finances shall not be considered a public disclosure under this Section 13.00, final drafts of the Transaction Documents proposed for approval by the Port Board will be made available to the public, and the Port is generally required to comply with requests for disclosure made pursuant to the California Public Records Act (Cal. Gov. §6250 et seq.), unless a statutory exemption from disclosure is available. The provisions under this Section 13.00 shall survive the Term.

14.00 Attorneys' Fees: In the event of a default under this Agreement or in the event a dispute arises in a judicial or quasi-judicial proceeding concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its or their rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable in-house and outside attorneys' fees. For purposes of this Agreement, reasonable fees of attorneys of the Port Attorney's Office shall be based on the fees the Port Attorney pays its outside private attorneys who work on any such dispute or a reasonable hourly rate (comparable to a rate charged by a qualified outside counsel) for work completed by attorneys in the Port Attorney's office. The provisions under this Section 14.00 shall survive the Term.

15.00 Real Estate Commissions: The Developer and the Port each represents to the other that it engaged no broker, agent or finder in connection with this Agreement or the transactions contemplated hereby. In the event any broker, agent or finder makes a claim, the party through whom such claim is made agrees to indemnify and defend the other party from any losses, damages or liability arising out of such claim. The provisions under this Section 15.00 shall survive the Term.

16.00 Notices: Unless otherwise expressly provided herein, any notice given under this Agreement shall be effective upon receipt only if in writing and given by delivering the notice in person or by sending it certified mail with a return receipt requested or by a nationally recognized courier service with proof of delivery, return receipt requested, with postage prepaid, or via facsimile, as follows:

If to the Port:

Mr. Chris Lytle
Executive Director
Port of Oakland
530 Water Street
Oakland, CA 94607

with copies to:

Mr. John Driscoll
Maritime Director
Port of Oakland
530 Water Street
Oakland, CA 94607

Danny Wan, Esq.
Port Attorney
Mary Richardson, Esq.
Deputy Port Attorney
Port of Oakland
530 Water Street
Oakland, CA 94607

If to the Developer: Prologis:

Prologis, L.P.
c/o Prologis
Attn: Mr. Mark Hansen
Pier 1, Bay 1
San Francisco, CA 94111

with a copy to: Prologis, L.P.
c/o Prologis, Inc.
Attn: Chief Legal Officer
4545 Airport Way
Denver, CO 80239

CCIG and OGRE

CCIG Oakland Global, LLC
Attn: Mr. Phil Tagami
300 Frank Ogawa Plaza, Suite 340
Oakland, CA 94612

with a copy to: Marc Stice Esq.
Stice & Block, LLP
2201 Broadway, Suite 604
Oakland, CA 94612

17.00 Assignment: The Port and the Developer acknowledge and agree that the Port is entering into this Agreement with the Developer on the basis of the particular experience, financial capacity, skills and capabilities of the Developer Parties. This Agreement is personal to the Developer Parties and is not assignable without the prior written consent of the Port, which may be given, withheld or conditioned in the Port's sole and absolute discretion. The parties agree that a material change in the composition of any one of the Developer Parties shall be considered an assignment subject to the provisions of this Section 17.00. Absent the required approvals set forth in this Section 17.00, any attempted assignment of this Agreement, or a significant or material change of the Developer, at the Port's option, shall be considered an event of default under this Agreement if such default is not cured within 30 days after the Port gives written notice to the Developer.

18.00 Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

19.00 Transaction Costs: At all times during the Term, the parties agree that each party shall be responsible for all of its own costs and the costs associated with any consultants of other members of its own team related to the negotiation and preparation this Agreement and of any and all Transaction Documents.

20.00 Right of Entry: Upon request, and provided that Developer has executed the Port's form of access agreement, the Port shall grant the Developer the right to enter on the Port Lands during normal business hours in accordance with the terms of the access agreement and this Agreement for the purpose of performing non-invasive, visual investigations of the Port Lands to assess the feasibility of developing the Port Lands. If the Developer wishes to conduct any physical studies of the Port Lands, including invasive investigations regarding environmental conditions, soil condition or physical building inspections, the Developer shall submit a detailed written proposed scope of work ("**Proposed Work Plan**") for the Port's review and approval in the Port's proprietary capacity as the owner of the Port Lands. The Port, acting in its proprietary capacity, shall have the right to grant, deny, or condition such Proposed Work Plan in its sole discretion. It shall be reasonable for the Port to deny such Proposed Work Plan if, among other reasons, the Proposed Work Plan requires the Port to incur any cost or expense other than the staff time of those Port staff directly involved in the negotiations under this Agreement. If the Port approves or conditionally approves such Proposed Work Plan, the Port shall grant the Developer a right of entry under a Temporary Rental Agreement ("**Temporary Rental Agreement**") prepared and approved by the Port Attorney or his designee. If the Proposed Work Plan requires any permits or other governmental approvals (including, without limitation, any Port permits or approvals from DTSC or the RWQCB), the Developer shall work with the Port to obtain any such governmental approvals at no cost or expense to the Port. If the Proposed Work Plan requires any Port permits, the Port may (acting in its regulatory capacity) grant, deny, or condition such Port permits in its sole and absolute discretion. If a Temporary Rental Agreement is entered into, the Developer shall provide copies of all reports and studies regarding the condition of the Port Lands (including, without limitation, any improvements or subsurface conditions) prepared by, for, or on behalf of, the Developer as a result of such entry upon the Port Lands.

Developer's Initials

21.00 Time of the Essence: Time is of the essence with respect to each provision of this Agreement.

22.00 Entire Agreement: This Agreement (including the Exhibits) contains all the representations and the entire agreement between the parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, agreements, warranties, or representations relating to such subject matter are superseded in total by this Agreement. No prior drafts of this Agreement or changes from those drafts to the executed version of this Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by either party or any other person and no court or other body shall consider those drafts in interpreting this Agreement.

23.00 Implementation of Agreement. The Port shall maintain authority to implement this Agreement through the Executive Director. The Executive Director shall have the authority to issue interpretations, waive provisions, and/or enter into certain amendments of this Agreement on behalf of the Port so long as such actions do not materially or substantially change the uses or development contemplated hereunder, or add to the costs incurred or to be incurred by the Port

as specified herein, and such interpretations, waivers and/or amendments may include extensions of time to perform. All other materials and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the Board of Port Commissioners.

24.00 Cooperation and Mutual Release: In connection with this Agreement, the Developer and the Port shall reasonably cooperate with one another to achieve the objectives and purposes of this Agreement. The parties, by their respective execution hereof, knowingly agree, notwithstanding anything herein to the contrary, that (a) a party's sole remedy for another party's breach of the obligation to negotiate exclusively and in good faith pursuant to this Agreement shall be the right to specifically enforce such obligation and (b) no party shall have any right to any other equitable or damage remedies under the law for such a breach of this Agreement. Except as related to the remedy of specific performance, each party hereby releases the other parties from any and all actions, demands, claims, costs, expenses, damages and liabilities (including, without limitation, attorneys' fees and costs) relating to or arising from the such party's breach of the obligation to negotiate exclusively and in good faith pursuant to this Agreement. Each party makes such release with full knowledge of Civil Code Section 1542 and hereby specifically waives the provisions of section 1542 of the California Civil Code and any similar law of any other state, territory or jurisdiction to the extent of this release. Section 1542 of the Civil Code provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR

[Signatures to follow]

DEVELOPER:

PROLOGIS:
PROLOGIS, L.P.

By: _____
Name: _____
Its: _____

Dated: _____

CCIG:
CCIG OAKLAND GLOBAL, LLC

By: _____
Name: _____
Its: _____

Dated: _____

OGRE:
OAKLAND GLOBAL RAIL ENTERPRISE, LLC

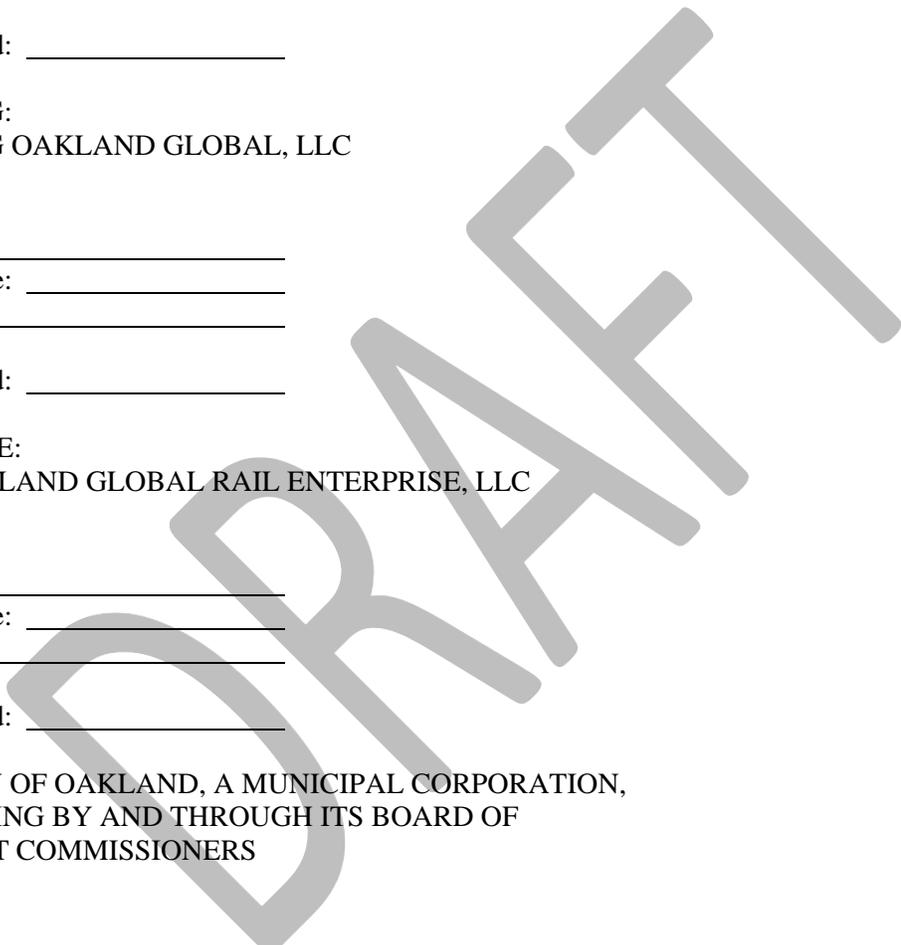
By: _____
Name: _____
Its: _____

Dated: _____

CITY OF OAKLAND, A MUNICIPAL CORPORATION,
ACTING BY AND THROUGH ITS BOARD OF
PORT COMMISSIONERS

By: _____
Name: _____
Its: _____

Dated: _____



THIS AGREEMENT SHALL NOT
BE VALID OR EFFECTIVE FOR
ANY PURPOSE UNLESS AND
UNTIL IT IS SIGNED BY THE
PORT ATTORNEY OR HIS DESIGNEE.

Approved as to form and
legality this __ day of _____, 201_

By: _____
Name: _____
Its: _____

Resolution Number: _____

Adopted: _____

DRAFT

EXHIBIT A

Description of Port Lands

[See attached]

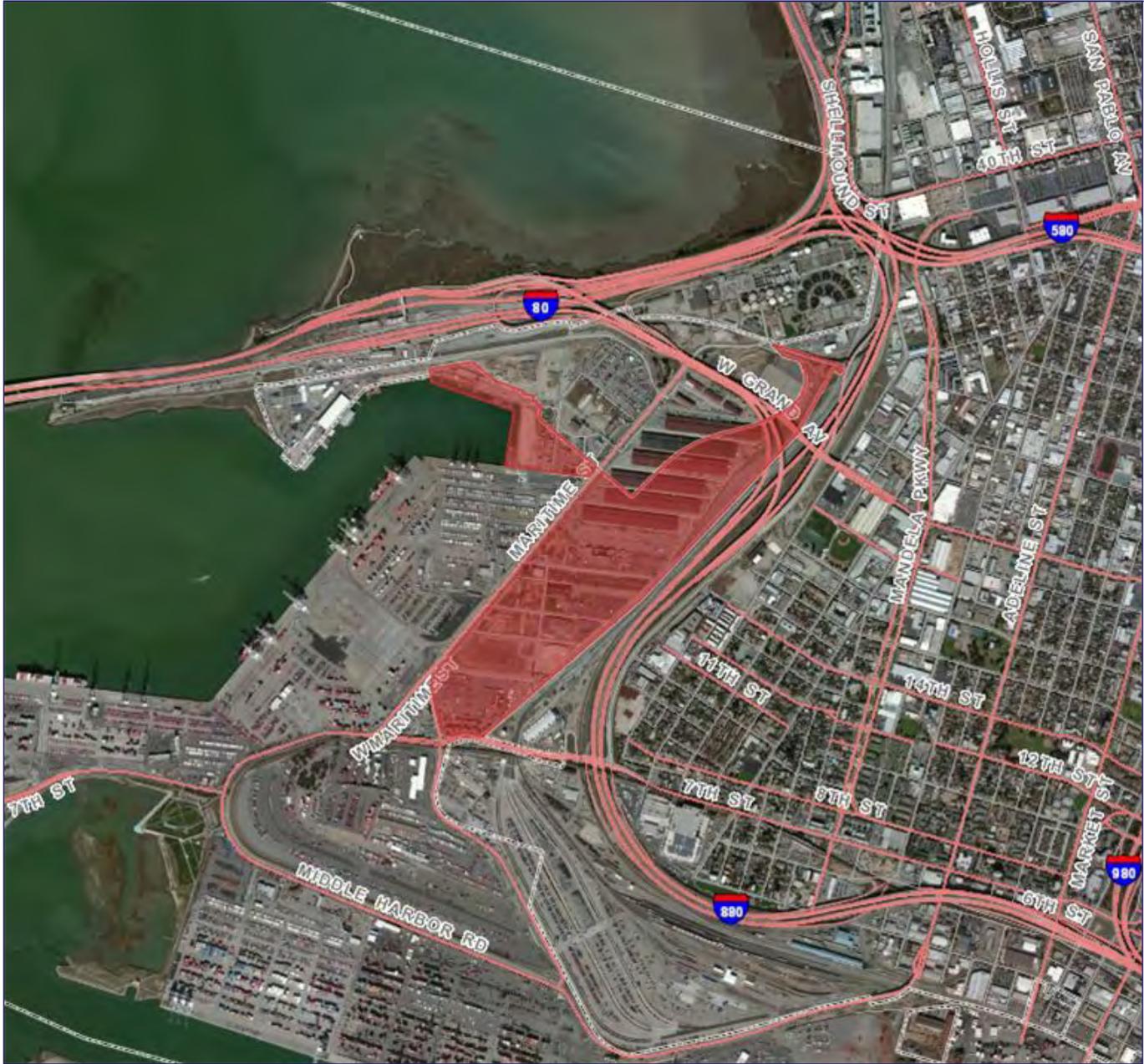
DRAFT

Exhibit B

Schedule of Performance

Party business representatives will meet every Tuesday and Friday during the term to advance negotiations under this Agreement. Party legal counsel shall attend such meetings as necessary to concurrently document any agreement by the parties.

DRAFT



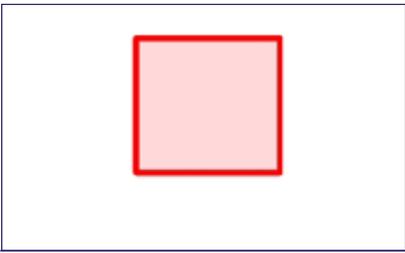
Port of Oakland Enterprise GIS Map

Streets

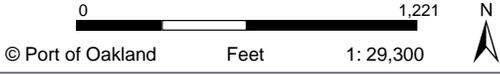
- Freeway
- Freeway Ramp
- Thoroughfare / Major Arterial
- Residential Street

Port Area Jurisdiction

Notes:



This map is a user-generated static output from an intranet map viewer, and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.
THIS MAP IS NOT TO BE USED FOR NAVIGATION



02/13/14
Item No. 3.3
MCR/lhr 

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

RESOLUTION APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO AN EXCLUSIVE NEGOTIATING AGREEMENT WITH PROLOGIS, L.P., CCIG OAKLAND GLOBAL, LLC AND THE OAKLAND GLOBAL RAIL ENTERPRISE, LLC FOR THE LONG TERM LEASE AND DEVELOPMENT OF THE FORMER OAKLAND ARMY BASE.

WHEREAS, the Board of Port Commissioners ("Board") has reviewed and evaluated Agenda Report Item 3.3 ("Agenda Report"), dated February 13, 2014 and related agenda materials, has received the expert testimony of Port staff, and has provided opportunities for and taken public comment; now, therefore, be it

RESOLVED, that the Board hereby authorizes the Executive Director of the Port of Oakland ("Executive Director") to execute for and on behalf of the Board an Exclusive Negotiating Agreement ("ENA") with Prologis, L.P., CCIG Oakland Global, LLC and the Oakland Global Rail Enterprise, LLC for a negotiating period that shall expire no later than June 30, 2014 subject to the extension rights set forth below and further extension of 60 days for the Board approval of any Agreement negotiated, as set forth in the draft ENA for the Long Term Lease and Development of the Former Oakland Army Base as more fully described in the Agenda Report. The ENA shall be in the form of the ENA presented to the Board on February 13, 2014, copies of which were available for public inspection at the Board meeting on February 13, 2014; and be it

FURTHER RESOLVED, that the Board hereby delegates to the Executive Director authorization to extend the term of the ENA for up to two (2) periods not to exceed thirty (30) days each; and be it

FURTHER RESOLVED, that the Board hereby delegates to the Executive Director authorization to issue interpretations, waive provisions, and/or enter into certain amendments of the ENA on behalf of the Port so long as such actions do not materially or substantially change the uses or development contemplated, or add to the costs incurred or to be incurred by the Port, and such interpretations, waivers and/or amendments may include extensions of time to perform; and be it

FURTHER RESOLVED, that the Board hereby finds and determines that the project was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA") and the Port CEQA Guidelines. In July 2002, the City of Oakland ("City"), as the lead agency under CEQA, certified an Environmental Impact Report ("EIR") for reuse of the OAB. On September 17, 2002, the Board, acting on behalf of the Port as a responsible agency under CEQA, adopted findings and a mitigation program in reliance on the City's EIR. In June 2012, the Board considered the 2012 OAB Project Initial Study/Addendum and adopted mitigation measures applicable to the Port from the City's OAB Standard Conditions of Approval/Mitigation Monitoring and Reporting Program ("SCA/MMRP"). The OAB EIR described projects to be developed by the Port on its portion of the former OAB, including certain infrastructure development as contemplated in the City's infrastructure project and related support uses. Therefore, no further or additional environmental review or documentation is necessary in order for the Board to take the actions recommended in this agenda report; and be it

FURTHER RESOLVED, that this resolution is not evidence of and does not create or constitute (a) a contract, or the grant of any right, entitlement or property interest, or (b) any obligation or liability on the part of the Board or any officer or employee of the Board. This resolution approves and authorizes the execution of an agreement in accordance with the terms of this resolution. Unless and until a separate written agreement is duly executed on behalf of the Board as authorized by this resolution, is signed and approved as to form and legality by the Port Attorney, and is delivered to the other contracting party, there shall be no valid or effective agreement, and be it

FURTHER RESOLVED, that this resolution shall become effective immediately upon adoption by the Board.