



## Legislation Details (With Text)

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<b>Type:</b>	Discussion	<b>Status:</b>		Agenda Ready	
<b>File created:</b>	6/11/2019	<b>In control:</b>		City Council	
<b>On agenda:</b>	6/18/2019	<b>Final action:</b>			
<b>Title:</b>	CONSIDER RESOLUTION 19-119 OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, APPROVING THE REAL ESTATE EXCHANGE AGREEMENT UNDER THREAT OF CONDEMNATION AND JOINT ESCROW INSTRUCTIONS WITH PROLOGIS TARGETED U.S. LOGISTICS FUND, L.P., A DELAWARE LIMITED PARTNERSHIP, TO EXCHANGE THE CITY YARD PROPERTY AT 2390/2400 E. DOMINGUEZ, CARSON FOR THE PROLOGIS REAL PROPERTY AT 18620 SOUTH BROADWAY & 18601 SOUTH MAIN STREET, CARSON (CITY COUNCIL)				
<b>Sponsors:</b>					
<b>Indexes:</b>					
<b>Code sections:</b>					
<b>Attachments:</b>	1. EXHIBIT A - City Yard Exchange Resolution (Prologis), 2. EXHIBIT B - Exchange Agreement_6-10-19_Owner Exec				

Date	Ver.	Action By	Action	Result
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## Report to Mayor and City Council

Tuesday, June 18, 2019

Discussion

### SUBJECT:

**CONSIDER RESOLUTION 19-119 OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, APPROVING THE REAL ESTATE EXCHANGE AGREEMENT UNDER THREAT OF CONDEMNATION AND JOINT ESCROW INSTRUCTIONS WITH PROLOGIS TARGETED U.S. LOGISTICS FUND, L.P., A DELAWARE LIMITED PARTNERSHIP, TO EXCHANGE THE CITY YARD PROPERTY AT 2390/2400 E. DOMINGUEZ, CARSON FOR THE PROLOGIS REAL PROPERTY AT 18620 SOUTH BROADWAY & 18601 SOUTH MAIN STREET, CARSON (CITY COUNCIL)**

### I. SUMMARY

The City is considering the exchanging of the City Yard Real Property at 2390/2400 E. Dominguez for the Prologis Targeted U.S. Logistics Fund, L.P. owned property at 18620 S Broadway & 18601 S Main Street, Carson.

California Government Code § 37421 et. seq. requires that a City set a date of the public hearing at which the public may provide testimony regarding a possible sale of real property. The City of Carson is a Charter City, however, and is not required to hold a

Public Hearing as this transaction is a Property Exchange.

This request for the approval of the resolution is the last legislative step for real estate acquisition, which entail the approval of the Real Estate Exchange Agreement ("Exchange Agreement") and acceptance of the terms of the exchange by adoption of Resolution 19-119.

The terms of the Agreement are described below.

## **II. RECOMMENDATION**

1. WAIVE FURTHER READING AND ADOPT RESOLUTION NO. 19-119, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 37421 ET. SEQ. APPROVING THE REAL ESTATE EXCHANGE AGREEMENT UNDER THREAT OF CONDEMNATION AND JOINT ESCROW INSTRUCTIONS WITH PROLOGIS TARGETED U.S. LOGISTICS FUND, L.P. AT 2390/2400 E. DOMINGUEZ, CARSON FOR THE PROLOGIS REAL PROPERTY AT 18620 SOUTH BROADWAY & 18601 SOUTH MAIN STREET, CARSON.
2. AUTHORIZE the Mayor to execute the Agreement following approval as to form by the City Attorney.

## **III. ALTERNATIVES**

TAKE another action deemed appropriate by the City Council.

## **IV. BACKGROUND**

The City has operated its City Yard at the City Property for several decades. The current buildings and facilities on the City Yard Property are in need of substantial repair and renovation which would be expensive and would significantly interfere with the services to the City. In addition, the City Yard has more acreage than needed for the City Yard operations and a portion is leased to a logistics tenant.

The Prologis Property is more centrally and better located within the City for the operation of the City Yard. It also has separate buildings that would allow the two departments that are housed at the City Yard, Parks & Recreation and Public Works, to have their separate and unique facilities at either end of the campus. The City could acquire the Prologis Property through condemnation subject to compliance with all applicable laws which would take time and incur significant legal costs and expense.

As a Charter City, the City does not need to comply with Government Code § 37421 et. seq., which requires a municipal law City to set a date for a public hearing, at which the

public may provide testimony regarding the sale of the property prior to the City approving a sale of property.

The City and Prologis have negotiated the Exchange Agreement for over 15 months. This resolution summarizes the terms of the Exchange Agreement and (i) approves the Exchange Agreement, (ii) authorizes the City Manager to execute documents required to consummate the transaction, and (iii) authorizes the City Manager to approve change orders to a cumulative maximum amount of \$500,000.

## **PROPERTIES:**

### **City Property.**

The City of Carson ("**City**") currently owns real property located at located at 2390/2400 E. Dominguez (APN 7316-026-900) consisting of approximately 10.48 acres ("**City Yard Property**") on which the City has operated the city yard for several decades. The current buildings and facilities on the City Yard Property were originally constructed as a steel manufacturer and not for its current purpose, and are in need of substantial repair and renovation which would be expensive and which renovation activity would significantly interfere with the operation of the yard, and ultimately services to the City.

### **Prologis Property.**

Prologis Targeted U.S. Logistics Fund, LP, a Delaware limited partnership ("**Prologis**") owns that certain real property located at 18620 South Broadway & 18601 South Main Street, in the City of Carson (APN 7339-013-024) consisting of approximately 6.39 acres with a number of buildings ("**Prologis Property**"). The Prologis Property is more centrally located within the City for the operation of the City Yard to serve the City. The City could acquire the Prologis Property through condemnation subject to compliance with all applicable laws, but such condemnation would take a substantial amount of time and incur significant legal costs and expense.

## **EXCHANGE AGREEMENT.**

Under threat of possible condemnation, Prologis has agreed to exchange the Prologis Property for the City Yard Property upon certain terms and conditions as set forth in an Exchange Agreement under Threat of Condemnation and Joint Escrow Instructions ("**Exchange Agreement**") pursuant to the terms summarized as follows:

1. **Property Valuations.** Both the City Property and the Prologis Property have been appraised. The appraisals determined that the fair market value of the City Property is \$25,824,000 and the fair market value of the Prologis Property is \$15,624,000, with the net difference being \$10,200,000 ("**Excess Amount**") which will be due to City (subject to offset as noted below for construction of the Improvements).
2. **Deposit.** Upon execution of the Exchange Agreement, Prologis shall have 10 business days to perform due diligence inspection of the City Yard Property. Upon

expiration of the due diligence period, Prologis must either cancel the Exchange Agreement or deposit \$1,500,000 into escrow which is non-refundable (except if City breaches).

**3. Construction of Improvements.** As additional consideration, Prologis will construct the internal improvements in the existing building on the Prologis Property summarized as follows:

- a. The plans and specifications for the improvements requested by the City ("**Improvements**") were prepared by MVA Architects and approved by City ("**Approved Plans**").
- b. The cost of the Improvements is estimated at \$4,871,733 of which Prologis shall pay \$2,410,000 and City shall be responsible for \$2,461,733 which will be offset against the Excess Amount. The cost of any requested change orders will be paid by City.
- c. Upon expiration of the due diligence period, Prologis is to promptly commence and diligently construct the Improvements in accordance with the Approved Plans and to complete same within 9 months of commencement.
- d. Pursuant to applicable law, Prologis will comply with prevailing wage laws for construction of the Improvements, even though construction is occurring prior to the transfer of the Prologis Property to City.

The Improvements will be deemed substantial completed ("**Substantial Completion**") upon the last to occur of (a) a certificate of substantial completion certificate executed by the Architect, General Contractor, and Prologis which will be delivered to the City, (b) a notice of completion under Civil Code 8412 has been recorded, and (c) a certificate of occupancy has been issued by the City in accordance with standard procedure.

**4. Environmental.** The parties have each retained environmental consultants to review the Phase I and II reports and to investigate the respective properties. Prologis retained PARTNER Engineering and Science, Inc. and City initially retained Dr. Susan Mearns and subsequently EFI Global to conduct a peer review. PARTNER and EFI are both major internationally recognized environmental firms and have issued reports indicating that there are no major environmental concerns on either property. PARTNER has issued a reliance letter for their report on the Prologis Property in favor of the City, which is supported by \$5,000,000 in errors and omissions insurance.

- a. The Exchange Agreement specifies that each party is accepting the property being acquired in AS-IS condition and will not have any rights against the transferring party but may pursue prior owners and the environmental consultants ("**AS-IS Covenant**").
  - b. The purchase price for the City Property was increased by \$200,000 to permit the City to obtain environmental insurance, evidence of which must be provided to Prologis as a condition to closing.
  - c. The City has the right (but not the obligation) to request that the Prologis Property be vested in the Carson Reclamation Authority ("**CRA**") at closing subject to certain conditions, including the CRA acknowledging the AS-IS Covenant.
5. **CEQA.** The uses of the respective properties does not trigger any CEQA issues as uses will be consistent with existing zoning and general plan uses and the permitted uses were adequately disclosed in the EIR certified in 2004 as part of the City's General Plan.
6. **Leaseback.** After the closing of escrow, City will lease back the City Yard Property for 30 days rent free to allow the city yard operations to be relocated to the Prologis Property. Furthermore, City has the right remove any and all items from existing City Yard at its discretion.
7. **Closing.** Closing will occur within 45 days of Substantial Completion of the Improvements.
- a. At Prologis' cost, Prologis will provide City with an extended ALTA owner's title policy, a final survey and as-built plans for the Improvements.
  - b. Prologis will pay **all** title, escrow recording, report and commission costs as well as documentary transfer taxes for both properties.

- c. City will receive net proceeds of \$7,538,267 less the cost of any change orders requested by the City during the construction period.

**8. Reimbursement Agreements.** Prologis has executed reimbursement agreements as follows:

- a. For City attorney fees to a maximum of \$125,000.
- b. For City's environmental work to a maximum of \$25,000.

**9. Damages for Breach.** If either party breaches the Exchange Agreement, neither property will be transferred and the non-defaulting party will be entitled to liquidated damages as follows:

- a. **Breach by Prologis.** City retains the Deposit \$1,500,000 as liquidated damages.
- b. **Breach by City.** Prologis receives:
  - i. \$1,500,000 if City breaches prior to commencement of the Improvements.
  - ii. \$3,000,000 if City breaches after commencement of the Improvements.

## **V. FISCAL IMPACT**

The transaction results in the City having a newly renovated and furnished City Yard, in a much more accessible location for both staff and the public. The difference in value between the two properties - with the City's current property being worth \$10,200,000 more than the Prologis property, creates a fund in that amount that allows the City to contribute \$2,461,733 toward improvements to the new site in excess of \$4,800,000. The resulting

net proceeds to the City would be approximately \$7,538,267.

## **VI. EXHIBITS**

1. Resolution No. 19-119 (pgs. 7-11)
2. Real Estate Exchange Agreement Under Threat of Condemnation and Joint Escrow Instruction with Prologis Targeted U.S. Logistics Fund, L.P. (pgs. 12-80)

Prepared by: David C. Roberts, Jr., Assistant City Manager