

MEMORANDUM OF UNDERSTANDING # 1
749 Toland Street

THIS MEMORANDUM OF UNDERSTANDING (this "**MOU**") dated as of February, 2019, is made by and between the City and County of San Francisco, a municipal corporation (the "**City**"), acting by and through its Office of Economic and Workforce Development ("**OEWD**") and Prologis, L.P. ("**Prologis**") in connection with a proposed project at 749 Toland Street and 2000 McKinnon Avenue in San Francisco.

RECITALS

This MOU is made with regard to the following facts, intentions and understandings:

A. In December 2016, Prologis filed a preliminary project assessment application (Case No. 2015-012491PPA) for a multi-level production, distribution, and repair ("**PDR**") development covering 749 Toland Street and 2000 McKinnon Avenue encompassing 2 city blocks and the potential a vacation or closure of a portion of Selby Street between McKinnon Avenue and Kirkwood Avenue (as described in the application, and as may be revised and updated from time to time, the "**Project**").

B. As currently proposed, the Project contemplates redeveloping two parcels in a core industrial area of San Francisco. Two new multi-story production, distribution, and repair ("**PDR**") buildings will serve as a new PDR / industrial facility in place of four one-story, metal clad buildings that will be demolished. Each building will be approximately 130 feet tall, with a maximum height of 155 feet including rooftop appurtenances, totaling approximately 2,371,000 gross square feet of PDR space and approximately 11,000 gross square feet of ground-floor retail space. The Project site is located within the Bayview Hunters Point Area Plan and consists of approximately 743,700 square feet (17.07 acres).

C. While the scope of the Project is not yet final, Prologis has applied for various discretionary approvals, including but not limited to a special use district, a related conditional use authorization and planning code and zoning map amendments and approvals. Prologis and the City desire to negotiate other City agreements related to the construction of the Project, including detailing various public benefits, and a potential development agreement in connection with the Project. The Project and the entitlements will require review and approval by the City's Planning Commission and Board of Supervisors, and may require approval of other City agencies. The parties acknowledge the Project may be modified through community and stakeholder and environmental review and planning processes.

D. The proposed Project would replace former military buildings constructed in 1943 on an under-utilized site with updated, modern, multiple purpose, PDR uses central to San Francisco's diverse economic base (including, without limitation, transportation, distribution, warehousing, manufacturing and maker space), new and varied job opportunities, a community benefits program and increased City revenues, as well as provide roadway, sidewalks and related infrastructure improvements.

E. OEWD is currently working with Prologis, as well as the City Attorney's Office and other City agencies, to determine the appropriate scope of all of the Project transaction and entitlement documents. This MOU provides a payment mechanism for Prologis to reimburse OEWD and other City agencies (including the City Attorney's Office) for staff time and materials expended on any component of the Project.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, OEWD and Prologis agree to the following:

1. Negotiations and Entitlement Process. OEWD, working closely with the Planning Department, will act as the lead representative of the City in negotiating the substance of the proposed entitlement package for the Project, including any transaction or approval documents (such documents will be collectively referred to as the "Project Documents"). OEWD will consult with staff from affected City agencies, and such City agencies will contribute personnel and staff time as may be directed by their respective directors or department heads. Following negotiations, all Project Documents will be subject to review and approval of the Planning Commission, applicable City agencies, and the Board of Supervisors, each in their sole discretion.

2. Reimbursement of City Costs.

(a) Prologis will reimburse OEWD for costs incurred by the City for all work associated with the preparing, adopting or negotiating the Project Documents for the Project. Eligible costs will include, without limitation, the (1) fees and expenses of the City Attorney's Office staff at the rates charged by the City Attorney's Office to third party outside developers from time to time, (2) actual fees and expenses of any outside counsel and third party consultants, advisors, and professionals (including, but not limited to, real estate appraisers), (3) actual costs related to public outreach and information; and (4) costs of staff time for the City agencies consulted in connection with the Project Documents. Eligible costs will not include costs that are paid or reimbursed through planning department or other project applications. Before engaging any outside counsel or consultants, OEWD will obtain Prologis's approval regarding the proposed engagement, which approval will not be unreasonably withheld. OEWD will be responsible for coordinating the billing of all City agencies as described in this section.

(b) OEWD will provide Prologis with quarterly invoices. These invoices will indicate the hourly rate for each OEWD or City staff member at that time, the total number of hours spent by each City staff member on the tasks during the invoice period, any additional costs incurred by the City and a brief non-confidential description of the work completed.

(c) The parties anticipate that OEWD and other City staff time to be reimbursed will not exceed \$89,544 [**per fiscal year**] based on the following staffing (under a 40-hour work week): up to 10% of the Project Manager's time, plus up to 5% of the PDR Sector Advisor, plus up to 5% of City Attorney staff time. All City staff time will be billed in accordance with this MOU, and the above estimate will not be considered a cap on costs. See Appendix A for current billing rates, [**which are anticipated to be in effect until June 30, 2019**].

(d) Prologis will pay the invoiced amount within 45 calendar days of receipt from OEWD, provided that (i) that the maximum amount payable will not exceed the budget established in subsection (c) above, as the same may be revised from time to time as provided in Section 14(a), (ii) in the event that City's costs and expenses exceed the amounts set forth in the approved budget, then, notwithstanding anything in this MOU to the contrary, City will have the right to suspend additional work on the Project until the parties reach agreement on a revised budget and additional payments to be made by Prologis, including any amounts due by Prologis for work previously performed, and (iii) in the event the parties cannot reach agreement on a revised budget, or if Prologis fails to pay any amounts due and owing hereunder, then City will have the right to terminate this MOU without cost or liability.

(e) If Prologis in good faith disputes any portion of an invoice, then within 60 calendar days of receipt of the invoice Prologis will provide written notice of the amount disputed and the reason for the dispute, and the parties will use good faith efforts to reconcile the dispute as soon as practicable. Prologis will have no right to withhold the disputed amount. If any dispute is not resolved within 90 days of Prologis's notice to City of the dispute, Prologis may pursue all remedies at law or in equity to recover the disputed amount. Prologis will have no obligation to reimburse City for any cost that is not invoiced to Prologis within twenty-four (24) months from the date the cost was incurred.

(f) If Prologis submits an application for a development agreement, the parties may terminate this MOU and revise the payment mechanisms for the reimbursement of all City costs consistent with San Francisco Administrative Code Chapter 56.

3. City Limitation. Nothing in this MOU will obligate OEWD or any other City department to expend funds or resources, nor will anything in this MOU be construed as a limitation on any party's authority to contribute staff, funds or other resources to the processing, review and consideration of the Project. Nothing in this MOU will limit the discretion to be exercised by City staff and City officials in connection with the Project.

4. No Liability; Termination. The parties are entering into this MOU in order to cooperate in negotiating the substance of an entitlement package with respect to the Project. The parties understand and agree that the City would not be willing to enter into this MOU if it could result in any liability or cost to the City. Accordingly, in the event that Prologis believes that the City has violated any of the terms of this MOU, Prologis's sole remedy, except as provided in 2(e) above, will be to terminate this MOU. Prologis will be responsible for the eligible costs incurred by any of the City agencies before the termination notification. Notwithstanding anything to the contrary in this MOU, either party will have the right to terminate this MOU at any time and for any reason without cost or liability by providing seven (7) days advance written notice of termination to other party, provided any such termination will not relieve Prologis of its reimbursement obligations with respect to work performed before the date of termination, nor the City of a claim arising under Section 2(e).

5. City Discretion. Prologis acknowledges and agrees that by entering into this MOU, OEWD is not committing itself or agreeing to approve any land use entitlements or undertake any other acts or activities relating to the subsequent independent exercise of discretion by the Planning Commission, the Board of Supervisors, the Mayor, or any other City agency, commission or department, and that the Project Documents and approvals are subject to the prior

approval of the Planning Commission, the Board of Supervisors, and the Mayor (and perhaps other City agencies, as applicable), each in their sole and absolute discretion.

6. Assignment. Prologis may assign its rights and obligations under this MOU to an affiliate or subsidiary entity at any time with notice to but without the consent of OEWD, provided, if such affiliate or subsidiary fails to pay amounts due hereunder, then Prologis will remain liable for such payment.

7. Environmental Review. The Project ultimately proposed by Prologis will be subject to a process of thorough public review and input and all necessary and appropriate approvals; that process must include environmental review under CEQA before a City department, commission, or any other City decision-maker may consider approving a project; and the Project will require discretionary approvals by a number of government bodies after public hearings and environmental review. Nothing in this MOU commits, or will be deemed to commit, the City or a City official to approve or implement any project, and they may not do so until environmental review of the Project as required under CEQA has been completed. Accordingly, all references to the "Project" in this MOU will mean the proposed project as revised and subject to future environmental review and consideration by the City. The City and any other public agency with jurisdiction over any part of the Project will have the absolute discretion before approving that project to: (i) make such modifications to the Project as may be necessary to mitigate significant environmental impacts; (ii) select other feasible alternatives to avoid or substantially reduce significant environmental impacts; (iii) require the implementation of specific measures to mitigate any specific impacts of the Project; (iv) balance the benefits of the Project against any significant environmental impacts before taking final action if such significant impacts cannot otherwise be avoided; and (v) determine whether or not to proceed with the Project.

8. Notices. Unless otherwise indicated elsewhere in this MOU, all notices or other communications required by this agreement shall be in writing and shall be sent by the parties by U.S. mail, and will be addressed as follows:

To OEWD: Ken Rich, Director of Development
c/o Crezia Tano, Project Manager
Office of Economic and Workplace Development
City Hall, Room 448
One Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Phone: 415.554.5194
and
Email: Ken.Rich@sfgov.org

To Prologis: Christine Jackson, Vice President
Prologis
Pier 1, Bay 1
San Francisco, CA 94111
Phone: 415.733.9934
and
Email: cjackson@prologis.com

With a copy to: Prologis
1800 Wazee Street, Suite 500
Denver, CO 80202
Attn: Chief Legal Officer
and
Email: enekrtz@prologis.com

In addition to the foregoing, any notice of default also must be sent by registered mail.

9. California Political Reform Act. The parties acknowledge that payments pursuant to this MOU from Prologis to OEWD are payments to the City, not to any individual employee or officer of the City, and that the payments therefore are not "income" to any City employee or officer under the California Political Reform Act, California Government Code Section 81000, *et seq.*

10. Notification of Limitations on Contributions. Prologis acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Prologis acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more.

11. No Joint Liability. Nothing in this MOU will be construed as giving a party the right or ability to bind other parties and nothing in this MOU will be construed to create any joint liability with regard to, or as a result of, the activities undertaken by any of the parties, their employees, officers and/or agents. All employees, officers and/or agents of a party will remain employees, officers and/or agents of that party and will be subject to the laws, procedures, rules and policies governing that party's employees, officers and/or agents.

12. Sunshine. Prologis understands and agrees that under the City's Sunshine Ordinance (S.F. Administrative Code Chapter 67) and the State Public Records Law (Gov't Code section 6250 *et seq.*) apply to this MOU and any and all records and materials submitted to the City in connection with this MOU.

13. Miscellaneous.

(a) This MOU may be modified only in writing and by mutual consent of all parties.

(b) This MOU will become effective when signed by all OEWD and Prologis. It will remain in effect until terminated in writing by either party.

(c) There are no intended third party beneficiaries of this MOU. The parties acknowledge and agree that this MOU is entered into for their benefit and not for the benefit of any other party.

(d) This MOU will be governed by the applicable laws of California.

(e) This MOU contains all of the representations and the entire agreement between the parties with respect to the subject matter of this MOU. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to such subject matter are superseded in total by this MOU.

IN WITNESS WHEREOF, the parties have executed this MOU on the date set forth herein.

City and County of San Francisco, a
municipal corporation, acting by and through its
Office of Economic and Workforce Development

By: 
Joaquin Torres, Director

Prologis, L.P.
A Delaware limited partnership

By: 
Christina Jackson
Its: Vice President

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: 
Elizabeth Dietrich, Deputy City Attorney

Appendix A

OEWD / Other City Staff – Billing Rates

(Hourly rates as of July 1, 2018)

Project Manager – Development Agreement	\$141
Project Manager – PDR Sector Advisor	\$121
City Attorney - Development Agreement	\$350 - 530

