



OFFICE

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AGENDA REPORT

TO: HONORABLE CITY COUNCIL

FROM: Fred Blackwell

SUBJECT: Recyclers ENA Extension

DATE: March 4, 2014

COUNCIL DISTRICT: 3

RECOMMENDATION

Staff recommends that the City Council adopt:

A Resolution Authorizing the City Administrator to Negotiate and Execute a Second Amendment to the City's Exclusive Negotiating Agreement (ENA) with California Waste Solutions, Inc. and CASS, Inc., Regarding a Proposed Recycling Project on up to Approximately 20 Acres in the North Gateway Area of the Former Oakland Army Base Extending the ENA to December 15, 2014

OUTCOME

Approval of the proposed Resolution will extend the term of the current ENAs which expire on March 18, 2014 to December 15, 2014 and enable the City Administrator to negotiate and execute an ENA with both CWS and CASS. City Council authorization would also provide an option for the City Administrator to extend either ENA up to an additional ninety (90) days if required based on any unexpected delays not due to CWS or CASS. The ENA extensions will enable both CWS and CASS to continue with their respective due diligence required to advance their respective developments prior to returning to Council with the request to enter into Disposition and Development Agreements.

BACKGROUND/LEGISLATIVE HISTORY

Relocating CWS and CASS out of West Oakland has been a long-term effort for the recyclers, the City and the West Oakland community. There are approximately 12 recycling and salvage operations in West Oakland. CWS and CASS are the two largest recyclers. In February 2009, these two firms submitted their first letter of interest to purchase property at the former Oakland Army Base. They proposed purchasing the 16.5-acre Subaru Lot to relocate their operations out of West Oakland, in part so that these two properties could be put to a higher and more

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community oriented use. Later in July 2009, CWS and CASS submitted a second letter to the City with CWS requesting 14.5 contiguous acres and CASS requesting its need for 10 contiguous acres. Ultimately, the combined acreage CWS and CASS requested was more land than the City had available. Of the City's 170 acres of Army Base property, 135 acres were allocated for master development and 15 acres for truck parking and services, leaving only approximately 20 acres unaccounted for in the development area. Staff continued to meet with the recyclers to explore alternative locations, but was unable to identify any feasible alternatives.

By 2011, CWS and CASS decided to compromise on the amount of land they would each need and try again to co-locate in the North Gateway. They met with staff on January 27, 2011 to discuss the potential. Staff told the recyclers that the City was considering issuing a Request for Proposals (RFP) for the North Gateway. The timeframe for the RFP's release depended on the master planning process. Staff conveyed to the recyclers they were free, however, to submit an unsolicited offer which could become the basis for direct negotiations. To be considered, the offer would have to provide a sketch site plan indicating buildings, parking, and circulation, and propose a specific price based on stated assumptions about acreage and uses.

On June 28, 2011, CWS and CASS submitted a joint proposal to purchase and develop approximately 20 acres of land in the North Gateway with CWS acquiring 11.1 acres (approx.. 55% of the total land area) and CASS 8.9 acres (approx.. 45% of the total land area). In addition, CASS proposed to lease 1.1 acres of land under the freeway for parking. CWS and CASS offered \$557,000 per acre, an amount comparable to the City's cost per acre for the Subaru Lot. It should be noted that another entity also submitted an offer at almost the same and that its offer and deposit terms were lower than the CWS/CASS proposal.

The City, CWS and CASS executed an ENA on February 12, 2012. The ENA was administratively extended, pursuant to authorization, to March 20, 2013. Staff received subsequent authorization to extend the ENA to December 15, 2013 with approval to extend the ENA administratively another 90 days. The ENA was administratively extended, pursuant to authorization, to March 18, 2014.

These extensions were necessary to complete the overall project Master Plan, CEQA findings, planning, design and securitization of funding for the construction of major backbone infrastructure. Additionally, there have been two other major factors which have impacted a later site delivery than may have been originally expected: 1) the scope, sequence and construction for the Public Infrastructure project, 2) issues surrounding the realignment of Wake Avenue; 3) the rail operator agreements with the Port of Oakland; and 4) the related relinquishment and relocation of the BNSF railroad easement

The Design Build Construction Contract for the Army Base Public Infrastructure was executed in October 2013 after more than two years of intensive work by and between City staff, the City's Agent, California Capital & Investment Group (CCIG) and their Project design,

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engineering and construction team. The Army Base Public Infrastructure Project scope, sequence and construction schedule sets the timeframe/estimated dates for site delivery of all of the development parcels at the former Oakland Army Base, including site delivery for the CWS and CASS parcels in the North Gateway Area.

The current, estimated site delivery dates are:

<u>Site</u>	<u>User</u>	<u>Delivery Date</u>
AMS Site	OMSS	July 2016
Central Gateway	Prologis	October 2016/December 2017
East Gateway	Prologis	July 2016
North Gateway	CWS/CASS	July 2016
West Gateway	CCIG	April 2016* (September 2015)

It should be noted however that all of these delivery dates above are projected and subject to change based on the achievement of critical path activity and the availability of adequate soils and materials handling for the project for the required site preparation.

In 2002, Caltrans obtained construction rights to the West Gateway through April 2016. The construction work necessary to allow CCIG to begin paying rent to the City and occupying the West Gateway will be completed by September 2015. Additionally, the issues involved with Wake Avenue have been a considerable concern and delay to moving forward with the Recyclers development agreements. As background, in 2007 as part of the proposed Army Base Auto Mall development in the North Gateway, the City went forward with development agreements, construction plans and CEQA clearance for the Auto Mall. The City was subsequently sued by East Bay Municipal Utility District (EBMUD) and ultimately agreed to a series of settlement terms that were formalized in a Memorandum of Agreement (MOA) with EBMUD authorized by the Council and executed July 19, 2012. There are two critical path items that have to be resolved prior to moving forward with any of the two Disposition and Development Agreements with either CWS or CASS, the BNSF easement relinquishment and relocation, and acquisition of a 1.6-acre parcel from the Port of Oakland.

The BNSF Easement Relinquishment and Relocation

One of the primary components of the EBMUD lawsuit against the City was access to the Main Waste Water Treatment Facility located adjacent to the North Gateway at the end of existing Wake Avenue. In order for the City to realign/relocate Wake Avenue from its current location, the City must relocate or remove an existing perpetual BNSF rail easement that has been in place since August 4, 1942. To relocate or remove the existing BNSF rail line and easement, the City must obtain agreement and cooperation from BNSF. Federal pre-emption law does not allow local or state municipalities to take condemnation action against railroads.

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To date BNSF has been willing to cooperate to remove or relocate the rail easement in consideration for equal access and operational rights within the Port of Oakland's new Army Base rail yard. With the help and leadership of the City's Agent, CCIG, the Port, Union Pacific Railroad and BNSF are in the process of finalizing a rail yard design that provides the access and operational rights necessary for BNSF to agree to and effect the relocation or removal of the rail easement. Staff has been working with BNSF on the easement issue since 2007 when it was first identified in the EBMUD lawsuit settlement discussions. And while BNSF has been willing to cooperate, the issue and its resolution have been slow to formulate. While staff has been confident the parties would work out an agreement, the timing on the agreement has continued to languish.

In the unlikely, but possible, event we are unable to secure BNSF agreement to relocate or remove the perpetual easement, the existing Wake Avenue would have to remain in place. The existing Wake Avenue runs directly through the proposed CWS parcel (see Attachment __). The impact of having existing Wake Avenue remain in place is a significant impact and changes and limits the value and utility of the currently proposed parcel. As indicated in Attachment __, the proposed parcel would be cut into two parcels. And the easements across existing Wake Avenue would stay in place, thereby prohibiting use this approximately 2-acre area by CWS or anyone other than vehicle traffic. Again, this would significantly reduce the value and utility of the parcels and leave CWS with two separated parcels of approximately 10-acres in total.

It is possible for the City and Recyclers to move forward with an At-Risk, contingency based development agreement that accepts the above described issues as contingencies. Previously staff has been hesitant to take this approach and has cautioned CWS and CASS of the cost and resource concerns of this approach. CASS has accepted this position and taken a hands-off, wait and see approach. CWS has been more active and engaged in trying to move the development deal and a Disposition and Development Agreement (DDA) forward. In the past month there have been very positive developments in the Port, Union Pacific, BNSF and CCIG discussions and staff has been informed the rail yard design has been agreed to in principle. While the design and agreements necessary to complete the construction must still be completed, staff believes there is sufficient agreement among the parties to move forward with At-Risk, contingency based draft Recyclers DDA negotiations.

Acquisition of that Port 1.6-acre Parcel

A second real estate issue has also been part of the delay. The City currently owns approximately 20.8-acres of property available for development by the Recyclers in the North Gateway. The Recyclers have consistently asked for as much developable property as possible. In response, the City and Recyclers have worked with the Port to acquire a portion of Port property located next to proposed Recyclers development area. The Port has agreed to sell approximately 1.6-acres of

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this property to the City, which the City would simultaneously transfer to the Recyclers (the intended party is CASS) consistent with City Council Ordinance 13160 dated May 21, 2013.

The 1.6-acre property was formerly Army-owned property that was acquired by the Oakland Base Reuse Authority (OBRA) and immediately transferred to the Port. The 1.6-acre property was acquired subject to a claim by State Lands Commission that the property may be subject to Tidelands Trust designation which limited the allowable uses to Maritime or Maritime related uses. The proposed Recyclers use is not a Maritime or Maritime related use and is therefore not consistent with Tidelands Trust designation. City staff, Port staff and outside counsel specializing in Tidelands Trust spent considerable time, effort and resources working with State Lands Commission staff to free the 1.6-acre parcel from any Tidelands Trust designation. These actions were completed and the property is now free of Tidelands Trust designation.

Staff is working with the Port, Recyclers and an appraiser to determine the potential purchase price for the 1.6-acre property. In the event the parties agree to the purchase price, the City would act as a pass through between the Port and Recyclers, with the Port transferring the property and the Recyclers paying the purchase price. The City would neither receive the property nor pay for it.

The acquisition of the 1.6-acres from the Port would bring the total to 22.4-acres of property available for development by the Recyclers, slightly more than the 20-acres identified in the June 28, 2011, joint proposal from the Recyclers.

As noted above, the June 2011 proposal identified 11.1-acres for CWS and 8.9-acre for CASS which is an approximate 55% to 45% split of acreage. A 55%/45% split of the potential 22.4-acres available would result in a 12.4-acre to 10-acre split between CWS and CASS. In discussions between staff and the Recyclers an issue arose that this split may not be acceptable to the parties. Staff wrote to the Recyclers and requested they meet and determine an acceptable split of the 22.4-acres and convey the agreed upon split to staff. In the event CWS and CASS are unable to reach agreement on a split, staff informed the Recyclers the City would work with the Recyclers to reach a mutually acceptable acreage split.

ANALYSIS

Removing incompatible recycling operations from West Oakland would remove a source of diesel emissions, noise, and traffic congestion, and would improve the quality of life for West Oakland residents. Moreover the sites vacated by CWS and CASS could be redeveloped to meet the demand for neighborhood-serving retail, new jobs, and generate increased tax revenue for the City of Oakland.

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CWS and CASS currently employ almost 200 people. The recyclers estimate that approximately half of their employees live in Oakland. Recycling is a growing industry that addresses Oakland's priorities for sustainable development and green collar jobs. The recyclers estimate that their move to the Army Base would enable them to create another 183 jobs. Recycling also generates business for the Port and has the potential to generate substantially more. CWS and CASS currently ship a total of approximately 730 containers per month through the Port. They expect that number to increase to over 1,200 containers per month with the proposed sites proximity to the Port, and expansion of their recycling services. Being able to ship overseas more efficiently and at lower cost would also help boost overseas sales. The North Gateway's access to rail would enable the recyclers to increase the tonnage of materials they can bring in and sell without increasing the amount of truck traffic in West Oakland.

The balance of the former Oakland Army Base is being developed into a new trade and logistics hub. The operations of CWS and CASS would be highly compatible with the new development. Equally important is the EBMUD's consideration of recycling uses as compatible with its wastewater treatment plant. EBMUD's cooperation is needed to make the CWS and CASS proposal work. As noted above Wake Avenue has to be realigned and EBMUD's main entry shifted to fit both recyclers on the site. As previously mentioned, the City and EBMUD have executed an MOA detailing the terms and conditions necessary for the realignment of Wake Avenue.

As noted above, City staff and the City's Agent, CCIG, continue to work with BNSF, Union Pacific, and the Port on its rail yard engineering and design. City staff have been informed the rail yard design has been agreed to in principle. While the agreements necessary for the rail yard must still be completed, staff believes there is sufficient agreement among the parties on the rail yard design and therefore BNSF may agree to move forward with relocation or removal of the BNSF rail easement along Engineers Road within the next 60-90 days.

Based on this new information, City staff are prepared to move forward and negotiate an At-Risk, contingency based draft DDA with CWS and subsequently CASS. It is staff's goal to bring to the Council, prior to this summer's recess, a request for authorization to enter into a DDA with CWS provided that the two major critical path elements discussed above have been eliminated. Staff hopes to also bring a request for authorization with CASS at the same time. Given the challenges and delays described above, and in order to keep in place CWS and CASS's exclusive negotiating rights, staff is requesting an additional nine month extension to December 15, 2014.

As of the date of this report, staff has not received word from CWS and CASS regarding the acreage split issue. Staff will report out orally any outcome or determination it receives from CWS and CASS on this issue. Finally, CWS has made a request to City staff to accelerate the current site delivery date. Staff will keep the Council apprised of this issue.

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PUBLIC OUTREACH/INTEREST

This item did not require any additional public outreach other than the required posting on the City's website.

COORDINATION

This action has been coordinated with the City Attorney's Office, City's Budget Office, Port of Oakland and California Capital & Investment Group (City's Agent).

COST SUMMARY/IMPLICATIONS

1. AMOUNT OF RECOMMENDATION:
The proposed action will not result in any new or additional cost to the City or CWS and CASS. Failure to approve this item and authorize the execution of the ENA extension will result in the return of a \$1,119,570 deposit from CWS and CASS currently being held by the City. The deposit is a good faith deposit from CWS and CASS as consideration for the City entering into the ENA and being precluded from negotiating the sale of this property to others. If the City, CWS and CASS enter into a DDA, fail to reach agreement, or the City otherwise declines to enter into a DDA, the City is required to return the deposit.
2. COST ELEMENTS OF AGREEMENT/CONTRACT:
Same as above.
3. SOURCE OF FUNDING:
As noted above CWS and CASS are the source of the current deposit.
4. FISCAL IMPACT:
The proposed action will not result in any new or additional cost to the City or CWS and CASS. Failure to approve this item and authorize the execution of the ENA extension will result in the return of a \$1,119,570 deposit from CWS and CASS currently being held by the City.

FISCAL/POLICY ALIGNMENT

The proposed action aligns with the City's Army Base Infrastructure Development Project. Authorization to extend the ENA allows staff to continue to pursue a Development and Disposition Agreement with CWS and CASS which would secure a portion of the funds needed by the City for the Army Base Infrastructure Development Project.

SUSTAINABLE OPPORTUNITIES

Economic: Relocating CWS and CASS out of West Oakland would open up large areas of West Oakland for higher uses, such as retail and research and development flex offices, which would generate tax revenue, and create career path jobs for Oakland residents. At the same time, CWS, CASS, and the Port would benefit from the recyclers move to the Army Base, where CWS and CASS will be able to expand and increase their operations

Environmental: Relocating CWS and CASS closer to Port would reduce the impact of truck traffic on West Oakland residents.

Social Equity: The property vacated by CWS and CASS could be redeveloped with more compatible uses.

For questions regarding this report, please contact John Monetta, Project Manager I, at (510) 238-7125.

Respectfully submitted,



Fred Blackwell
City Administrator

Reviewed by:
Douglas Cole
Oakland Army Base Project Manager III

Prepared by:
John Monetta, Real Estate Agent
Oakland Army Base Project Manager I

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Approved as to Form and Legality

Kiran Jain
Office of the City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A SECOND AMENDMENT TO THE CITY'S EXCLUSIVE NEGOTIATING AGREEMENT (ENA) WITH CALIFORNIA WASTE SOLUTIONS, INC. AND CASS, INC., REGARDING A PROPOSED RECYCLING PROJECT ON UP TO APPROXIMATELY 20 ACRES IN THE NORTH GATEWAY AREA OF THE FORMER OAKLAND ARMY BASE EXTENDING THE ENA TO DECEMBER 15, 2014

WHEREAS, on February 12, 2012, the City of Oakland and California Waste Solutions, Inc. (CWS) and CASS, Inc. (CASS) executed an Exclusive Negotiating Agreement (ENA) for the possible development of two recycling facilities on approximately 20 acres of the City-owned North Gateway Area in the former Oakland Army Base ("Property"); and

WHEREAS, on May 7, 2013, Council authorized an extension of the ENA to December 15, 2013, and a first amendment was executed by the parties on June 20, 2013 extending the ENA to December 15, 2013; and

WHEREAS, the parties wish to further extend the ENA to December 15, 2014 and enter into a second amendment to effectuate this intent; and

WHEREAS, CWS and CASS intend to build two new recycling facilities on the Property to relocate their recycling operations out of West Oakland residential neighborhoods and restrict the use of their former West Oakland properties to preclude recycling and other waste operations ("Project"); and

WHEREAS, the relocation of CWS and CASS out of West Oakland residential neighborhoods would reduce truck traffic and remove a land use conflict from the community; and

WHEREAS, the relocation of CWS and CASS to the Army Base would enable the two firms to remain in Oakland, develop more efficient operations, increase productivity, increase sales, and contribute to the Port of Oakland's business; and

WHEREAS, the City is engaged in active negotiations with CWS and CASS and needs additional time to complete these negotiations; now, therefore be it

RESOLVED, that the City Administrator is authorized to negotiate and execute a second amendment to the ENA with CWS and CASS extending the ENA to December 15, 2014, and retaining the ENA's existing option in Section 1.4 thereof for the City Administrator to extend the ENA by up to an additional ninety (90) days thereafter, for the purposes of negotiating the terms and conditions of the possible development of the Project; and be it

FURTHER RESOLVED, that the City has independently reviewed and considered the environmental determination, and the City finds and determines that this action complies with CEQA because this action on the part of the City is exempt from CEQA pursuant to Section 15262 (feasibility and planning studies), Section 15306 (information collection) and Section 15061(b)(3) (general rule) of the CEQA Guidelines; and be it

FURTHER RESOLVED, that the City Administrator or designee shall cause to be filed with the County of Alameda a Notice of Exemption for this action; and be it

FURTHER RESOLVED, that the second amendment to the ENA shall be reviewed and approved as to form and legality by the City Attorney prior to execution; and be it

FURTHER RESOLVED, that the City Administrator is further authorized to take whatever action is necessary with the respect to the second amendment to the ENA consistent with this Resolution and its basic purposes.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2014

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON McELHANEY, KALB, KAPLAN, REID, SCHAAF, AND
PRESIDENT KERNIGHAN

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California