

**REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND**
AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2008 OCT 16 PM 6:48

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: October 28, 2008

RE: **Resolution Amending the Exclusive Negotiating Agreement with Oakland Maritime Support Services for the Development of 15 Acres within the Former Oakland Army Base to Extend the Term of the Agreement from August 11, 2008 to February 28, 2009**

SUMMARY

In November 2007, the Redevelopment Agency executed an Exclusive Negotiating Agreement (ENA) with Oakland Maritime Support Services (OMSS) for the development of 15 acres in the East Gateway of the former Oakland Army Base (see Attachment A).

Staff and OMSS were negotiating a long-term ground lease at the expiration of the ENA, and have reached a conceptual agreement on all major terms of the Lease. However, prior to execution of the Lease, several actions must occur, including:

- Design review by the Landmarks Preservation Advisory Board;
- Planning Commission approval of (1) OMSS's historic preservation analysis (2) a Vesting Tentative Tract Map, and (3) determination that the project complies with Section 3.5 of the Historic Preservation Element of the General Plan; and
- City Council approval of a Deconstruction Fair Share Cost Agreement with the Port of Oakland.

These actions will take several months to complete.

To afford both OMSS and the Agency protection under an agreement until the Lease can be executed, staff recommends that the Agency Board extend the ENA to February 28, 2009.

FISCAL IMPACT

Authorization of the extension does not commit the Agency to the expenditure of any funds, although the future approval of a Lease will require the Agency to incur costs for: (1) environmental remediation; (2) planning permit fees; (3) deconstruction of existing warehouse structures; and (4) installation of new utilities or other infrastructure (stubbed to the property line). These costs will depend on the design and scope of the project, which is still being

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planned. Funding for these site preparation costs would come from existing funds in the FY 2007-09 Oakland Army Base Redevelopment Project Area Budget that are allocated to fund environmental remediation in the GDA.

BACKGROUND

On November 7, 2007, the Agency executed an ENA with OMSS for the development of 15 acres of "Ancillary Maritime Support" (AMS) services to be located in the southern half of the East Gateway portion of the Gateway Development Area (see map, Attachment A). AMS is a business category that includes logistics, trucking, warehouses, and other uses that relate directly to Port operations.

The Agency selected OMSS as the result of a competitive Request for Proposals (RFP) process. In pursuing a potential project with OMSS, the Agency is intending to accomplish several policy goals, including:

- Fulfill a requirement of the San Francisco Bay Conservation and Development Commission (BCDC) to reserve at least 15 acres of the GDA for the development of AMS uses.
- Comply with the Oakland Army Base Environmental Impact Report (EIR) which includes mitigations that require the City and Port of Oakland to work together to reduce the effects of truck parking and truck traffic in West Oakland.
- Address community concerns about the relocation of trucking companies out of West Oakland.
- Create high quality jobs and support Port operations.

At this time, it appears that Agency staff and OMSS have reached conceptual agreement on all major terms of the project. Staff plans to return to the Agency Board as soon as possible in order to seek Agency approval of a long term ground lease for the OMSS project.

KEY ISSUES AND IMPACTS

As discussed below, there are several administrative actions and issues with the Port of Oakland that must be resolved before the Agency can consider approval of a proposed ground lease. Staff is recommending an extension to the ENA in order to allow sufficient time to resolve these outstanding administrative issues.

Actions Required Prior to Approval of the Proposed Ground Lease

Historic Preservation Analysis. The site includes portions of five 233,000 square foot warehouses that were built in 1941-1942 and fall within a historic district. The 2002 Army Base EIR included a comprehensive analysis of the historic preservation issues associated with these buildings. Under the mitigations required by the EIR, the City/Agency cannot remove any of the buildings until it has an approved project for the East Gateway and completes a study to determine the feasibility of preserving and reusing the buildings (MMRP Measure 4.6-14). Staff completed a consultant study, which determined that it is *physically* possible to reuse the buildings for certain AMS uses. OMSS conducted additional analyses, and after thorough study of possible reuse options, determined that it is both *physically* and *economically* infeasible to preserve any portion of the buildings, but that some of the materials from the original 800-series warehouses could be used in the proposed project. OMSS's finding must be presented to the Landmarks Preservation Advisory Committee and the Planning Commission for their consideration. The LPAB and PC will also review the proposed new construction which must be approved by the Planning Commission.

Landmarks Preservation Advisory Board (LPAB) Review. Since the proposed project is located in a historic district, the project is being presented to the LPAB for review and comments before submission to the Planning Commission. The LPAB will consider the feasibility analysis and make recommendations to the Planning Commission about the new construction.

Planning Commission Approval.

Project Approval. Deconstruction of the warehouses on the project site cannot occur until the Planning Commission approves the OMSS project.

Policy 3.5 Findings. Because the OMSS project would require the deconstruction of historic warehouses on the project site, it is subject to Policy 3.5 of the General Plan's Historic Preservation Element, which states that for any project involving complete demolition of Heritage Properties or Potential Designated Historic Properties requiring discretionary City permits, the City must find that:

- (1) the design quality of the proposed project is at least equal to that of the original structure and is compatible with the character of the neighborhood; or
- (2) the public benefits of the proposed project outweigh the benefit of retaining the original structure; or
- (3) the existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood.

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Vesting Tentative Tract Map. The project site is part of a much larger parcel in the GDA. To enter into a ground lease with OMSS, the Agency must subdivide the land and create the 15-acre parcel that OMSS would lease. Subdivision requires the Planning Commission's approval.

Deconstruction Fair Share Cost Agreement. Under the terms of the EIR and the Mitigation Monitoring and Reporting Program (MMRP) Measure 4.6-9, the City and the Port have committed to share the costs on a "fair-share basis" of "a program to salvage as whole timber posts, beams, trusses and siding of warehouses to be deconstructed." Because the historic warehouses in the East Gateway (including the project site) straddle Agency and Port property, the Agency Board authorized the Agency Administrator to negotiate an agreement with the Port to split the cost of deconstructing these buildings. Once an agreement has been negotiated, staff will return to the Agency Board for authorization to enter into the agreement. Actual deconstruction of the portions of the warehouses on the OMSS project site will not occur until the feasibility analysis is complete, the project has been approved by the Planning Commission, and construction permits have been issued based upon an approved site development plan.

Staff expects to receive all of the necessary approvals for the OMSS project by mid December 2008. Until then, without an extension of the ENA, the Agency and OMSS lack assurance of each other's commitment to the project. Any delay in the procedural approvals would expose the Agency and OMSS to additional uncertainty. The Agency has invested considerable staff time and resources to bring this project forward. It enables the Agency to fulfill the Agency's BCDC obligation, implement two EIR mitigation measures, and meet Agency and community goals.

In addition, OMSS has informed staff that it is much more difficult to seek project financing in the current economic climate without ENA coverage.

PROJECT DESCRIPTION

OMSS proposes to build a 15-acre service-rich, one-stop AMS facility, which can help attract trucks out of the neighborhoods, particularly West Oakland. The development will consist of three main components:

- (1) Truck Fuel and Support Services:
 - Parking space for approximately 145 truck cabs
 - Storage space for approximately 173 containers
 - Truck scales
 - Truck wash and maintenance facilities
 - Truck fueling stations dispensing only biodiesel and alternative fuels
 - Trans-load facility

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- (2) Convenience Retail and Gas, which will include a 3,200-square foot convenience market and an auto fueling station
- (3) Multi-use Development:
 - Approximately 23,000 square feet of office space for trucking companies
 - Approximately 20,000 square feet of flex space for retail and business services
 - 6,000 square foot food court

OMSS's project would relocate approximately 30 trucking companies (employing an estimated 400 truckers) out of West Oakland. In addition to reducing the number of trucks traveling through the residential neighborhoods, the project would also offer employment and local business opportunities to Oakland residents and training programs for those seeking to enter or advance in the trucking industry.

SUSTAINABLE OPPORTUNITIES

Economic: The project would retain and generate significant high-quality jobs and tax revenue, and would increase land values in a vacant, blighted, abandoned military facility.

Environmental: The proposed AMS use would help to mitigate the critical issue of truck traffic through the residential areas of West Oakland and the adverse effects of diesel emissions on West Oakland residents.

Social Equity: The project would retain and generate a range of jobs that are accessible to Oakland residents with a range of educational backgrounds. Also revenue generated from the redevelopment of the Army Base could be used to fund open space and other community benefits for West Oakland and the rest of Oakland.

DISABILITY AND SENIOR CITIZEN ACCESS

OMSS's proposed development plans address disability and senior access issues and will comply with all applicable local, state and Federal accessibility regulations.

RECOMMENDATION(S) AND RATIONALE


Staff recommends that the Agency retroactively extend the OMSS ENA term from August 11, 2008 through February 2009. The negotiations between the Agency and OMSS for the development of a trucking facility in the East Gateway are already far along. This extension will allow the Agency and OMSS to complete their negotiations. Staff would then return to the Agency Board and seek approval of a long-term ground lease with OMSS.

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ACTION REQUESTED OF THE CITY COUNCIL/REDEVELOPMENT AGENCY

Staff requests the Agency to approve the attached resolution amending the Exclusive Negotiating Agreement with Oakland Maritime Support Services to extend the Agreement from August 11, 2008 to February 28, 2009.

Respectfully submitted,



Dan Lindheim, Director
Community and Economic Development Agency

Reviewed by:

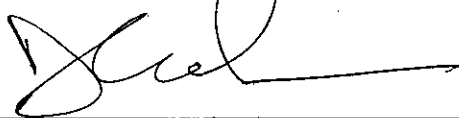
Gregory Hunter, Deputy Director
Economic Development and Redevelopment

Alex Greenwood, Urban Economic Coordinator

Prepared by:

Hui Wang, Urban Economic Analyst
Redevelopment Division

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:



Office of the Agency Administrator

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Attachment A
OMSS Location in the East Gateway



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Approved as to form and legality:

By: *[Signature]*
Agency Counsel

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION No. _____ C.M.S.

RESOLUTION AMENDING THE EXCLUSIVE NEGOTIATING AGREEMENT WITH OAKLAND MARITIME SUPPORT SERVICES FOR THE DEVELOPMENT OF 15 ACRES WITHIN THE FORMER OAKLAND ARMY BASE TO EXTEND THE TERM OF THE AGREEMENT FROM AUGUST 11, 2008 TO FEBRUARY 28, 2009

WHEREAS, the Redevelopment Agency of the City of Oakland (the "Agency") owns approximately 165 acres of real property located in the "Gateway Development Area" (GDA) within the former Oakland Army Base; and

WHEREAS, the Oakland Army Base Redevelopment Plan EIR requires the Agency and the Port of Oakland to jointly implement two mitigation measures to reduce the impacts of trucking on West Oakland; and

WHEREAS, the Bay Conservation and Development Commission (BCDC) requires, as part of the 2006 land conveyance from the Oakland Army Reuse Authority to the Agency and the Port of Oakland, 15-acre set-asides by both entities for Ancillary Maritime Support Services (AMS); and

WHEREAS, on June 22, 2007, staff issued a Request for Proposals (RFP) for the development of an AMS facility within a 15-acre portion of the East Gateway Development Area specifically focused on trucking and truck-related activities, such as parking, trans-load facilities, offices and services targeting the local trucking sector; and

WHEREAS, staff received seven proposals and subsequently conducted a thorough review and interview process that included five finalists; and

WHEREAS, the proposal from Oakland Maritime Support Services (OMSS) was for the development of a 15-acre multi-use project that includes truck parking, a trans-load facility, offices for trucking companies or related businesses, retail, fuel, and other services catering to trucking employees and businesses; and

WHEREAS, staff determined through the review and interview process that among the five finalists, OMSS's proposal was the most responsive to the RFP; and

WHEREAS, on November 6, 2007, the Agency approved Resolution Number 2007-0076, authorizing an Exclusive Negotiating Agreement (ENA) with OMSS for a term of 180 days to negotiate the financial terms, utilities, preservation or deconstruction of existing warehouses in the East Gateway, and other site preparation issues in the development of the proposed project; and

WHEREAS, the six-month ENA term expired August 11, 2008; and

WHEREAS, the Agency wishes to extend the term of the existing ENA from August 11, 2008 to February 28, 2009, to allow the Agency and OMSS to complete the negotiations; now therefore be it

RESOLVED: That the Redevelopment Agency hereby authorizes the Agency Administrator to execute an amendment to the ENA in a substantially similar form to the amendment attached hereto (Exhibit A) and that will extend the term of the ENA from August 11, 2008 to February 28, 2009; and be it

FURTHER RESOLVED: That the Agency hereby authorizes the Agency Administrator or his designee to take all actions necessary to carry out this resolution and its basic purposes; and be it

FURTHER RESOLVED: That all documents shall be reviewed and approved by the Office of the City Attorney as to form and legality prior to execution.

IN AGENCY, OAKLAND, CALIFORNIA, _____, 2008

PASSED BY THE FOLLOWING VOTE:

AYES – BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND CHAIRPERSON DE LA FUENTE

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____
LATONDA SIMMONS
Secretary of the Redevelopment Agency
Of the City of Oakland, California

EXHIBIT A

FIRST AMENDMENT TO THE EXCLUSIVE NEGOTIATING AGREEMENT Oakland Maritime Support Services

This First Amendment to the Exclusive Negotiating Agreement Between the Redevelopment Agency of the City of Oakland and Oakland Maritime Support Services ("First Amendment") is made and entered into this 11th day of August 2008 ("Effective Date") by and between the REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND, a community redevelopment agency organized and existing under the California Community Redevelopment Law ("Agency"), and OAKLAND MARITIME SUPPORT SERVICES, INC., a California corporation ("Developer") (together, Agency and Developer are referred to as the "Parties"), pursuant to Agency Resolution No. 2008-____ C.M.S, adopted on _____, 2008.

RECITALS

A. In November 2007, the Parties entered into an Exclusive Negotiating Agreement (Agreement) to explore the possibility of developing 15 acres in the East Gateway area within the former Oakland Army Base for a multi-use project that includes truck parking, a trans-load facility, offices for trucking companies or related businesses, retail, fuel, food and other services catering to trucking employees and businesses (the "Project"); and

B. Under the Agreement, the period for negotiations between the Parties is 180 calendar days, which period expired on August 11, 2008; and

C. The Parties wish to amend the Agreement to retroactively extend the period for negotiations from August 11, 2008 to February 28, 2009;

NOW THEREFORE, the Agreement is hereby amended as follows:

1. Section 1.4 is hereby deleted in its entirety and replaced with the following:

Section 1.4 Length of Negotiation Period. Unless extended by written mutual agreement after formal approval of the Agency's Governing Body, the period for negotiations between the Parties under this Agreement shall, commence on the date of this Agreement and end on February 28, 2009 (the "Negotiation Period"); provided, however, that the Negotiation Period may be terminated earlier pursuant to the termination provisions of this Agreement.

2. Section 7.3 is hereby deleted in its entirety and replaced with the following:

7.3 Nonwaiver of Default

The failure of Agency to give notice of a default or to forbear and not enforce a default will not be construed as waiver of the right of Agency to enforce a similar default in the future.

3. Subsection 7.4(c) is hereby deleted in its entirety and replaced with the following:

Developer's remedy of specific performance will mean only that if Agency breaches its duty of negotiating in good faith or negotiating exclusively with Developer that Developer may seek an appropriate order requiring Agency to negotiate in good faith or to cease negotiating with a third party, which will allow Developer to have its full Negotiation Period of good faith, exclusive negotiations as provided for in this Agreement. The Negotiation Period for which a court may order negotiations will be calculated by subtracting any days that Agency negotiated exclusively and in good faith, but will not count any time that Agency was in breach and during which Developer seeks judicial recourse for the breach.

4. The Parties hereby agree that all other terms, conditions, and provisions of the Agreement remain unchanged and in full force.

5. The persons signing this Agreement on behalf of Developer affirm that they are authorized to execute on Developer's behalf.

[Signatures on following page]

IN WITNESS WHEREOF, this First Amendment to the Exclusive Negotiating Agreement between the Redevelopment Agency of the City of Oakland and Oakland Maritime Support Services, Inc. has been executed by the Parties as of the date first written above.

AGENCY:

The REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND, a community redevelopment agency organized and existing under the California Community Redevelopment Law

By: _____
Dan Lindheim
Agency Administrator

Approved as to form and legality:

By: _____
Dianne Millner
Agency Counsel

DEVELOPER:

OAKLAND MARITIME SUPPORT SERVICES, INC.,
a California Corporation

By: _____
William I. Aboudi
President