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OFFICE OF THE CITY CLERK  
OAKLAND

2013 APR 11 AM 9:00

# AGENDA REPORT

TO: DEANNA J. SANTANA  
CITY ADMINISTRATOR

FROM: Fred Blackwell

SUBJECT: Recyclers ENA Extension

DATE: March 18, 2013

City Administrator  
Approval

Date 4/2/13

COUNCIL DISTRICT: 3

## RECOMMENDATION

Staff recommends that the City Council adopt:

A Resolution Authorizing the City Administrator to Negotiate and Execute an Amendment to the City's Exclusive Negotiating Agreement (ENA) with California Waste Solutions and Custom Alloy Scrap Sales, 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, 2013

## OUTCOME

The City will execute an amendment extending the Exclusive Negotiating Agreement with California Waste Solutions (CWS) and Custom Alloy Scrap Sales, Inc. (CASS) for a recycling project on the Army Base North Gateway property to expire on December 15, 2013, with an option by the City Administrator to extend it up to an additional ninety (90) days thereafter.

## BACKGROUND/LEGISLATIVE HISTORY

Relocating CWS and CASS out of West Oakland has been a long-term effort for both the recyclers and the West Oakland community. There are approximately 12 recycling and salvage operations in West Oakland. CWS and CASS are the two largest recyclers and the community has been pressing the City to relocate them to the Army Base. CWS and CASS are also interested in relocating. Their operations are currently spread inefficiently over an assortment of parcels. CWS and CASS are unable to consolidate their operations or expand in their present locations. Moreover, they have had to curtail their activities in response to complaints from the growing residential community around them. CWS and CASS want to remain in Oakland, but they need to be where their businesses can function effectively.

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In February 2009, these two firms submitted their first letter of interest to purchase property at the Army Base. They proposed purchasing the 16.5-acre Subaru Lot to relocate their operations out of West Oakland. Initially, CWS and CASS believed the Subaru Lot could accommodate their two operations. After considering all their space needs, however, they realized the Subaru Lot by itself would be insufficient for the both of them.

Unable to find a site suitable for co-location, the recyclers tried working independently on their respective relocation efforts. In July 2009, CWS submitted a second letter to the City and requested 14.5 acres on the Army Base. At approximately the same time CASS stated its need for 10 acres. From an efficiency and cost perspective, CASS wanted 10 contiguous acres, but would accept dividing the 10 acres into two parcels with a separate storage yard on the smaller parcel. The total acreage CWS and CASS requested was more land than the City had available. Of the City's 170 acres of Army Base property, 118 acres were allocated for master development, 15 acres for truck parking and services, and almost 17 acres for open space, leaving only 20 acres unaccounted for. 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 being underway. Since the City had just entered into an ENA (the "Developer's ENA") with AMB Property Corporation/California Capital Group (the "Developer") for the master development of the Army Base, the process was in its beginning stages. Staff told the recyclers they were free, however, to submit an unsolicited offer which could be 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. 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. CWS and CASS also proposed to provide a deposit of 10 percent of the proposed purchase price as security during the negotiation period. It should be noted that another owner/user also submitted an offer at almost the same and that its offer and deposit terms were considerably lower than the CWS/CASS proposal. Staff brought both proposals before the City and was directed to bring back the terms of an ENA with CWS/CASS.

Staff returned to Council in December 2011 and was ultimately provided authorization to negotiate and enter into an ENA with CWS and CASS. On February 12, 2012, City, CWS and

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CASS executed a 360-day ENA which expired December 20, 2012. The ENA was administratively extended, pursuant to authorization, to March 20, 2013.

### 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 increased tax revenue.

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 site, proximity to the Port, and expansion of their recycling services. Being able to ship overseas more efficiently and at lower cost would 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 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 East Bay Municipal Utility District's (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. Wake Avenue has to be realigned and EBMUD's main entry shifted to fit both recyclers on the site. The City and EBMUD have executed an MOA detailing the terms and conditions necessary for the realignment of Wake Avenue. A condition of the MOA and the realignment is the relocation of an existing BNSF rail easement. Staff has been working with BNSF and EBMUD to resolve these issues and allow the realignment of Wake Avenue and the ultimate development the North Gateway site by CWS and CASS. Those discussions and negotiations are ongoing and have a positive momentum, however, they have not been completed. The ENA with CWS and CASS expired on March 20, 2013. Staff, CWS and CASS believe an additional six months are required to complete negotiations between the parties and are therefore requesting this extension.

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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 and the Budget Office.

**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.

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## SUSTAINABLE OPPORTUNITIES

**Economic:** This proposed action does not provide any additional economic benefits or opportunities. 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:** This proposed action does not provide any additional environmental benefits. Relocating CWS and CASS closer to Port would reduce the impact of truck traffic on West Oakland residents.

**Social Equity:** This proposed action does not provide any additional social benefits or social equity to Oakland citizens. The property vacated by CWS and CASS could be redeveloped with more compatible uses.

For questions regarding this report, please contact John Monetta, Real Estate Agent, at (510) 238-7125.

Respectfully submitted,



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Fred Blackwell  
Assistant City Administrator

Reviewed by:  
Gregory D. Hunter  
Office of Neighborhood Investment

Prepared by:  
John Monetta, Real Estate Agent  
Real Estate Service Division

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APPROVED AS TO FORM AND LEGALITY

*D. Miller*

CITY ATTORNEY

## OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C.M.S.

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**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE AN AMENDMENT TO THE CITY'S EXCLUSIVE NEGOTIATING AGREEMENT (ENA) WITH CALIFORNIA WASTE SOLUTIONS AND CUSTOM ALLOY SCRAP SALES, 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, 2013**

**WHEREAS**, on February 12, 2012, the City of Oakland and California Waste Solutions, Inc. (CWS) and Custom Alloy Scrap Sales, 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**, the ENA expired on or about March 20, 2013; and

**WHEREAS**, the parties wish to extend the ENA to December 15, 2013; and

**WHEREAS**, CWS and CASS intend to build two new recycling facilities on the Property and relocate their recycling operations out of West Oakland residential neighborhoods ("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; now, therefore be it

**RESOLVED**, that the City Administrator is authorized to negotiate and execute an amendment to the ENA with CWS and CASS extending the ENA to December 15, 2013, 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 her 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 Exclusive Negotiating Agreement 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 ENA consistent with this Resolution and its basic purposes.

**OAKLAND, CALIFORNIA, \_\_\_\_\_, 2013**

PASSED BY THE FOLLOWING VOTE:

AYES - KALB, REID, GIBSON-MCELHANEY, SCHAAF, GALLO, BROOKS, KAPLAN, AND  
CHAIRPERSON KERNIGHAN

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

**LATONDA SIMMONS**

City Clerk and Clerk of the Council  
Of the City of Oakland, California