



CITY OF OAKLAND

# AGENDA REPORT

**TO:** Edward D. Reiskin  
City Administrator

**FROM:** Elizabeth Lake  
Deputy City Administrator

**SUBJECT:** California Waste Solutions Exclusive  
Negotiating Agreement

**DATE:** June 10, 2020

---

City Administrator Approval

Date: June 24, 2020

---

## RECOMMENDATION

**Staff Recommends That The City Council Adopt A (a) Non-Binding Term Sheet Pursuant To The Terms Of An Existing Exclusive Negotiating Agreement (ENA) With California Waste Solutions (CWS) Reflecting Potential Disposition Terms Of A Portion Of The City-Owned Gateway Industrial District Located At The Former Oakland Army Base For The Proposed Relocation Of CWS's Existing West Oakland Recycling Uses; And (b) A Resolution Authorizing The City Administrator To Execute An Amendment To The ENA That (i) Requires CWS To Pay A \$30,000 ENA Extension Fee For The Previously Approved ENA Extension Authority Granted To The City Administrator and (ii) Incorporate A Non-Binding Term Sheet Into The Existing ENA.**

## EXECUTIVE SUMMARY

Staff recommends that the City Council (a) approve a non-binding term sheet, included as **Attachment A**, (Term Sheet), pursuant to the terms of an existing Exclusive Negotiating Agreement (ENA) with California Waste Solutions (CWS) reflecting potential disposition terms of a portion of the City-owned Gateway Industrial District at the former Oakland Army Base (the Property) for the proposed relocation of CWS's existing West Oakland recycling uses; and (b) adopt a resolution authorizing the City Administrator to execute an amendment to the ENA that (i) requires CWS to pay a \$30,000 ENA Extension Fee for the previously approved ENA Extension authority granted to the City Administrator, and (ii) incorporate the non-binding term sheet into the ENA.

CWS currently operates two existing recycling facilities in the West Oakland neighborhood, with locations at 3300 Wood Street and 1819/1820 10th Street. City Staff and CWS have reached agreement on the proposed terms by which CWS would purchase a portion and lease a portion of the Property to develop new state-of-the-art recycling facilities and relocate its existing recycling uses to the Property (collectively, the Project).

Staff intends to complete real estate negotiations with CWS to bring the Lease/Disposition and Development Agreement (L/DDA), concurrently with the requisite land use entitlements necessary to consummate the Project, after such proposed entitlements have been reviewed and recommended by the Planning Commission for City Council approval.

City Council  
June 30, 2020

## **BACKGROUND / LEGISLATIVE HISTORY**

In July 2018, the City and CWS executed an ENA to negotiate the sale of the Property to CWS to relocate its recycling uses from its existing facilities in the West Oakland neighborhood. The relocation of CWS's uses outside of the West Oakland neighborhood has been a key objective of the community benefits program identified for the Oakland Army Base in 2012.

In January 2020, the City and CWS executed an extension to the ENA, extending it to October 2020.

## **ANALYSIS AND POLICY ALTERNATIVES**

Relocating CWS's existing uses to the Gateway Industrial District on the former Oakland Army Base allows intensive recycling facilities to move from the West Oakland neighborhood to the industrially zoned area and puts the currently undeveloped land into productive use. The Property is conveniently located in the East Bay near the Bay Bridge and has direct access to the I-980 freeway.

The Term Sheet includes the following:

### **Property**

The Property is 14.38 acres and consists of two areas: Parcel 1, approximately 12.02 acres of land owned by the City, to be sold to CWS; and Parcel 2, approximately 2.36 acres of land owned by Caltrans and controlled by the City pursuant to an easement, to be leased to CWS via a 99-year lease that is prepaid as part of the Purchase Price.

### **Project Description**

Subject to the final land use entitlements as may be approved by the City in its regulatory discretion, the Project is anticipated to consist of a recycling facility with an approximately 171,000 square foot building containing an administrative office, material receiving area, a material recycling and recovery area with processing equipment, a bale storage area, a material shipping area, staff areas, a truck maintenance area and a dispatch area and parking for personnel and collection trucks. The facility would handle up to 850 tons of material per day and would accept and process material that has been separated for recycling from both commercial and residential customers.

### **Purchase Price**

CWS will pay the total purchase price of \$8,268,500.000, consistent with a fair reuse evaluation, to be conducted as required by Oakland Municipal Code Chapter 2.42.

### **Closing Costs**

CWS will pay all escrow fees and closing costs including, without limitation, City and any other County transfer and possessory interest taxes.

Condition of Property

CWS will accept the Property "as is," in its current condition, without warranty express or implied by the City, including without limitation with respect to the presence of hazardous materials known or unknown on or near the Property.

Good Faith Deposit

CWS has made a deposit of \$568,840, during the ENA period. CWS will provide an additional amount of \$250,000.00, within three business days of L/DDA execution, to increase the deposit total to \$818,840.00.

Completion Guaranty

CWS will provide the City with a commercially reasonable completion guaranty for one hundred percent (100%) of the hard costs to construct the Project.

Permitted Transfer

Except for transfers to a wholly owned entity, CWS may not sell, convey, assign, transfer, or alienate all or any of its interest or rights in this Agreement without the prior consent of the City.

The following transfer fees will apply in the event the Property is transferred to a non-affiliate for any purpose or to an affiliate for purposes other than the operation of a solid waste or recycling-related business:

- a) Thirty-five percent (35%) of the fair market land value or fifteen percent (15%) of the gross lease revenue of the Property if transferred within 0-5 years of the Close of Escrow; or
- (b) Twenty percent (20%) of the fair market land value or ten percent (10%) of the gross lease revenue of the Property if transferred within 6-10 years of the Close of Escrow.
- (c) Ten percent (10%) of the fair market land value or five percent (5%) of the gross lease revenue of the Property if transferred within 11-35 years of the Close of Escrow.

Standard Conditions

The L/DDA will include standard City/Oakland Army Base conditions, including:

1. CWS to pay a one-time fee of \$16,000/acre into the West Oakland Community Fund (which is anticipated to be \$229,760).
2. CWS to include the Construction Jobs Policy (see Attachment A to the Term Sheet) as a material term of all contracts under which construction may occur and shall itself comply with the terms of such policy, including paying prevailing wage.
3. Prior to Commencement of Construction, CWS to demonstrate to City that either CWS has entered into a Project Labor Agreement that is consistent with the Construction Jobs Policy or has used commercially reasonable efforts to do so.

4. CWS to comply with the Operations Jobs Policy (see Attachment B to the Term Sheet) including compliance with the City's Living Wage Ordinance and Equal Benefits Ordinance.
5. CWS to pay an annual fee equal to \$0.005/per month, per leasable square foot of building space to support the Jobs Center.
6. CWS to pay its fair share of the California Environmental Quality Act (CEQA) 2012 Addendum costs, calculated to be \$46,409.66 and comply with the Oakland Army Base CEQA Standard Conditions of Approval and Mitigation Monitoring and Reporting Program, as amended by the City Council on July 16, 2013 (Ordinance No. 13182 C.M.S.), and any other mitigations that may be required as a result of the Project approvals, including, but not limited to contributing its fair share payment related to CEQA Mitigation Measures, which the City anticipates to be \$375,311, and completing air quality construction and operations plans.
7. CWS to contribute its fair share of \$8,703.19 to the cost of preparing and recording the parcel map to create the 12.02-acre Property parcel.
8. CWS to pay special taxes associated with the Gateway Industrial District Community Facilities District No. 2015-1, as it may be amended, for purposes of maintaining the public infrastructure for the Gateway Development Area.

#### Relinquishment of Recycling Use on West Oakland Facilities Properties

The City's desire to enter into agreement with CWS is, in substantial part, to relocate CWS's existing business operations in West Oakland to the Gateway Industrial District, and not allow any similar business to operate at the existing CWS West Oakland sites. As such, following completion of construction and commencement of operations of the Project at the Property, CWS shall unconditionally relinquish and terminate operations at the existing West Oakland sites, including its conditional use permits at 1819 10<sup>th</sup> Street and 1820 10<sup>th</sup> Street and its grandfathered nonconforming use at 3300 Wood Street.

#### **FISCAL IMPACT**

There is no fiscal impact in approving the Term Sheet since it results in no binding commitment by the City to authorize or advance the Project.

In January 2020, Staff received authorization from the City Council to extend the ENA with CWS. As part of the ENA extension authorization, CWS agreed to pay a \$30,000 ENA extension fee. However, the authorizing legislation for the ENA extension did not include the appropriate fund information for receiving, depositing and appropriating the ENA extension fee. The accompanying legislation for this report contains language to deposit and appropriate the additional \$30,000 ENA extension fee to a new project in the Miscellaneous Capital Projects Fund (Fund 5999), Organization: Oakland Army Base Redevelopment (Org. 85244).

## **PUBLIC OUTREACH / INTEREST**

The City has conducted numerous outreach meetings with a variety of community organizations, neighborhood groups, and business groups as well as outside agencies regarding the planning and development of the Oakland Army Base. The Property is located in the northern portion of the former Oakland Army Base and was the subject of the Army Base Environmental Impact Report in 2002, which was updated in 2012 with an Addendum (Ordinance No. 13131 C.M.S.).

As is required by the CWS ENA, a project-specific Public Engagement Plan was prepared by CWS and approved by the City on May 1, 2019. Pursuant to the Plan, CWS has performed the following outreach:

- Mailed notices to all Oakland residents describing the CWS proposed Project.
- Conducted public meetings on July 15, 2019 and September 10, 2019 to discuss Project overview including community benefits, jobs, and re-use of the current sites.
- Hosted a tour to Rethink Waste, a state-of-the-art waste management facility in San Carlos, CA, for community stakeholders.
- Sponsored community events including First African Methodist Episcopal Church (FAME) Oakland's Back to School Shoe Giveaway, Life is Living Festival, Oakland Excellence in Sports Performance Yearly (ESPYS) award ceremonies, Makin Moves Community Festival, and other key events that target residents in West Oakland and throughout the city in an effort to expand the outreach database.
- Held presentations at local neighborhood organizations including West Oakland Biz Alert and West Oakland Neighbors. Additional presentations and meetings with key stakeholders are also being scheduled.
- Presented the site plan and building design portion of the Project to the City's Design Review Committee during its duly noticed hearings held on December 11, 2019 and March 4, 2020

## **COORDINATION**

The City Administrator's Office has coordinated its efforts with the Bureau of Planning with respect to the California Environmental Quality Act (CEQA) review and Project approvals, as well as the Public Works Department, the City Attorney's Office, and Budget Bureau.

## **SUSTAINABLE OPPORTUNITIES**

***Economic:*** Potential redevelopment of the Property could have substantial economic regional benefits which can be characterized in terms of net direct spending, total output, income and jobs. In addition, the Project could have positive fiscal impacts which can be measured in both city and county tax revenue increases including property taxes, sales taxes, business taxes, etc.

**Environmental:** Relocating CWS's existing facilities out of a residential mixed use neighborhood and onto the Gateway Industrial District of the former Oakland Army Base would contribute to and enhance smart growth principles, would leverage its existing multi-modal transportation amenities and would be consistent with regional growth policies and state growth mandates Senate Bill 375 and Assembly Bill 32, as well as allow for updated state-of-the-art recycling facilities, all of which result in environmental benefits.

**Race and Equity:** The West Oakland neighborhood adjacent to the Property has long experienced social and economic equity issues and adverse environmental impacts caused by the industrial business activities in or near the neighborhood. Relocating a truck-intensive, industrial use to the Oakland Army Base would ultimately provide positive health benefits by moving recycling activities away from the historically environmentally impacted neighborhood in West Oakland. In addition, relocation would provide economic stimulus to the neighborhood by preserving and creating additional local job opportunities and would contribute to continued neighborhood job growth and economic stability.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

An authorization to approve the Term Sheet is not in-and-of-itself a "project" (pursuant to CEQA Guidelines Section 15378) since the Term Sheet results in no binding commitment by the City to authorize or advance the Project, and it will not result in a direct or indirect physical change in the environment; therefore, approving the Term Sheet is not subject to CEQA. The "project" would be the development that may be authorized under any final L/DDA and land use entitlements. Any such L/DDA and land use entitlements would be subject to final review and approval by the City Council, and appropriate CEQA analysis of the Project will occur prior to City Council consideration and approval of the L/DDA and land use entitlements.

### **CALIFORNIA SURPLUS LANDS ACT**

Pursuant to the California Surplus Lands Act (SLA) (CA Government Code 54220 et seq.), public agencies disposing of public assets must comply with the SLA requirements to prioritize the disposition of such assets for the development of affordable housing and other stated policy objectives. The SLA has been amended various times, including as recently as January 1, 2020. However, the recently amended SLA exempts properties that are subject to ENAs executed prior to September 30, 2019 if the proposed transactions close prior to December 31, 2022. As noted above, the City and CWS have been in an ENA to negotiate the final disposition terms of the Property since 2018. As such, the Property is exempt from the new SLA requirements.

In addition, all of the properties located within the Oakland Army Base were used for federal military uses for decades, resulting in hazardous materials contamination. In light of this contamination, the properties in the Oakland Army Base have both Federal and State deed restrictions preventing their use for any residential activities. The properties were transferred, ultimately, to the City to advance specific development objectives and not general City uses.



**ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That The City Council Adopt A (a) Non-Binding Term Sheet Pursuant To The Terms Of An Existing ENA With California Waste Solutions (CWS) Reflecting Potential Disposition Terms Of A Portion Of The City-Owned Gateway Industrial District Located At The Former Oakland Army Base For The Proposed Relocation Of CWS's Existing West Oakland Recycling Uses; And (b) A Resolution Authorizing The City Administrator to Execute An Amendment To The ENA That (i) Requires CWS To Pay A \$30,000 ENA Extension Fee For The Previously Approved ENA Extension Authority Granted To The City Administrator and (ii) Incorporate The Non-Binding Term Sheet Into The Existing ENA.

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

Respectfully submitted,



---

ELIZABETH LAKE  
Deputy City Administrator

Prepared by:  
John Monetta, Project Manager I  
Office of the City Administrator

Attachment (1):  
A: Term Sheet