


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO AN EXCLUSIVE NEGOTIATION AGREEMENT (ENA) WITH CASS, INC. FOR RELOCATION OF ITS RECYCLING FACILITIES TO 101 ADMIRAL ROBERT TONEY WAY, WITH A TERM OF NINE MONTHS, WITH TWO THREE-MONTH ADMINISTRATIVE EXTENSIONS, AND PAYMENT OF A NONREFUNDABLE ENA PAYMENT OF \$60,000; AND ADOPTING CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

WHEREAS, the City of Oakland (“City”) owns approximately 8.4 acres of land (the “City Property”) and the City of Oakland, acting by and through its Board of Port Commissioners (“Port”) owns 1.6 acres of land (the “Port Property”) in the City of Oakland commonly known as 101 Admiral Robert Toney Way, located in the North Gateway Area of the former Oakland Army Base (collectively, the “Property”); and

WHEREAS, the Property is designated for mixed-use commercial and industrial uses, including recycling uses; and

WHEREAS, CASS, Inc. (“CASS”) owns and operates existing recycling facilities on property located in the West Oakland neighborhood; and

WHEREAS, in 2012, the City revised its Redevelopment Plan for the former Oakland Army Base to include relocation of two recyclers, including CASS, from the West Oakland neighborhood to the then proposed Gateway Industrial District on the former Oakland Army Base (Resolution No. 83030 C.M.S.); and

WHEREAS, relocating the recyclers’, including CASS’s, facilities to the North Gateway Area would allow intensive recycling facilities to move from the West Oakland neighborhood, would place the currently undeveloped Property into productive use, and would meet a key objective of the community benefits program identified for the former Oakland Army Base in 2012 (Resolution No. 83933 C.M.S.); and

WHEREAS, pursuant to Resolution No. 83678 C.M.S., the City, California Waste Solutions, Inc., and CASS previously entered into an Exclusive Negotiating Agreement (North Gateway Recyclers Project) dated February 12, 2012 (the “Joint ENA”) pursuant to which CASS paid the City a good faith deposit in the amount of \$557,000 (“Prior Deposit”); and

WHEREAS, the Joint ENA expired in accordance with its terms; and

WHEREAS, the City and the Port entered into a purchase and sale agreement for the Port Property authorized by Ordinance No. 13160 C.M.S. adopted on May 21, 2013, which also expired; a new agreement would be necessary with respect to the Port Property; and

WHEREAS, the Property is subject to a recorded Covenant to Restrict Use of Property Environmental Restrictions, which among other things, has Federal and State restrictions that prohibit any residential housing; and

WHEREAS, the City and CASS desire to enter into a period of preliminary study and exclusive negotiations over the proposed disposition of the City Property for development of a project to relocate CASS's existing recycling uses from West Oakland to the Property, with the understanding that this does not constitute a binding commitment on the part of the City for any project for the City Property or the Port Property; and

WHEREAS, CASS is willing to pay an additional negotiating payment and agrees to allow the City to apply the Prior Deposit with respect to a new exclusive negotiating agreement; now, therefore, be it

RESOLVED: That the City Council hereby authorizes the City Administrator to negotiate and execute an Exclusive Negotiating Agreement ("ENA") with CASS, or a related affiliate approved by the City Administrator, for purposes of evaluating the feasibility, and negotiating the terms and conditions of a Disposition and Development Agreement for the development of the Property to relocate CASS's recycling operations in West Oakland to the Property, and, undertaking the necessary environmental review process; and be it

FURTHER RESOLVED: That the initial exclusive negotiating period shall be for nine (9) months from the date of this Resolution, with an option to extend such period for two (2) additional three-month periods in the sole discretion of the City Administrator; and be it

FURTHER RESOLVED: That the City shall require a nonrefundable negotiating payment of \$60,000 (the "ENA Payment") from CASS, which will be reallocated from the Prior Deposit; and be it

FURTHER RESOLVED: That the City Council authorizes the City Administrator to accept, appropriate, authorize, and administer the ENA Payment in the amount of \$60,000, which includes the already received \$5,000 project expense payment and the reallocated \$55,000 of the Prior Deposit in the Joint Army Base Infrastructure Fund (5672), Oakland Army Base Redevelopment Organization (85244), Budget Carry Forward Account (58999), Recyclers PEP Project (1001076), OARB-Bay Bridge Gateway Program (SC07); and be it

FURTHER RESOLVED: That the City Council authorizes the City Administrator to accept, appropriate, authorize and administer the remaining amount of the Prior Deposit in the amount of \$502,000 currently in liabilities with the Joint Army Base Infrastructure Fund (5672), Oakland Army Base Redevelopment Organization (85244), Deposit Payable Account (24213), Recyclers ENA CASS Project (P455710), OARB-Bay Bridge Gateway Program (SC07); and be it

FURTHER RESOLVED: That the City Council finds and determines, on a separate and independent basis, that the Property is exempt surplus land pursuant to the California Surplus Lands Act (Government Code 54220 *et seq.*, as amended) because the Property is validly restricted surplus land subject to federal and state restrictions which prohibit any residential housing; and be it

FURTHER RESOLVED: That the City Council finds and determines any proposed disposition of the City Property, whether made pursuant to ENA or otherwise, will require further discretionary actions of the City Council, and the City retains full discretion, following conclusion of the response and negotiation periods set forth in the ENA to proceed with disposition of its interest in the Property in compliance with the California Environmental Quality Act (“CEQA”); and be it

FURTHER RESOLVED: That the City Council, after independent review and consideration, finds this action will not result in a direct physical change in the environment and does not in-and-of-itself a “project” pursuant to CEQA Guidelines Section 15378; and be it

FURTHER RESOLVED: That the City Administrator is further authorized to negotiate and execute documents and take all other action necessary with respect to the ENA and the Property consistent with this Resolution and its basic purposes

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California