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OFFICE OF THE CITY CLERK  
OAKLAND

2015 JAN 29 PM 1:11

# AGENDA REPORT

TO: HONORABLE CITY COUNCIL

FROM: John A. Flores

SUBJECT: **Recyclers ENA Extension**

DATE: January 9, 2015

COUNCIL DISTRICT: 3

## RECOMMENDATION

Staff recommends the City Council accept:

**A Resolution Authorizing the City Administrator to Negotiate and Execute a Third 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, 2015**

## OUTCOME

Approval of the proposed Resolution will extend the term of the current ENAs which expire on March 20, 2015 to December 15, 2015 and enable the City Administrator to negotiate and execute an ENA with both California Waste Solutions (CWS) and CASS, Inc. (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 City staff to complete negotiations with both CWS and CASS prior to returning to Council with the request to enter into Disposition and Development Agreements (DDA).

## 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 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 as well as 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 extended initially to December 15, 2013, and again to December 15, 2014 with an administrative extension to March 19, 2015.

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 and address 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 Burlington Northern Santa Fe (BNSF) railroad easement.

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

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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 were two critical path items that had to be resolved prior to moving forward with the Disposition and Development Agreements with CWS and CASS; the BNSF easement 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 was required by the MOA to relocate or remove an existing perpetual BNSF rail easement that has been in place since 1942. To relocate or remove the existing BNSF rail line and easement, the City had to obtain agreement and cooperation from BNSF. Federal pre-emption law does not allow local or state municipalities to take condemnation action against railroads.

BNSF was 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 Port and the City's Agent, California Capital & Investment Group (CCIG), the parties attempted to finalize a rail yard design that provided access and operational rights necessary for BNSF to agree to and effect the relocation or removal of the rail easement. Unfortunately, the parties were not able to finalize an agreement and in October, BNSF provided the City with written notice that it would not relocate or relinquish its easement.

Based on the inability to reach agreement with BNSF, staff and EBMUD developed an alternative proposal. The alternative proposal was approved by City Council on December 9, 2014. EBMUD is taking the alternative proposal to its board in February. EBMUD is in the process of preparing the initial draft of the amendment to the EBMUD MOA consistent with the terms approved by the Oakland City Council in December, for City staff and CCIG review. The proposed amendment to the EBMUD MOA will formalize the alternative proposal that will allow for the realignment of Wake Avenue and construction of Engineer's Road primarily on EBMUD property as a result of BNSF not relinquishing their easement. Staff will provide an oral update at the committee meeting.

*OAB Mid Project Budget Revision Re-Sequencing*

In December 2014, the City Council authorized a number of actions to bring into alignment the City obligations under the TCIF Grant Agreement with existing agreements under the Lease Disposition and Development Agreement (LDDA) by and between the City and Prologis and CCIG. Implementation of the approved actions collectively, enable an earlier than originally scheduled site delivery of the North Gateway Parcels to CWS and CASS from May 2017 to July

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2016. Earlier site delivery benefits both CWS and CASS and also enable land sales proceeds from these two parcels to cash flow back to the project earlier for construction of the City's Public Improvements. Private investment by both CWS and CASS along with CCIG & Prologis enable the City in meeting the City and Port TCIF public/private match obligation prior to the end of FY 2019/20.

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 the proposed Recyclers development area. The Port has agreed to sell approximately 1.6-acres of 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 Port reported in mid-January 2015, to the City Administration, that sale of the Inner Claw is moving forward.

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 the 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.

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. The June 2011 joint proposal identified 11.1-acres for CWS and 8.9-acre for CASS which is an approximate 55% to 45% split of acreage.

Staff sent a letter requesting CWS and CASS advise the City of the acreage split in the event 22.4-acres were available for development (**Attachment A**). On March 31, 2014, staff received a letter from CWS and CASS stating they had mutually agreed to a revised acreage split to 13-acres for CWS and 9.4-acres for CASS (**Attachment B**).

## **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.

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.

It is staff's goal to bring to the Council, prior to this summer's recess, a request for authorization to enter into a Disposition and Development Agreement (DDA) with CWS and a DDA with CASS. 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, 2015.

## **PUBLIC OUTREACH/INTEREST**

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

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## **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:**  
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 DDA with CWS and CASS, which would secure a portion of the funds needed by the City for the Army Base Infrastructure Development Project.

***Economic:*** Relocating CWS and CASS out of West Oakland would open up large areas of West Oakland for higher uses, such as retail, research and development flex offices, which would generate tax revenue and create career path jobs for Oakland residents. At the same time, CWS,

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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,



John A. Flores  
Interim City Administrator

Reviewed by:

Doug Cole, Project Manager III  
Office of the City Administrator  
Oakland Army Base Project

Prepared by:

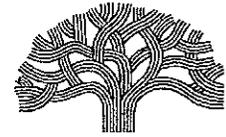
John Monetta, Project Manager I  
Office of the City Administrator  
Oakland Army Base Project

**Attachment A**, North Gateway Property letter – February 6, 2014

**Attachment B**, North Gateway Property letter – March 31, 2014

Attachment A

CITY OF OAKLAND



250 FRANK H. OGAWA PLAZA OAKLAND, CALIFORNIA 94612-2033

Office of Neighborhood Investment  
Real Estate Services

(510) 238-3541  
FAX (510) 238-2240  
TDD (510) 238-3254

February 6, 2014

Mr. David Duong  
President and CEO  
California Waste Solutions, Inc.  
1820 10<sup>th</sup> Street  
Oakland, CA 94607

Mr. Edward Kangeter IV  
CEO  
CASS, Inc.  
2730 Peralta Street  
Oakland, CA 94607

**RE: NORTH GATEWAY PROPERTY**

Mr. Duong & Mr. Kangeter:

The proposal letter you jointly submitted to the City on June 28, 2011, proposed a 55/45 percentage split of North Gateway property. There is approximately 22.4 acres of property available in the North Gateway, assuming the 1.6-acre inner claw property owned by the Port of Oakland is included. Under the property split you jointly proposed, California Waste Solutions would acquire approximately 12.4-acres and CASS would acquire approximately 10-acres.

Based on an October 1, 2013 letter to the City and my conversations with California Waste Solutions (CWS) representatives, I understand CWS is requesting a minimum of 14-acres in the North Gateway. This would result in an approximate 8.4-acre parcel for CASS. I understand a potential 14-acre/8.4-acre split is not acceptable to CASS.

I have been directly by Fred Blackwell, Assistant City Administrator, to request CWS and CASS meet and determine a mutually acceptable division of the available 22.4-acre North Gateway property by February 21, 2014. In the event you are unable to reach a mutually acceptable property division by February 21, 2014, please contact me at your earliest convenience, and City staff will work with CWS and CASS to reach a mutually acceptable solution in a timely manner.

If you have any questions regarding this letter, please contact me at (510) 238-7125.

Regards,



John Monetta  
Project Manager I

cc: Fred Blackwell, City of Oakland  
Doug Cole, City of Oakland

Attachment B



LAW OFFICES  
**MARK C. LEAS**

3430 AMERICAN RIVER DRIVE, SUITE 100  
SACRAMENTO, CALIFORNIA 95864

916-484-6666

FACSIMILE  
916-484-7197

Mark C. Leas

March 31, 2014

John Monetta, Project Manager I  
**City of Oakland**  
250 Frank H. Ogawa Plaza  
Oakland, California 94612-2033

RE: North Gateway Property

Dear Mr. Monetta:

I have been requested by California Waste Solutions, Inc. (CWS) And CASS, Inc. to respond on their behalf to your letter dated February 6, 2014 which requested an indication of an acceptable division between CWS and CASS of the 22.4 acres which are available in the North Gateway. Subject to the terms and conditions of the Exclusive Negotiating Agreement and this letter, a proposed property division between CWS and CASS has been agreed upon for the 22.4 acres.

The proposed property division would result in CWS purchasing approximately 13 acres and CASS purchasing the remaining 9.4 acres. This includes the 1.6 acres known as the inner claw, Parcel 15A, which would be purchased at a price not greater on a square foot basis than the remaining 20.8 acres. Both CWS and CASS require title to the full 22.4 acres be conveyed simultaneously. Additionally, both CWS and CASS need to address with the City concerns regarding adequate parking at North Gateway.

While both CWS and CASS are aware that some in the West Oakland community desire to have what they consider to be non-compatible uses relocated from West Oakland to North Gateway, neither of the North Gateway sites offer sufficient acreage to accommodate employee vehicle or rolling stock parking (rolling stock is trucks or boxes/equipment used to service the recycling needs of our clients). CWS & CASS are willing to agree to waive their rights to operate industrial recycling operations at their existing facilities once the new facilities at North Gateway are substantially operating and fully functional. This would include the opportunity to transfer physical operations with the understanding that neither of the sites at North Gateway offer sufficient parking.

John Monetta, Project Manager I  
**City of Oakland**  
March 31, 2014  
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In the event either additional acreage at North Gateway or in close proximity to the North Gateway, such as the property on Wood Street, is not available, both CWS and CASS need to retain the rights to park employee vehicles and rolling stock at their existing sites to facilitate recycling operations at the new sites. Both CWS and CASS are open to any other alternatives the city might want to suggest to find a cost efficient solution on the subject of parking.

Please feel free to contact me if you have any questions.

Sincerely,

**LAW OFFICES OF MARK C. LEAS**

A handwritten signature in black ink, appearing to read "Mark C. Leas", written over a horizontal line.

**Mark C. Leas**  
**Attorney at Law**

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Office of the City Attorney

## OAKLAND CITY COUNCIL

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

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**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A THIRD 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, 2015**

**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**, on April 1, 2014, Council authorized an extension of the ENA to December 15, 2014, and a second amendment was executed by the parties on April 11, 2014 extending the ENA to December 15, 2014; and

**WHEREAS**, the parties wish to further extend the ENA to December 15, 2015 and enter into a third 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 third amendment to the ENA with CWS and CASS extending the ENA to December 15, 2015, 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 his 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, CAMPBELL-WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID,  
AND PRESIDENT GIBSON McELHANEY

NOES-

ABSENT-

ABSTENTION-

ATTEST \_\_\_\_\_

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