

INTRODUCED BY COUNCILMEMBER _____


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE:

(1) AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A LEASE AND DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF OAKLAND (CITY) AND CALIFORNIA WASTE SOLUTIONS, INC. (CWS) FOR DEVELOPMENT OF A RECYCLING FACILITY AT 2308 WAKE AVENUE, WITH A TERM OF UP TO SEVEN YEARS, A CONVEYANCE PRICE OF \$8,268,500 AND APPLICABLE EXTENSION FEES OF \$125,000, \$250,000, AND \$425,000;

(2) AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A 99-YEAR LEASE BETWEEN THE CITY AND CWS OF THE CITY'S LEASEHOLD INTEREST IN AN EASEMENT GRANTED BY CALTRANS OVER ADJACENT PROPERTY;

(3) WAIVING THE CITY'S LOCAL AND SMALL LOCAL BUSINESS ENTERPRISES PROGRAM, AS AMENDED ON FEBRUARY 16, 2021 (ORDINANCE NO. 13640 C.M.S.) AND MAY 4, 2021 (ORDINANCE NO. 13647 C.M.S.); AND

(4) APPLYING THE CONSTRUCTION JOBS POLICY AND OPERATION JOBS POLICY APPLIED TO THE OTHER PROJECTS AT THE FORMER OAKLAND ARMY BASE; AND

(5) ADOPTING REQUISITE CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

WHEREAS, the City owns approximately 12.02 acres of land in the City of Oakland commonly known as 2308 Wake Avenue in the North Gateway Area of the former Oakland Army Base (the "Land") and holds an easement granted by the State of California Department of Transportation ("Caltrans") (the "Caltrans Easement") on approximately 2.36 acres of adjacent land (collectively, the "Property"); and

WHEREAS, the City may only grant its rights in the Caltrans Easement to others through a lease that meets the terms of the Caltrans Easement; and

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

WHEREAS, California Waste Solutions, Inc. (“CWS”) has existing recycling uses and facilities located at 3300 Wood Street and 1819/1820 10th Street in West Oakland; and

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

WHEREAS, the City and CWS entered into an Exclusive Negotiating Agreement dated July 24, 2018 (“ENA”), to negotiate the sale of the Land and lease of the Caltrans Easement for relocation of CWS’s recycling uses from its existing facilities in West Oakland (Resolution No. 87308 C.M.S.); and

WHEREAS, relocating CWS’s existing facilities to the North Gateway Area allows intensive recycling facilities to move from the West Oakland neighborhood, puts the currently undeveloped Property into productive use, and meets a key objective of the community benefits program identified for the Oakland Army Base in 2012 (Resolution No. 83933 C.M.S.); and

WHEREAS, after completion of construction of the Project, CWS will execute and record documentation that will relinquish and terminate recycling operations on its West Oakland sites; and

WHEREAS, the parties worked together in good faith to expeditiously implement the performance schedule set forth in the ENA and amended the ENA on January 24, 2020 (Resolution No. 88001 C.M.S.), July 13, 2020 (Resolution No. 88204 C.M.S.), October 24, 2020 (Resolution No. 88342 C.M.S.), and April 24, 2021 (Resolution No. 88593 C.M.S.) to extend the expiration date to provide the parties additional time to complete L/DDA negotiations; and

WHEREAS, a Keyser Marston Associates’ fair reuse evaluation dated June 18, 2021, prepared on behalf of the City, provides a fair reuse value of \$8,000,000 for the Property; and

WHEREAS, the form of the Construction Jobs Policy and Operations Jobs Policy have been applied to other projects at the former Oakland Army Base; and

WHEREAS, the Property is exempt from the California Surplus Lands Act (Government Code Section 54220 *et seq.*) because the Property is subject to the ENA, which was executed prior to September 30, 2019 and the disposition of the Property is anticipated to be completed prior to December 31, 2022; and

WHEREAS, the Property is to be conveyed “AS IS” in its current condition, without warranty, express or implied, by the City; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby, pursuant to Resolution No. 85324 C.M.S., waives the requirement to sell the Property and finds, instead, that it is in the best interests of the City to sell rather than lease the Land for the following reasons (a) relocating CWS's existing facilities and uses, which are currently located at 3300 Wood Street and 1819/1820 10th Street, to the North Gateway Area of the former Oakland Army Base allows intensive recycling facilities to move from the West Oakland neighborhood to the industrially zoned Gateway Industrial District on the Army Base, (b) puts the currently undeveloped land into productive use, (c) meets a key objective of the community benefits program identified for the Oakland Army Base in 2012 (Resolution No. 83933 C.M.S.).

SECTION 2. The City Council finds that the \$8268,500 conveyance price of the Property exceeds the \$8,000,000 fair reuse value and hereby authorizes the conveyance of the Land and lease of the Caltrans Easement for an aggregate conveyance price of \$8,268,500 and on substantially the terms and conditions set forth in the L/DDA and the Lease attached to the Agenda Report for this item.

SECTION 3. The City Council hereby authorizes the City Administrator, without returning to the City Council, to (a) execute the L/DDA and a 99-year Lease in substantially the forms attached to the Agenda Report for this item for development of real property located at 2308 Wake Avenue for development of a recycling facility with an approximate term of four years, a conveyance price of \$8,268,500 and three one-year extensions with payment of extension fees of \$125,000, \$250,000 and \$425,000; (b) negotiate and execute such other additions, amendments or other modifications to the foregoing documents that the City Administrator, in consultation with the City Attorney's Office, determines are in the best interests of the City, do not materially increase the obligations or liabilities of the City, and are necessary or advisable to complete the transaction contemplated by this Ordinance; and (c) to negotiate and execute such other documents as necessary or appropriate, in consultation with the City Attorney's Office, to implement the L/DDA and the Lease and development of the Property in order to consummate the transaction in accordance with this Ordinance, or to otherwise effectuate the purpose of this Ordinance and its basic purposes.

SECTION 4. City Council hereby authorizes that the \$8,268,500 conveyance price, will be accepted and appropriated to the General Purpose Fund (1010), Oakland Army Base Redevelopment Organization (85244), OARB Bay Bridge Gateway Program (SC07), a Project to be determined.

SECTION 5. City Council hereby authorizes that the previously deposited ENA earnest money deposit of \$568,840 (referred to as the Good Faith Deposit in the L/DDA), which will be applied to the conveyance price at closing, will be accepted and appropriated to the OBRA Leasing & Utility Fund (5671), Oakland Army Base Redevelopment Organization (85244), OBRA Leasing & Utility Project (1001542), OARB Bay Bridge Gateway Program (SC07).

SECTION 6. City Council hereby authorizes that the additional \$250,000 deposit, to be made by CWS within three business days after the execution of the L/DDA, will be accepted and appropriated to the OBRA Leasing & Utility Fund (5671), Oakland Army Base Redevelopment

Organization (85244), OBRA Leasing & Utility Project (1001542), OARB Bay Bridge Gateway Program.

SECTION 7. City Council hereby authorizes that the \$375,311 fair share payment required under the L/DDA, will be accepted and appropriated to the OBRA Leasing & Utility Fund (5671) Oakland Army Base Redevelopment Organization (85244), OAB Fair Share Project (1005263), OARB Bay Bridge Gateway Program (SC07).

SECTION 8. City Council hereby authorizes that the \$46,409.66 and \$8,703.18 proportionate share payments of CEQA costs and the cost of preparation and recordation of the parcel map, respectively, will be accepted and appropriated to the OBRA Leasing & Utility Fund (5671), Oakland Army Base Redevelopment Organization (85244), OBRA Leasing & Utility Project (1001542), OARB Bay Bridge Gateway Program (SC07).

SECTION 9. City Council hereby authorizes that the \$229,760 West Oakland Community Fund payment, will be accepted and appropriated to the Miscellaneous Trusts Fund (7999), Oakland Army Base Redevelopment Organization (85244), OARB Bay Bridge Gateway Program (SC07), a Project to be determined.

SECTION 10. City Council hereby authorizes that the annual community maintenance fee, equal to \$0.005 per month, per square foot of building space to support the West Oakland Jobs Resource Center, which shall be increased annually consistent with the Consumer Price Index (“CPI”), will be accepted and appropriated to the OBRA Leasing & Utility Fund (5671), Workforce Development Organization (85311), West Oakland Jobs Resource Center Project (10000336), OARB Bay Bridge Gateway Program (SC07).

SECTION 11. The City Council hereby waives the applicability of the Local and Small Local Business Enterprise Program, as amended on February 16, 2021 (Ordinance No. 13640 C.M.S.) and May 4, 2021 (Ordinance 13647 C.M.S.) to the Project and, instead, applies to the Project the Construction Jobs Policy and Operation Jobs Policy (attached to the Agenda Report for this item) applied to other projects at the former Oakland Army Base.

SECTION 12. The City Council hereby finds and determines, on a separate and independent basis, that the Property is exempt from the California Surplus Lands Act (Government Code Section 54220 *et seq.*, as amended) because the Property is subject to the ENA, which was executed prior to September 30, 2019 and the disposition of the Property is anticipated to be completed prior to December 31, 2022.

SECTION 13. The City Council hereby finds and determines, on a separate and independent basis, that the anticipated environmental effects of the disposition of the Property authorized through the L/DDDA have been adequately evaluated by the 2002 Oakland Army Base Redevelopment Plan Environmental Impact Report (“EIR”), as amended by 2012 Addendum (together, the “2002 EIR/2012 Addendum”), and as further amended by Addendum No. 2 and therefore, in accordance with California Resources Code Section 2166 and CEQA Guidelines Section 15164, the 2002 EIR/2012 Addendum and Addendum No. 2, comprise the full and complete CEQA evaluation necessary for the proposed project and no further CEQA evaluation for the approval of the L/DDA is required.

SECTION 14. All agreements associated with the Property and the Project shall be reviewed and approved as to form and legality by the City Attorney's Office prior to execution by the City and shall be placed on file with the City Clerk.

SECTION 15. The recitals contained in this Ordinance are true and correct and are an integral part of the City Council's decision.

SECTION 16. The record before this Council relating to this Ordinance, includes without limitation, the Agenda Report for this item and the attachments thereto.

SECTION 17. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 18. Effective Date. This Ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

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

Date of Attestation: _____

NOTICE AND DIGEST

AN ORDINANCE:

(1) AUTHORIZING CITY ADMINISTRATOR TO EXECUTE A LEASE AND DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF OAKLAND (CITY) AND CALIFORNIA WASTE SOLUTIONS, INC. (CWS) FOR DEVELOPMENT OF A RECYCLING FACILITY AT 2308 WAKE AVENUE, WITH A TERM OF UP TO SEVEN YEARS, A CONVEYANCE PRICE OF \$8,268,500 AND APPLICABLE EXTENSION FEES OF \$125,000, \$250,000, AND \$425,000; AND

(2) AUTHORIZING CITY ADMINISTRATOR TO EXECUTE A 99-YEAR LEASE BETWEEN THE CITY AND CWS OF THE CITY'S LEASEHOLD INTEREST IN AN EASEMENT GRANTED BY CALTRANS OVER ADJACENT PROPERTY; AND

(3) WAIVING THE CITY'S LOCAL AND SMALL LOCAL BUSINESS ENTERPRISE PROGRAM, AS AMENDED ON FEBRUARY 16, 2021 (ORDINANCE NO. 13640 C.M.S.) AND MAY 4, 2021 (ORDINANCE NO. 13647 C.M.S.); AND

(4) APPLYING THE CONSTRUCTION JOBS POLICY AND OPERATION JOBS POLICY APPLIED TO OTHER PROJECTS AT THE FORMER OAKLAND ARMY BASE; AND

(4) ADOPTING REQUISITE CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

This Ordinance authorizes a Lease and Disposition and Development Agreement (“L/DDA”) between the City of Oakland (“City”) and California Waste Solutions, Inc. (“CWS”) for development of a recycling facility at 2308 Wake Avenue in the North Gateway Area of the former Oakland Army Base, with a term of up to seven years, a conveyance price of \$8,268,500 and applicable extension fees of \$125, \$250,000, and \$425,000. This Ordinance further authorizes a 99-year Lease between the City and CWS of the City’s leasehold interested in an easement granted to the City by the State of California Department of Transportation (“Caltrans”) (the “Caltrans Easement”) on approximately 2.36 acres of adjacent land. The City may only grant its rights in the Caltrans Easement to others through a lease that meets the terms of the Caltrans Easement. This Ordinance waives the City’s Local and Small Local Business Enterprise Program to apply the Construction Jobs Policy and Operation Jobs Policy applied to other projects at the former Oakland Army Base, and adopts requisite California Environmental Quality Act findings.