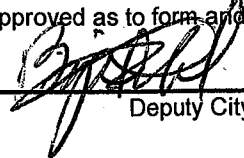


2010 JUL 19 PM 3:16

Approved as to form and legality

Deputy City Attorney

OAKLAND CITY COUNCIL
RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING AN EXCLUSIVE NEGOTIATING AGREEMENT ("ENA") WITH CALIFORNIA WASTE SOLUTIONS, INC. ("CWS"), PERMITTING STAFF TO 1) NEGOTIATE THE PRICE AND TERMS OF A DEVELOPMENT AND DISPOSITION AGREEMENT WITH CWS FOR THE RELOCATION OF ITS EXISTING WEST OAKLAND RECYCLING USES TO A PORTION OF THE NORTH GATEWAY PARCELS LOCATED AT THE FORMER OAKLAND ARMY BASE; 2) ACCEPTING AND APPROPRIATING A PROJECT EXPENSE PAYMENT IN CONNECTION WITH THE ENA; AND 3) CONFIRMING THE APPLICATION OF AN EXISTING SECURITY DEPOSIT

WHEREAS, the City owns approximately 12 acres of land and an easement on approximately 2 acres of land in the City of Oakland commonly known as the North Gateway Area of the former Oakland Army Base (the "Property"); and

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

WHEREAS, California Waste Solutions ("CWS") has existing recycling uses and facilities located in the West Oakland neighborhood;

WHEREAS, the City and CWS desire to enter into exclusive negotiations over development of a project to relocate CWS's existing recycling uses from West Oakland to the Property; and

WHEREAS, an Exclusive Negotiating Agreement ("ENA") between the City and CWS will allow the parties to enter into a period of negotiations over possible disposition of the Property and development of a project on the Property, understanding that this does not constitute a binding commitment on the part of the City to any developer or project; and

WHEREAS, the City and CWS previously entered into a joint ENA with CWS and another West Oakland recycling company, and the City currently has an ENA security deposit in the amount of \$623,840 from CWS from this previous ENA ("Existing

Security Deposit"); and

WHEREAS, the Property has federal and State deed restrictions prohibiting any residential activities and was transferred to the City to advance specific development objectives and not for any City uses; and

WHEREAS, as a condition of entering into this new ENA, CWS agrees to pay a security deposit and agrees to allow City to apply the Existing Security Deposit; and

WHEREAS, as a condition of entering into the ENA, the City shall require that CWS provide a Project Expense Payment ("PEP"), in an amount to be determined, for the purpose of covering City's third party costs related to studying the proposed project and negotiating the terms for disposition of the Property; now, therefore, be it

RESOLVED: That the City Council hereby authorizes the City Administrator, or her designee, to negotiate and execute an Exclusive Negotiating Agreement with CWS, or an affiliated entity approved by the City Administrator, for purposes of evaluating the feasibility of, and negotiating terms and conditions for, the potential development to relocate CWS's existing recycling uses in West Oakland to the Property; and be it

FURTHER RESOLVED: That the initial exclusive negotiating period shall be for twelve months from the date, commencing as of the date of this Council action, with an option to extend said period for an additional two (2) three-month periods at the discretion of the City Administrator or his or her designee; and be it

FURTHER RESOLVED: That the City Council hereby accepts any Project Expense Payment from CWS for development of the Property, and appropriates any revenues received from CWS for this purpose to the Joint Army Base Infrastructure Fund 5672, Project to be determined later, within Fiscal Years 2019-2021; and be it

FURTHER RESOLVED: That the City Council hereby accepts an Existing Security Deposit in the amount of \$623,840 from CWS as security for development of the Property, and appropriates said funds to the Joint Army Base Infrastructure Fund 5672, and Project to be determined later; and be it

FURTHER RESOLVED: The Property is not surplus property pursuant to the California Surplus Lands Act; and be it

FURTHER RESOLVED: The City Council finds and determines, after independent review and analysis, that this action is not in-and-of-itself a "Project" (pursuant to CEQA Guidelines Section 15378) since it will not result in a direct or indirect physical change in the environment. Depending on the outcome of the negotiations authorized under the ENA, the action authorized by this Resolution may or may not be part of a larger "Project" that shall be subject to appropriate environmental review in accordance with CEQA at the "earliest feasible time" prior to "approval" consistent with CEQA Guidelines Sections 15004 and 15352. The larger "Project" would be the development authorized

under the Development and Disposition Agreement ("DDA") subject to final review and approval by the City Council following the conclusion of the negotiations authorized under the ENA, and City staff will bring back appropriate CEQA analysis of the larger project prior to any City Council consideration and approval of the DDA; and be it

FURTHER RESOLVED: That the City Council hereby authorizes the City Administrator or his or her designee to negotiate and execute documents and take all other action necessary with respect to the ENA, the Property, the proposed project, and the PEP, consistent with the Resolution and its basic purposes.

IN COUNCIL, OAKLAND, CALIFORNIA, _____,

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, GALLO, GIBSON MCELHANEY, GUILLEN, KALB, KAPLAN,
 CAMPBELL-WASHINGTON and PRESIDENT REID

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

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