ATTACHMENT B

EXCLUSIVE NEGOTIATION AGREEMENT
(North Gateway CASS, Inc.)

This Exclusive Negotiation Agreement (the "**ENA**" or this "**Agreement**"), is made and entered into as of _____, 20__ (the "**Effective Date**"), by and between the City of Oakland, a municipal corporation ("**City**"), and CASS, Inc., a California corporation, or its affiliate ("**Developer**"). City and Developer shall be referred to herein sometimes as the "**Parties** and each individually as a "**Party**."

RECITALS

A. On December 20, 2011, pursuant to Resolution No. 83678, the City Council authorized the City to enter into that certain Exclusive Negotiating Agreement ("**2011 ENA**") by and among the City, Developer, and California Waste Solutions Inc., a California Corporation, dated as of February 12, 2012, as amended by that certain First Amendment to the Exclusive Negotiating Agreement, dated June 20, 2013 (the "**First Amendment**"), as further amended by that certain Second Amendment to the Exclusive Negotiating Agreement, dated April 11, 2014 (the "**Second Amendment**"), and further amended by that certain Third Amendment to the Exclusive Negotiating Agreement, dated August 17, 2015 (the "**Third Amendment**"). Collectively, the 2011 ENA, First Amendment, Second Amendment, and Third Amendment shall be referred to as the "**Joint ENA**".

B. The Joint ENA was for, among other things, the Parties to negotiate the terms for Developer's development of an aluminum recycling facility, including related office space, parking and other improvements and uses on a portion of the North Gateway Area of the former Oakland Army Base.

C. The Joint ENA has expired, and the Parties seek to enter into a new exclusive negotiating agreement for development of the following parcels: (1) that certain real property which is owned by the City and consisting of 8.4 acres of land, as more particularly described on **Exhibit A-1**, attached hereto, and depicted on the site map, attached hereto as **Exhibit B-1** and incorporated herein by this reference ("**Parcel 1**"); and (2) that certain real property consisting of 1.3 acres adjacent to Parcel 1, which is currently owned by the City, acting by and through its Board of Port Commissioners ("**Port**"), and over which the City will have jurisdictional control pursuant to separate agreement with the Port, as more particularly described on **Exhibit A-2**, attached hereto, and depicted on the site map, attached hereto as **Exhibit B-2** and incorporated herein by this reference ("**Parcel 2**"**)**. Parcel 1 and Parcel 2 shall together be referred to as the "**Property**".

D. The Property is located on land that was formerly part of the Oakland Army Base ("**OAB**").

E. To guide redevelopment of the OAB, the City adopted the Oakland Army Base Area Redevelopment Plan in 2000, as most recently amended and restated March 21, 2006 per Ordinance No. 12734 C.M.S. ("**Redevelopment Plan**"), and adopted the Base

Reuse Plan in 2002 ("**Reuse Plan**"), as amended by City Council Resolution No. 83930 C.M.S. on June 19, 2012.

F. As part of the adoption of the Redevelopment Plan and Reuse Plan, the City adopted the 2002 Oakland Army Base Redevelopment Plan Environmental Impact Report ("**EIR**") and the 2012 Oakland Army Base Project Initial Study/Addendum ("**EIR Addendum"**). The EIR and the EIR Addendum (collectively, the "**Existing CEQA Documents**").

G. Developer now desires to relocate its existing recycling uses and related ancillary uses, and develop new facilities to accommodate those existing uses along with office space, parking, and other ancillary uses on the Property consistent with the Existing CEQA Documents (the "**Project**").

H. In connection with the Project, Developer desires to negotiate with City, and City desires to negotiate with Developer, a disposition and development agreement (the "**DDA**") setting forth the terms and conditions of the conveyances of Parcel 1 and Parcel 2 (collectively, "**Conveyance**"), and the development of the Project.

I. In furtherance of the foregoing, City and Developer wish to enter into this ENA to allow the City and the Developer to enter into a period of environmental review, including to consider the Project with respect to the Existing CEQA Documents and exclusive good faith negotiations with respect to the DDA, with each Party understanding that this ENA does not constitute a binding commitment on the part of City to permit the development and/or Conveyance of the Project or Property, or of Developer to require the Conveyance of the Property or develop the Project.

J. This Agreement is entered into with the understanding that the final terms and conditions of the DDA negotiated during the Term (as defined in Section 2(a)) of this ENA will be subject to approval by the City Council.

NOW, THEREFORE, for and in consideration of the foregoing recitals, which are incorporated herein by reference, and the mutual promises contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. **NEGOTIATIONS**.

a. Agreement to Negotiate. Subject to the terms and conditions of this ENA, the Parties, acknowledging that time is of the essence, agree to negotiate diligently and in good faith with each other to enter into a final conveyance agreement in the form of a DDA, including any necessary associated agreements leading to the conveyance of the Property and development of the Project (collectively, the DDA and such other agreements shall be referred to as the "**Transaction Documents**"); provided, however, the actual sale and Conveyance of the Property, shall not occur absent the satisfaction or waiver of such conditions and contingencies that may be contained in the Transaction Documents, including, without limitation, the receipt of governmental entitlements and permits for the

Project. City grants Developer an exclusive right to negotiate the Transaction Documents (the "**Exclusive Right**") on the terms set forth herein and agrees not to solicit or consider, during the Term, any other proposals or negotiate with any other developers, with respect to the subject of the negotiations set forth herein without the prior written consent of Developer, to be granted or withheld by Developer in its reasonable discretion. The negotiations shall include discussions of community benefits that will be provided by the Project, including those topics identified in the attached **Exhibit F**, incorporated herein by reference. Such negotiations shall take into account input from the community outreach obtained through the outreach plan required in the Performance Benchmarks (as defined in Section 6) as approved by the City.

b. No City Commitment. Developer acknowledges and agrees that under this ENA, City is not committing itself or agreeing to enter into the Transaction Documents or undertake (i) any exchange or transfer of real property, (ii) any disposition or leasing of any real property interests to Developer, (iii) approval of any land use entitlements, or (iv) any other acts or activities relating to the subsequent independent exercise of discretion by City. This ENA does not constitute the disposition of property or exercise of control by City over property, and Developer acknowledges and agrees it is proceeding at its own risk and expense.

c. Environmental Review. Nothing in this ENA shall be construed to commit City to any definite course of action with respect to any Project subject to review under the California Environmental Quality Act, Pub. Res. Code section 21000 *et seq*. and 14 Cal. Code Regs. section 15000 *et seq*. (collectively, "**CEQA**"). Any project that results from the exchange, transfer, disposition of property, grant of land use entitlements, or other discretionary actions considered by the City under or after this ENA shall be subject to environmental review under CEQA at the "earliest feasible time" prior to "approval," consistent with CEQA Guidelines Sections 15004 and 15352. Furthermore, City will not decide whether to enter into the Transaction Documents for use of the Property before complying with CEQA. In order to comply with CEQA and give the public the opportunity to be aware of the environmental consequences of the Project, the City retains the absolute discretion to (i) approve or not approve the transaction and the Project as may be necessary to comply with CEQA; (ii) select other alternatives to avoid significant environmental impacts; (iii) balance the benefits of the Project against any significant environmental impacts prior to taking final action, if such significant impacts cannot otherwise be avoided; and/or (iv) determine not to proceed with approval of the Project. City, in its role as lead agency under CEQA, will determine the appropriate level of environmental review after Developer's filing of an application for zoning clearance/determination pursuant to section 17.01.070 of the Planning Code, and as otherwise provided in the Performance Benchmarks (the "**Zoning Clearance Application**").

2. TERM, TERMINATION AND EXTENSION.

a. Term. The term of this ENA (the "**Term**") commenced on the Effective Date and will expire on the earlier to occur of (i) the mutual execution of the Transaction Documents approved by City Council, or (ii) on the date that is nine (9) full calendar

months from the Effective Date, unless earlier terminated pursuant to Section 2(b), or extended pursuant to Section 2(c).

b. Early Termination. This ENA may terminate, prior to the expiration of the Term, upon the occurrence of any of the following events:

i. Upon notice from Developer that it desires to cease negotiations, which shall not be deemed a Developer Event of Default (as defined in Section 13(a)) and the Deposit (as defined in Section 4) shall be returned to Developer, and the provisions of this ENA that are intended to survive termination shall remain in effect;

ii. In the event of a Developer Event of Default pursuant to Section 13(a), City may terminate this ENA upon written notice to Developer pursuant to Section 14; or

iii. In the event of an impasse on material terms during the Term of this ENA, any Party may provide written notice to the other Party of the impasse (the "**Impasse Notice**"). After an Impasse Notice is given, the Parties agree to work diligently and in good faith to resolve the subject impasse. If the Parties are unable to resolve the subject impasse for any reason within sixty (60) days after the Impasse Notice is given, any Party may, in its sole discretion, terminate this ENA upon written notice to the other Party given before the subject impasse is resolved, which shall not be deemed a Developer Event of Default (as defined in Section 13(a)), the Deposit shall be returned to Developer, and no Party shall have any further rights or obligations to the other Party under this ENA; and the provisions of this ENA that are intended to survive termination shall remain in effect.

c. Extension. The City Administrator or his or her designee, in his or her sole and absolute discretion, may extend the Term for two (2) additional periods of up to three (3) calendar months each (each, an "**Extension Term**"), upon sending written notice to Developer. Each Extension Term shall become effective upon written acknowledgement of Developer; provided that if Developer fails to so acknowledge the Extension Term, such Extension Term shall commence three (3) business days from the date of the notice of the Extension Term from City to Developer.

3. ENA EXPENSE PAYMENT. City hereby acknowledges that Developer, as a part of the Joint ENA, paid Five Thousand Dollars ($5,000) to City for purposes of reimbursing City for third party expenses incurred by City, in its proprietary capacity, in its sole discretion. Developer hereby agrees to also reallocate Fifty-five Thousand Dollars ($55,000) from the Prior Deposit (as defined in Section 4 below) as a nonrefundable payment, which combined payments ($60,000) are referred to herein as the "**ENA Expense Payment**") for the City's entering into this ENA. The City shall have the right to retain the ENA Expense Payment under all circumstances hereunder and shall not be obligated to return the ENA Expense Payment to Developer under any circumstance.

4. EARNEST MONEY DEPOSIT. City hereby acknowledges that Developer, as part of the Joint ENA, made an earnest money deposit to the City in the amount of Five Hundred Fifty-Seven Thousand Dollars ($557,000) (the "**Prior Deposit**"). After reallocating funds pursuant to Section 3, City shall continue to hold the remaining Five Hundred and Two Thousand Dollars ($502,000) (the "**Deposit**") under this ENA in

exchange for the exclusive negotiating rights granted to the Developer under this ENA. The Deposit shall be applicable as a credit to reduce the price to be paid by Developer for the Conveyance of the Property should such occur. Subject to Sections 13(a) and 14(a) below, the Deposit shall be refundable to Developer.

5. TERM SHEET. By the date set forth in the Performance Benchmarks (defined in Section 6(a)), the Parties will use good faith efforts to negotiate a term sheet for an "As-Is" and "Where-Is" conveyance of the Property, representing the Parties' consensus on the scope, financial terms, and other terms and responsibilities related to the Project (the "**Term Sheet**"), which will be attached hereto as **Exhibit E** and incorporated herein by a writing signed by both parties. The Term Sheet shall serve as a non-binding guide in the negotiation of the Transaction Documents, although the Parties acknowledge that review of additional information and further discussion after the Term Sheet is agreed to may lead to refinement and revision of the Term Sheet and/or changes in the Project. Such changes in the Project may result in changes to the Term Sheet if the Parties agree that the changes are necessary to support Project feasibility. If the Parties fail to agree on a Term Sheet after negotiations pursuant to the above and this ENA is terminated, the Deposit shall be returned to Developer.

6. SCHEDULE OF PERFORMANCE.

a. Satisfaction of Performance Benchmarks. During the Term of this ENA, the Parties shall, in good faith, work expeditiously on, and diligently pursue to completion, each of the performance benchmarks described on **Exhibit D** (the "**Performance Benchmarks**") in the manner and within the times set forth therein, in addition to any additional Performance Benchmarks mutually agreed upon in writing by the Parties. Developer and City shall reasonably consider during the Term of this ENA, any additional Performance Benchmarks proposed by the other Party that are feasible and do not materially increase the obligations, burdens or risks of a Party. Developer's compliance with the Performance Benchmarks shall not alter or reduce its obligations to comply with any other provision of this ENA. Any additional Performance Benchmarks agreed on by the Parties shall be documented in writing and shall thereafter be deemed part of and incorporated into the Performance Benchmarks. Any failure of Developer to meet the Performance Benchmarks for reasons beyond its control as reasonably determined by City shall not be a Developer Event of Default (as defined below).

b. Waiver or Extension of Performance Benchmarks. At the discretion of the City Administrator or his/her designee, City may extend the date for the performance of any item set forth in the Performance Benchmarks required to be completed by Developer, from time to time, without the necessity for further City Council action, so long as the cumulative extensions of a particular Performance Benchmark do not exceed a total aggregate of three (3) months from the originally established date. Any such extension shall not release any of Developer's respective obligations nor constitute a waiver of City's rights with respect to any other term, covenant or condition of this ENA. Notwithstanding the foregoing, the City Administrator or his/her designee shall have the discretion to waive

or extend the date for the performance of any item set forth in the Performance Benchmarks required to be completed by City, without the necessity for further City Council action.

7. RIGHT OF ENTRY.

a. Grant of Entry. Developer and Developer's officers, directors, members, agents, employees, affiliates, contractors, and representatives (collectively, "**Developer Parties**") may enter upon the Property at any time during the Term to conduct investigations, tests, topographical surveys, appraisals, and studies, including geotechnical studies, soils tests, and environmental site assessments, subject to the following terms:

i. Developer shall give at least three (3) business day's advanced written notice to City prior to entering the Property and shall take steps to minimize any disruption to the operations of any existing lessees or occupants of the Property. In response to Developer's written notice, City will advise Developer of any concerns regarding the entry promptly thereafter.

ii. Developer shall not conduct any invasive testing on Parcel 1 without the advance written consent by City of Developer's proposed sampling plan, which consent shall not be unreasonably withheld or delayed. If any changes are required by the City or any governmental agency having jurisdiction over Parcel 1 with respect to such testing, then Developer shall obtain such approval from City before proceeding with such testing. Developer shall not have the right to conduct any invasive testing at Parcel 2 without the written consent of the Port. If Developer seeks such right, City agrees to reasonably cooperate with Developer in obtaining such permission from Port. The terms of any entry onto Parcel 2 shall be governed by any temporary license agreement (the "**Port License**") entered into by and between Developer and the Port, and not this ENA; provided, however, in the event of conflict between this ENA and the Port License, this ENA shall control;

iii. Developer and the Developer Parties shall not alter the Property, except as reasonably necessary to conduct testing and other activities thereon, as authorized by this ENA and the Port License. Developer agrees upon completion of any testing or other activity under this ENA to remove all debris, litter, equipment, and other materials placed on the Property by Developer and any Developer Parties, and to restore the Property to substantially its original condition; and

iv. Notwithstanding any other provision of this ENA, this right of entry shall not relieve Developer from the obligation to obtain all applicable governmental approvals or permits necessary to perform such tests or conduct other activities on the Property.

b. Indemnification/Insurance. Without limitation, the indemnification provisions of Section 10 shall apply with respect any entry by Developer or any of the Developer Parties. Prior to any entry by Developer or any of the Developer Parties onto the Property, Developer shall provide to City satisfactory evidence of compliance with the insurance requirements required in Section 11 below.

c. Hazardous Substances.

i. In connection with any entry on the Property, Developer and the Developer Parties are prohibited from causing any Hazardous Substance (as defined in Section 7(c)(ii)) to be placed on or under the Property.

ii. For purposes of this Section 7, the term "**Hazardous Substance**" shall have the meaning set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended as of the date of this ENA, 42 U.S.C. §9601(14), and in addition shall include, without limitation, petroleum (including crude oil or any fraction thereof) and petroleum products, asbestos, asbestos-containing materials, polychlorinated biphenyls ("**PCB**s"), PCB-containing materials, all hazardous substances identified in the California Health & Safety Code §§25316 and 25281(d), all chemicals listed pursuant to the California Health & Safety Code §25249.8, and any substance deemed a hazardous substance, hazardous material, hazardous waste, or contaminant under Environmental Law.

iii. The term "**Environmental Law**" shall include all federal, state and local laws, regulations, and ordinances governing hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or storage, and employee or community right-to-know requirements related to the work being performed under this ENA.

iv. City and Developer agree that Developer shall be responsible for lawfully disposing of any test samples (i.e., any soil cuttings, ground water samples and other waste materials associated with Developer's investigations of Parcel 1 pursuant to this ENA) in accordance with applicable Environmental Law, but that City shall sign any waste manifest as the owner of Parcel 1 and that the City's EPA ID number shall be used for said disposal to the extent required by Environmental Law.

d. City Rights/License Agreements. Notwithstanding the rights of Developer described in this ENA, including, without limitation, the right of Developer to access the Property during the Term, as described in this Section 7, City shall have the right throughout the Term to grant to other parties licenses, leases, or other occupant agreements to use all or a portion of the Property, subject to the following: No such license, lease or other occupancy agreement shall (i) permit the tenant, licensee or other occupant thereunder any right to materially and negatively interfere with Developer's activities permitted under this ENA; (ii) be terminated on greater than thirty (30) days or less notice; (iii) permit or create any conditions that are reasonably likely to exacerbate any Hazardous Substances existing on, under or about the Property; and/or (iv) permit or allow any tenant, licensee, or other occupant to store or use any Hazardous Substances on, under or about any portion of the Property (excluding only gasoline or diesel customarily carried within any heavy equipment or vehicle fuel tanks). Subject to the above, such uses within the license area may include, but are not limited to, parking office trailers; homeless shelters; placing debris boxes; parking heavy equipment or

trucks; storing containers or other materials; construction laydown, and parking for licensee's employees, contractors and agents.

8. NEGOTIATION OF TRANSACTION DOCUMENT.

a. Negotiation of Transaction Documents. Subject to the terms and conditions of this ENA, the Parties shall diligently confer, negotiate in good faith, and seek to complete the Transaction Documents in a form that is approved by legal counsel for each Party, incorporating specific terms, including, without limitation, the responsibilities of each Party, the economic parameters, development standards and requirements, and a performance schedule. Developer agrees and acknowledges that the obligation to "negotiate in good faith" is limited to the actions of City staff and that the foregoing obligation does not apply to, or bind, any other department or body of the city nor the City Council. The Transaction Documents are subject to City Council approval in compliance with applicable law. The Transaction Documents shall provide for mutually agreed-upon closing conditions, including, without limitation, title insurance, closing date, closing costs, receipt of final approval of all regulatory approvals, and permits required for the Project upon terms and conditions reasonably acceptable to the Parties, and the ability of Developer to obtain financing on commercially reasonable terms and conditions. Failure of such negotiations, or failure to obtain City approval of any Transaction Document, shall not be deemed a Developer Event of Default and the Deposit shall be returned to Developer.

b. Basis for Negotiations. Developer will submit a description of the proposed Project, including any proposed phasing, to City in accordance with date specified in the Performance Benchmarks (the "**Project Description**"). The Project Description shall serve as the basis for negotiations under this ENA. By entering into this ENA, Developer represents and warrants that it shall work in good faith to advance the Project as shall be reflected in the Project Description and that any redesign of the Project may be a basis for the City not to enter into the Transaction Documents.

9. DEVELOPER'S OBLIGATIONS. During the Term of this ENA, Developer shall be responsible for meeting or causing to be met, all obligations related to the Project. Accordingly, Developer agrees that during the Term of this ENA:

a. Developer shall diligently, and in good faith and its sole cost, pursue obtaining all regulatory approvals for the Project, including satisfaction of CEQA;

b. As between Developer and City, Developer shall be solely responsible for all of its own costs and expenses, including, but not limited to, fees it incurs for its attorneys, architects, engineers, consultants, and other professionals, related to or arising from this ENA, or the negotiation and execution of any of the Transaction Documents. Developer shall not have any claim against City for reimbursement for any such costs and expenses irrespective of whether any of the Transaction Documents are approved by City Council, or whether regulatory approvals are secured;

c. Developer shall bear all costs associated with or complying with all permit and processing fees related to the Project as well as the conditions of any necessary regulatory approval granted to Developer;

d. To the extent applicable, Developer shall pay and discharge any fines or penalties imposed as a result of its failure to comply with the terms and conditions of any regulatory approval granted to Developer, and City shall have no liability, monetary or otherwise, for such fines and penalties;

e. Developer, in accordance with the ENA, shall undertake and complete its "due diligence" review or investigations of the Property and, if requested by City, provide to City (at no cost to City) copies of all non-privileged, non-proprietary reports regarding the Property without warranty of any kind as to the completeness or accuracy of any information contained therein, as set forth in the Performance Benchmarks.

f. Developer shall prepare financial projections, provide evidence of Developer's financial ability to construct the Project, and shall prepare and provide to City (at no cost to City) complete concept plans and schematic design plans for the Project, including, but not limited to, floor plans, elevations and renderings, as set forth in the Performance Benchmarks;

g. Developer shall submit in a timely manner to any regulatory body having approval over the Project, all specifications, descriptive information, studies, reports, disclosures and any other information required to satisfy the application filing requirements of those agencies;

h. Developer shall diligently pursue completion of all Performance Benchmarks and additional Performance Benchmarks, if any, in a timely fashion;

i. Developer shall not pay, or agree to pay, any fee or commission, or any other thing of value that is contingent on the entering of this ENA, any other Transaction Document, or any other agreement with City related to the Project, to any City employee or official or to any contracting consultant hired by City for purposes of the Project. By entering into this ENA, Developer certifies to City that it has not paid, nor agreed to pay, any fee or commission, or any other thing of value contingent on the entering of this ENA, any other Transaction Document, or any other agreement with City related to the Project, to any City employee or official or to any contracting consultant hired by City for purposes of the Project;

j. During the Term of this ENA, with respect to its obligations hereunder, Developer shall comply with, in all respects, the requirements of all applicable laws, including City ordinances, resolutions, regulations, plans, development controls, or other regulatory approvals (e.g., planning, design, construction, management and occupancy). Notwithstanding the above, Developer shall file its Zoning Clearance Application in accordance with the Performance Benchmarks; and

k. Developer shall commit sufficient financial and personnel resources required to undertake and to fulfill its obligations under this ENA, as reasonably determined by Developer.

10. INDEMNITY.

a. Developer shall indemnify, defend (with counsel acceptable to City), and hold harmless City and its Council members, commissioners, officers, agents, contractors, and employees ((collectively, the "**Indemnitee Parties**" or individually, an "**Indemnified Party**") from and against any and all liens and any and all losses, costs, claims, damages, liabilities, expert witness and consulting fees, and costs of litigation, demands, actions, suits, judicial or administrative proceedings, penalties, deficiencies, fines, orders, judgments, damages, liabilities, and causes of action, expenses (including Attorneys' Fees and Costs), including, without limitation, with respect to any challenge or any filing of any kind related to any regulatory approvals, bodily injury, death or property damage occurring in or about the Premises, any act, omission or sole negligence of Developer or its employees or agents ("**Claim**" or "**Claims**) arising out of, or relating to the terms of this ENA and/or Developer's entry onto the Property pursuant to Section 7; provided, however, that the foregoing indemnity shall not apply to any Claims due to the gross negligence or willful misconduct of any Indemnified Party seeking to be indemnified, or its respective agents, employees, or contractors (collectively "**Indemnity Exclusions**").

b. Notwithstanding the foregoing in this Section 10, Developer shall be under no obligation whatsoever with respect to any pre-existing Hazardous Substances or other pre-existing defects, including, but not limited to, contaminated soil and/or other materials, extracted, existing, or otherwise discovered by Developer in the performance of its inspection of the Property ("**Pre-Existing Condition(s)**"), and Developer shall not be obligated to indemnify, defend or hold the Indemnitee Parties harmless due to the discovery or existence of any Pre-Existing Condition unless and only to the extent that Developer or Developer Parties exacerbates any Pre-Existing Condition. Developer's obligations under this Section shall survive the termination of this ENA.

11. INSURANCE.

a. Requirement to Maintain Insurance. Without in any way limiting Developer's indemnification obligations under this ENA, and subject to approval by City of the insurers, policy forms and all other coverage specifics, Developer shall obtain and maintain, or cause to be obtained and maintained at no cost to City, during the Term, the insurance set forth on City's Schedule Q, attached hereto as **Exhibit C** and incorporated herein as related to Parcel 1. Notwithstanding anything to the contrary herein stated, Developer shall be subject to the insurance requirements applicable to Parcel 2 as set forth in the Port License between Developer and the Port. No failure by the City to approve of any insurance submitted by Developer, which otherwise complies with the requirements of this Section 11, shall result in or constitute a default by Developer under this ENA.

b. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions over $550,000 must be disclosed to City in writing and approved in advance, in

writing by City. In the event such deductibles or self-insured retentions are in excess of $50,000, City shall have the right to elect that: (i) the insurer reduce such deductibles or self-insured retentions as such impacts City and its commissioners, Council members, officers, contractors, agents and employees to $50,000 or less, or (ii) Developer procure a financial guarantee satisfactory to City assuring payment of any claims, losses, investigations, claim administration and defense costs and expenses.

c. Verification of Coverage. Developer must furnish City with, and City must approve in writing, certificates of insurance and additional endorsements effecting coverage required by this Section prior to any commencement of work at or access to the Property by Developer. The certificates and endorsements for each insurance policy shall be signed by a person authorized by each insurer to bind coverage on its behalf. City reserves the right to request complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time, which copies shall be delivered by Developer to City within five (5) business days (or, if applicable, by such other date as specified in **Exhibit C**) of the date of such request.

12. NON-ASSIGNMENT. The Parties acknowledge and agree that City is entering into this ENA and granting the Exclusive Right to Developer on the basis of the particular experience, financial capacity, skills and capabilities of Developer. This ENA is personal to Developer and is non-assignable without the prior written consent of City, which may be withheld in City's sole and absolute discretion. Notwithstanding the foregoing, Developer may, with prior notice to City but without requiring the City's consent, assign its interest in this ENA to a Developer Affiliate. As used herein, a "**Developer Affiliate**" means an entity that controls, is controlled by, or is under common control with Developer, or which is controlled by Edward B. Kangeter IV.

13. DEFAULT.

a. Developers' Event of Default. The occurrence of any of the following (each, a "**Developer Event of Default**") shall constitute a default by Developer after City gives notice of the default specifying in reasonable detail the basis for the determination of the default and after the expiration of the applicable cure period, if any:

i. Failure to pay any sums due under this ENA within ten (10) days after written notice has been given by City.

ii. Failure to perform or abide by any provision of this ENA within thirty (30) days after written notice has been given by the City, including the Performance Benchmarks (other than any failures to meet the Performance Benchmarks that are outside the control of Developer, as reasonably determined by City), as such are waived or extended in accordance with Section 6.

iii. Either (1) the filing by Developer of a petition to have itself adjudicated insolvent and unable to pay its debts as they mature or a petition for reorganization or arrangement under any bankruptcy or insolvency law, or a general assignment by Developer for the benefit of creditors; or (2) the filing by or against

Developer of any action seeking reorganization, arrangement, liquidation, or other relief under any law relating to bankruptcy, insolvency, or reorganization or seeking appointment of a trustee, receiver, or liquidator of itself or any substantial part of the its assets.

iv. Any material breach of any representation and warranty contained in Section 16(a), or any other provision of this ENA, unless Developer notifies City within ten (10) business days after it becomes aware of the material breach and commences to cure same within thirty (30) days from the date on which it was obligated to notify City (or if such material breach cannot reasonably be cured within such thirty (30) days, Developer shall not be in default of this ENA if it commences to cure such material breach within the thirty (30) day period and diligently and in good faith continues to seek to cure such material breach until such material breach is cured.).

v. The debarment or prohibition of Developer from doing business with any federal, state or local governmental agency, or any debarment or prohibition of any affiliate of Developer from doing business with any federal, state or local governmental agency to the extent such debarment or prohibition could affect the development of the Project as contemplated hereby.

vi. Failure to procure or maintain any of the insurance coverage required hereunder so that there is a lapse in required coverage, which is not cured within fifteen (15) business days after written notice has been given by City.

If a Developer Event of Default cannot reasonably be cured within the applicable time period set forth in this Section 13(a), Developer shall not be in default of this ENA if it commences to cure the Developer Event of Default within the applicable time period and diligently and in good faith continues to seek to cure the Developer Event of Default until such Developer Event of Default is cured.

b. City's Event of Default.

i. Failure to perform or abide by any material provision of this ENA, if such failure is not cured within thirty (30) days after written notice (which shall specify in reasonable detail the basis for the determination of the default) has been given to City, shall constitute an event of default by City ("**City Event of Default**"); provided, however, that if the City Event of Default cannot reasonably be cured within thirty (30) days, City shall not be in default of this ENA if City commences to cure the City Event of Default within the thirty (30) day period and diligently and in good faith continues to seek to cure the City Event of Default until such City Event of Default is cured.

ii. Any material breach of any City representation and warranty contained in Section 16(c), or any other provision of this ENA, unless City notifies Developer within ten (10) business days after it becomes aware of the material breach and commences to cure such material breach within thirty (30) days from the date on which City was obligated to notify Developer (or if such material breach cannot reasonably be cured within such thirty (30) days, City shall not be in default of this ENA if City

commences to cure such material breach within the thirty (30) day period and diligently and in good faith continues to seek to cure such material breach until such material breach is cured .

14. REMEDIES.

a. City's Remedies. If a Developer Event of Default remains uncured after the expiration of any applicable notice and cure period specified above, or is reasonably determined by the City to be an uncurable default, City shall have the option, as its sole and exclusive remedy at law or in equity, to (i) terminate this ENA upon written notice to Developer, sent in accordance with Section 22, and retain any payments, including, without limitation the Deposit, previously paid to City as liquidated damages in accordance with Section 15 and (ii) seek to enforce Developer's indemnity obligations. City hereby waives any and all rights it may now or hereafter have to pursue any other remedy or recover any other damages on account of any breach or default by Developer, including, without limitation, loss of bargain, special, punitive, compensatory or consequential damages.

b. Developer's Remedies. If a City Event of Default remains uncured or is deemed to be an incurable default, Developer shall have the right, as its sole and exclusive remedy at law or in equity, to terminate this ENA by delivery of written notice of termination to City, whereupon the Deposit shall be returned by City to Developer, and all Parties shall each be released from all liability under this ENA (except for those provisions which recite that they survive termination). The foregoing are the exclusive rights and remedies available to Developer at law or in equity in the event of City's default under or breach of this ENA. Developer hereby waives any and all rights it may now or hereafter have to pursue any other remedy or recover any other damages on account of any such breach or default by City, including, without limitation, loss of bargain, loss of profits, special, punitive, compensatory or consequential damages.

c. Developer's Risk. Subject to the foregoing provisions of this Section 14, Developer acknowledges and agrees that it is proceeding at its own risk and expense until such time as the Transaction Documents are approved by City Council and without any assurance that the Transaction Documents will be approved.

15. DAMAGES. The Parties have agreed that City's actual damages in the event of a failure to approve, execute and deliver the Transaction Documents due to a default by Developer would be extremely difficult or impracticable to determine. After negotiation, the Parties have agreed that, considering all the circumstances existing on the date of this ENA, the amount of the ENA Expense Payment (including any increases), Deposit and other payments previously paid by Developer, as herein provided, is a reasonable estimate of the damages that City would incur in such event.

IF THE PARTIES DO NOT REACH AGREEMENT ON THE TRANSACTION DOCUMENTS OR THE TRANSACTION DOCUMENTS ARE NOT APPROVED, EXECUTED AND DELIVERED AS CONTEMPLATED HEREBY DUE TO ANY

DEVELOPER DEFAULT UNDER THIS ENA, THEN CITY SHALL BE ENTITLED TO RETAIN THE DEPOSIT AND OTHER PAYMENTS PREVIOUSLY PAID BY DEVELOPER TO CITY AS LIQUIDATED DAMAGES. NOTHING IN THIS ENA WILL, HOWEVER, BE DEEMED TO LIMIT DEVELOPER'S LIABILITY TO CITY FOR DAMAGES OR INJUNCTIVE RELIEF FOR BREACH OF DEVELOPER'S INDEMNITY OBLIGATIONS UNDER SECTION 10 OR FOR ANY FRAUD AND/OR MISREPRESENTATION IN THE MAKING OF THIS ENA. BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS ENA WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION. THIS PROVISION SURVIVES TERMINATION OF THIS ENA.

INITIALS: City _____ Developer _____

16. REPRESENTATIONS AND WARRANTIES.

a. Developer's Representations and Warranties. Developer represents, warrants and covenants, as of the Effective Date as follows:

i. Valid Existence; Good Standing; Joint Venture Relationships. Developer and any of its entities and affiliates involved in the Project, if applicable, are duly organized and validly existing entities under the laws of the states of their incorporation. Developer has all requisite power and authority to own its property and conduct its business as presently conducted. Developer has made all legally required filings and is in good standing in the jurisdiction of the State of California.

ii. Authority. Developer has all requisite power and authority to execute and deliver this ENA and to carry out and perform all of the terms and covenants of this ENA.

iii. No Limitation on Ability to Perform. Neither Developer's articles of incorporation and bylaws nor any other agreement, document or law in any way prohibits, limits or otherwise affects the right or power of Developer to enter into and perform all of the terms and covenants of this ENA. Developer is not a party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument, which could prohibit, limit or otherwise affect the same. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other person or entity is required for the due execution, delivery and performance by Developer of this ENA or any of the terms and covenants contained in this ENA. To Developer's actual knowledge, there are no pending or threatened suits or proceedings or undischarged judgments affecting Developer before any court, governmental agency, or arbitrator, which might affect the enforceability of this ENA, or the ability of Developer to perform the transactions contemplated by this ENA.

iv. Valid Execution. The execution and delivery of this ENA by Developer has been duly and validly authorized by all necessary action. This ENA will be a legal, valid and binding obligation of Developer, enforceable in accordance with its terms, subject to usual qualifications related to the effects of laws relating to bankruptcy, insolvency and the limitations imposed by equitable considerations.

v. Defaults. The execution, delivery, and performance of this ENA do not and will not violate or result in a violation of, contravene, or conflict with, or constitute a default under (i) any agreement, document, or instrument to which either Developer may be bound or affected, (ii) any law, statute, ordinance, regulation, or (iii) the articles of incorporation or the bylaws of Developer.

vi. Meeting Financial Obligations; Material Adverse Change. Developer is meeting its current liabilities as they mature; to Developer's actual knowledge, no federal or state tax liens have been filed against it; and Developer is not in default or claimed default under any agreement for borrowed money. Developer shall during the Term of this ENA promptly notify City of any material, adverse change in its financial condition, and such material, adverse change shall constitute a default under this ENA if the material, adverse change in its financial condition materially affects Developer's ability to meet its obligations under this ENA.

vii. Conflicts of Interest. Developer is familiar with (i) Section 87100 et seq. of the California Government Code, which provides that no member, official, or employee of City, may have any personal interest, direct or indirect, in this ENA nor shall any member, official, or employee participate in any decision relating to this ENA that affects her or his personal interest or the interests of any corporation, partnership or association in which she or he is interested directly or indirectly; (ii) Oakland Municipal Code Section 2.25.050, which prohibits former City employees and consultants from working on behalf of another party on a matter in which they have participated personally and substantially for one (1) year after separation from City unless City of Oakland Public Ethics Commission consents to such scope of work; and (iii) Section 1090 of the California Government Code, which provides that no member, official or employee of City shall be financially interested in any contract made by them in their official capacity. As to the provisions referred to in clause (i), to its actual knowledge, Developer does not know of any facts that constitute a violation of such provisions.

viii. Not Prohibited from Doing Business. To Developer's actual knowledge, neither Developer nor any of its officers or directors nor any Developer Affiliate has been prohibited from doing business with any local, state or federal governmental agency.

ix. Business Licenses. To Developer's actual knowledge, Developer has obtained all licenses required to conduct its business in City and is not in default of any fees or taxes due to City.

x. No Claims. Developer has no claim, and shall not make any claim, against City (other than potential claims arising from any default of City), or against the Project, or any present or future interest of City therein, directly or indirectly, by reason of:

(A) the entry into this ENA or the termination of this ENA; (B) any statements, representations, acts or omissions made by City or any of its officers, Council members, commissioners, employees, contractors or agents with regard to the Project or any aspect of the negotiations under this ENA; and (C) City's exercise of discretion, decision and judgment set forth in this ENA.

As used herein, "to Developer's actual knowledge" or words to that effect means the actual knowledge (and not imputed or constructive knowledge) of Edward B. Kangeter IV, without any requirement of inquiry or investigation on his part. Such reference to Mr. Kangeter shall not result in any personal liability on his part for any such representation or warranty.

b. Representation and Warranties of Developer's Signatory. If Developer signs as a corporation, limited liability, company or a partnership, each of the persons executing this ENA on behalf of Developer does hereby represent and warrant that Developer is a duly authorized and existing entity, that it has and is qualified to do business in the State of California, that Developer has full right and authority to enter into this ENA, and that each and all of the persons signing on Developer's behalf is authorized to do so. Upon City's request, Developer shall provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

c. City's Representations and Warranties. City represents, warrants and covenants as follows:

i. Authority. City has all requisite power and authority to execute and deliver this ENA and to carry out and perform all of the terms and covenants of this ENA.

ii. Valid Execution. The execution and delivery of this ENA by City have been duly and validly authorized by all necessary action. This ENA will be a legal, valid and binding obligation of City. City has provided to Developer a written resolution of City Council authorizing the execution of this ENA.

17. COOPERATION WITH CITY ON DESIGN. Developer agrees to work in good faith and collaboratively with City with respect to the design of the Project.

18. PRESS CONFERENCE; PRESS RELEASE. During the Term of this ENA, each Party hereby covenants and agrees that it shall not issue any press release or hold any press conference with respect to the Project or this ENA, except to the extent required by applicable law, without the prior written consent of the other Party, which approval shall not be unreasonably withheld, conditioned or delayed. If any Party is required by applicable law to issue such a release, such Party shall, at least five (5) business days prior to the issuance of the same, deliver a copy of the proposed release to the other Party for review.

19. CAMPAIGN CONTRIBUTION RESTRICTIONS. The Developer and its officers, directors and affiliates are aware of and shall abide by the prohibition on campaign contributions from contractors doing business with the City between commencement of contract negotiations and either (a) one-hundred eighty (180) days from completion of

contract negotiations, or (b) termination of contract negotiations, as set forth in the Oakland Campaign Reform Act. The Developer acknowledges that it has executed and submitted to the City a Contractor Acknowledgement of City of Oakland Campaign Contribution Limits.

20. POLITICAL ACTIVITY. None of the funds, materials, property, or services contributed by the Developer under this ENA may be used for any political activity or the election or defeat of any candidate for public office.

21. BALLOT MEASURES. Developer expressly agrees and acknowledges that it shall not initiate, promote, support or pursue, or authorize any other person or Party to initiate, promote, support, or pursue, any ballot measure relating to the Project without the prior consent of the City Council by resolution.

22. NOTICES. Any notice given under this ENA shall be in writing and given by delivering the notice in person, by commercial courier, express delivery service, or by sending it by registered or certified mail, or express mail, return receipt requested, with postage prepaid, to the mailing address listed below or any other address, notice of which is given.

Any mailing address may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change.

All notices under this ENA shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt; provided, notice will not be deemed given if delivery fails because it is attempted on a day that is not a regular business day of the recipient, or during non-business hours of the recipient, and thereafter shall only be deemed given upon delivery or attempted delivery during regular hours of a regular business day of the recipient. A Party may not give official or binding notice by facsimile or email. The effective time of a notice shall not be affected by the receipt of the original or mailed copy of the notice.

CITY:

City of Oakland
City Administrator's Office
Oakland Army Base Project Implementation
One Frank Ogawa Plaza, 3rd Floor
Oakland, CA 94612
Attn: OAB Project Manager

Copy to:

City Attorney's Office
One Frank Ogawa Plaza, 7th Floor
Oakland, CA 94612

Attn: Supervising City Attorney for Real Estate

DEVELOPER*:*

CASS, Inc.
2730 Peralta Street
Oakland, CA 94607
Attention: Edward B. Kangeter IV

Copy to:

Miller Starr Regalia
1331 N. California, 5th Floor
Walnut Creek, CA 94596
Attention: Michael Di Geronimo and Bryan Wenter
Facsimile: (925) 933-4126

and to:

RAF Law Group
811 Wilshire Blvd., Suite 1050
Los Angeles, CA 90017
Attention: Ruben Castellon
Facsimile: (213) 532-3984

23. MISCELLANEOUS PROVISIONS.

a. Governing Law. This ENA shall be governed by and construed in accordance with the laws of the State of California, without regard to any choice of law principles. As part of the consideration for City entering into this ENA, Developer agrees that all actions or proceedings arising directly or indirectly under this ENA may, at the sole option of City, be litigated in courts located within the County of Alameda, State of California, and Developer expressly consents to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon itself wherever it may then be located, or by certified or registered mail directed to the address set forth in this ENA.

b. Interpretation of ENA.

i. Exhibits. Whenever an "Exhibit" is referenced, it means an exhibit to this ENA unless otherwise specifically identified.

ii. Captions. Whenever a section, article or paragraph is referenced, it refers to this ENA unless otherwise specifically identified. The captions preceding the articles and sections of this ENA have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this ENA.

iii. Words of Inclusion. The use of the term "including," "such as", or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

iv. References. Wherever reference is made to any provision, term or matter "in this ENA," "herein" or "hereof" or words of similar import, the reference shall be deemed to refer to any and all provisions of this ENA reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered, section or paragraph of this ENA or any specific subdivision thereof.

v. Recitals. In the event of any conflict or inconsistency between the recitals and any of the remaining provisions of this ENA, the remaining provisions of this ENA shall prevail.

vi. No Presumption Against Drafter. This ENA has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this ENA against the Party that has drafted it is not applicable and is waived. The provisions of this ENA shall be construed as a whole according to their common meaning and not strictly for or against any Party in order to achieve the objectives and purposes of the Parties. The provisions of this ENA shall be interpreted in a reasonable manner to effect the purposes of the Parties and this ENA.

c. Entire ENA; Conflict. This ENA contains all of the representations and the entire agreement between the Parties with respect to the subject matter of this ENA. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to such subject matter are superseded in total by this ENA. No prior drafts of this ENA or changes from those drafts to the executed version of this ENA shall be introduced as evidence in any litigation or other dispute resolution proceeding by any Party or other person, and no court or other body should consider those drafts in interpreting this ENA.

d. Non-Liability. No Council member, commissioner, official, agent or employee of City will be personally liable to Developer, or any successor in interest (if and to the extent permitted under this ENA), in an event of default by City or for any amount that may become due to Developer or successors or on any obligations under the terms of this ENA. No director, officer, agent or employee of Developer will be personally liable to City in an event of default by Developer or for any amount that may become due to City or on any obligations under the terms of this ENA.

e. Amendments. No amendment of this ENA or any part thereof shall be valid unless it is in writing and signed by a person or persons having authority to do so, on behalf of all Parties.

f. Severability. If any provision of this ENA, or its application to any person or circumstance, is held invalid by a court of competent jurisdiction, the invalidity or inapplicability of such provision shall not affect any other provision of this ENA or the application of such provision to any other person or circumstance, and the remaining portions of this ENA shall continue in full force and effect, unless enforcement of this ENA as so modified by and in response to such invalidation would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the fundamental purposes of this ENA. Without limiting the foregoing, in the event that any applicable federal or state law prevents or precludes compliance with any material term of this ENA, the Parties shall promptly modify, amend or suspend this ENA, or any portion of this ENA, to the extent necessary to comply with such provisions in a manner which preserves to the greatest extent possible the benefits to each of the Parties to this ENA before such conflict with federal or state law. However, if such amendment, modification or suspension would deprive any of the Parties of the substantial benefits derived from this ENA or make performance unreasonably difficult or expensive, then the affected Party may terminate this ENA upon written notice to the other Parties. In the event of such termination, none of the Parties shall have any further rights or obligations under this ENA, except as otherwise provided herein, such termination shall not be treated as an Event of Default by either Party, and Developer shall receive the Deposit.

g. Counterparts. This ENA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

h. Singular, Plural, Gender. Whenever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, and vice versa.

i. Approvals and Consents. Unless this ENA otherwise expressly provides or unless applicable law requires, all approvals, consents or determinations to be made by or on behalf of (i) City under this ENA shall be made by the City Administrator or his or her designee, and (ii) Developer under this ENA shall be made by David Duong or such other employee or agent of Developer as it may designate to act as Developer's representative for a particular matter. Unless otherwise herein provided, whenever approval, consent or satisfaction is required of a Party pursuant to this ENA, it shall not be unreasonably withheld, conditioned or delayed. The reasons for disapproval shall be stated in reasonable detail in writing. Approval by any of the Parties to or of any act or request by the other in accordance with this Section 23(i) shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests.

j. Waiver. No failure by any Party to insist upon the strict performance of any obligation of the other Party under this ENA or to exercise any right, power or remedy

arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of any full or partial payment during the continuance of any such breach shall constitute a waiver of such breach or of such Party's rights to demand strict compliance with such term, covenant or condition. Any Party's consent to or approval of any act by another Party requiring the consenting Party's consent or approval shall not be deemed to waive or render unnecessary the consenting Party's consent to or approval of any subsequent act by the other Party. Any waiver by any Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this ENA.

k. Time for Performance.

i. Expiration. All performance dates, including cure dates, expire at 5:00 p.m., Oakland, California time, on the performance or cure date.

ii. Weekends and Holidays. A performance date which falls on a Saturday, Sunday, or national, state or City holiday is deemed extended to the next working day.

iii. Days for Performance. All periods for performance specified in this ENA in terms of days shall be calendar days, and not business days, unless otherwise expressly provided in this ENA.

iv. Time of the Essence. Time is of the essence with respect to each provision of this ENA, except that each milestone set forth in the attached Performance Benchmarks is advisory, as further described in Section 6 above.

l. Successors and Assigns. This ENA shall inure to the benefit of and bind the respective successors and assigns of City and Developer, subject to the limitations on assignment by Developer set forth in Section 12. This ENA is for the exclusive benefit of the Parties hereto and not for the benefit of any other person and shall not be deemed to have conferred any rights, express or implied, upon any other person.

m. Force Majeure. Whenever performance is required of a Party hereunder, that Party shall use all due diligence and take all necessary measures in good faith to perform, but if completion of performance is delayed by reasons of floods, earthquakes or other acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, damage to work in progress by casualty, any administrative, judicial, or referenda challenges or proceedings, or by other cause without fault and beyond the reasonable control of the Party (except COVID-19 or it variants, which is a known existing condition), then the specified time for performance shall be extended by the amount of the delay actually so caused; provided, however, that the foregoing shall not impact or extend any obligation by Developer to meet a monetary duty under this ENA. For purposes of this Section 23(m), strikes, picketing, or other labor disputes shall be deemed to be beyond the reasonable control of a Party. Since COVID-19 and its variants is an existing condition as of the Effective Date of this Agreement, it cannot be used for Force Majeure pursuant to

this Agreement as it is known and foreseeable. However, if a delay is caused by COVID-19 or its variants, Developer shall provide written notice to the City of the specific delay and the specific cause, and the City and Developer shall meet and confer in good faith to mutually agree to extension related to the particular delay on a case-by-case basis.

n. Broker. Neither City nor Developer will pay a finder's or broker's fee in connection with this ENA or upon execution of any of the Transaction Documents. City and Developer agree to indemnify and hold the other harmless from any claim and costs and expenses, including Attorneys' Fees and Costs, incurred by any Party in conjunction with any such claim or claims of any finder(s) or broker(s) to a commission in connection with this ENA or any of the Transaction Documents as a result of the actions of City or Developer.

o. Attorneys' Fees and Costs. If any action arising out of a dispute relating to the meaning or interpretation of any provision of this ENA or the performance of a Party of its obligations under this ENA, the Party determined to be in default or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party or Parties on account of such default or in enforcing or establishing its rights under this ENA, including, without limitation, court costs and reasonable Attorneys' Fees and Costs (as defined below). Any such Attorneys' Fees and Costs incurred by any Party in enforcing a judgment in its favor under this ENA shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this ENA and to survive and not be merged into any such judgment. For purposes of this ENA, the reasonable fees of attorneys shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which services were rendered who practice in the City of Oakland in law firms with approximately the same number of attorneys as employed by the City Attorney's Office. "**Attorneys' Fees and Costs**" means any and all reasonable attorneys' fees, costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, attachment preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and the costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, fees and costs associated with execution upon any judgment or order, and costs on appeal.

p. Survival. Notwithstanding anything to the contrary in this ENA, the indemnification obligations and those other obligations that specifically survive and that arise and were not satisfied before termination shall survive any termination of this ENA. In addition, the representations and warranties in Section 16 shall survive any termination of this ENA for a period of one (1) year.

q. Rights Reserved. If negotiations with Developer under this ENA are unsuccessful and do not lead to approval of the Transaction Documents within the Term of this ENA, City reserves and shall have the right, after the expiration or termination of this

ENA, to negotiate with another developer for the long-term development of the Project or to undertake other efforts, including, but not limited to, issuing a request for proposals.

r. Relationship of the Parties. The subject of this ENA is a private development with none of the Parties acting as the agent of the other in any respect. None of the provisions in this ENA shall be deemed to render City a partner in Developer's business or a joint venture partner or member in any joint enterprise with Developer.

s. Cooperation. In connection with this ENA, the Parties shall reasonably cooperate with one another to achieve the objectives and purposes of this ENA. In so doing, the Parties shall each refrain from doing anything that would render its performance under this ENA impossible and shall each use commercially reasonable efforts to do everything that this ENA contemplates each Party will do to accomplish the objectives and purposes of this ENA.

t. Joint and Several. In the event that Developer is composed of more than one person or entity, the obligations imposed herein shall be joint and several.

u. Disclosure of Confidential Information. The Parties acknowledge that City is subject to the California Public Records Act (the "**CPRA**") and the City's "**Sunshine Ordinance**" (City of Oakland Municipal Code, Chapter 2.20). The Sunshine Ordinance generally provides that written documents retained by City are subject to disclosure upon the request of any third party except for specific limited exceptions provided for in the CPRA and Sunshine Ordinance. Notwithstanding the preceding, City acknowledges that certain financial and other proprietary information provided by Developer may be protected from disclosure pursuant to applicable law, including but not limited to California Government Code section 6254.15 of the CPRA.

[Signatures Appear on Following Pages]

IN WITNESS WHEREOF, the Parties have executed this Exclusive Negotiation Agreement as of the date first above written.

CITY:

CITY OF OAKLAND,
a municipal corporation

By: _____
Edward D. Reiskin
City Administrator

Approved as to form and legality:

By: _____
JoAnne Dunec
Deputy City Attorney

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
ADDITIONAL SIGNATURES TO FOLLOW

DEVELOPER:

CASS, INC.,
a California corporation

By: _____
Name: _____
Title: _____

Exhibit A-1
Parcel 1

[Attached]

Exhibit A-2
Parcel 2

[Attached]

Exhibit B-1
Site Map of Parcel 1

[Attached]

Exhibit B-2
Site Map of Parcel 2

[Attached]

Exhibit C
City Insurance Requirements

Schedule Q
CITY INSURANCE REQUIREMENTS
(Revised 09/12/2019)

a. General Liability, Automobile, Workers' Compensation and Professional Liability

Developer shall procure, prior to the Effective Date, and keep in force for the Term of this Agreement, at Developer's own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to the City. If requested, Developer shall provide the City with copies of all insurance policies. The insurance shall at a minimum include:

i. **Commercial General Liability insurance** shall cover bodily injury, property damage and personal injury liability for premises operations, independent contractors, products-completed operations personal & advertising injury and contractual liability. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01)

Limits of liability: Developer shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than $2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, either the general aggregate limit shall apply separately to this Project or the general aggregate limit shall be twice the required occurrence limit.

ii. **Automobile Liability Insurance.** Developer shall maintain automobile liability insurance for bodily injury and property damage liability with a limit of not less than $1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). Coverage shall be at least as broad as Insurance Services Office Form Number CA 0001.

iii. **Workers' Compensation insurance** as required by the laws of the State of California, with statutory limits, and statutory coverage may include Employers' Liability coverage, with limits not less than $1,000,000 each accident, $1,000,000 policy limit bodily injury by disease, and $1,000,000 each employee bodily injury by disease. The Developer certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The

Developer shall comply with the provisions of Section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.

iv. **Professional Liability/Errors and Omissions insurance if determined to be required by Human Resources Management/Risk Management Department (HRM/RMD),** appropriate to the Developer's profession with limits not less than $_____ each claim and $_____ aggregate. If the professional liability errors and omissions insurance is written on a claims-made form:

a. The retroactive date must be shown and must be before the date of the contract or the beginning of work.
b. Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
c. If coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the Commencement Date of this Agreement, the Developer must purchase extended period coverage for a minimum of three (3) years after completion of work.

v. **Contactor's Pollution Liability Insurance:** If the Developer is engaged in: environmental remediation, emergency response, hazmat cleanup or pickup, liquid waste remediation, tank and pump cleaning, repair or installation, fire, or water restoration or fuel storage dispensing, then for small jobs (projects less than $500,000), the Developer must maintain Contractor's Pollution Liability Insurance of at least $500,000 for each occurrence and in the aggregate. If the Developer is engaged in environmental sampling or underground testing, then Developer must also maintain Errors and Omissions (Professional Liability) of $500,000 per occurrence and in the aggregate.

vi. **Sexual/Abuse Insurance.** If Developer will have contact with persons under the age of 18 years, or provide services to persons with Alzheimer's or Dementia, or provides Case Management services, or provides Housing services to vulnerable groups (i.e., homeless persons) Developer shall maintain sexual/molestation/abuse insurance with a limit of not less than $1,000,000 each occurrence and $1,000,000 in the aggregate. Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after completion of the contract work.

vii. **Technology Professional Liability (Errors and Omissions) OR Cyber Liability Insurance, if determined by HRM/RMD,** appropriate to the Consultant's profession, with limits not less than $2,000,000 per occurrence or claim, $2,000,000 aggregate. Coverage shall be sufficiently broad to

respond to the duties and obligations as is undertaken by Consultant in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to, infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to, or destruction of, electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties, as well as credit monitoring expenses with limits sufficient to respond to these obligations.

b. Terms Conditions and Endorsements

The aforementioned insurance shall be endorsed and have all the following conditions:

i. Insured Status (Additional Insured): Developer shall provide insured status naming the City of Oakland, its Councilmembers, directors, officers, agents, employees and volunteers as insureds under the Commercial General Liability policy. General Liability coverage can be provided in the form of an endorsement to Developer's insurance (at least as broad as ISO Form CG 20 10 (11/85) or both CG 20 10 and CG 20 37 forms, if later revisions used). If Developer submits the ACORD Insurance Certificate, the insured status endorsement must be set forth on an ISO form CG 20 10 (or equivalent). A STATEMENT OF ADDITIONAL INSURED STATUS ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF MEETING THIS REQUIREMENT; and

ii. Coverage afforded on behalf of the City, Councilmembers, directors, officers, agents, employees and volunteers shall be primary insurance. Any other insurance available to the City, Councilmembers, directors, officers, agents, employees and volunteers under any other policies shall be excess insurance (over the insurance required by this Agreement); and

iii. Cancellation Notice: Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the City of not less than thirty (30) days; and

iv. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Developer, and its employees, agents and subcontractors; and

v. Certificate holder is to be the same person and address as indicated in the "Notices" section of this Agreement; and

vi. Insurer shall carry insurance from admitted companies with an A.M. Best Rating of A VII, or better.

c. Replacement of Coverage

In the case of the breach of any of the insurance provisions of this Agreement, the City may, at the City's option, take out and maintain at the expense of Developer, such insurance in the name of Developer as is required pursuant to this Agreement, and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Developer under this Agreement.

d. Insurance Interpretation

All endorsements, certificates, forms, coverage and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Office as of the date of this Agreement.

e. Proof of Insurance

Developer will be required to provide proof of all insurance required for the work prior to execution of this Agreement, including copies of Developer's insurance policies if and when requested. Failure to provide the insurance proof requested or failure to do so in a timely manner shall constitute ground for rescission of the contract award.

f. Subcontractors

Should the Developer subcontract out the work required under this Agreement, it shall include all subcontractors as insureds under its policies or shall maintain separate certificates and endorsements for each subcontractor. As an alternative, the Developer may require all subcontractors to provide at their own expense evidence of all the required coverages listed in this Schedule. If this option is exercised, both the City of Oakland and the Developer shall be named as additional insured under the subcontractor's General Liability policy. All coverages for subcontractors shall be subject to all the requirements stated herein. The City reserves the right to perform an insurance audit during the project to verify compliance with requirements.

g. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to, and approved by, the City. At the option of the City, either: the insurer shall reduce or eliminate such deductible or self-insured retentions as respects the City, its Councilmembers, directors, officers, agents, employees and volunteers; or the Developer shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

h. Waiver of Subrogation

Developer waives all rights against the City of Oakland and its Councilmembers, officers, directors, employees and volunteers for recovery of damages to the extent these damages are covered by the forms of insurance coverage required above.

i. Evaluation of Adequate Coverage

The City of Oakland maintains the right to modify, delete, alter or change these requirements, with reasonable notice, upon not less than ninety (90) days prior written notice.

j. Higher Limits of Insurance

If the Developer maintains higher limits than the minimums shown above, the City shall be entitled to coverage for the higher limits maintained by the Developer.

Exhibit D
Performance Benchmarks

[All capitalized terms shall have the meaning given to them in the ENA, except as otherwise provided below]

Task	**Target Date**
1. Survey and Initial Title Review a. Developer to commence an ALTA survey for both Parcel 1 and Parcel 2 (the "**Survey**") b. Provide copy of Survey to City as well as any list of any title matters or exceptions that Developer views as potentially problematic based on its initial title review	a. Within thirty (30) days after the later of (x) the Effective Date or (y) the date that the Port License is fully signed b. Within fifteen (15) days after the Survey is completed and delivered to Developer
2. City to confirm approval process and rights/ obligations related to Parcel 2	Within 180 days after the Effective Date
3. Developer to provide to City a written project description and schematic design documents, which shall be limited to a proposed site plan showing the project improvements and elevations	Within 90 days after the Effective Date
4. Developer to file its Zoning Clearance Application, including a detailed Project description	Within 10 days after the satisfaction of Task No. 3.
5. CEQA a. Developer to submit to City proposed CEQA scope b. City to review and comment on CEQA scope c. Developer to consider City comments and submit revised CEQA scope	a. Within 15 business days after the satisfaction of Task No. 4. b. Within 15 business days after satisfaction of Task No. 5a c. Within 15 business days after receipt of Task No. 5b comments

6. Outreach Plan a. Developer to submit to City proposed community outreach plan integrating both anticipated planning approval process and outreach with community stakeholders regarding community benefits b. City to review and comment on community outreach plan c. Developer to consider City comments and submit revised outreach plan d. Developer to initiate implementation of outreach plan, including informational presentations of proposed Project to community groups and stakeholders	 a. Within 90 days after Effective Date b. Within 20 days after satisfaction of Task No. 6a c. Within 20 days after receipt of Task No. 6b comments d. Within 20 days after satisfaction of Task No. 6c
7. Term Sheet a. Developer and City staff to negotiate and reach consensus on Term Sheet, including terms of a community benefits agreement b. City staff to obtain informal Council direction on Term Sheet c. Negotiate to finalize Term Sheet	 a. Commence promptly after the Effective Date b. Within 30 days after the completion of Task No. 7a above c. Within 40 days after Task No. 7b
8. Developer to provide City Staff: a. Preliminary proforma, including sources and uses and equity and financing sources; b. Construction estimate; c. Construction schedule and; d. Financial plan, including net worth of developer entity, which shall be kept confidential to the extent legally permissible.	Within 7 months after the Effective date
9. City to initiate CEQA initial study analysis, and/or retain consultants for CEQA documentation	Within 30 days Task No. 5c

10. Disposition and Development Agreement (DDA) a. Developer and City staff to negotiate the DDA b. Parties to reach consensus on near final DDA	a. Commencing within thirty (30) days after the later of (i) Effective Date or (ii) the completion of Task No. 7c b. No later than the thirtieth (30th) day prior to the end of the Term of the ENA
11. Developer to procure all requisite City land use approvals, including satisfaction of CEQA	Within 9 months after Effective Date
12. City Committee and Council consideration and action regarding the DDA, including CEQA compliance	Within 9 months after Effective Date

Exhibit E
Term Sheet

[To Be Added After the Effective Date]

Exhibit F
Community Benefits

The following list of categories will guide the negotiations regarding community benefits during the Term.

Below is a preliminary list that is based on community benefits and construction and operations jobs policies provided by other projects on the former Oakland Army Base, which policies were previously provided to Developer. This list will be subject to negotiations between the Parties with input from implementation of the outreach plan during the Term of this Agreement and approval by the City Council. The outcome of those negotiations between the Parties and stakeholders, subject to City Council approval, will be reflected in any Transaction Documents.

- Project labor agreements and labor peace
- Local employment, workforce training, retention of existing workers, and apprenticeship policies
- Local business and small business contracting policies
- Environmental mitigation measures
- Other community benefits as needed and feasible, to be negotiated

Nothing set forth above shall be construed as Developer's agreement to provide any such community benefits unless and only to the extent such benefits are provided for in the DDA and/or the Transaction Documents.