

RESOLUTION NO. 18-04-CRJPA

A RESOLUTION OF THE CARSON RECLAMATION AUTHORITY APPROVING A CONVEYANCING AGREEMENT TO SELL THAT CERTAIN CELL 2 SURFACE LOT OF THE 157 ACRE PARCEL OWNED BY THE CARSON RECLAMATION AUTHORITY AND APPROVING A COOPERATION AGREEMENT WITH THE CITY OF CARSON FOR THE REIMBURSEMENT OF SALES TAXES TO FUND PUBLIC INFRASTRUCTURE AND SITE DEVELOPMENT COSTS OF SAID PROPERTY, BEING THE FORMER CAL-COMPACT LANDFILL

WHEREAS, on February 17, 2015, a Joint Powers Agreement for the formation of the Authority was executed by its Members on or about February 17, 2015, which was amended on or about March 17, 2015; and

WHEREAS, Authority acquired, and currently owns, approximately 157 gross acres of real property in the City of Carson, as shown on the Site Map attached hereto as Exhibit “A” (the “157 Acre Site”), which said 157 Acre Site is divided into five Cells as shown on Exhibit “A” and is subject to The Boulevards at South Bay Specific Plan, approved on February 8, 2006, and amended on April 5, 2011 (the “Specific Plan”); and

WHEREAS, the 157 Acre Site is a former landfill site, and on October 25, 1995, the California Department of Toxic Substances Control (“DTSC”) approved a Remedial Action Plan (“RAP”) for portions of the 157 Acre Site, which RAP requires the installation, operation and maintenance of certain remedial systems, including a landfill cap, landfill gas collection and control system, and groundwater extraction and treatment system on the 157 Acre Site, including re-grading and re-compaction of the soils and other materials on the site (together with other mitigation measures required by applicable law, collectively, the “Remedial Systems”); and

WHEREAS, development of any part of the 157 Acre Site due to the prior landfill will require building protection systems, including below-ground and above-ground improvements, such as venting systems and gas monitoring systems, as well as any necessary methane monitoring and venting equipment within buildings (to the extent located on the Cell 2 Site and related to the Project, the “BPS”); and

WHEREAS, DTSC entered into the Compliance Framework Agreement dated as of September 28, 2006, with the then-current property owner, Carson Marketplace LLC (“CM”), as amended by the First Amendment to Compliance Framework Agreement dated as of December 31, 2007 (collectively, the “CFA”) for the purpose of setting forth a plan for addressing the environmental condition of the 157 Acre Site, and the CFA required CM to establish financial assurance for implementation of the RAP, including long-term operation and maintenance of the Remedial Systems (“O&M”); and

WHEREAS, in connection with the obligation to implement the Remedial Systems, CM and Tetra Tech, Inc. (“Tetra Tech”) entered into a Fixed Price Design and Construction Environmental Assurance Agreement dated December 31, 2007, as amended, for, among other things, the design and construction of the Remedial Systems, and a Fixed Price Operations and Maintenance Environmental Assurance Agreement dated December 31, 2007, as amended, for, among other things the operation, maintenance and monitoring of the Remedial Systems; and

WHEREAS, in December 2007 AIG Environmental issued the Carson Marketplace Cleanup Cost Cap Insurance Policy (the “AIG Policy”), and in September 2006 CM also obtained a Pollution and Remediation Legal Liability Policy issued by XL Environmental (the “PARLL”). CM, Tetra Tech and Wells Fargo Bank, National Association, entered into a Carson Marketplace Design and Construction EAA Trust Agreement dated April 13, 2009, as amended by a First Amendment to Carson Marketplace Design and Construction EAA Agreement dated June 12, 2012 (collectively, the “EAA Trust Agreement”) to establish a trust account for funds to be paid to Tetra Tech for certain remediation activities, improvements and operations, payable upon completion of certain work (the “EAA Trust Account”); and

WHEREAS, CM and Authority, the City, and the Successor Agency to the Carson Redevelopment Agency (the “Successor Agency”) entered into that certain Settlement, Release and Indemnity Agreement (the “Settlement Agreement”) dated May 12, 2015, pursuant to which Authority agreed to take title to the 157 Acre Site, as provided for in the Settlement Agreement, and pursuant to which Successor Agency committed to provide \$50.5 million in additional required funding (the “Funding”) to Authority through the issuance of taxable bonds (“Bonds”); and.; and

WHEREAS, pursuant to the Settlement Agreement Authority was assigned all of CM’s rights and assumed all of CM’s obligations pursuant to the EAA Trust Agreement and EAA Trust Account. Subsequently, Tetra Tech was terminated and DTSC approved the replacement of the EAA Trust Agreement with the Enterprise Fund Administration Agreement dated January 25, 2017 (the “EFAA”). Authority currently has available funds in the amount of approximately \$32,000,000 in the EFAA, solely for the construction and operation of the remedial systems; and

WHEREAS, in 2015 CM offered to convey the 157 Acre Site to City without charge, but seeking indemnification; while City determined that such a transaction may be the only way to develop the 157 Acre Site, but as under the state and federal environmental law, risked landowner’s liability if City took title; the City was unwilling to put its general fund and taxpayers at risk for environmental cleanup costs, which then exceeded \$100 Million; and thereafter the Authority, a joint powers agency under California law, was created; and

WHEREAS, Authority took title to the 157 Acre Site on May 20, 2015 and based on the CFA, DTSC continues to have certain oversight rights concerning the

development of the 157 Acre Site and agreements affecting the Remedial Systems continue to be subject to DTSC approval; and

WHEREAS, the City has no real property interest in the 157 Acre Site, which is wholly owned by Authority; in addition to its regulatory authority, the City provides public infrastructure and services to the 157 Acre Site, including streets, sidewalks, parkways, sewer, water, drainage, lighting, and other utilities, and must assure accessibility to the 157 Acre Site (“Infrastructure Obligations”); and

WHEREAS, City will contract with Authority to perform the City’s Infrastructure Obligations within and around the 157 Acre Site and to construct that portion of the Infrastructure Obligation termed as the Offsite Improvements in the Agreements, to avoid any City liability for the remediation of the 157 Acre Site, which was the purpose for creating the Authority; and

WHEREAS, by this Agreement with the City, Authority will construct all such improvements including streets, sidewalks, parkways, sewer, water, drainage, lighting, and other utilities outside Cell 2 and such other public offsite infrastructure, as further described and defined in the Conveyancing Agreement as the Offsite Improvements. The Authority’s resources are insufficient to undertake all costs of the Offsite Improvements, and Developer is advancing up to \$10 Million for this purpose; and

WHEREAS, Authority shall be responsible for certain site preparation work that is being undertaken by the Authority as a result of the environmental condition of the 157 Acre Property, being defined more specifically as “Site Development Improvements”. However, the Authority does not have sufficient funds to pay for the Offsite Improvements and Site Development Improvements; and

WHEREAS, in paying funds to Authority for construction of the Authority Improvements it is the intent of City that Authority conform with all City rules and regulations in the bidding and award of public works contracts, that the work be done in accordance with the City’s standards and specifications, that prevailing wage and other laws be adhered to, and that all work be inspected and accepted by City before being transferred to City; and

WHEREAS, Authority anticipates entering a Conveyancing Agreement to convey the Cell 2 Surface Lot to CAM-CARSON LLC, a Delaware limited liability company (“Developer”), City would enter into a Development Agreement with such Developer for the development of a fashion outlet retail center on the Cell 2 Surface Lot of the 157 Acre Site (the “Project”); and

WHEREAS, Developer is willing to advance funds to Authority to fund (i) the Stormwater Work, (ii) the Sub-Foundation Systems, (iii) the Utility Work upon Cell 2, and (iv), the Foundation Systems, all as further described the Conveyancing Agreement (the “Site Development Improvements”). The Site Development Improvements are being installed by Authority within Cell 2 with funds advanced by Developer as described in

the Cooperation Agreement, but if Developer were unable to recover such Advances, development of the Project would be financially infeasible; and

WHEREAS, in order to make development of the Project financially feasible, the Parties have negotiated an arrangement whereby the City will deposit into a special fund separate from other funds of City to pay to Authority sales taxes or other funds equivalent to fifty percent of sales taxes derived from the Project, and Authority will in turn pay over such amounts to Developer as recovery of its Advances, for a period of up to twenty-five years, subject to certain limitations and exceptions, to the extent required to make the Project economically feasible;

NOW, THEREFORE, be it resolved by the CARSON RECLAMATION AUTHORITY as follows:

Section 1. Rentals. The Recitals set forth above are true and correct and incorporated herein by this reference.

Section 2. CEQA Findings. The City Council of the City of Carson previously prepared and certified a SEIR for the District at South Bay Specific Plan. The SEIR identified that implementation of the proposed modified Project would require certain approvals, including approval of the Cooperation Agreement and the Conveyancing Agreement by the Carson Reclamation Authority as a responsible agency under the California Environmental Quality Act (CEQA). The Cooperation Agreement and Conveyancing Agreement were expressly included within the scope of the project, and were environmentally assessed in the SEIR. Neither the Cooperation Agreement nor the Conveyancing Agreement changes the environmental assessment of the SEIR. Further, the SEIR was certified on April 3, 2018. The Carson Reclamation Authority further finds that no subsequent review is required under CEQA Guidelines section 15162 as since that time no substantial changes have been proposed in the project which will require major revisions of the previously certified SEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. Likewise, no substantial changes have occurred since that time with respect to the circumstances under which the project is undertaken which will require major revisions of the SEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. There is also no new information, which was not known and could not have been known at the time of the SEIR that the project will have significant effect not discussed in the SEIR. As such, the Carson Reclamation Authority finds the Cooperation Agreement and the Conveyancing Agreement have already been fully assessed in accordance with CEQA, no subsequent review is required under CEQA Guidelines section 15162, and no further action or review is required under CEQA.

Section 3. Findings of Public Benefit. Development of the Project and the 157 Acre Site is expected to realize significant regional and community public benefits, including, without limitation:

3.1. *Increased Tax Revenues.* Due to the strategic location at the meeting place between Orange County, Long Beach, and Los Angeles, there is great potential for increased revenue through proper site development. The Project is estimated to produce over Three Million (\$3,000,000) in annual sales taxes. The development of the 157 Acre Site as planned could result in increased real property taxes, sales taxes, transient occupancy taxes, and other revenues to City exceeding Five Million Dollars (\$5,000,000) to Seven Million Dollars (\$7,000,000) per year.

3.2. *Overcoming Constraint of Remediation Cost.* The 157 Acre Site is the only major undeveloped property exceeding 100 acres along the I-405 Freeway in an approximately 75-mile run. This continued vacancy is due to the extraordinary remediation costs, estimated to exceed One Hundred Fifty Million Dollars (\$150,000,000), necessary to develop the 157 Acre Site. Many development projects have been proposed for this site over some four decades, but none have been financially feasible because of the environmental and soils condition of the 157 Acre Site as a result of its use as a Class II landfill. This Project represents a unique opportunity to develop the 157 Acre Site.

3.3. *Community Center.* The unique development is proposed to be a community and regional focus of economic and social activity helping, along with the South Bay Pavilion, to provide a new community center for Carson, and giving it a regional presence competitive with other major regional centers in the highly competitive Los Angeles market area.

3.4. *Job Generation.* The Project entails a land use and infrastructure plan that will support the creation of a major job center in the City and significantly improve the City's jobs to housing balance. The Project is proposed to provide substantial economic and employment opportunities for the community, with a goal of generating at least 1,600 new direct construction jobs, with another 1,000 indirect and induced, as well as 1,500 new permanent jobs.

3.5. *Insurance.* The Project contributes to a robust insurance program for the 157 Acre Site to provide coverage against environmental claims and provides protection to the public entities, developers, property owners and contractors carrying out construction on the 157 Acre Site, including coverage for general liability, personal injury, property damage and other claims and to which Developer pays its fair share as provided in Article 13. Total insurance coverage provided is almost One Billion Dollars (\$1,000,000,000) for all types of insurance provided by the program.

3.6. *Carry Costs.* As part of Developer's agreement with Authority to acquire the Developer Property, Developer will agree to reimburse Authority for a proportional share of the Carry Costs (as defined below) of the 157 Acre Site, in an amount exceeding One Hundred Twenty-Five Thousand Dollars (\$125,000) per month.

In exchange for these benefits to City and the other public benefits described herein, Developer desires to receive the assurance that it may proceed with development of the Project in accordance with the terms and conditions of the Project Agreements including without limitation the vested rights specified in the Development Agreement and the financial assistance, all as more particularly set forth in the Project Agreements.

Section 4. Creation of Special Fund. A special fund will be created, to be held separate and apart from all other funds of the City to be known as the “Cell 2 Surface Lot Revenues Fund” (the “Fund”) or by such other name as shall be designated by the City Manager of the City, into which Fund shall be deposited sales tax revenues derived by the City from the Project or other funds as designated, as shall be necessary to enable the City to satisfy the City’s payment obligations under the Cooperation Agreement. Pursuant to the Cooperation Agreement, City is prepared to pay to Authority certain funds City anticipates receiving after development of the Cell 2 Surface Lot, in exchange for Authority undertaking City’s Infrastructure Obligations. Authority will enter into a Cooperation Agreement with City to carry out these obligations and to receive the financial payments specified therein which will allow it to meet its obligations hereunder. All payment obligations of the City under the Cooperation Agreement shall be limited obligations of the City, payable solely from sales tax revenues derived from the Project on deposit in the special fund established pursuant to this Section 4.

Section 5. Standards of Work Applicable to Authority Improvements. Authority shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described in the Agreement and covenants that it shall follow the highest professional standards in performing the work required hereunder and that all materials will be of good quality, fit for the purpose intended. These assurances include:

5.1 Compliance with Law. Authority shall keep itself informed concerning, and shall render all work hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

5.2 Licenses, Permits, Fees and Assessments. Authority shall obtain at its sole cost and expense such licenses, permits, registrations, and approvals as may be required by law for the performance of the work required by this Agreement. Authority shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Authority’s performance of the work required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

5.3 Protection and Care of Work and Materials. Authority shall adopt reasonable methods, including providing and maintaining storage facilities, during the life of

the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property.

5.4 Assurance of Non Discrimination During Construction. The Authority agrees that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation or gender preference, national origin, or ancestry in the performance of the Authority Improvements or of this Agreement, and shall assume compliance with this provision from its contractors, subcontractors, and other performing work on the site. The Authority shall take affirmative action to ensure that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, sexual orientation or gender preference, national origin, or ancestry.

5.5 Assurance of Payment of Prevailing Wages. Authority shall pay prevailing wages as required by law, as described in California Labor Code §1720 in the performance of the Authority Improvements. Authority acknowledges and agrees that should any third party, including, but not limited to, the Director of the Department of Industrial Relations (“DIR”), require Authority or any of its contractors or subcontractors to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the DIR under Prevailing Wage Law, then Authority shall indemnify, defend, and hold City harmless from any such determinations, or actions (whether legal, equitable, or administrative in nature) or other proceedings, and shall assume all obligations and liabilities for the payment of such wages and for compliance with the provisions of the Prevailing Wage Law.

5.6 Acceptance. City shall have the right to monitor and inspect all work performed by Authority and its contractors, to review specifications and change orders, and to accept, reject or require modification of improvements not meeting City specifications.

Section 6. Developer Recovery of Advances. The Offsite Advances and Site Development Advances (collectively the “Advances”) made by Developer, together with interest thereon, are to be repaid to Developer over time via the Sales Tax Assistance Payments, subject to certain limitations, all as described in the Cooperation Agreement. City acknowledges that Authority’s ability to make these payments will depend on City’s making payments to Authority in the amounts payable by Authority to Developer pursuant to Article IV of the Cooperation Agreement, subject to the conditions and limitations set forth in Section 7 of the Conveyancing Agreement (the “Sales Tax Assistance Payments”). The terms of payment by City to Authority are governed by Article V of the Cooperation Agreement herein. Authority is relying on this Agreement in entering into the Conveyancing Agreement. In the event of any conflict between the

terms of this Article IV of the Cooperation Agreement and Section 7 of the Conveyancing Agreement, the terms of the Conveyancing Agreement shall govern.

Section 7. Indemnity and Release Obligations. Authority will protect, defend, indemnify, release and hold harmless City and its elected officials, officers, employees, volunteers and agents (“**Indemnified Parties**”) from and against any and all Claims or Litigation arising out of or resulting in any way from: (i) Authority’s performance of this Agreement, including the performance of any Personnel working on Authority’s behalf, (ii) any claims for personal injury, loss, or damage arising during construction or thereafter due to Developer’s construction, development or operations upon the Cell 2 Site or Authority’s construction, development or operations of Authority Improvements; (iii) any repair, cleanup or detoxification, or preparation and implementation of any removal, remediation, response, closure, or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous waste and/or household hazardous waste (as such terms will be broadly defined) deposited after the commencement of Project or Authority Improvement construction, and (iv) Claims pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, “CERCLA”, 42 U.S.C. Section 9607(e), or California Health and Safety Code Section 25364, the Resource Conservation and Recovery Act, “RCRA”, 42 U.S.C. Sections 6901 et seq. or other similar federal, state or local law or regulation resulting from Developer’s actions or those of its contractors, tenants, or invitees. Such indemnification shall not cover any Claim due to the negligence or willful misconduct of the Indemnified Parties or to the extent the Indemnified Parties have received compensation from an insurance carrier for the full amount of such Claim.

Section 8. Enforcement by Third Party Beneficiary. Macerich is the intended Third Party Beneficiary of the provisions of this Agreement for the payment of the City Payments to Authority to enable the Authority to make Sales Tax Assistance Payments to Macerich, pursuant to the Conveyancing Agreement. In the event of any failure by City to make payment to Authority, and if Authority fails to timely act to obtain payment from City, Macerich shall have the same rights as the Authority hereunder to enforce Authority’s rights against City.

Section 9. Approval. Based on the findings of public benefit and subject to the provisions hereof, the Carson Reclamation Authority, a California Joint Powers Authority, hereby:

1. Approves the Cooperation Agreement between the City of Carson and the Carson Reclamation Authority; and
2. Approves the Conveyancing Agreement between the City of Carson and Cam-Carson LLC, a Delaware limited liability company; and
3. Authorizes the Chairman to execute the Agreements in final form approved by Authority Counsel and authorizes the Executive Director to take all necessary actions to implement the Agreements.

PASSED, APPROVED, AND ADOPTED this _____ day of _____
2018.

Albert Robles, Chair

ATTEST:

Donesia Gause, Authority Secretary

APPROVED AS TO FORM:

Sunny Soltani, Authority Counsel

Exhibit “A”