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Title: CONSIDER A LETTER AGREEMENT WITH ORRICK, HERRINGTON & SUTCLIFFE LLP ("ORRICK"), TO SUPPLEMENT THE EXISTING CONSULTING AGREEMENT WITH ORRICK REGARDING THE FILING AND PROCESSING OF A VALIDATION ACTION TO OBTAIN A COURT'S DETERMINATION ON THE LEGAL ENFORCEABILITY OF CERTAIN TRANSACTIONAL AGREEMENTS AMONG THE CARSON RECLAMATION AUTHORITY, THE CITY OF CARSON, AND CAM-CARSON, LLC (CITY COUNCIL)

Sponsors:

Indexes:

Code sections:

Attachments: 1. Orrick Engagement Letter

Date	Ver.	Action By	Action	Result
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Report to Mayor and City Council

Tuesday, October 16, 2018

Consent

SUBJECT:

CONSIDER A LETTER AGREEMENT WITH ORRICK, HERRINGTON & SUTCLIFFE LLP ("ORRICK"), TO SUPPLEMENT THE EXISTING CONSULTING AGREEMENT WITH ORRICK REGARDING THE FILING AND PROCESSING OF A VALIDATION ACTION TO OBTAIN A COURT'S DETERMINATION ON THE LEGAL ENFORCEABILITY OF CERTAIN TRANSACTIONAL AGREEMENTS AMONG THE CARSON RECLAMATION AUTHORITY, THE CITY OF CARSON, AND CAM-CARSON, LLC (CITY COUNCIL)

I. SUMMARY

The City of Carson ("City") entered into a statutory Development Agreement dated September 6, 2018, with CAM-CARSON, LLC, a Delaware limited liability company ("Developer"), for the development of Cell 2 of the 157-acre parcel owned by the Carson Reclamation Authority ("Authority"), formerly known as the Cal-Compact Landfill ("Site"), into a high end fashion outlet mall (the "Project").

Concurrent with the Development Agreement, the City and Authority entered into a

Cooperation Agreement for the reimbursement of sales taxes to help fund public infrastructure on behalf of the City, and other development costs, in order to make the Site developable, the Authority entered into a Conveyancing Agreement with Developer for the conveyance of approximately 41 net acres of the surface lot of Cell 2 of the Site ("Cell 2"); the City and Authority entered into an Agreement to Undertake Validation Action and Reimbursement Agreement II with Developer ("Validation and Reimbursement Agreement"), each of which were approved by the City and Authority at a public hearing held on September 4, 2018.

The Development Agreement, the Cooperation Agreement, and the Conveyancing Agreement, are collectively referred to as the "Project Agreements".

The City and Authority previously engaged the consulting services of Orrick pursuant to a letter agreement, dated March 29, 2018, due to the complexity of the Project Agreements and their interconnectedness and for a legal opinion regarding the question of whether the proposed tax payment obligations under the Project Agreements are prohibited under California law. The City and Authority seek to engage with Orrick to prepare and file a validation action (pursuant to California Code of Civil Procedure Section 860 et seq) (the "Validation Action") to be brought by the City of Carson to validate the Project Agreement and thereby establish the authority of the City and the Authority, that the City payment obligation under the Cooperation Agreement is not a debt, and certain other matters. Under this proposed supplemental letter agreement, Orrick will be retained directly by the City and Authority, and therefore City and Authority are its clients, but the Developer has the obligation to pay 100% of the legal fees of Orrick.

II. RECOMMENDATION

1. APPROVE a Supplemental Consulting Agreement between the City of Carson, the Authority, and Orrick, Herrington & Sutcliffe LLP ("Orrick"), to expand the scope of services under the existing Consulting Agreement with Orrick with regards to the filing and processing of a validation action on behalf of the City of Carson regarding the legal enforceability of the payment obligations of the City to the Authority under the Cooperation Agreement in a form acceptable to Authority Counsel;
2. Authorize the City Manager to execute all documents related to this agreement.

III. ALTERNATIVES

Take no action.

IV. BACKGROUND

The Supplemental Consulting Agreement provides for consulting/legal services by Orrick on behalf of the City and Authority to file and process the Validation Action in order for the City and Authority to comply with its obligations under the Validation and Reimbursement Agreement. Under the Validation and Reimbursement Agreement, Developer is obligated to pay for any and all costs of the City and Authority in connection with the Validation Action, including Orrick's legal fees, all City Attorney's fees, and all consultant or third party costs in preplanning, filing and obtaining judgment in the Validation Action. In addition, the Supplemental Consulting Agreement provides for Developer's agreement to directly fund

any and all of Orrick's legal fees and costs related to the Validation Action, estimated at \$50,000 to \$60,000, rather than requiring the City/Authority to seek reimbursements from the Developer.

Thus, the City and Authority desire to expand the scope of work under the existing Consulting Agreement with Orrick in order to file and process the Validation Action on behalf of the City and the Authority.

V. FISCAL IMPACT

None. Under the proposed agreement, Orrick is being retained directly by the City and Authority, and therefore are the firm's clients, and Developer is solely responsible for directly paying 100% of the consulting/legal fees for the services required to be performed under the proposed agreement, estimated at \$50,000 to \$60,000.

VI. EXHIBITS

1. Supplemental Consulting Agreement Letter with Orrick, Herrington & Sutcliffe LLP (pgs. 4-6)

Prepared by: John S. Raymond, Assistant City Manager