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**Report to Carson Reclamation Authority**

Tuesday, October 06, 2020

Discussion

**SUBJECT:**

**CONSIDER OPTION AGREEMENT AND JOINT ESCROW INSTRUCTIONS WITH FBD CARSON, LLC FOR CELLS 3, 4 AND 5 OF THE 157 ACRE SITE**

**I. SUMMARY**

In September 2019 the Carson Reclamation Authority (“Authority”) issued an Invitation to Propose (“RFQ”) seeking a developer to undertake a project on Cells 3, 4, and 5 (“Remainder Cells”) of the former Cal-Compact Landfill property (“157 Acre Site”). The RFQ required the developers to bear the responsibility for all the project costs - vertical, horizontal, and remediation -- based on the Authority’s experience on the Cell 2 Project. Most of the proposals the Authority received were largely industrial/warehouse uses, given the strong real estate economics of such uses, as opposed to retail, residential and other uses, which have weakened over the past several years.

Following the RFQ, in March 2020, the Authority Board selected Faring Capital, LLC (“Faring”) to proceed with negotiations for its proposed project on the Remainder Cells, to include a signature community park with food and beverage facilities, playground space, exhibition and/or museum space, and entertainment uses along with an industrial/fulfillment/logistics center along the back of the Remainder Cells (“Project”). On June 10, 2020, the Board approved a Memorandum of Understanding (“MOU”) and a Reimbursement Agreement with FBD Carson, LLC (“FBD”), a partnership between Faring

and Bridge Acquisition, LLC (“Bridge”). The MOU outlined the basic terms that would govern the development of FBD’s proposed Project that would be more fully detailed in an Option Agreement between the parties.

The parties have negotiated the terms of the Option Agreement and seek approval from the Board. Under the Option Agreement, the purchase price for the Remainder Cells would be made in the form of two advances, totaling \$45,000,000, and FBD would be required to bear the entire cost of the remediation and development of the Remainder Cells.

## **II. RECOMMENDATION**

1. APPROVE OPTION AGREEMENT AND JOINT ESCROW INSTRUCTIONS AND RELATED DOCUMENTS FOR CELLS 3, 4 AND 5 OF 157 ACRE SITE WITH FBD CARSON, LLC; AND
  
2. AUTHORIZE the Chairman or his/her designee to execute the Option Agreement and all related documents in a form acceptable to the Authority Counsel, with any minor modifications approved by the Authority Counsel.

- 1.

## **III. ALTERNATIVES**

TAKE another action the Authority Board deems appropriate.

## **IV. BACKGROUND**

In September 2019, the Authority issued an Invitation to Propose (“RFQ”) seeking a developer to undertake a development project on the Remainder Cells. Because negotiations from the Authority’s two previous RFQs seeking developer proposals were ultimately unsuccessful, largely over issues related to economic feasibility, this RFQ included much more detailed information learned from the Cell 2 Project in order to inform proposers of the developer’s responsibilities, rather than deferring these discussions to the negotiation of the agreements. The RFQ required the developers to acknowledge that they would need to bear the responsibility for all the project costs - vertical, horizontal, and remediation - and that their project pro forma reflected that.

The proposers were informed of the Remedial Action Plan (“RAP”) approved by DTSC in 1995, and that the environmental work would include all remediation work and all financial assurances for the funding required under the Compliance Framework Agreement (“CFA”), the RAP, the Management Approach to Phased Occupancy (“MAPO”) and other applicable documents or regulatory requirements. Unlike in the Cell 2, the developer would fund and perform all Remediation Work on the Remainder Cells. The investigation of the environmental conditions, testing, and the development of the remediation plan on these Cells would be undertaken by developer at the developer’s expense.

Of the 7 proposals received in November, 2019, one was from Faring. Their Project proposes a 13-acre signature “community park” with commercial, restaurants and retail along Lenardo Drive, and industrial/fulfillment center development along the back of the Remainder Cells. FBD anticipates the 13-acre community park element to be integrated and curated into an entertainment and dining hub in a post-COVID world that would be totally unique in the LA area:

1. Large and Small Dog Parks
2. Children’s Playground
3. 6 to 8 Restaurants, with each restaurant being architecturally unique as well.
4. Giant Instagram-able Art Pieces (similar to Robert Therrien’s “Under the Chair” - the giant table and chair at The Broad in Downtown LA) and Instagram-worthy walls (similar to Paul Smith’s wall on Melrose).
5. Cultural Programming that will include outdoor movie nights, picnics and other community gatherings

The Authority Board originally gave direction to negotiate with Faring and Bridge (Faring’s joint venture partner) on March 9, 2020. Given the nature of the transaction, the parties agreed that an Option Agreement on the three cells is the best structure, with a series of other related agreements negotiated at the same time. The Option Agreement is presented here for approval.

Most of the major deal points were captured in an earlier MOU, which set forth the major terms of the transaction and provided for FBD’s reimbursement of Carry Costs. The MOU described the Project and the Option Rights that FBD (as the Developer) would receive under the Option Agreement, as well as the compensation the Authority would receive in consideration for those rights.

Such compensation would take the form of two advances (1) a First Advance in the amount of \$20,000,000, and (2) a Second Advance in the amount of \$25,000,000. Ultimately, the First and Second Advances would be applied to the Purchase Price amount (\$45,000,000) for the Remainder Cells if FBD is able to acquire the Remainder Cells. If not, however, the Advances would be secured by certain collateral documents in favor of FBD, including the DIF Credit Agreement, a Promissory Note, a Deed of Trust, and a Covenant Agreement.

**OPTION RIGHTS.** The Option Agreement gives FBD two options: Options A and B, described below. Option A must be exercised by FBD if City approves the Project in a form substantially consistent with the Scope of Development and the Site Plan shown in the Option Agreement, subject to FBD’s receipt of all required entitlements and CEQA Approvals that may be required for the Project (the “Required Approvals”). If the Project is not approved by the City Council or if litigation is initiated challenging such approvals, FBD must re-process the Project to address any corrective actions identified by the Council or in the litigation.

FBD’s acquisition of the Property pursuant to Option A shall include (i) all permits, licenses, authorizations, consents, approvals and certificates relating to the Property, to the extent assignable from Authority to FBD, and (ii) all rights, privileges, easements, rights-of-way and appurtenances used or connected with the beneficial use or enjoyment of the Surface

Lot of the Remainder Cells, including without limitation, development rights, and air rights.

FBD has a second option, Option B, applicable if FBD is unable to obtain the Required Approvals for the Project through no fault of its own, as follows (defined as an “Option B Trigger”): (i) City’s failure to consider the Project after initial submittal or Re-Processing by Developer; (ii) City Council disapproves the Project but fails to identify actions in its disapproval which would address the reasons for the disapproval; (iii) City approval of a project substantially different from the Project (as described in the Option Agreement); (iv) City approval is reversed through Adverse Judicial Judgment and Developer submits an application for Re-Processing, but City fails to consider the Re-Processing; or (v) if after Re-Processing of the Project, the Project is denied by the City Council. In order for FBD to exercise Option B following an Option B Trigger, it must give notice to the Authority and 90 days to the Authority in order to cure the event that caused the Option B Trigger.

If Option B is effectuated, the Developer will have the benefit of the DIF Credit Agreement (described below) and shall be entitled to a return of \$25,000,000 (the “Second Advance”). In the event Authority fails to return the entire Second Advance, then FBD shall market the Remainder Cells for sale for a period of at least 12 months to a developer who is able to develop the Remainder Cells in accordance with the Specific Plan. Authority will have approval rights over the ultimate purchaser of the Remainder Cells, however. In the event the marketing is unsuccessful, then Developer shall be entitled to foreclose on the surface lot of the Remainder Cells pursuant to the Deed of Trust (referenced above).

The Term of the Option Agreement will be up to two (2) years, provided that the Term is tolled during any litigation challenging the Project entitlements or CEQA approvals. Additionally, CRA Executive Director shall grant further extensions of up to 360 days administratively under certain conditions.

Title to the surface lot of the Remainder Cells shall only transfer following the approval of the entitlements and other Required Approvals that authorize and permit the development of the Project, following the expiration or passage of all applicable appeal periods and successful resolution of all litigation challenging such approval, if any.

The exhibits to the Option Agreement are as follows:

- Exhibit A: Site Map
- Exhibit B: Parcel Map
- Exhibit C: Form of Grant Deed
- Exhibit D: Entitlements; General Project Requirements
- Exhibit D-1: Preliminary Site Plan
- Exhibit E: Additional Terms of Transaction Regarding Infrastructure Improvements, Site Development Improvements, and Environmental Remediation Responsibilities
- Exhibit F: Subsidence Easement
- Exhibit G: Title Policy
- Exhibit H: Initial Schedule of Performance
- Exhibit I: Description of Insurance Program
- Exhibit J: Form of Insurance Administration Agreement
- Exhibit K: Infrastructure Improvements

**OPTION PRICE.** The Purchase Price for the Remainder Cells would be \$45,000,000, which shall be made in two advances (a First Advance pursuant to Escrow A and a Second Advance pursuant to Escrow B).

**DOCUMENTS NEEDED FOR TRANSACTION.** There are a number of documents that are related to the Option Agreement but are separate from the Option Agreement itself. These separate agreements act as collateral for Developer's Option rights under the Option Agreement. Several of these agreements are included as Exhibits to the Option Agreement. Others, such as the Development Agreement, CC&Rs, Assignment, and others will be drafted in connection with the Developer's processing of its entitlements. Below is a list of the documentation required for the release of the First and Second Advances from Escrow A and Escrow B (and the timeframe when they must be finalized):

- Grant Deed [final form by release of First Advance]
- DIF Credit Agreement [executed upon release of First Advance]
- License Agreement [final form by release of Second Advance]
- Insurance Administration Agreement [final form by release of Second Advance]
- Promissory Note [executed upon release of Second Advance]
- Deed of Trust [executed upon release of Second Advance]
- Covenant Agreement [executed upon release of Second Advance]
- A Certificate of Compliance for the Remainder Cells legal description [Finalized prior to release of Second Advance]
- Reconveyance/Release/Termination documents [Executed upon release of Second Advance]
- An accounting of outstanding costs for Cell 2 and budget of estimated costs to complete Cell 2 Remedial Systems.

**CARRY COST.** CRA has certain costs for the operation and maintenance ("O&M") of the Remedial Systems which have been and will be constructed ("Carry Costs"). The Carry Costs have recently ranged from \$200,000 to \$445,000 per month on the entire Site. Developer is required to pay the monthly pro rata Carry Costs to the CRA, and the obligation goes back to March 9, 2020 upon execution of the Option Agreement. Developer's payment obligations for the Carry Costs are capped at \$250,000 per month or \$6,000,000 in the aggregate during the initial two year term of the Option Agreement.

**INSURANCE PROGRAM.** In the event of a closing under Option A, Developer must pay its fair share of the CRA's insurance programs, including PLL, CPL/PLI, and OCIP, on a pro-rata or risk allocation basis, based on acreage or construction valuation (depending on the policy) and based on which policies Developer elects to be insured under.

**OFFSITE IMPROVEMENTS.** In the event of a closing under Option A, the Authority, using locally available funds through the City, shall design and construct the Lenardo Drive and the main stormwater infrastructure, as well as the backbone roadway and traffic improvements, and water sewer, drainage, power, and other utilities within the public right-of-way to the property line of the Remainder Cells, including utility stubs to the property roadway and other off-site physical improvements required for development of the Project on the Property. Developer shall contribute to such costs, but the payment obligation is limited to 60% of the total costs of the offsite public infrastructure required to serve and

support the Project; and with respect to the construction of Lenardo Drive only, the Parties shall establish a cap on Developer's payment obligation which shall be delineated in an exhibit to the Option Agreement.

## **V. FISCAL IMPACT**

The MOU required the Developer to enter into a Reimbursement Agreement of \$2,000,000, of which \$250,000 was immediately available to the CRA for project related expenses such as legal costs; the balance will be available for the CRA's costs in processing the Project and its Entitlements, including CEQA studies and legal fees. In addition, the Developer's share of the Carry Costs shall be 60%, estimated to be \$250,000/month, which shall cover a portion of the CRA's O&M obligations. Finally, the Option Agreement requires the Developer to pay the Authority a total of \$45,000,000 to be available for use by the Authority for the Site and infrastructure. In addition, Exhibit K of the Option Agreement provides for a schedule of the cost sharing on the Site infrastructure. Finally, to the degree the CRA and Developer enter joint insurance programs or the Developers are added as Named Insureds on the Pollution Legal Liability or Contractor's Pollution Liability policies, the CRA would receive a pro rata share of the premium from the Developer.

## **VI. EXHIBITS**

*The Agreement will be provided on this website on October 5, 2020, prior to the meeting.*

1. OPTION AGREEMENT AND JOINT ESCROW INSTRUCTIONS FOR CELLS 3, 4 AND 5 OF 157 ACRE SITE WITH FBD CARSON, LLC  
(To Be Provided)

1.

Prepared by: John S. Raymond, Executive Director