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Title: APPROVAL OF A DEVELOPMENT AND ENVIRONMENTAL REMEDIATION PROPERTY MANAGEMENT AGREEMENT BY AND BETWEEN THE CARSON RECLAMATION AUTHORITY AND RE|SOLUTIONS, LLC, FOR HORIZONTAL MASTER DEVELOPMENT SERVICES ON THE FORMER CAL COMPACT LANDFILL ("CCLF")

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Report to Carson Reclamation Authority

Wednesday, June 21, 2017

Discussion

SUBJECT:

APPROVAL OF A DEVELOPMENT AND ENVIRONMENTAL REMEDIATION PROPERTY MANAGEMENT AGREEMENT BY AND BETWEEN THE CARSON RECLAMATION AUTHORITY AND RE|SOLUTIONS, LLC, FOR HORIZONTAL MASTER DEVELOPMENT SERVICES ON THE FORMER CAL COMPACT LANDFILL ("CCLF")

I. SUMMARY

On May 2, 2017 the CRA Board approved a Term Sheet with RE|Solutions, LLC (RES) for a Horizontal Master Developer contract to manage the environmental design and construction process, the project entitlement process, and ultimately, undertake the construction of the remedial systems, the subsurface structural systems, and the public infrastructure on the CCLF. The CRA was already under contract with RES to perform a number of consulting tasks related to the regulatory approvals, project schedule, and environmental oversight. The original Agreement, as amended, was to provide the CRA the type of services described above, as well as help finalize the DTSC approval of the Tetra Tech termination, the AIG commutation, and assist with the negotiations with the other Master Developer proposers. This Development Management and Environmental Remediation Agreement would be the Horizontal Master Developer contract (the "Contract") for both "pre-development" activities and development activities, including site

grading, installation of remedial systems, and installation of piles and other structural systems tied to the vertical development, as well as site infrastructure. The Contract also requires RES to provide property management services.

II. RECOMMENDATION

1. APPROVE a Development and Environmental Remediation Property Management Agreement with RE|Solutions, LLC for Horizontal Master Developer Services
2. AUTHORIZE Chairman to execute the Contract and other related documents in a form acceptable to the Agency Counsel

III. ALTERNATIVES

TAKE another action the Board deems appropriate.

IV. BACKGROUND

One of the most important tasks of the CRA is to maintain the project and development schedule that was included in the July 2016 ENA with Macerich, and to begin to incorporate schedule and task elements from the other developers on the site. While the vertical developers have the resources to implement the schedule from the shopping center design and construction end, the CRA bears most of the responsibility for environmental compliance and delivery of pads and/or building lots to the vertical developers. These responsibilities include the submittal and follow up of all of the regulatory approvals through DTSC, which is necessary for the ultimate receipt of the Remedial Action Completion Report (RACR) and Health Risk Evaluation (“HRE”) by Macerich for Cell 2. The cell-specific HRE is the last step required before the vertical developer, Macerich, can begin to construct its buildings on the site without HAZWOPER-trained workers.

The CRA elected to use a third party contractor to take the responsibility of performing these tasks because it lacked the expertise and resources to match the private developers in the timely completion of tasks, and needs to keep all of the vertical development adhering to a tight project schedule to get the projects open and operating. Part of the solicitation of a “master developer” in 2016 was to seek a developer experienced with brownfields to undertake this work on behalf of the CRA.

RE|Solutions, LLC

In RE|Solutions, LLC’s (“RES”) proposal dated August 25, 2016, submitted in response to the CRA’s July 2016 Request for Qualifications for a Master Developer (the “SOQ”), RES proposed to serve as the CRA’s Environmental Risk Manager for the development of the former Cal Compact Landfill (“CCLF”). RES proposed to assist the CRA and other developers by undertaking the installation of remedial and geotechnical systems, e.g. landfill cap and liner, structural piles, etc. (collectively, the “Remedial Work”) to prepare the

property for vertical development. RES jointly proposed with TRC Solutions, Inc., (“TRC”) a national engineering, consulting and construction management firm providing integrated services to the power, oil and gas, environmental and infrastructure markets. TRC serves a broad range of clients in government and industry, implementing complex projects from initial concept to operations.

The CRA is currently under contract with RES to perform a number of consulting tasks related to the regulatory approvals, project schedule, and environmental oversight. This original Agreement, as amended, was to provide the CRA the type of services described above, as well as help finalize the DTSC approval of the Tetra Tech termination, the AIG commutation, and assist with the negotiation with the other Master Developer proposers. The Development and Environmental Remediation Property Management Agreement would be the Horizontal Master Developer contract (the “Contract”) for both “pre-development” activities and development activities, including site grading, installation of remedial systems, and installation of piles and other structural systems tied to the vertical development, as well as site infrastructure.

CCLF Predevelopment Services Contract and Subcontracting

The CRA now desires to contract with RES to provide certain predevelopment services on the CCLF to undertake the contracting responsibility for all of the integration of the vertical and subsurface systems, complete Remedial Work, and procure the long-term infrastructure and O&M contractors. Under the Contract, the contractors that install piles, perform remedial work, and deliver structural slabs to each vertical developer would be under contract with RES, not the CRA. The O&M contractor, possibly under a new, rebid contract upon the expiration of the current SCS Engineers contract, would also be under RES, especially during the Development period and prior to turning the responsibility over to the CFD.

The integration of the vertical and subsurface systems encompasses the pile system, utilities, site grading, BPS, and perhaps even the structural slab and building lots for each of the buildings, depending on the risk tolerance of the vertical developer. The Contract describes how the subcontracting process will be undertaken in order for the CRA to retain some control and approval of the contract form and the risk-reward arrangement between RES and the subcontractor.

RES will use TRC Solutions, Inc., its co-proposer, as the Environmental Designer and General Contractor for purposes of bidding and selecting the contractors that will perform the various installations, grading and horizontal development work. Since the final design of the remedial systems is dependent on the design of the vertical projects, construction of such improvements cannot commence until the project receives a CEQA determination.

Nature and Scope of Horizontal Master Developer Contract

In terms of the nature of the contract, RES would assume most of the development-related contractual obligations of the CRA pursuant to the CRA’s agreements with Vertical Developers. RES would not seek a Prospective Purchaser Agreement (“PPA”) or similar

protections and covenants from DTSC.

1. RES will be responsible for property management (“site control”) until:
 - a. The Remedial Systems are installed on all cells; and
 - b. All Pads/Structural Slabs and BPS are installed in accordance with development plans provided by all Vertical Developers that have entered into DDAs with the CRA, or the contract is otherwise terminated.
 - c. The issue of any termination prior to the completion of the project mainly applies to Cell 1, for which there is not an identified developer today - the Contract will provide a “baseline remedy” option for Cell 1 if its development extends beyond a date certain. The baseline remedy is briefly described as installing the landfill gas system on the site, as well as the liner and cap. Such remedy would “close out” Cell 1 from the environmental perspective, but would make it very difficult to develop later. Alternatively, the Contract also includes a form of “right of first offer” for Cell 1 by RES if the CRA fails to line up a vertical developer within the next four (4) years. RES would have the right to make an offer to the CRA to develop residential uses on the site.
2. Existing contracts - there will be minimal amendments of the SCS and MBI contracts at this point, but the remedial construction work scopes can be bid all at one time through RES and TRC. There will be appropriate weight included in favor of contractors who have significant institutional knowledge of the project. The single design contractor, TRC, will be responsible for coordinating and overseeing all aspects of remedial design for RES and will work with RES on refining and developing real time budgets and cost estimates for the remedial construction work to be conducted.
 - a. The CEQA and EIR contracts will remain with City of Carson as the Lead Agency. RES will assume some responsibility for the coordination of those contracts.
 - b. The rebidding of the existing SCS contract may give the CRA an opportunity to reduce the ongoing O&M costs. There are some financial incentives in the Contract for RES to achieve those savings.
 - c. During the remaining term of their current contracts, SCS, MBI and ESA will continue to perform the approved work scopes in their current contracts with the CRA and the City, and bill the CRA directly; however, RES proposes to:
 - i. Manage and direct the work; and
 - ii. Review and approve all invoices on behalf of CRA
3. RES will directly contract for a number of services. Elements d. through f. of the below tasks will be implemented only after CEQA approvals for the Project are obtained through the EIR process that is currently underway. RES will bid the various contracts for remedial and civil/structural construction and select the winning

bidders, but CRA will have rights to approve the bidding process, the scoring components and the ultimate contractor being selected and the form of contract used:

- a. Preparing amendments to the Specific Plan and General Plan as needed;
 - b. Operation and Maintenance of the Property while RES has “site control”
 - i. RES will bid out and contract directly with an O&M contractor at the end of SCS’s current 1-year contract
 - c. Preparation of plans and specifications for all site improvements, including:
 - i. All On- and Off-Property and On-Site (cell-specific) Utilities and Infrastructure;
 - ii. Foundation Systems (including piles and pile caps);
 - iii. Building Protections Systems (BPS); and
 - iv. Structural Slabs (designed by Vertical Developers);
 - d. Performing over-lot grading of the entire Property;
 - e. Construction and installation of the BPS, all Foundation Systems, Structural Slabs, Utilities and Infrastructure; and
 - f. Final design and installation of Remedial Systems.
4. RES will perform the following project management services:
- a. Manage the overall Project, including schedule, budget and any reporting required under its contract;
 - b. Issue RFQs or RFBs with bid specifications as necessary to select and contract for the services listed in Section 3 above;
 - c. Manage/oversee the performance of work being conducted by all contractors currently retained by the CRA;
 - d. Manage the regulatory communications and approvals with DTSC, including any necessary plans, agreements, etc. to allow construction of Remedial Systems and certification of the remedies; and, RES will be responsible for management and coordination of the Enterprise Fund draws and cash-flow projections;
 - e. Coordinate with the various Vertical Developers selected by the CRA to ensure effective implementation of Property-wide Project requirements, such as CEQA, master grading plan, master planning for infrastructure improvements, stormwater management, Utilities, etc.;

- f. Create and implement a community outreach program for the remediation and site improvement work.
5. The contract would be deemed complete when:
 - a. The remediation work is certified by DTSC and any other required regulator; and
 - b. Pads/structural slabs are delivered to all Vertical Developers; and
 - c. Required site infrastructure (streets, utilities, etc.) are complete.
6. RES will have the right to terminate if there is no development on any of the three Sites. In the case of termination:
 - a. RES would remain on the programmatic insurance policies; and
 - b. RES would be paid a completion fee of ½ of any unpaid completion fee.

V. FISCAL IMPACT

At the point the Pre-Development Contract and Development Contracts are fully implemented, the entire contract will have been in excess of \$100 million because RES will have acted as the CRA's agent in constructing most of the physical improvements on the entire 157 at or below the surface, including the installation of the remaining remedial systems, piles, slabs, BPS, grading and site work, and the infrastructure improvements. A portion of the funding for this will be directly from the CRA, and a large part of it will come from the Developer advances from Macerich, Vestar and the Cell 1 developer for the CRA to undertake the subsurface work on their behalf. Most of these funds will pass through RES and to the subcontractors performing the construction.

Based on its status as the Operator of the Site, RES will share CRA's environmental liability as well as regulatory and legal obligations associated with the DTSC documents and the master developer agreements (Macerich MOU, DDA, etc.). RES will agree to perform those obligations by and on behalf of CRA. RES will indemnify CRA from any claims associated with its failure to perform the required work, its breach of those obligations or its negligent performance. RES will have the benefit of the Predevelopment PLL, Development PLL, Predevelopment CPL/PLI and the Development CPL/PLI, and should be responsible for coordinating the addition and removal of various contractor and subcontractor parties on those programs.

The fee structure for the services performed is described in the Contract. Generally, the fee structure is as follows:

a. Project Completion Fees.

These shall be payable as follows:

- i. \$300,000 upon the execution of the Contract, for Mobilization;
 - ii. \$400,000 upon the completion of the environmental remedy for Cell 2 and delivery of a finished slab to Macerich;
 - iii. \$400,000 upon the completion of the environmental remedy for Cells 3, 4, and 5; and delivery of finished slabs to Vestar;
 - iv. \$400,000 upon the completion of the environmental remedy for Cell 1.
 - v. \$900,000 upon full completion RES work. RES could receive \$100,000 of this payment at milestone (ii) and another \$100,000 at milestone (iii) if those projects are completed by the original schedule date. In the event that milestone (iv) is completed by the installation of the Baseline Remedy, the \$900,000 completion incentive payment will be reduced by 1/3.
- b. Minimum Monthly Fee.** Commencing upon the effective date of the Agreement and thereafter through the first full year of the Contract, a minimum fee of \$110,000.00 per month shall be paid and credited against Services Fees payable. At the end of the first year, the minimum fees paid will be reconciled against the earned fees and any balance will be deducted monthly from Services fees earned over the minimum. These fees are not “in addition to” normally earned Services Fees.
- c. Services Fee.** A fee equal to five percent (5%) of the third-party costs incurred in the performance of the Site Management/O&M Services and Predevelopment Services (the “Services Fees”).
- d. Cost Reduction Fee.** A fee equal to an amount equal to fifteen percent (15%) of the reduction in annual third-party site management and O&M costs between the effective date and the completion of the environmental remedy, as determined vis a vis the Authority’s site management and O&M costs for calendar year 2017 (adjusted annually for inflation), which are currently anticipated to be approximately \$4,200,000, less savings already achieved prior to the Contract. “Reduction in annual third-party site management and O&M costs” means, for the term of the Agreement, the difference between (i) the currently anticipated annual O&M costs and (ii) the actual annual O&M costs.

Cash Flow and Accounts Payable

The review and processing of invoices from RES to the CRA will continue to go through the

City/CRA's normal accounts payable process, as supplemented by a third party technical review of the bills by SEG Advisors. In the instance where the CRA is spending the developers' funds, the agreements between the CRA and the developers give the CRA the obligation to perform the subsurface work and the right to contract with a third party to undertake the actual construction, which is the purpose of the RES contract, so all of the RES expenditures will come through the CRA.

Given the multiple payees and funding parties involved, the Contract proposes a process that gets the contractors paid as quickly as possible after being signed off by the CRA, in order to keep things moving smoothly with the contractors and subcontractors. The CRA's goal is to only have to pay RES (and not dozens of contractors and subcontractors), but the "subcontractor to contractor to developer to CRA" billing process creates significant time compression, especially when accompanied by the need to obtain and review lien releases and related backup documentation.

The CRA's custodial bank for the Enterprise Fund, BNY Mellon, is a bank that has familiarity with other major environmental cleanup projects. Since the CRA already has two custodial accounts at BNY set up for the purpose of managing the Enterprise Fund, BNY's Corporate Trust Department in New York proposed a mechanism that could simplify the transfer of funds from the CRA to RES (and also from the developers to the CRA) while maintaining the financial control and multiple approvals (both in Finance and in the Treasurer's Office) that we need.

CRA would establish a new custody account at BNY. Under the Contract with RES, every 60 days CRA will wire/transfer funds into the custody account (titled in the name of CRA only) that should be sufficient to fund anticipated project costs for that period. Depending on the line item, some of the funds will come from the \$18 million custodial account (for installation of the remedial systems) and some will come from East West Bank or one of the other cash or brokerage accounts where the CRA has funds invested. The CRA has not yet fully negotiated the way the developer funds will come into the CRA for the construction of their improvements, but since the City will ultimately "pay" interest on those funds from the date disbursed (through a future sales tax sharing agreement), the funds should arrive "just in time" to pay contractors. Those funds would be wired directly into the CRA's new third custodial account at BNY.

RES will also establish an "escrow account" at BNY Mellon. That account will be in RES's name only. When CRA has approved a monthly invoice or draw submitted to it by RES in accordance with its contract and its normal payables process, CRA will transfer the funds necessary to pay that invoice from its custody account to the RES escrow account, thereby "paying" the RES invoice.

This end of the transaction should be similar to how the CRA currently pays some bills by wire transfer. The authorization for the wire is not complete until Finance has signed off, and the Treasurer's office arranges the wire. The difference here is that it is to/from BNY, and the funds have already been advanced into the account 30-60 days ahead of time based on a rolling budget estimate provided by RES and approved by CRA.

VI. EXHIBITS

1. Environmental Remediation and Property Management Agreement with RE|Solutions, LLC

Prepared by: John S. Raymond, Executive Director