



Legislation Details (With Text)

**File #:** 2023-0677    **Version:** 1    **Name:**

**Type:** Consent    **Status:** Agenda Ready

**File created:** 9/6/2023    **In control:** Carson Reclamation Authority

**On agenda:** 9/11/2023    **Final action:**

**Title:** CONSIDER THIRD AMENDMENT TO OPTION AGREEMENT WITH CARSON GOOSE OWNER, LLC FOR THE DEVELOPMENT OF CELLS 3, 4, AND 5 ON THE FORMER CAL COMPACT LANDFILL

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Carson Goose - Third Amendment to Option Agreement (AW- 9-7), 2. DIF Termination Agreement, 3. Insurance Administration Agreement

Date	Ver.	Action By	Action	Result
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**Report to Carson Reclamation Authority**

Monday, September 11, 2023

Consent

**SUBJECT:**

**CONSIDER THIRD AMENDMENT TO OPTION AGREEMENT WITH CARSON GOOSE OWNER, LLC FOR THE DEVELOPMENT OF CELLS 3, 4, AND 5 ON THE FORMER CAL COMPACT LANDFILL**

**I. SUMMARY**

The proposed Third Amendment to Option Agreement (“Third Amendment”) would make certain changes to the payments required from the developer, Carson Goose Owner, LLC (“CGO” / “Developer”), to the Carson Reclamation Authority (“CRA”) at the closing and transfer of the Cells 3, 4, and 5 portion of the former Cal-Compact Landfill (known and referred to as the “157 Acre Site”), and makes certain changes to the closing conditions to enable the transfer of Cells 3, 4, and 5 to the Developer, among other things, in order to facilitate the closing of the transaction as early as November 2023. The proposed Third Amendment is an amendment to the original Option Agreement, which was entered into on December 17, 2020, and was subsequently amended in October 2022, and again in May 2023.

## II. RECOMMENDATION

1. APPROVE the Third Amendment to Option Agreement and Joint Escrow Instructions (“Third Amendment”) between the Carson Reclamation Authority and Carson Goose Owner, LLC; and
2. AUTHORIZE the Board Chair to execute the Third Amendment and all related documents.

## III. ALTERNATIVES

TAKE another action the Authority Board deems appropriate.

## IV. BACKGROUND

CRA and Faring Capital, LLC (“Faring”) previously entered into that certain Option Agreement and Joint Escrow Instructions, dated as of December 17, 2020 (the “Original Option Agreement”). Faring assigned all its rights and obligations under the Original Option Agreement to Developer, and Developer assumed the same pursuant to that certain Assignment of Option Agreement and Joint Escrow Instructions, dated January 15, 2021, between Faring and Developer (the “Assignment”). Subsequently, Developer and the CRA entered into that certain Amendment to Option Agreement and Joint Escrow Instructions, dated October 4, 2022 (the “First Amendment”), and that certain Second Amendment to Option Agreement and Joint Escrow Instructions, dated May 15, 2023 (the “Second Amendment”, together with the Original Option Agreement and the First Amendment, collectively, the “Option Agreement”)

The Developer and CRA seek to close and transfer the Cells 3, 4, and 5 (“Property”) to the Developer as soon as possible, and in order to facilitate the transaction, Developer has requested certain changes made to the Option Agreement as set forth in the Third Amendment attached to this Staff Report as Exhibit 1. Many of the changes are due to the new financial constraints, the substantial escalations in costs for the Cells 3, 4, and 5 project (“Project”) from the estimates in 2020 when the Original Option Agreement was entered into, deal terms to accommodate the Cell 2 project with CAM-Carson, LLC (“CAM”), and the new interest rate environment.

The Third Amendment includes the following primary changes to the Option Agreement, but also acknowledges that there are other changes required to the Option Agreement which shall be set forth in a further amendment to the Option Agreement prior to the closing and transfer of the Property from the CRA to the Developer.

1. The CRA staff and its legal counsel have negotiated changes to the terms of the original \$32.5M Second Advance (as defined in the Original Option Agreement), so that the Second Advance shall be restructured as follows:

- a. Developer shall pay \$3M at the closing of the Property to the CRA.
- b. Developer shall pay up to \$8M in annual installments over 16 years commencing upon 5 years after date of completion of the Carson Country Mart or Lenardo Dr. (but the \$8M may be reduced to accommodate for any additional Developer payments required for the construction of Lenardo/Stamps and other associated public infrastructure).
- c. Commencing on Jan. 1, 2025, Developer shall pay to the CRA \$2 Million per year until the CRA has received \$7 Million total (but if CAM or another Cell 2 developer is paying the carry costs associated with the Cell 2 site, the annual payment obligation shall be reduced to be \$1.25 Million).
- d. Developer shall increase the amount it was estimated to pay under the Original Option Agreement (i.e., \$10M) for the Infrastructure Improvements to be \$12.5 Million (which shall be paid once the CRA has expended \$15 Million of the full \$22.4 Million in Measure M / R Bond Funds).
- e. Developer shall enter into a letter agreement with the City and the CRA which will provide that the Developer provide for \$7.5 Million to the City which may be provided to the CRA to be used for the Infrastructure Improvements and/or for the benefit of the 157 Acre Site, in accordance with the terms and conditions of the Development Agreement, dated June 8, 2022, between the City and the Developer.
- f. Developer shall receive a credit for its payment of certain insurance premium costs of up to \$3.5 Million, and in the event the actual insurance premium costs are less than \$3.5 Million, Developer shall pay the difference to the CRA at the closing of the Property.
- g. Developer shall take the responsibility for all existing liner, geofoam and stockpiles of soil, sand, and gravel presently located on the Property (collectively, "Reuse Materials"), and to relocate storm water and retention basins and to reconsolidate trash materials currently located on Cells 4 and 5 (collectively, "Assumed Site Costs"). Most of these materials are committed by the CRA to the Cell 2 Project or Lenardo Road, and therefore do not benefit the Developer. The Assumed Site Costs are estimated at \$4.5 Million ("Estimated Assumed Site Costs Amount"). The Estimated Assumed Site Costs Amount shall be credited against the Second Advance at Closing.
- h. Based on various requests from the Authority Board and City Council to Developer to enhance and upgrade the project designs and plans for the Carson Country Mart, Developer has accommodated such requests, but at a significant cost to Developer, and as such the Third Amendment provides for a credit against the Second Advance in the amount of \$4 Million, given the benefit to City residents will receive from the upgraded design improvements and enhancements to the proposed Carson Country Mart.

2. A new precedent to Closing has been added in favor of the Developer such that Developer must receive a Prospective Purchaser Agreement (“PPA”) from DTSC prior to closing.
3. If approval from State of California Department of Housing and Community Development (“HCD”) has not been received by the CRA for the closing and transfer of the Property to Developer, Developer may elect to waive such condition to closing, provided that it shall indemnify the CRA from any penalties imposed by HCD on account of any non-compliance with the Surplus Land Act.
4. Certain changes have been made in the Third Amendment in order to reconcile and credit the Developer’s future payments made under CFD 2012-1, and/or CFD 2012-2, and/or future payments to be made under the restructured CFD for operation and maintenance of the remedial systems, based on Developer’s carry costs obligations under the Option Agreement (which may overlap with the payments under various CFD’s referenced above).
5. The Third Amendment adds provisions with respect to the Lenardo / Stamps construction (“Infrastructure Improvements”), which allow for a “self-help” provision such that Developer may act as the CRA’s agent to finish the Infrastructure Improvements (i.e., Lenardo and Stamps), subject to certain terms and conditions, including the requirements that all Measure R / M Bond Funds have been expended by the CRA for the construction of the Infrastructure Improvements.
6. The Third Amendment allows for a “self-help” provision which allows the Developer to construct the Buffer Zones on Cells 1 and 2 if there is no developer proceeding on Cell 2 in a timely manner to allow for Cells 3, 4, and 5 to open under the provisions under the MAPO.

Two other Agreements, the DIF Termination Agreement and the Insurance Administration Agreement, are exhibits to the Third Amendment but are included here as separate attachments for the Board’s approval. They would be approved as part of the approval of the Third Amendment.

## **V. FISCAL IMPACT**

The basic economic obligations of the Developer to the CRA, under the Original Option Agreement, were approximately \$50 Million (which would be provided through the \$32.5 Million Second Advance, certain fees, and a contribution toward the construction of Lenardo/Stamps and other infrastructure). These obligations have generally remained the

same in the aggregate amount under the Third Amendment, but have been restructured so that a portion comes in the form of cash to the CRA, some of the contributions are deferred or paid over time, some is in the form of the Developer assuming certain CRA obligations, some is in the form of credits for additional amenities requested by the CRA, and some is in the form of an increased contribution toward the construction of Lenardo/Stamps and other infrastructure.

## **VI. EXHIBITS**

1. Third Amendment to Option Agreement (pgs. 6-19)
2. DIF Termination Agreement (pgs. 20-22)
3. Insurance Administration Agreement (pgs. 23-52)

1.

Prepared by: John S. Raymond, Executive Director