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Title: CONSIDER AMENDMENT NO. 2 TO A CONVEYANCING AGREEMENT WITH CAM-CARSON, LLC; AMENDMENT NO. 1 TO A COOPERATION AGREEMENT BETWEEN THE CITY OF CARSON AND THE CARSON RECLAMATION AUTHORITY FOR THE REIMBURSEMENT OF SALES TAXES TO FUND PUBLIC INFRASTRUCTURE AND SITE DEVELOPMENT COSTS; AND RATIFICATION OF AMENDMENT NO. 1 TO A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF CARSON AND CAM-CARSON, LLC FOR THE DEVELOPMENT OF A FASHION OUTLET RETAIL CENTER ON THE CELL 2 SURFACE LOT OF THE 157-ACRE SITE OWNED BY THE CARSON RECLAMATION AUTHORITY, KNOWN AS THE FORMER CAL-COMPACT LANDFILL

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

Monday, August 01, 2022

Discussion

SUBJECT:

CONSIDER AMENDMENT NO. 2 TO A CONVEYANCING AGREEMENT WITH CAM-CARSON, LLC; AMENDMENT NO. 1 TO A COOPERATION AGREEMENT BETWEEN THE CITY OF CARSON AND THE CARSON RECLAMATION AUTHORITY FOR THE REIMBURSEMENT OF SALES TAXES TO FUND PUBLIC INFRASTRUCTURE AND SITE DEVELOPMENT COSTS; AND RATIFICATION OF AMENDMENT NO. 1 TO A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF CARSON AND CAM-CARSON, LLC FOR THE DEVELOPMENT OF A FASHION OUTLET RETAIL CENTER ON THE CELL 2 SURFACE LOT OF THE 157-ACRE SITE OWNED BY THE CARSON RECLAMATION AUTHORITY, KNOWN AS THE FORMER CAL-COMPACT LANDFILL

I. SUMMARY

The Authority Board is asked to consider Amendment No. 2 to the Conveyancing Agreement (the “Conveyancing Agreement Amendment”, Exhibit 1) by and between the

Carson Reclamation Authority (“Authority”) and CAM-Carson, LLC, a Delaware limited liability company (“Developer” or “CAM-Carson”), for the development of a high-end fashion outlet mall; Amendment No. 1 to the Cooperation Agreement between the Authority and the City of Carson (“City”) (Exhibit 2) to provide for the construction of site infrastructure and the reimbursement to the Developer for certain Site Development Costs; and ratifying a First Amendment to Development Agreement (“DA Amendment”) between the City of Carson and CAM-Carson (Exhibit 3).

The original Conveyancing Agreement was approved on April 3, 2018 and was amended on September 6, 2018 (collectively, the “Conveyancing Agreement”), under which the Developer was to acquire the Cell 2 Surface Lot of the 157 Acre (i.e., approx. 41 acres). City and Authority are parties to a Cooperation Agreement, dated September 6, 2018 (“Cooperation Agreement”). Developer and the City are parties to a Development Agreement also dated September 6, 2018 (“Development Agreement”).

The Conveyancing Agreement, Cooperation Agreement, and Development Agreement are referred to as the “Project Agreements”. The City, Authority, and Developer have agreed to restructure and amend the Project Agreements in a manner that will allow the Project to proceed after years of delay.

After execution of the Project Agreements, Authority commenced the installation of the Remedial Systems and Site Development Improvements as required under the Conveyancing Agreement. A dispute arose between the Developer, City, and Authority as to Authority’s ability to complete the Remedial Systems and Site Development Improvements and thus, construction temporarily ceased in early 2020. In April 2020, Developer filed suit in that certain litigation captioned CAM-Carson, LLC v. Carson Reclamation Authority, et. al, Case No. 20STCV16461, (the “Litigation”) alleging, in part, breaches of the Project Agreements by Authority and City, and thereafter Authority filed counterclaims in the Litigation.

After a mediation of the disputes in the Litigation, the Developer has requested to return to the Project and Developer, City, and Authority have determined to proceed with the Project with the following modifications to the terms of the original deal under the Project Agreements pursuant to the “Project Agreement Amendments” which include the following terms (among others): (1) CAM-Carson will complete the Remaining Horizontal Work and the Authority will contribute \$32,500,000 in order to pay for such work, (2) in the event the Remaining Horizontal Work exceeds the Authority’s \$32,500,000 contribution, CAM-Carson shall be reimbursed through one-half of the sales taxes attributable to the Project for a 32-year reimbursement term, (3) CAM-Carson shall complete and pay for the Site Development Improvements (i.e., piles, foundation slab, etc.) and all work required in the Embankment Lot to construct the Developer Pylon Sign (the “Embankment Lot Improvements”), subject to reimbursement through the Sales Tax Reimbursements, and (4) CAM-Carson will contribute \$10,000,000 to the Authority for its construction of Lenardo Drive and Stamps Road and certain other required offsite improvements (the “Offsite Advances”), subject to reimbursement through the Sales Tax Reimbursements.

The Project Agreement Amendments provide that the Project Agreements be restructured as described above to enable CAM-Carson to be repaid for the Offsite Advances, the Embankment Lot Improvements, and any costs required for the completion of the Remaining Horizontal Work over and above the \$32.5M contribution from the Authority

through a share of the sales taxes received by the City from the Project, but the term of such payments will be extended from 25 years to 32 years.

Given the costs to complete the Remaining Horizontal Work and the Embankment Lot Improvements, along with the high rate of increase in construction costs for development projects in the region generally (including recent increases in inflation/CPI), and the previously provided Site Development Advances from the Developer to the Authority, Developer has determined that it cannot achieve a reasonable rate of return on its fashion outlet mall Project without the restructuring of the Sales Tax Assistance Payments.

The Authority and City are proposing to enter into an Amendment to the Cooperation Agreement to provide that Authority may have Developer perform or fund completion of the Remaining Horizontal Work and the Embankment Lot Improvements the cost of which shall be included in the advances that are subject to reimbursement under the Sales Tax Reimbursements to Developer, and that the term of the Cooperation Agreement shall be extended to up to thirty-two (32) years. Finally, while the Development Agreement is between the City of Carson and the Developer and is the document which conveys the entitlement, the Authority is asked to ratify the DA Amendment because it is currently the property owner and will hold title until the surface lot is conveyed to the Developer.

II. RECOMMENDATION

TAKE the following actions:

1. APPROVE Amendment No. 2 to the Conveyancing Agreement with CAM-Carson, LLC, for the development of a fashion outlet retail center on the Cell 2 surface lot of the 157-Acre Site owned by the Carson Reclamation Authority, the former Cal-Compact Landfill, in a form acceptable to Authority Counsel; and
2. APPROVE Amendment No. 1 to the Conveyancing Agreement between the City of Carson and the Carson Reclamation Authority, in a form acceptable to the Authority Counsel; and
3. RATIFY the DA Amendment between the City of Carson and the Developer
4. AUTHORIZE Chair to execute such agreements.

1.

III. ALTERNATIVES

Take another action deemed appropriate by the Board.

IV. BACKGROUND

The original Conveyancing Agreement was approved on April 3, 2018 and was amended on September 6, 2018 (the "Conveyancing Agreement"), under which the Developer was construct a high quality fashion outlet mall and ground lease the Cell 2 Surface Lot. Also, the Developer and the City of Carson are parties to a Development Agreement and the Authority and City are parties to the Cooperation Agreement, both also dated September 6, 2018.

After completing the installation of all the piles and a portion of the slab, as well as a

significant portion of the Remedial Systems required for the Cell 2 site, in October 2019 the Authority informed the Developer of the significant cost increases and work on the Developer-funded portion of the Project (slab pouring, utility installation) stopped. The Authority continued the installation of remedial systems into January 2020 but then approved a soft demobilization of the environmental contractor from the Cell 2 site, and the civil general contractor was also demobilized. By December 2019, however, a significant portion of the remedial system work on Cell 2 was complete, which included part of the installation of the landfill gas system headers and lines and the installation of the liner.

CAM-Carson, LLC Litigation

On April 30, 2020, CAM-Carson filed a lawsuit against the City, the Authority and RES (the Authority's development manager), and later amended the complaint to add the Successor Agency. The Authority responded to the suit, denying all claims.

On March 15, 2021, the Los Angeles Superior Court granted a demurrer to the City of Carson and the Carson Successor Agency, removing them from the action (and awarded the City attorney's fees), and approved the removal of the negligence and negligent supervision claims against the Authority, making the legal action largely contractual (notwithstanding the appeal rights of CAM-Carson).

In an effort toward settling litigation, in March 2022 the attorneys for CAM-Carson began negotiating with the Authority Counsel on a Term Sheet setting forth the provisions of the Project Agreements, which provided for CAM-Carson to return to the Project and complete the fashion outlet mall.

The proposed Amendments to the Project Agreements provide that the Developer would, acting as the Authority's agent, undertake the completion of the Remedial Systems on the Cell 2 site and the Authority would reimburse the Developer for a portion of those costs up to \$32.5 Million. As part of the consideration for the increased costs of the Remaining Horizontal Work (which includes the unreimbursed cost of the Remedial Systems) the sales tax sharing agreement contained in both the Conveyancing Agreement and the Cooperation Agreement would be extended from 25 years to 32 years. In addition, there is some change to the Developer's infrastructure obligations. Most other provisions of the Project Agreements remain unchanged.

The funding for the Authority's participation in the Project Agreement Amendments would come from the Faring Option Payment for Cells 3, 4, and 5 after closing. If Developer terminates the Project Agreement Amendment during the Diligence Period (as defined below), then the Project Agreement Amendments shall become null and void and the Parties may continue with the Litigation or other actions pursuant to the Project Agreements as they existed prior to the effective date of such Amendments.

Due Diligence Period Once the Project Agreement Amendments are approved and fully executed by the Parties, the Developer shall have ninety (90) days to complete its review of the condition of the Cell 2 Site and the Remedial Systems and Site Development Improvements (the "Diligence Period", which period is subject to extension as set forth in the Conveyancing Agreement Amendment). During the Diligence Period, Developer may, at its sole cost and expense, inspect and review the previously constructed Remedial Systems and Site Development Improvements, title, utilities, infrastructure and any other

matters associated with the development of the Cell 2 Site and may meet, have discussions, and exchange documents with DTSC and other regulatory agencies regarding development of the Cell 2 Site. Under the Project Agreement Amendments, the Authority agrees to reasonably cooperate with such discussions and shall provide access to any reports, information, documents, and consultants reasonably necessary for Developer and its consultants to complete such inspection and review, including, but not limited to, any reports and documentation related to remediation of the 157 Acre Site and copies of all contracts and agreements related to the Cell 2 Site.

To the extent that as part of its diligence, if the Developer requests any work by third party consultants (not including Authority, City, or respective staff or counsel), Developer shall pay any related costs agreed to in advance for such work.

If during the Diligence Period, the Developer determines, in its sole discretion, that the Project is not feasible given the current condition of the Cell 2 Site, the Developer may provide notice of its election to terminate the Project Agreement Amendments. Upon the Developer's issuance of such termination notice, amendments shall become null and void and of no further force or effect, and the Parties may continue with the Litigation or other actions pursuant to the Project Agreements as they existed prior to the effective date of the Project Agreement Amendment. Any costs and expenses incurred by the Developer during the Diligence Period, including Carry Costs, shall not be recoverable by Developer against Authority or City.

Stay of Litigation

Immediately following the execution of the Project Agreement Amendments, the Authority, City, and Developer shall jointly seek a stay of all Litigation until 30 days after the end of the Diligence Period. Authority shall assist and support Developer in obtaining RE|Solutions, LLC's ("RES") agreement to such stay. Following the end of the Diligence Period, if Developer has not previously terminated this Amendment, and expiration of all applicable challenge or appeal periods, including litigation, to the Project Agreement Amendments (or successful resolution of any and all such challenges and appeals, including litigation) (i) the Developer, Authority and City shall dismiss the Litigation, (ii) the Developer, Authority, City, and the Successor Agency shall enter into a mutual release of claims related to the Litigation and the existing horizontal improvements, and (iii) CAM-Carson and RES shall enter into a mutual release of claims related to the Litigation.

Third-Party Agreements, Title, and Insurance

The Developer anticipates completing Cell 2 (including all Remedial Systems and Site Development Improvements) with its own contractors and seeks to ensure that they are starting from a "clean slate." Except for the contracts expressly approved in writing by the Developer to remain in effect, on or before the end of the Diligence Period, the Authority shall terminate or cause to be terminated all contracts related to the Cell 2 Site, and Authority shall obtain from the parties to such contracts' appropriate releases, estoppel certificates and/or lien releases reasonably acceptable to the Developer. The Authority and City shall indemnify, protect, and defend the Developer from and against any claims made by vendors, contractors, or other third parties in connection with the Project or the Cell 2 Site arising on or before the execution date of the Project Agreement Amendments.

During the Diligence Period, the Parties will obtain, at Developer's cost and expense, an updated preliminary title report.

Also during the Diligence Period, the Parties will review the existing environmental insurance and determine if any modifications to the Insurance Administration Agreement ("IAA") are necessary. In the event the Parties agree, in their reasonable discretion, that the IAA should be revised, the Executive Director shall have the authority, with the reasonable concurrence of Authority's counsel, to replace the exhibit to the Conveyancing Agreement which sets forth the IAA with a revised exhibit for the IAA mutually agreed to by the Parties, or formally amend the IAA. In the event additional insurance is reasonably required, Developer shall secure the additional insurance comparable to the existing insurance to the extent available and include Authority and City as additional insureds as necessary. Developer may, in its sole discretion, coordinate insurance coverage for the Cell 2 Site with the Remainder Developers (i.e., the developers of Cells 1, 3, 4, and 5).

Offsite Improvements

As with the original Project Agreements, the Authority shall have primary responsibility for funding the development, construction, installation, maintenance, operation, repair, and replacement of the Offsite Improvements. However, Authority does not have sufficient funds to pay for all the Offsite Improvements. City shall pay to Authority, and shall fund, \$22,400,000 (the "Offsite Infrastructure Funds") to be applied to the cost of completing the Offsite Improvements as set forth in the terms and conditions of the Amendment to the Cooperation Agreement. Authority shall first pay the cost of the Offsite Improvements from the Offsite Infrastructure Funds. If the Offsite Infrastructure Funds are depleted prior to completion of the Offsite Improvements, then (i) Developer shall pay its fair share (not to exceed thirty-percent (30%)) of the costs for the Offsite Improvements that exceed \$22,400,000 up to a maximum contribution of \$10,000,000 (the "Offsite Advances") and (ii) Authority shall pay, directly or through contribution by the Remainder Developers (the "Additional Off-Site Contributions"), for the remaining costs of the Offsite Improvements.

Construction of Remaining Horizontal Work

Under the Project Agreement Amendments, the Developer shall complete the Remaining Horizontal Work. As the agent for the Authority, Developer shall complete the installation of the remaining components of the Remedial Systems and the Site Development Improvements (which include, without limitation Stormwater Work, Sub Foundation Systems, Utility Work and Foundation Systems) specifically required for the vertical development of the Project, including but not limited to any required changes to, or replacement or repair of, the previously installed systems or improvements as Developer may determine are necessary, installation of any remaining piles, the pile cap excavations, excavation of trenches and features, installation of remaining geomembrane liner and backfill, and BPS. Developer shall be responsible for all costs to complete the Remaining Horizontal Work, which costs shall be included as part of the Total Recovery Amount.

The Authority shall reimburse Developer for the Remaining Horizontal Work as set forth in the Conveyancing Agreement Amendment. Prior to the expiration of the Diligence Period, Authority will deposit into an escrow account with a Title Company (the "Remediation Escrow Account"), subject to mutually agreeable escrow instructions, \$32,500,000 (the "Remediation Escrow Deposit"). As the Remaining Horizontal Work is completed and paid

for by Developer, Developer shall be entitled to make monthly withdrawals in arrears from the Remediation Escrow Account equal to fifty percent (50%) of Remaining Horizontal Work costs paid by Developer. Upon depleting the Remediation Escrow Account, Developer shall be responsible for the costs of the Remaining Horizontal Work.

Within thirty (30) days after the expiration of the Diligence Period, Developer shall provide Authority with a revised and detailed Project Schedule, which shall be the "Project Schedule" for all purposes of the Conveyancing Agreement. The Parties anticipate that the Project Schedule will reflect a target completion date for the Project (not including final tenant improvements) of November 2024.

Sales Tax Assistance to Make Project Feasible

Because the 157 Acre Site, including the Cell 2 Subsurface Lot, is a contaminated and poorly-compacted landfill subject to DTSC requirements, the development of the Project on the Cell 2 Site would be financially infeasible unless the Cell 2 Site itself were very substantially remediated and improved to address both its environmental and compaction issues. The Developer has estimated that it will only achieve a reasonable rate of return if Authority contributes toward the cost of the Remedial Systems, Site Development Improvements, and certain other Offsite Improvements, as set forth in the Conveyancing Agreement Amendment, but Developer has agreed to make the Advances as defined above and set forth in the Project Agreement Amendments. To reimburse the Advances, the parties have negotiated the Sales Tax Assistance Payments described in the Conveyancing Agreement Amendment.

Authority believes that the sales tax revenues to be generated by the Project, as well as the secondary benefits of economic development in this area of the City spurred by development of the Project, justify the expenditure of substantial funds to address those issues to permit such development.

The Developer has agreed to fund the costs of the Remaining Horizontal Work, the Embankment Lot Improvements, the Offsite Advances, and the Site Improvement Advances (collectively the "Advances") on the terms and conditions contained in the Project Agreement Amendments. The total amount of the Advances actually made plus interest shall be the "Total Recovery Amount". Authority shall pay to Developer following receipt from the City of the sales taxes derived from the Project as set forth under the Cooperation Agreement Amendment.

Benefits of the Project

Once completed, the Project is estimated to generate \$3.6 million a year of gross sales tax, with \$1.8 million a year of sales tax for the City. As a former landfill, the Site has been blighted and undeveloped since its closure for over five decades ago and will be finally developed. The Project will bring over 1,200 construction jobs and 1,600 permanent jobs, and hundreds of thousands of new visitors to the city each year. Finally, the remedial systems for Cell 2 will be completed, which will help in reducing methane gas through completed landfill gas collection and control systems.

V. FISCAL IMPACT

Once the Carrying Cost obligations become effective, reimbursement from the Developer would provide revenue to the Authority of approximately \$100,000/month. Additionally, the completion of the Cell 2 Project will provide Community Facilities District revenue to the Authority, which is required for the permanent operation and maintenance of the remedial systems. Finally, the Project will produce an estimated \$3.6 million a year in sales tax, which would be shared between the City and the Developer at the rate of 50% for a period of 32 years, still providing significant residual sales tax revenue to the City.

VI. EXHIBITS

1. Amendment No. 2 to Conveyancing Agreement Between the Carson Reclamation Authority and CAM-Carson, LLC (pgs. 9-30)
2. Amendment No. 1 to the Cooperation Agreement Between the City of Carson and Carson Reclamation Authority (pgs. 31-44)
3. Amendment No. 1 to the Development Agreement Between the City of Carson and CAM-Carson, LLC (pgs. 45-60)

Prepared by: John S. Raymond, Executive Director