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Report to Carson Reclamation Authority

Tuesday, May 02, 2017

Discussion

SUBJECT:

CONSIDERATION OF A TERM SHEET WITH RE|SOLUTIONS, LLC FOR PREDEVELOPMENT SERVICES FOR THE FORMER CAL COMPACT LANDFILL (CCLF) IN ANTICIPATION OF A MASTER DEVELOPER CONTRACT

I. SUMMARY

This action is to consider a Term Sheet with RE|Solutions, LLC 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 is already under contract with RES to perform a number of tasks related to the regulatory approvals, project schedule, and environmental oversight. Future contracts with RES still may come in three sections, which may result in up to three separate contracts. The first is the original Agreement, as amended, to initially provide the CRA the type of services described above, as well as helping finalize the DTSC approval of the Tetra Tech termination, the AIG commutation, and assisting with the negotiation with the other Master Developer proposers. Next would be a Horizontal Master Developer contract (the "Contract") for "pre-development" activities, which is the subject of the attached Term Sheet, and the final agreement would be an amendment to the "pre-development" Contract or a new "Development Agreement" to provide for development activities, including site

grading, installation of remedial systems, and installation of piles and other structural systems tied to the vertical development.

II. RECOMMENDATION

1. APPROVE Term Sheet with RE|Solutions, LLC for Horizontal Master Developer Services
2. AUTHORIZE Authority Staff to negotiate a Master Developer Services Contract with RE|Solutions, LLC on substantially the terms described in the Term Sheet, for future Board action

III. ALTERNATIVES

TAKE another action the Board deems appropriate.

IV. BACKGROUND

One of the most difficult and 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. Macerich has expressed confidence that they can hold up their end of the schedule from the shopping center design and construction end, but the CRA bears most of the responsibility for the environmental compliance. 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 Health Risk Assessment (“HRA”) by Macerich for Cell 2. The cell-specific HRA is the last step required before the vertical developer, Macerich, can begin to construct on the site.

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 did not propose any vertical development of its own, offering instead to assist the CRA and other developers by undertaking the installation of remedial and geotechnical systems, e.g. landfill cap, 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.

While RES was not “selected” as one of the Master Developer candidates to proceed to a second round of interviews for vertical development, on November 1, 2016, the CRA instead approved a Contractual Services Agreement (the “Agreement”) with RES whereby

RES would assist CRA with: (1) the Tetra Tech Termination and Release Agreement; (2) the replacement Financial Assurance Agreement with DTSC; (3) the creation of the Development Playbook, which includes a robust Glossary of Terms and comprehensive Project Schedule; and (4) the bidding of a new Remedial Contractor.

The Agreement with RES and the specific activities proposed by RES are consistent with the capabilities and experience detailed in their SOQ, and therefore the Agreement was awarded to RES as the result of an open solicitation and not as a “sole source” contract. No other developer in the RFQ process proposed to undertake the Remedial Work for the entire site, along with its attendant environmental liabilities, and most did not propose to even undertake the Remedial Work on their own cell, instead deferring the responsibility and liability for the Remedial Work to the CRA. RES is highly qualified to help CRA integrate the planned development with the environmental conditions on the property, and managing the attendant risks. RES owns and operates brownfield projects nationally for their own account as well and is a specialty developer of complex brownfield sites.

In April 2017, the Board approved Amendment No. 1 to the Agreement with RES to amend the contract to reflect the additional duties RES has been tasked to do since the approval of the original contract, as well as the greatly expanded set of negotiations with DTSC over regulatory issues since the original contract was approved in November. These duties included:

1. Additional negotiation with DTSC on replacement financial assurance, enterprise fund rebalancing, Compliance Framework Agreement (CFA)/Explanation of Significant Differences (ESD), Site Soils classification, and Phased Development Plan. As part of the negotiation of the Tetra Tech Termination and Release Agreement, an entirely new compliance regime needed to be negotiated with the regulators, including providing evidence of the CRA’s financial capacity to perform the remedial work and future O&M. There are still myriad issues under negotiation with DTSC.
2. Management of data downloaded from Tetra Tech and assistance for the Data and Information Project Management Program administered by Greenberg Traurig (“GT”), the CRA’s environmental Special Counsel, for an interactive single-source web portal for the master developer diligence and project management efforts. GT’s Legal Project Management (“LPM”) Office developed this platform to conform the specifications to CRA’s immediate needs in the most cost-effective manner possible. RES is instrumental in determining which documents from Tetra Tech and EnviroStor (DTSC’s online public document repository) will be loaded onto the site. This was a completely new task since the November contract.
3. Significant involvement in negotiations with Macerich and in drafting the Macerich MOU, including preparing the Master Development Schedule and the Responsibility Matrix. The Responsibility Matrix has helped negotiate most of the “who pays for what” decisions between the CRA and Macerich at a level of specificity that was not captured in the MOU, helping head off future disagreements.
4. Responding to extensive requests from Macerich re: environmental due diligence, design of BPS, and lot line issues.

5. Initiation of development coordination with Cell 1 developer and Vestar on Cells 3, 4, and 5.
6. Takeover of SCS coordination, and coordination of the private developer participation in City's EIR and Specific Plan for the site. RES oversees SCS' overall O&M contract and helps make decisions that could have regulatory impacts; the CRA still also needs to create an O&M protocol and manual.
7. RES has also taken on much of the coordination of the private developers with the City's EIR consultant.

Ultimately, the CRA's contracts with RES still may come in three sections, which may result in up to three separate contracts. The first is the original Agreement, as amended, to initially provide the CRA the type of advice described above, as well as helping finalize the DTSC approval of the Tetra Tech termination, the AIG commutation, and assisting with the negotiation with the other Master Developer proposers. Next would be a Horizontal Master Developer contract (the "Contract") for "pre-development" activities, and the final agreement would be an amendment to the "pre-development" Contract or a new "Development Agreement" to provide for development activities, including site grading, installation of remedial systems, and installation of piles and other structural systems tied to the vertical development.

Assessment of Project Completeness

In determining the progress made to date on the November 1 Agreement, below is an assessment on the completeness of the activity and the work still to be done:

1. Analyze the Macerich agreement from an environmental, remediation, insurance perspective. In terms of the MOU with Macerich, which is about to be approved by the parties, RES has satisfied the requirements of this task in terms of the initial contract. The understanding of the environmental requirements of the project is still evolving and will continue to evolve through the design-development process, but RES has assisted the CRA in understanding the interface between the vertical and subsurface systems, and the design and cost implications of MOU language related to the pile systems and the building protection systems. No design was required from the task.
2. Develop a "development playbook," describing all of the parties' duties in the integration of the remediation, site work and vertical construction. The "Development Playbook," at this point, consists of a robust Project Glossary containing all the defined terms in the MOU and other project agreements, as well as technical definitions of a number of the terms that will be used throughout the development and construction process; a detailed project schedule that captures and integrates the different aspects of the project, such as design, regulatory, CEQA, insurance underwriting, remedial construction and financing; and, the Responsibility Matrix, which, in a single table, describes all of the aspects of the deal with Macerich and labels which party is responsible for funding, designing and

constructing, owning, and maintaining each improvement. The outline and framework of the Development Playbook is complete, but it is also a living document that will be updated through the development process. The Schedule and Development Playbook also constitute the framework for the Data and Information Project Management Program administered by GT.

3. Assist with the Tetra Tech Termination and Release Agreement and the related AIG EPP commutation, unwinding of the Environmental Trust Account, and obtaining DTSC approval of the replacement Financial Assurance. This task is essentially complete, having closed on January 29, 2017, but there is still some cleanup necessary with Tetra Tech and some additional renegotiation with DTSC on “rebalancing” the O&M and Remedial Construction Accounts.
4. Assist with the DTSC approval of the Phased Development Plan (“PDP”) drafted by SCS Engineers. This task is partially complete, with the “Working Draft” PDP having been presented to DTSC in February. However, collectively - RES, the CRA, and SCS Engineers have decided to regroup on the PDP for a possible incorporation of its key elements into a new regulatory agreement, if allowed by DTSC. Given the speculative nature of Cell 1, too, there may be some additional analysis done in the PDP to make it clearer as to a potentially longer timeframe between the completion of phases in the Project, or a “button up” alternative on Cell 1 if there is no feasible project to develop.
5. Prepare or review bid documents for solicitation of new Remedial Contractor for Design & Construction work; review contractor submissions and score responses against established criteria; negotiate terms. This task will be discussed below. RES proposed on the project with and intends to use TRC Solutions, Inc., its co-proposer, as the Environmental Designer and Environmental General Contractor for the remedial systems and for quality assurance and coordination of the structural system installation (e.g. piles, pile caps) with the mitigation and remedial systems (BPS, landfill gas wells). TRC will bid for the installation for the construction work on agreed-upon terms in the Contract.
6. Perform environmental analysis of the Master Developer proposals as Environmental Risk Manager for Cells 1 and Cells 3, 4, and 5. This task is complete, as RES provided its analysis of the other six Master Developer proposals from the environmental perspective, including assessing the developers’ awareness and understanding of the environmental issues confronting them at the Project Site.
7. Work with the City to develop long-term O&M and risk management program for piles, utilities and BPS for Cell 1 and Cells 3, 4, and 5 developments. This work is substantially complete as it was necessary for the completion of the Enterprise Fund negotiation with DTSC as part of the Tetra Tech Termination. Some of the “program,” however, will be negotiated through the Development Agreements with the vertical master developers. As such, the long-term O&M and risk management program for the piles and building protection systems (BPS), and all sub-surface systems, cannot be fully developed until the design of such is complete and the business deals with each of the vertical developers is complete.
8. Depending on the capabilities of the Master Developer(s), manage design-build

contract for Cell 1 and Cells 3-5 pile systems, utility installation and BPS. This task will also be discussed below.

9. Environmental Risk Manager for Cell 2
 - a. Manage design-build contract for Cell 2 piling systems, utility installation and BPS. This task will also be discussed below.
 - b. Work with the City to develop long-term O&M and risk management program for piles, utilities and BPS for Cell 2 development. This task will also be discussed below.

With the work in Tasks 1-4 above substantially completed, the focus is now on Tasks 5-9 and the negotiation for the Environmental Risk Manager (or “Horizontal Master Developer”) contract.

CCLF Predevelopment Services Contract and Subcontracting

The CRA now desires to negotiate 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 O&M contractor. Part of this will be accomplished through Task 5 above, but that task may limit RES to assisting the CRA in preparing the bid package and bidding the contract for the remedial system (landfill cap and gas collection system) final design and installation, as well as O&M if the CRA deemed it necessary to rebid the SCS contract. Under the Contract, conversely, the contractors that install piles 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, could 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 under Tasks 6 and 7, encompasses the pile system, BPS, and perhaps even the structural slab for each of the buildings, depending on the risk tolerance of the vertical developer. The CRA and RES are currently discussing whether this is one, two, or three subcontracts under RES - one for remedial design and construction, one for O&M, and one for design (possibly) and construction of piles, BPS, and structural slab.

As part of the Horizontal Master Developer Contract (“Contract”), the parties shall describe 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. And, while most public agencies use the design/bid/build system, where the 100% design package is produced and included in the bid documents, the very linear nature of that process can result in long lead times and the system may not accommodate the integration and schedule demands of this project, with several vertical Master Developers, the Remedial Systems installation undertaken by RES, and the timetable required to achieve site specific HRAs to allow the vertical developers to move

forward.

Also, the services contemplated by this Staff Report that are related to the design and construction of physical improvements that require further CEQA and land use consideration by the Authority or the City of Carson will need to be excluded from the proposed contract until such consideration is completed. Therefore, the proposed Predevelopment Agreement would be limited to the site management, operation and maintenance and predevelopment services that do not require such additional consideration.

RES' proposal is attached to this Staff Report as Attachment B (the "Term Sheet"). The Term Sheet and the portions of this Staff Report dealing with deal terms provide a broad outline of the proposed Predevelopment Agreement that should be ready for review and approval at the June 2017 CRA Board meeting. There are a couple of known factors: (1) RES intends to 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 installation, grading and horizontal development work; and (2) the contracts with the Authority and RES will need to be broken into two sections - the Pre-Development Phase and the Development Phase. Since the final design of the remedial systems is dependent on the design of the vertical project, construction of such improvements cannot commence until the project receives a CEQA determination. Staff acknowledges that there are some inconsistencies between the Term Sheet and this Staff Report but neither is binding, and the two documents will be synthesized into a Predevelopment Agreement to be brought back to the Board at the June 2017 meeting for review and consideration.

Nature and Scope of Horizontal Master Developer Contract

In terms of the nature of the contract, it will be a limited "Risk Transfer" contract with appropriate carve-outs for the CRA to approve key milestones and items, such as (a) contracts in excess of a specified monetary amount; (b) regulatory documents and submissions; (c) legal matters involving pending or threatened litigation; and (d) changes in land use plans or CEQA documents. RES would affirmatively assume the environmental obligations and would provide a covenant and indemnity (first party obligations) to CRA. RES would not seek a Prospective Purchaser Agreement ("PPA") or similar document from DTSC and would in fact be responsible for certifying CRA compliance with the applicable regulatory documents.

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 as set forth in Section 8. below.
 - 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 Agreement will

provide a “button up” option for Cell 1 if its development extends beyond a date certain. It is also possible the Agreement could include some form of right of first offer for Cell 1 in favor of RES.

2. Existing contracts - there will be minimal amendments of the SCS, MBI and ESA contracts at this point, but the remedial construction work scopes can be re-bid all at one time through RES and TRC. There can 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 CRA. RES will assume some responsibility for the implementation of those contracts. In any case, RES will be a third party beneficiary of those contracts.
 - b. The CRA has a need to rebid two work scopes under the SCS contract for prevailing wage issues, and then rebid the entire O&M contract when RES and TRC do the other remedial construction contracts. The rebidding effort should also give the CRA good opportunity to try to reduce the ongoing O&M costs. There will be some financial incentives in the Agreement for RES to achieve those savings, further aligning the interests of RES and CRA.
 - 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 the following services. Elements d. through f. of the below tasks will be contracted 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:
 - 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;
 - iii. Building Protections Systems (BPS); and
 - iv. Structural Slabs
- 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
 - b. Pads/structural slabs are delivered to all Vertical Developers
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 liability assumption fee

V. FISCAL IMPACT

At the point the Pre-Development Contract and Development Contracts are completed, 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. Attachment A of the Term Sheet outlines these estimated costs. 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. RES' fee structure is described below.

Liability Assumption Fee

RES will affirmatively assume the regulatory and legal obligations associated with the DTSC documents, the master developer agreements (Macerich MOU, DDA, etc.) and agree to perform those obligations by and on behalf of CRA. RES will indemnify CRA from any claims associated with 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. RES proposes to be paid to perform this work based on the following schedule of fees, applied to actual project costs (the assumed project costs and associated fees are set forth on Attachment A):

- a. A liability assumption fee of 10% of the total cost to complete installation of the Remedial Systems (based currently on the Estimate to Complete) submitted to DTSC in January, 2017 (assume ETC is \$24 million, total fee is \$2.4 million), allocated as follows:
 - i. Half (½) of the liability assumption fee is earned upon contract execution (Initial Payment of \$1,200,000), paid as follows:
 1. 1/2 of Initial Payment released to RES at execution of Predevelopment Agreement (\$600,000)
 2. 1/2 of Initial Payment released to RES upon execution of contracts with TRC, Project Engineer of record, and Civil General Constructor (\$200,000 each for a total of \$600,000)
 - ii. The remaining ½ of the liability assumption fee will be paid in increments of 1/3 each as pads/slabs are delivered to Vertical Developers (\$400,000 each developer).

With respect to Cell 1, the Contract will set an outside date either for "button up" of that cell or for development, and would include a right of first offer in favor of RES. Contract completion will be tied to "final HRA" meaning all Remedial Action Completion Reports

(RACRs) for completion of all remedial systems site-wide, including any potential “button up” of Cell 1.

Project Management / Development Services Fee

- a. A fee of 5% of the current contracts with SCS, MBI and ESA to manage the landfill O&M, initial civil design, and the Specific Plan and CEQA compliance work
- b. A development fee of 5% of the development costs under the contracts with the following subcontractors, paid monthly:
 - i. Remedial Contractor;
 - ii. O&M Contractor - SCS or other environmental engineering firm to be selected after the expiration of the current SCS contract;
 - iii. Project Engineer - Phase II of existing MBI contract (or other civil engineer to be selected) engaged to RES;
 - iv. General Contractor/Civil Constructor - Snyder Langston (or other construction firm to be selected pursuant to a public bid process);
 - v. Others as required to complete the Project
- c. Reasonable out-of-pocket expenses as agreed between CRA and RES.

Minimum Monthly Fee

A “maintenance fee” or some other mechanism to cover carry costs if no work under contracts outlined in Section 3. above is being done (fee to be discussed/agreed upon with CRA).

Cost Reduction Fee

To align interests, RES has been asked to review the current O&M expenses (approximately \$4.0 M per year) and work with DTSC and contractors to reduce those costs. If successful, RES will be paid a percentage of the savings as an incentive.

CRA may need to maintain an agreed-upon minimum balance in either an escrow account or a deposit control account/joint account with RES to provide security for subcontractor payments. RES has agreed to explore a financing arrangement that would allow it to eliminate the need for such an escrow.

VI. EXHIBITS

1. Term Sheet (pgs. 13-19)
2. Attachment A to Term Sheet (pg. 20)

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