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**Title:** CONSIDER A SPECIAL COUNSEL ENGAGEMENT LETTER WITH ORRICK, HERRINGTON & SUTCLIFFE LLP, WITH REGARDS TO THE TRANSACTIONAL AGREEMENTS BETWEEN THE CARSON RECLAMATION AUTHORITY AND THE CITY OF CARSON AND CAM-CARSON LLC FOR THE DEVELOPMENT OF CELL 2 OF THE 157-ACRE PARCEL OWNED BY THE CARSON RECLAMATION AUTHORITY, THE THE FORMER CAL-COMPACT LANDFILL

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**Attachments:** 1. Orrick Exhibit - CC, 2. File Summary

Date	Ver.	Action By	Action	Result
4/3/2018	1	City Council		

**Report to Mayor and City Council**

Tuesday, April 03, 2018

Consent

**SUBJECT:**

**CONSIDER A SPECIAL COUNSEL ENGAGEMENT LETTER WITH ORRICK, HERRINGTON & SUTCLIFFE LLP, WITH REGARDS TO THE TRANSACTIONAL AGREEMENTS BETWEEN THE CARSON RECLAMATION AUTHORITY AND THE CITY OF CARSON AND CAM-CARSON LLC FOR THE DEVELOPMENT OF CELL 2 OF THE 157-ACRE PARCEL OWNED BY THE CARSON RECLAMATION AUTHORITY, THE THE FORMER CAL-COMPACT LANDFILL**

**I. SUMMARY**

The City of Carson ("City") is considering entering into a statutory Development Agreement with CAM-CARSON, LLC, a Delaware limited liability company ("Developer"), an affiliate of The Macerich Company of Santa Monica, California, for the development of Cell 2 of the 157-acre parcel owned by the Carson Reclamation Authority ("Authority"), formerly known as the Cal-Compact Landfill ("Site"), into a high end fashion outlet mall.

Concurrent with the Development Agreement, the Authority is considering entering into: (1) a Cooperation Agreement with the City for the reimbursement of sales taxes to help fund public infrastructure on behalf of the City, and other development costs, in order to make

the Site developable; and (2) a Conveyancing Agreement with Developer for the conveyance of approximately 41 net acres of the surface lot of Cell 2 of the Site.

The effectiveness of the Development Agreement, the Cooperation Agreement and the Conveyancing Agreement (collectively, "Agreements") are contingent one upon the other.

The City and Authority desire to engage the specialized legal services of Orrick, Herrington & Sutcliffe LLP, due to the complexity of these Agreements and their interconnectedness. Under this proposed agreement, Orrick, Herrington & Sutcliffe LLP will be retained directly by the City and Authority, and therefore City and Authority are its clients, and the Developer has the obligation to pay 100% of their fees.

## **II. RECOMMENDATION**

1. APPROVE a Special Counsel Engagement Letter between the City of Carson, the Carson Reclamation Authority and Orrick, Herrington & Sutcliffe LLP, with regards to the transactional agreements between the Carson Reclamation Authority, the City of Carson and CAM-Carson LLC for the development of Cell 2 of the 157-acre parcel owned by the Carson Reclamation Authority, the former CAL-Compact landfill, in a form acceptable to Authority Counsel;
2. Authorize the City Manager to execute all documents related to this agreement, subject to City Attorney approval as to form.

## **III. ALTERNATIVES**

Take no action.

## **IV. BACKGROUND**

### The 157-Acre Property

On May 18, 2015, the Authority acquired approximately 157 gross acres of real property in the City of Carson (the "Property"). The Property is divided into five (5) Cells and is subject to The Boulevards at South Bay Specific Plan, approved on February 8, 2006, and amended on April 5, 2011 (the "Specific Plan"). The Property is a former landfill site, and on October 25, 1995, the California Department of Toxic Substances Control ("DTSC") approved a Remedial Action Plan ("RAP") for portions of the Property, which RAP requires the installation, operation and maintenance of certain remedial systems, including a landfill cap, gas extraction and treatment system, and groundwater collection and treatment system on the Property ("Remedial Systems").

The 157 Acre Site has been vertically subdivided into a surface lot (the "Surface Lot") and a subsurface lot (the "Subsurface Lot"). Cell 2 Site is comprised of approximately 46 acres and is currently shown in Subdivision Map No. 70372 combined with Cell 1. The Surface Lot is currently shown on such subdivision map at an elevation two feet above the level of the proposed trash liner on the Cell 2 Site. Authority shall adjust the horizontal and vertical subdivision lines separating the Developer Property from horizontally and vertically

adjoining lots so as to match the final design of the Project, at Authority's sole cost and as reasonably necessary to match the final Project design. Such adjustments shall (i) move the line separating Cells 1 and 2, (ii) adjust the vertical lot line between the Cell 2 Subsurface Lot and the Cell 2 Surface Lot to the bottom of the Project's foundation slab, and (iii) separate the Embankment from the Cell 2 Surface Lot.

### The Agreements

#### 1. *The Conveyancing Agreement.*

The Carson Reclamation Authority ("Authority") is considering entering into a Conveyancing Agreement with CAM-CARSON, LLC, a Delaware limited liability company ("Developer"), an affiliate of The Macerich Company of Santa Monica, California, for the conveyance of approximately 41 net acres of the surface lot of Cell 2 of the 157-acre parcel owned by the Carson Reclamation Authority, formerly known as the Cal-Compact Landfill ("Site").

Under the terms of the Conveyancing Agreement, the Authority will convey to Developer approximately 41 net acres of the Surface Lot of Cell 2 and certain easement areas, and will retain approximately 5.3 acres lying along the I-405 Freeway and between the freeway and the Cell 2 Surface Lot ("Embankment Lot"). The Authority will also convey certain easement rights to Developer for purposes of construction, operation and use of the Project and Project signage, including an easement in the Embankment Lot for the Developer Pylon Sign.

Concurrent with the Conveyancing Agreement: (1) the Authority is considering entering into a Cooperation Agreement with the City of Carson ("City") for the reimbursement of sales taxes to help fund public infrastructure on behalf of the City, and other development costs, in order to make the Site developable; and (2) the City is considering entering into a statutory Development Agreement with the Developer for the development of the Site into a high end fashion outlet mall.

#### 2. *The Development Agreement.*

Under the terms of the Development Agreement between the City and Developer, Developer would develop the Site into a high-quality, state of the art, fashion outlet retail center of not less than 450,000 GBA square feet (for Phase I only) and up to 711,500 GBA square feet (taking into account Phase I and Phase II, which may be developed separately or concurrently), which may include, at the sole discretion of Developer, sit-down restaurant space of up to 15,000 GBA square feet, a VIP lounge, and the various take-out and on-site food and alcohol service uses permitted by right or with an administrative use permit or conditional use permit (in each case upon the approval by City of such permit) in the Specific Plan, and related signage on the Developer Property pursuant to the Agreement and the Development Plan (the "Project"). The definition of Project in the Agreement includes the preparation of designs for, and improvement of, the Developer Property for purposes of effecting the structures and improvements comprising the Project including, without limitation: design, grading, the construction of infrastructure related to the Project, whether located within or outside the Developer Property; the construction of structures and buildings; construction in connection with leasing of the Project, including, without limitation, installation of tenant improvements; installation of landscaping;

installation of signs, including, without limitation, the Developer Pylon Sign, certain Entry Signs and other signs; and the operation, use and occupancy of, and the right to maintain, repair, or reconstruct, any private building, structure, sign, improvement, leased premises or facility after the construction and completion thereof.

3. *The Cooperation Agreement.*

Because the 157 Acre Site, including the Cell 2 Subsurface Lot, is a contaminated and poorly-compacted landfill subject to the RAP, Developer, City and Authority acknowledge that 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. Authority has a responsibility under the RAP to remediate the 157 Acre Site and has substantial funds to do so. Authority believes that the sales tax revenues to be generated for the City 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 so as to permit such development. The need for the Sales Tax Assistance is based upon the fact that a developer would not proceed with the Project without a reasonable assurance that it can achieve a market rate of return on its costs to build the Project, i.e., net operating income from the Project representing at least the "Required Return." Inability to achieve the Required Return for the Project would produce a financial "Feasibility Gap." Developer has estimated that it will achieve the Required Return only if Authority pays the cost of (i) the Stormwater Work, (ii) the Sub-Foundation Systems, (iii) the Utility Work upon Cell 2, and (iv) the Foundation Systems (the "Site Development Improvements"). Authority does not currently have funds to pay for the Site Development Improvements, and therefore Developer has agreed to make certain advances towards the costs of the Site Development Improvements, to be reimbursed to Developer at a later time pursuant to a negotiated Sales Tax Assistance Payments intended to bridge the financial Feasibility Gap. The Cooperation Agreement between the City and the Authority defines the roles of the three parties in that regard.

The effectiveness of the Conveyancing Agreement, the Development Agreement, and the Cooperation Agreement (collectively, "Agreements") are contingent one upon the other.

The City and Authority desire to engage the consulting services of Orrick, Herrington & Sutcliffe LLP, due to the complexity of these Agreements and their interconnectedness.

**V. FISCAL IMPACT**

None. Under the proposed Special Counsel Engagement Letter, Orrick, Herrington & Sutcliffe LLP is being retained directly by the City and Authority, and therefore are the firm's clients, and Developer is solely responsible for paying 100% of the fees.

**VI. EXHIBITS**

1. Engagement Letter with Orrick, Herrington & Sutcliffe LLP (pgs. 5-15)

Prepared by: John S. Raymond, Assistant City Manager