



Legislation Text

File #: 2023-0339, Version: 1

Report to Carson Reclamation Authority

Monday, May 01, 2023

Consent

SUBJECT:

CONSIDER SECOND AMENDMENT TO OPTION AGREEMENT BETWEEN THE CARSON RECLAMATION AUTHORITY AND CARSON GOOSE OWNER, LLC FOR CELLS 3, 4, AND 5 OF THE FORMER CAL COMPACT LANDFILL, 20400 SOUTH MAIN STREET, CARSON

I. SUMMARY

The proposed Second Amendment would extend the term of the Option Agreement (Agreement) for an additional seven (7) months, to a new expiration date of January 10, 2024. As part of the consideration for the extension to the term under the Option Agreement, the Developer has agreed to pay the amount of \$300,000, which is to be used by the Authority to pay Antieri & Associates Consulting Engineers, Inc. for the designs and planning for the dry-utilities and electrical work necessary to serve the 157 Acre Site (the "Initial Dry-Utility Planning"), as described further below.

II. RECOMMENDATION

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

III. ALTERNATIVES

TAKE another action the Board deems appropriate.

IV. BACKGROUND

The proposed Second Amendment is between the Carson Reclamation Authority ("CRA") and Carson Goose Owner, LLC, a Delaware limited liability company ("Developer"). The

Option Agreement was previously amended in October, 2022, to add an additional six months to the term.

The CRA and Faring Capital, LLC (“Faring”) previously entered into an Option Agreement (“Agreement”) on December 17, 2020. As was allowed under the terms of the Agreement, Faring assigned all its rights and obligations under the Agreement to the Developer, and Developer assumed those rights and obligations pursuant to an Assignment of Option Agreement and Joint Escrow Instructions, dated January 15, 2021, between Faring and Developer (the “Assignment”).

Developer has received all Required Approvals, and the Project Determination Date occurred on June 8, 2022.

However, the Closing Date under the Agreement as set forth in Section 6.2 is expected to be delayed, due to no fault of Developer or Faring; other factors have caused such delay, including, the settlement of the ongoing litigation among RE|Solutions, LLC (“RES”), CAM-Carson, LLC (“CAM”), the City and CRA, and the re-initiation of the Cell 2 Project by CAM and its ongoing Due Diligence period, which has some effect on a number of Closing Conditions for Developer. As such, Developer seeks an extension to the term of the Agreement and the Closing Date, as described below, and as a condition to the extension, Developer shall pay to the CRA an amount of approximately \$300,000, to be used and applied by the Authority to pay Antieri & Associates Consulting Engineers, Inc. for the designs and planning for the dry-utilities and electrical work necessary to serve the 157 Acre Site (the “Initial Dry-Utility Planning”), which is a precondition to the requirements for the Authority to commence construction of the Infrastructure Improvements.

There are some conditions to the payment, such as the Developer’s required sixty percent (60%) contribution payments for the Infrastructure Improvements as set forth in Exhibit K to the Original Option Agreement shall be credited / reduced by the amount of the Second Amendment Payment. Notwithstanding anything to the contrary herein or in the Option Agreement, if the Authority is able to utilize the Measure R/Measure M Metro Bond proceeds for such Initial Dry-Utility Planning, then the Second Amendment Payment may be utilized by the Authority in any manner it desires, so long as it is applied to the 157 Acre Site and the Authority’s costs associated with same (including, without limitation, contractors/consultant fees and costs and legal fees, but not any legal fees associated with the CAM Litigation or negotiations with CAM with respect to Cell 2).

Under the Second Amendment, the “Term” of the Agreement shall now expire effectively thirty (36) months after the Effective Date; however, Developer may request one or more extensions of the Term by written request to the CRA, and so long as Developer is proceeding with due diligence and in good faith with respect to the Project and the requirements to enable the Closing. The CRA’s Executive Director is also able grant such extensions of the Term of up to 360 days cumulatively (provided that any single extension granted by the Executive Director shall not be less than 90 days). Any additional extensions to the Term shall be subject to the approval of the CRA Board, in its reasonable discretion, based on the Developer’s then-current progress and diligent efforts in

processing the Project.

V. FISCAL IMPACT

There is no cost to the CRA for the extension of the Term of the Option Agreement. As consideration for such extension, however, the Developer has agreed to pay \$300,000 toward the cost of the Antieri & Associates Consulting Engineers, Inc. contract for the designs and planning for the dry-utilities and electrical work necessary to serve the 157 Acre Site (the "Initial Dry-Utility Planning"). The contract, currently under the Authority's Master Developer, RE|Solutions, will be collaterally assigned to the Authority when the wind down of the RES contract is complete. The total contract is \$650,000, of which a portion will come from the Developer, a portion assigned to the street development costs, and a portion from the other two vertical developers on the Site.

VI. EXHIBITS

1. Second Amendment to Option Agreement with Carson Goose Owner, LLC. (pgs. 4 - 10)

Prepared by: John S. Raymond, Executive Director