



Legislation Text

File #: 2022-920, Version: 1

Report to Carson Reclamation Authority

Monday, November 07, 2022

Consent

SUBJECT:

CONSIDER AN EXCLUSIVE NEGOTIATING AGREEMENT AND ASSOCIATED DEPOSIT AND REIMBURSEMENT AGREEMENT WITH DISTRICT ESSENTIAL HOUSING, LLC FOR CELL 1 OF THE FORMER CAL-COMPACT LANDFILL, 20400 S. MAIN STREET, FOR THE PURPOSE OF DEVELOPING APPROXIMATELY 1,250 UNITS OF RESIDENTIAL UNITS, PURSUANT TO THE PROVISIONS OF THE SURPLUS LAND ACT

I. SUMMARY

In August 2021 the Carson Reclamation Authority (“CRA” or “Authority”) adopted a resolution declaring Cell 1 of the former Cal Compact Landfill Site (the “Site”) as “surplus” pursuant to the State’s Surplus Land Act. Cell 1 is zoned for residential development above -grade (approved for up to 1,250 units) and the CRA issued a Notice of Availability (“NOA”) pursuant to the Surplus Land Act process with the California Department of Housing and Community Development (“HCD”). Only one offer was received following issuance of the NOA by an affordable housing developer by the November 14, 2021 deadline, Standard Property Company, Inc. (“Standard”). Standard is affiliated with District Essential Housing, LLC (“Developer”), as discussed below, and the Developer was formed for the purpose of acquiring Cell 1 for a proposed residential development on Cell 1, and the parties have negotiated an Exclusive Negotiating Agreement (“ENA”) and a Deposit and Reimbursement Agreement (“Reimbursement Agreement”) to facilitate the transaction, which will culminate in a future Purchase Agreement for Cell 1 between the parties, which will require future approval by the CRA Board.

The ENA sets forth the basic deal points, which will be refined during the period of negotiations and finalized under a future Purchase Agreement.

II. RECOMMENDATION

1. APPROVE the Exclusive Negotiating Agreement and associated Deposit and Reimbursement Agreement with District Essential Housing, LLC.

2. AUTHORIZE the Chair to execute the ENA and Deposit and Reimbursement Agreement and all related documents in a form acceptable to the Authority Counsel.

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III. ALTERNATIVES

TAKE another action the Board deems appropriate.

IV. BACKGROUND

On August 2, 2021, the Authority's Board of Directors approved Resolution No. 21-10-CRJPA pursuant to California Government Code Section 5221(b) (the "Surplus Land Act," Assembly Bill No. 1486, approved on October 9, 2019) to declare the Cell 1 portion of the Site ("Cell 1 Property") as "surplus land." The Authority subsequently issued a Notice of Availability ("NOA") on September 14, 2021 to all interested "housing sponsors" identified on the State Housing & Community Development Department's ("HCD") list of affordable housing providers, as required by California Government Code Section 54222. The NOA triggered a 60-day deadline for interested housing sponsors to respond to the Authority and express an interest in developing housing and affordable housing on the Cell 1 Property. During this 60-day period the Authority received only one proposal of interest to develop and acquire the Cell 1 Property from "Standard Property Company, Inc.," which is a member (directly or indirectly) of Developer. After entering good faith negotiations during the statutory period with Standard Property Company, Inc., the Authority proposes to enter into the ENA with Developer with the goal of transferring ownership of the Cell 1 Property subject to the terms of a future Purchase Agreement as described below.

The Project (as defined below) proposed by the Developer under the ENA must comply with the Surplus Land Act and all regulations, procedures, and guidelines issued by the HCD relating to the Act. The Surplus Land Act specifically requires an entity proposing to use surplus land for affordable housing to agree to make no less than 25 percent of the total number of units developed for Lower Income affordable housing units. Such a commitment shall be memorialized in a recorded covenant and agreement and provided to the HCD along with a summary of the proposed disposition of land. Developer's proposed Project on the Cell 1 Property substantially exceeds this requirement, as described below.

Developer has proposed to build a new affordable residential development on the Cell 1 Property, and the ENA provides for a structure upon which the Developer and Authority shall negotiate for the conveyance of the Cell 1 Property, which encompasses approximately 15 gross acres (the "Project Surface Lot"), in addition to the licensing or granting of easements to Developer of the Subsurface Lot of Cell 1. Developer's proposed project would consist of a large-scale modern housing project consistent with the current zoning of Cell 1 under the Specific Plan, including affordable housing options (the "Project"). The Authority and Developer anticipate that the Project will include approximately 445 Lower Income units (defined as 80% or less than Area Median Income) and 805 Moderate Income units (defined as 120% or less than Area Median Income) (such affordable units, the "Affordable Units").

The term of the ENA is for twelve (12) months (the “Term”). During the Term, Developer (i) will conduct and complete its due diligence with respect to the Cell 1 Property and the Project as described herein, (ii) develop with Authority additional business terms and final details for the transaction, (iii) develop an initial Project schedule in cooperation with the Authority, (iv) produce a Project site plan and elevations, and (v) negotiate a Purchase Agreement (including other necessary agreements for the sale of the Project Surface Lot, the licensing or granting of easements for the Subsurface Lot of Cell 1 or the development of the Project to Developer, and any and all other necessary covenants, easements, DTSC or third party approvals, insurance and documentation) for the Cell 1 Property with Authority.

The Developer continues to update their cost estimates due to inflation in materials and labor and is also updating their financing model. Last fall, they anticipated using tax-exempt bonds for all- or a part of their construction or permanent financing but the tax-exempt bond market has suffered in the rising interest rate environment, making that option much less feasible. Their offer also originally assumed the CRA would be able to provide some funding for remediation assistance (which relied on our own legal and financial ability to issue bonds) but has been modified to shift the remediation cost burden back on the Developer, who will seek State or Federal funding to assist with the remediation costs and the affordability of the low-income units.

The Authority shall cooperate and assist with Developer’s effort to seek and apply for any Federal or State public funding to defray Cell 1 remediation costs and or assist with financing construction of the Project’s Lower Income affordable units, including but not limited to, grant funding and public subsidy programs administered by DTSC and/or HCD and tax credit financing and tax exempt bond financing through the California Tax Credit Allocation Committee (“TCAC”), the California Pollution Control Financing Authority (“CPCFA”), and the California Debt Limit Allocation Committee (“CDLAC”).

During the Term, Developer shall submit and process all required applications for any additional and modified land use entitlements and approvals, which may include Site Plan Review, State Density Bonus Law incentives/concessions and waivers of development standards and approval of a tentative subdivision map to accommodate the development of the Project, at its sole cost and expense, from the City and as well as all other applicable governmental and/or quasi-governmental entities (collectively, “Permits”), except for actual building permits, which will be obtained after Developer has acquired the Project Surface Lot.

The Developer understands that all approvals are subject to the City’s sole and absolute discretion in the exercise of its police powers, consistent with applicable State housing laws such as the Housing Accountability Act and the Density Bonus Law and assumes the risk of not obtaining its Permits. Approval of any Permits shall be a condition precedent to the sale of the Project Surface Lot under the Purchase Agreement which condition shall be for the benefit of Developer. Developer acknowledges and agrees that this Agreement does not constitute a disposition of property by the Authority and Developer acknowledges and agrees that it has not acquired and will not acquire, by virtue of the terms of this Agreement, any legal or equitable interest in real or personal property from Authority. Execution of this Agreement does not constitute “approval” of a “project,” as those terms

are defined in CEQA.

Cell 1 has an approved housing allocation in the District at South Bay Specific Plan, as amended in 2022, and is included as housing in the City's General Plan and Housing Element. However, there will be a need for additional environmental review as to the Project under CEQA. Developer shall have sole responsibility at its sole cost and expense to pursue and obtain any necessary environmental approvals for the Project and all Permits required for the Project pursuant to CEQA. Authority will assist Developer (to the extent necessary) in preparing any environmental documentation and processing any environmental review necessary. Developer shall provide to Authority / City all funds necessary to cover the costs of such environmental review through the Reimbursement Agreement.

V. FISCAL IMPACT

The Authority will receive a good faith deposit ("Deposit") in the amount \$100,000 pursuant to the ENA and shall recover all its legal fees, consultant costs and staff costs associated with the ENA, the Project, and negotiations associated therewith through the Reimbursement Agreement. The Deposit is refundable to the Developer if the parties cannot reach an agreement on the proposed Purchase Agreement.

Furthermore, the ENA provides that the CRA shall receive, at the closing of the transaction under the Purchase Agreement, reimbursement for all of the CRA's carrying costs for the Cell 1 Property, commencing at the time the ENA is executed through and including the date that the closing occurs under the Purchase Agreement; however, if the closing does not occur under the Purchase Agreement, no such payment for carrying costs will be recoverable.

VI. EXHIBITS

1. Exclusive Negotiating Agreement with District Essential Housing, LLC (pgs. 5-22)
2. Deposit and Reimbursement Agreement with District Essential Housing, LLC

(pgs. 23-35)

Prepared by: John S. Raymond, Executive Director