



Legislation Details (With Text)

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Title:	CONSIDER AN EXCLUSIVE RIGHT TO NEGOTIATE WITH GRAPEVINE DEVELOPMENT, LLC, FOR THE DEVELOPMENT OF A HOSPITALITY-ENTERTAINMENT CENTER ON CELL 1 OF A 157-ACRE PARCEL OWNED BY THE CARSON RECLAMATION AUTHORITY, THE FORMER CAL-COMPACT LANDFILL, AND A TIME-LIMITED RIGHT TO PROPOSE ON CELLS 3, 4, AND 5; AND, A DEPOSIT AND REIMBURSEMENT AGREEMENT AMONG THE CITY OF CARSON, THE CARSON RECLAMATION AUTHORITY AND GRAPEVINE DEVELOPMENT, LLC				

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Report to Carson Reclamation Authority

Wednesday, November 07, 2018

Discussion

SUBJECT:

CONSIDER AN EXCLUSIVE RIGHT TO NEGOTIATE WITH GRAPEVINE DEVELOPMENT, LLC, FOR THE DEVELOPMENT OF A HOSPITALITY-ENTERTAINMENT CENTER ON CELL 1 OF A 157-ACRE PARCEL OWNED BY THE CARSON RECLAMATION AUTHORITY, THE FORMER CAL-COMPACT LANDFILL, AND A TIME-LIMITED RIGHT TO PROPOSE ON CELLS 3, 4, AND 5; AND, A DEPOSIT AND REIMBURSEMENT AGREEMENT AMONG THE CITY OF CARSON, THE CARSON RECLAMATION AUTHORITY AND GRAPEVINE DEVELOPMENT, LLC

I. SUMMARY

The Authority is being asked to consider entering into an Exclusive Right to Negotiate Agreement (the "ENA") and a Deposit and Reimbursement Agreement with Grapevine Development, LLC of Sherman Oaks, California ("Grapevine") for the development of a hospitality and regional entertainment center on Cell 1 of the 157-Acre Former Cal Compact Landfill and a time-limited right to propose on Cells 3, 4, and 5. The terms are

described below.

II. RECOMMENDATION

1. APPROVE an Exclusive Negotiating Agreement with Grapevine, LLC
2. APPROVE a Deposit and Reimbursement Agreement Among the City of Carson, the Carson Reclamation Authority and Grapevine Development, LLC
3. AUTHORIZE the Chairman and if necessary the City Manager to execute all documents related to the Agreements in a form acceptable to the Authority Counsel and City Attorney

III. ALTERNATIVES

Take another action the Board deems appropriate.

IV. BACKGROUND

The Authority issued a Request for Proposals (RFP) in October 2017 for the development of the four remaining cells of the Former Cal Compact Landfill Site, other than Cell 2, which was under negotiation with Macerich at the time for a high fashion outlet mall. The review process under the RFP involved several steps, which included a review of the five initial proposals submitted by the various development teams that responded to the RFP and meetings between staff and the development teams. Thereafter, a Council Subcommittee was established, along with a specific review process by which the Authority would follow to select a development team for the Site based on the terms and conditions outlined in the RFP and under a Term Sheet issued by the Authority to the various development teams that had previously responded to the RFP.

In April and May Authority staff conducted preliminary interviews with the proposed Developers, including Hopkins Real Estate Group, Rand Resources LLC, Shopoff Development, and Grapevine. The Council Subcommittee then scheduled a meeting on May 31, 2018 intended to hear presentations from these development teams to review their development proposals, on the condition that each team submit a \$50,000 deposit (Participation Deposit) in order to participate in the meeting and be considered in the Subcommittee's selection process. Despite the invitation extended by the Authority to participate in that meeting, only one development team paid the Participation Deposit. Several of the teams had internal issues within their teams to cause them to miss the payment deadline and the meeting itself.

Grapevine was the only developer team who came forward on May 31 with the Participation Deposit payment. Following Grapevine's presentation, the Subcommittee determined they should be given priority in the selection process. There was a period of about a month where the other developers could make the Participation Deposit and schedule a Subcommittee Meeting, but were required to acknowledge that their proposals were only "backup" proposals to Grapevine's in the event of a failure of the Authority and Grapevine to enter an ENA, and ultimately a Conveyancing Agreement. Certain conditions had to be met before any developer could participate further. None of the proposers selected that option during the first month.

One other proposer, however, an off-shoot of one of the original proposers, did produce a \$50,000 check and submitted a new proposal for consideration. This proposer however did not meet the other conditions.

After the initial month, concerns were also raised about this proposer and the Authority and the council subcommittee ultimately determined that the acceptance of such deposits and continued consultation between staff and the backup development teams may create a cloud over the impartial review of Grapevine's development proposal. In order to assure a fair and untangled process, in early August the Authority returned the one Participation Deposit other than Grapevine's and stated that it would no longer accept any deposits from developers wishing to participate in the selection process until the Subcommittee had fully completed its review and consideration of Grapevine's development proposal and exhausted this entire process to the end.

At the May 31 meeting, Grapevine presented two options for the development of the remaining Cells on the Site: (1) a specific site proposal for Cell 1; and (2) proposals and options for the development of the other remaining Cells if selected to develop all four remaining Cells ("Option 2").

The Subcommittee was interested in both options and decided to recommend that Grapevine be awarded the opportunity to develop a project on all four remaining Cells. Grapevine and the Authority staff have been working diligently towards the goals of a specific project proposal for Option 2 together with a financial pro forma in accordance with the terms of Section 13 of the Term Sheet.. At this juncture, given the completion of Grapevine's concepts on Cell 1, staff recommend the ENA with the limited right for Grapevine to fine tune the design and pro-forma concepts on the remaining cells.

Initial Term

The initial term of the ENA shall commence on the date approved by the Authority, and shall terminate 120 days after (the "Initial Term"). During the Initial Term, Grapevine (i) will finalize its due diligence with respect to the Property and the Project, (ii) develop with the Authority business terms of the transaction, (iii) finalize the project's uses and financial pro forma justifying the transaction, (iv) determine what changes are required to the Specific Plan and EIR, if any, (v) develop the Project schedule in cooperation with the Authority, and (vi) produce a Project's uses, site plan and sample elevations. Prior to the expiration of the Initial Term, Grapevine shall have obtained approval from Authority for:

- (a) Site Plan and Identification of Uses, specifying the conceptual framework to

guide the overall development of the Project and showing location of significant uses; the preliminary design plan for the Project, including design themes to allow evaluation of the architectural design and site layout; building elevations and design themes; and, order and review a preliminary title report.

(b) Conveyance Agreements General Terms, which shall include the following: (i) a specific schedule for development of the Project; (ii) standard use restrictions consistent with the operation of a hotel and sports/entertainment venue; (iii) rights and limitations of Grapevine to assign or transfer its obligations prior to completion of the Project; (iv) provisions ensuring that the Authority retains responsibility for installing and operating the Remedial System; (v) provisions for clearing title; (vi) the agreement by Grapevine to proceed diligently in good faith to perform its obligations and to reimburse Authority for certain of its out of pocket third-party costs of negotiating the transaction; (vii) Grapevine's responsibility to indemnify Authority and City from certain claims against the Project; and (viii) other provisions as identified herein.

(c) Project pro forma, which sets forth the following:

- (i) due to remediation issues and development costs there will be no "purchase price"; consideration will be Grapevine's performance of its obligations under the Conveyance Agreements;
- (ii) the estimated costs and expenses required for the Offsite Improvements, the BPS, the Site Preparation Work, the Sub-Foundation Systems, and Foundation Systems;
- (iii) the estimated costs of developing, constructing, and financing of all Project vertical improvements ("Vertical Improvements") (all of which Grapevine shall have sole responsibility for constructing and paying for);
- (iv) the expected income, valuation, and expected rates of return for the Project, including (a) computation of net operating income ("NOI") with rental revenue, other revenue, and vacancy allowance to derive gross income total operating expense (with itemizing property taxes, management fees, and other expenses), and (b) computation of return on cost by component (with estimated cap rates);
- (v) sources of equity and construction and permanent loan financing (together with evidence of commitments from such financing sources);
- (vi) a twenty five (25) year summary operating projection showing projected gross, effective gross, NOI, and a consolidated cash flow showing all Project components;
- (vii) a preliminary financial analysis demonstrating the costs and benefits to the City regarding all construction, maintenance and operations of all proposed public improvements, including the economic return to City for at least a twenty five (25) year period after completion of the Project, including all taxes and fees, and other economic returns to the City as well as jobs and general community benefits;

- (viii) the expected assessment and/or apportionment of costs, and responsibility for construction, of public improvements, including an estimate of any and all City fees for processing any necessary additional entitlements for the Project;
 - (ix) the estimated costs of any proposed offsite public improvements as allocated between Authority and/or Grapevine;
 - (x) projected need for public assistance in the form of Tax Sharing to make the Project financially feasible; and
 - (xi) any other information reasonably deemed necessary by Authority's financial consultant.
- (d) Terms Regarding Tax Sharing under which Grapevine would receive rebates/refunds of local sales taxes produced by the Project and payable by tenants to the City to facilitate the development and operation of the Project.
- (e) Partners. In addition to the information publicly available regarding Grapevine and its personnel, provide adequate disclosure of their joint venturers, if any, who are participants or principals of the Project, and other relevant information requested by Authority, concerning the above.
- (f) Tenants. Grapevine shall diligently contact potential tenants for the Project and shall keep Authority updated on all contacts and letters of intent or commitment from prospective tenants.
- (g) Schedule. During Initial Term, Grapevine shall work in the following phases: (i) in the first 60 days, develop and submit a preliminary Site Plan and description of uses, a preliminary pro forma together with a projection of tax revenues generated by the Project, a preliminary description of necessary changes to the Specific Plan and the EIR, an identification of its proposed partners and sources of financing, and any proposed changes to the Major Deal Terms; (ii) in the subsequent 30 days, Grapevine and Authority staff shall meet, review and revise the preliminary Site Plan and preliminary pro forma, proposed changes to the Specific Plan and EIR, and the Major Deal Terms; and (iii) in the last 30 days, present the final Site Plan and description of uses along with the detailed project pro forma, and the parties will finalize the Major Deal Terms.

Extended Term

At the end of the Initial Term and upon Authority's approval of completion of the tasks set forth above, and Grapevine's compliance with all Preconditions, the term shall be extended upon Grapevine's exercise of its Right to Extend for a period of nine (9) months for the following purposes: (i) to obtain from the City any required additional entitlements for the Project or modifications to the Specific Plan, any required additional CEQA processing or modifications to the EIR, and negotiate and enter into a development agreement for the development of the Project ("Development Agreement"), and (ii) to negotiate with the Authority the Conveyance Agreements, Tax Sharing terms and other necessary agreements for the transfer and development of the Project Surface Lot to Grapevine (the

“Extended Term”, or, together with the Initial Term, the “Term”).

Option to Develop Remainder Cells

During the Initial Term, Grapevine shall, in addition to the Cell 1 Site Plan, have the exclusive option to prepare a plan to develop one or more or all of the Remainder Cells. The elements of the plan (“Remainder Cell Plan”) shall include: (i) a site plan; (ii) a designation of proposed uses; (iii) a description of financial partners and financing sources; (iv) a description of proposed tenants; (v) an outline necessary Specific Plan amendments or revisions or amendments to the EIR; (vi) a description of public revenues generated from the Remainder Cell Plan project; (vii) a financial pro forma and needed tax assistance; (viii) a description of public benefits; and (ix) a development schedule. It is intended that any development project for the Remainder Cells accomplish the following objectives: (a) procure sufficient tax revenue to finance the project and make a substantial contribution to the City’s general fund, (b) create an iconic regional attraction drawing visitors to the City, and (c) create a core town center for the community to foster City pride and identity. During the Initial Term, it is the intent of the parties that Authority shall not approve any development proposal from any other third party Developer.

At the end of the Initial Term, however, Authority will evaluate Grapevine’s Remainder Cell Plan against the Authority’s objectives, whether it is feasible and practical, and the extent to which tax assistance will be required. Generally, the Authority will apply the same criteria to its evaluation as it will for the Cell 1 Project.

In the sole and absolute discretion of Authority, Authority may (i) determine to negotiate an exclusive right to negotiate agreement (“ENA”) with Grapevine for one or more Remainder Cells, or (ii) determine to negotiate with a different Developer. The parties acknowledge and agree that CAM Carson, LLC has a Right of First Negotiation following the conclusion of negotiations with Grapevine for any Remainder Cells. Authority shall have no liability to Grapevine for choosing not to enter an ENA with Grapevine for the Remainder Cell(s).

Pursuant to the ENA, Grapevine has an option to submit a plan for the development of one or more of the additional Remainder Cells, and in the event the Authority approves of the Grapevine’s proposed plans for one or more Remainder Cells and the Parties execute an exclusive negotiation agreement for such development proposal, Grapevine shall be required to deposit the amount of \$2,000,000 with the City as a good faith performance deposit, which deposit shall be governed by a separate deposit/reimbursement agreement or an amendment to this Agreement.

Reimbursements, Deposits, and Carrying Costs

Grapevine has paid City (i) a nonrefundable deposit in the amount of \$50,000 (the “Participation Deposit”), and (ii) a nonrefundable deposit in the amount of \$200,000 to City (the “ENA Deposit”). Following the execution of this Agreement, Grapevine shall pay a deposit in the amount of \$2,000,000 to City, which shall be refundable to Grapevine pursuant to the terms and conditions set forth in the ENA and under the Reimbursement Agreement described below.

Additionally, the Authority has and continues to incur certain carrying costs to maintain the 157 Acre Property (collectively, “Carry Costs”). Grapevine has agreed to pay for 100

percent of the Carry Costs incurred by the Authority for the Cell 1 portion of the 157 Acre Property; such reimbursement will commence as of the date that the City Council/Authority Board approves the ENA and Reimbursement Agreement. Among other things, these costs include maintaining and operating the Remedial Systems installed on the Property and are approximately \$22,500 per month for Cell 1.

Reimbursement Agreement

All deposits, payments, and reimbursements of City and Authority costs and contributions and advances to be made by Grapevine, including, without limitation, the Participation Deposit, ENA Deposit, Performance Deposit, and the Remainder Cell Deposit, are set forth in detail in a reimbursement agreement among the Authority, City and Grapevine (the "Reimbursement Agreement") and are governed by the terms thereof, except that the terms regarding the Remainder Cell Deposit shall be specified pursuant to an amendment to the Reimbursement Agreement or under an amended and restated reimbursement agreement or separate reimbursement agreement, as agreed to by the parties.

The Deposits shall be used to pay for actual costs incurred by the City Parties on or after September 7, 2018 (the day following the City Council's direction to the Authority to negotiate and enter into the ENA and Reimbursement Agreement with Grapevine, in connection with: City or Authority staff, employee, legal, consultant, or other third party costs in reviewing, preparing, negotiating, processing, and obtaining approval for the Project, the ENA, this Agreement, and all other agreements related to the Project or performing its obligations under the ENA, and actions taken by the City Parties in connection with the planning and development of the Project; preparing, negotiating, reviewing and processing entitlements, and/or permits required for the Project (including, without limitation preparing and/or reviewing plans, studies, permits, conditions, site plans, general plan, specific plan, or zoning entitlements, and any further agreements as may be required by the Project, such as any amendments to the District at South Bay Specific Plan, and all CEQA Processing; costs related to litigation against the Project, including defense of any legal or administrative action challenging any entitlements or approvals for the Project; preparation and review of studies, pro formas, reports and design services, and agreements related to development of any Project and Project-related infrastructure; and, renegotiating, obtaining, or changing any of the insurance programs with respect to the Property (if required for the Project), including, Commercial General Liability, OCIP, OPPI, Builder's Risk, contractor's pollution liability and owner's professional liability coverage, comprehensive pollution legal liability coverage, earthquake and related coverages in connection with the Project.

In the event the Conveyance Agreements are approved by the City Parties, all unexpended portions of the Performance Deposit shall be applied to the monetary contributions required to be paid by Grapevine to Authority under the Conveyancing Agreements, including, without limitation, certain Offsite Improvements, the Remedial Systems, the BPS, the Site Preparation Work, and the Sub-Foundation Systems and Foundation Systems, all as more particularly described in the ENA. There are provisions where Grapevine would be entitled to receive unexpended portions of their deposits in the event the Authority chooses not to move forward on the Conveyancing Agreements and they have otherwise complied with the terms of the Agreements.

V. FISCAL IMPACT

The City has already received \$250,000 in deposits. In addition, the Authority and City will receive a \$2,000,000 deposit from Grapevine to be used for the costs described above. Finally, Grapevine will commence paying its \$22,500 pro rata costs toward to Site Carrying Costs.

VI. EXHIBITS

1. Exclusive Negotiating Agreement with Grapevine, LLC
2. Deposit and Reimbursement Agreement Among the City of Carson, the Carson Reclamation Authority and Grapevine Development, LLC

Prepared by: John S. Raymond, Executive Director