



Legislation Text

File #: 2016-955, Version: 1

Report to Mayor and City Council

Tuesday, September 06, 2016

Discussion

SUBJECT:

CONSIDERATION OF APPROVAL OF A SETTLEMENT AGREEMENT WITH CARDINAL CAVALRY LLC; CARSON HOLDINGS LLC; CARSON RECLAMATION AUTHORITY; SUCCESSOR AGENCY TO THE CARSON REDEVELOPMENT AGENCY; AND CARSON PUBLIC FINANCING AUTHORITY

I. SUMMARY

The City Council is asked to consider a Proposed Settlement Agreement with Cardinal Cavalry, LLC ("Cardinal"), Carson Holdings, LLC ("Carson Holdings"), the Carson Reclamation Authority ("Authority"), the Successor Agency to the Carson Redevelopment Agency ("Successor Agency"), and the Carson Public Financing Authority ("PFA").

The settlement brings to a close the consideration of the NFL stadium in Carson and guarantees that the Chargers and Raiders paid for all City, Authority and Successor Agency costs associated with their project. A payment of \$1,823,953 will result in no costs to the City, the Successor Agency and the Authority and fully reimburses the City for all staff, City Attorney and other costs related to the project.

- The settlement results in \$250,000 of excess funds to be devoted to future planning of the site.
- The settlement also pays \$5,179,504 to the Authority which covers all of the costs incurred by the Authority during the stadium application period, including six months after the NFL decision was made to locate in Inglewood.
- The City, Authority, and Successor Agency agree to allow Carson Holdings to sell its interest in the 11-Acre Property to a prospective buyer.

The City, Authority, and Successor Agency also agree to cooperate with the prospective buyer and Carson Holdings in the successful development of the site. The Authority agrees to deliver to Carson Holdings a full and unconditional reconveyance of the Deed of Trust to Carson Holdings that the Authority was holding as security. The Authority will retain the 157

-acre Property.

Carson Holdings has been a very generous partner with the City. Throughout the proposed NFL Stadium project, Carson Holdings has consistently covered all of the costs relating to the holding and maintaining the 157-acre Property and the negotiations regarding a National Football League Stadium. Carson Holdings consistently replenished their planning, legal and carry cost deposit accounts such that the City and the Authority were kept financially whole.

The funding provided by Carson Holdings permitted the City to move ahead with planning on the site after the NFL's decision. The City recently entered into an Exclusive Negotiation Agreement with the Maserich Company to develop a high fashion outlet mall on a large portion of the site. Funding from Carson Holdings also allowed the Authority to continue to install the environmental improvements on the 157-acre site, while Carson Holdings funded the operational costs of the project.

II. RECOMMENDATION

It is recommended that the City, the Successor Agency and the Public Finance Authority take the following action:

1. Approve the Proposed Settlement Agreement by and between the City, Cardinal Cavalry, LLC; Carson Holdings, LLC; the Carson Reclamation Authority; the Successor Agency to the Carson Redevelopment Agency ("Successor Agency"); and the Carson Public Financing Authority ("Authority").
2. The Carson Reclamation Authority is required to take a separate action to approve the proposed Settlement Agreement.

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III. ALTERNATIVES

TAKE another action the City Council deems appropriate consistent with the requirements of law.

IV. BACKGROUND

On May 18, 2015, the Carson Reclamation Authority ("Authority"), Successor Agency and Carson Marketplace, LLC ("CM") entered into a "Settlement, Release and Indemnity Agreement" ("SRIA"). The Authority agreed to acquire and acquired the former Carson Marketplace ("157-Acre Property").

In March 2015, the City and Carson Holdings entered into a "Deposit and Reimbursement Agreement" ("Reimbursement Agreement") in which Carson Holdings was required to reimburse the City for its costs related to the review, processing, preparation and approval

of entitlements for the proposed development of 11 acres of land located in the City of Carson ("11-Acre Property") and the proposed development and use of the surface lot of the 157-Acre Property.

The Spanos family then purchased the 11-Acre Property across Del Amo Blvd to hold for parking for the stadium project. On May 18, 2015, CM made and entered a "Declaration of Covenants, Conditions and Restrictions" ("CC&Rs") that sets forth covenants, conditions and restrictions on the 11-Acre Property, and on May 18, 2015 Carson Holdings acquired the 11-Acre Property from CM.

On May 18, 2015, Cardinal Cavalry LLC ("Cardinal") and Authority entered into a "Designation, Transfer and Option Agreement" ("DTO"). Cardinal designated the Authority as its designee to take title to the 157-Acre Property and assume the agreements set forth in the SRIA. Cardinal agreed to pay the Authority "Carry Costs" as defined in the DTO. As security for the payment of the Carry Costs, Carson Holdings recorded a deed of trust against the 11-Acre Property for the benefit of Authority in the amount of \$ 7.5 million ("Deed of Trust"); and the Authority granted to Cardinal an exclusive option to lease the surface lot of the 157-Acre Property ("Option") solely for development of an NFL Stadium and other permitted uses.

On May 18, 2015, the Authority, Carson Holdings and Tetra Tech, Inc. entered into a letter agreement ("Tetra Tech Letter Agreement"). Carson Holdings agreed to pay certain Tetra Tech costs related to the 157-Acre Property from April 1, 2015 to May 18, 2015, the Authority agreed to pay certain Tetra Tech costs related to the 157-Acre Property after May 18, 2015 and to deposit certain funds in the Design and Construction Environmental Assurance Agreement Trust Account. On October 5 and October 19, 2015, Carson Holdings paid to Tetra Tech the required costs as provided for by the Tetra Tech Letter Agreement;

On May 18, 2015, CM and Carson Holdings entered into a "Partial Assignment and Assumption Agreement." CM assigned and Carson Holdings assumed the rights, title, interests, burdens and obligations of CM pursuant to a Development Agreement by and between City and CM, dated March 21, 2006 ("Development Agreement"), as amended, to the extent, but only to the extent, the Development Agreement and the assumed rights, title, interests, burdens and obligations applied to the 11-Acre Property as set forth in the Partial Assignment and Assumption Agreement.

Pursuant to the OPA, the Carson RDA undertook an obligation to provide a total of \$120 million of financial assistance for remediation work on the 157-Acre Property and development of certain public improvements, and pursuant to the obligation, \$12.165 million in Series 2009 Bonds were issued on a tax exempt basis by the Carson PFA ("2009 Carson PFA Bonds"). Pursuant to the OPA, the Carson RDA also issued \$22.810 million in Project Area No. 1 Tax Allocation Bonds, Series 2009A on a tax-exempt basis (the "2009 Carson RDA Bonds");

The 2009 Carson PFA Bonds are payable from, and secured by, payments made by Carson RDA under an Installment Payment Contract ("Installment Payment Contract") between the City, the Carson RDA and the Carson PFA, and lease revenue paid by City. If

the Carson RDA's payments are insufficient; under the Installment Payment Contract, the Carson RDA agreed to pay the City an amount equal to the interest rate savings that resulted from Carson PFA's issuance of bonds ("Additional Payments").

In 2015, pursuant to the OPA, the Successor Agency provided an additional \$50.5 million in financial assistance to the remediation of the 157-Acre Property. Pursuant to the OPA and SRIA, on May 18, 2015 the Successor Agency issued the Series 2015A Tax Allocation Bonds and on August 20, 2015 the Successor Agency issued the Series 2015B Tax Allocation Bonds as a publicly offered refunding bond issue for the Series 2015A bonds (collectively, "2015 Bonds"). In addition, in 2016, the Carson PFA sought to refinance the 2009 Carson PFA Bonds and 2009 Carson RDA Bonds on a taxable basis; however, the California Department of Finance ("DOF") rejected the refinancing of the Installment Payment Contract.

On January 21, 2016, Cardinal issued a Determination Notice pursuant to the DTO, notifying Authority that in light of the action taken by the National Football League with respect to the proposed development of a NFL football stadium in Carson, Cardinal elected not to proceed with the development of an NFL Stadium in Carson and relinquished their option.

On March 4, 2016, Carson Holdings transmitted a notice of termination of the Reimbursement Agreement to the City.

Throughout this time period, a dispute arose between the DOF and the City, Successor Agency and the Carson PFA concerning the 2009 Carson PFA Bonds and the denial by DOF of the enforceability of certain obligations relating to the 2009 Carson PFA Bonds, including the enforceability of the Installment Payment Contract and payment of the Additional Payments.

On or about May 27, 2016, City, Successor Agency, and the Carson PFA filed a Petition for Writ of Mandate and Complaint for Declaratory Relief and Injunctive Relief entitled *City of Carson; et al. v. Cohen; et al.*, Sacramento County Superior Court Case No. 34 2016 80002359, against the DOF and other parties, challenging DOF's denial of the enforceability of the Installment Payment Contract and the payment of the Additional Payments ("Litigation").

The City, Successor Agency, and the Carson PFA entered into a settlement agreement on August 4, 2016 with DOF whereby the parties to the Litigation agreed to settle all outstanding claims related to the issues raised in the Litigation. Carson Holdings in turn agreed to pay the entire amount of making the City whole as a result of this settlement with DOF which was calculated to present value at \$1.4 Million.

Throughout this entire process, Carson Holdings has fully cooperated with the City in all respects and has made the City and the Authority financially whole. The City has received reimbursements for all costs, including City Attorney fees over this entire time period.

Analysis

All pending matters, including the lawsuits mentioned above, have now successfully

concluded. The City Council, Successor Agency and PFA is asked to consider and approve a Proposed Settlement Agreement to be entered into between the City, Cardinal, Carson Holdings, LLC ("Carson Holdings"), the Authority, the Successor Agency, and the Carson PFA ("Proposed Settlement Agreement"). The agreement would terminate the City's partnership with these entities. Under the Proposed Settlement Agreement, as full and final settlement, Carson Holdings will be required to:

1. Pay the City \$1,823,952.00 for final accounting of the Reimbursement Agreement and the DOF settlement.
2. Pay the Authority \$5,179,504.00 for the carry-cost of the 157 acre property.

As a term of the Settlement Agreement, the City, Authority, and Successor Agency agree to allow Carson Holdings to sell its interest in the 11-Acre Property to a prospective buyer. The City, Authority, and Successor Agency agree to cooperate with the prospective buyer and Carson Holdings in that transaction. The Authority also agrees to deliver to Carson Holdings a full and unconditional reconveyance of the Deed of Trust to Carson Holdings. The City and Authority would retain the 157-acre Property.

Finally, all parties agree to release all claims that each may have against the other in relation to the above-mentioned agreements.

In addition to the above, Carson Holdings provided the City with an additional \$250,000 for the any purpose, including concurrently exploring options for the property in case the NFL Stadium proposal was unsuccessful.

1. V. FISCAL IMPACT

There is no fiscal impact to the City, the Successor Agency, the PFA or the Carson Reclamation Authority.

VI. EXHIBITS

1. Settlement Agreement (Pgs. 6-17)

Prepared by: City Attorney's Office