



# CITY OF CARSON

## Legislation Text

File #: 2017-040, Version: 1

### Report to Mayor and City Council

Tuesday, January 24, 2017

Consent

#### **SUBJECT:**

**ACTING AS THE BOARD OF THE COMMUNITY FACILITIES DISTRICT NO. 2012-1, PLEDGE COMMUNITY FACILITIES DISTRICT 2012-1 REVENUES TOWARD THE DEPARTMENT OF TOXIC SUBSTANCES CONTROL'S FINANCIAL ASSURANCE REQUIREMENTS FOR THE 157-ACRE FORMER CAL-COMPACT LANDFILL, IN THE AMOUNT OF \$2,323,750 PER YEAR AT BUILD OUT OVER THE LIFE OF THE DISTRICT PURSUANT TO TITLE 27, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, SUBDIVISION 1, CHAPTER 6.**

#### **I. SUMMARY**

As part of the current approval of the Carson Reclamation Authority's Financial Assurance package with the DTSC, necessary to obtain approval of the Tetra Tech termination, the dissolution of the Remediation Trust and the AIG EPP policy, a pledge of future CFD revenues must be made by the CFD's governing body, which is the City Council. Such revenues will supplement the revenues received as part of the dissolution and commutation and ensure the ongoing operation of the remedial systems. In this case, the City Council, acting solely as the governing board for Carson Community Facilities District 2012-1, is asked to pledge \$2,323,750 per year in CFD revenues pursuant to Title 27, California Code of Regulations, Division 2, Subdivision 1, Chapter 6. This pledge would be over the life of the CFD toward the maintenance of the project's remedial systems. Such a pledge counts toward the CRA's Financial Assurance obligations toward ongoing operation and maintenance.

#### **II. RECOMMENDATION**

ACTING AS THE BOARD OF THE COMMUNITY FACILITIES DISTRICT NO. 2012-1, APPROVE the pledge of CFD revenues in the amount of \$2,323,750 per year in CFD revenues pursuant to Title 27, California Code of Regulations, Division 2, Subdivision 1, Chapter 6 over the life of the CFD, toward the operation and maintenance of the remedial systems at the former Cal-Compact landfill.

#### **III. ALTERNATIVES**

TAKE another action the CFD Board deems appropriate and consistent with the requirements of law.

#### **IV. BACKGROUND**

On November 14, 2016, Tetra Tech and the Carson Reclamation Authority (“CRA”) executed a Termination and Release Agreement (“Termination Agreement”), which Termination Agreement would terminate two guaranteed fixed-price remediation agreements entered into by the previous owner, Carson Marketplace: (i) the Fixed Price Design and Construction Environmental Assurance Agreement, dated December 31, 2007, as amended (the “D&C EAA”); and (ii) the Fixed Price Operation and Maintenance Environmental Assurance Agreement dated December 31, 2007, as amended (the “O&M EAA”) (together, the “Remediation Agreements”).

On April 13, 2009, CM, as Grantor, Tetra Tech, as Beneficiary, and Wells Fargo Bank, N.A., as Trustee, executed that certain Carson Marketplace Design and Construction EAA Trust Agreement, as amended, and deposited approximately \$79,347,714 in a trust account (the “Remediation Trust”) to support and fund certain remediation activities associated with the Site under the D&C EAA Agreement and the Regulatory Documents.

DTSC is a third-party beneficiary of the Trust Agreement and has certain audit and “clawback” rights with respect to payment from the Trust.

The CRA assumed Carson Marketplace’s position in the Trust through the Second Amendment to Carson Marketplace Design and Construction EAA Trust Agreement dated May 18, 2015 (“Second Amendment”) pursuant to which all of Carson Marketplace’s right, title and interest in and to the Trust Agreement and Trust were assigned and transferred to CRA (collectively the Original Trust Agreement, the First Amendment and the Second Amendment are sometimes referred to herein as the “Trust Agreement”).

Therefore, in order to further the purposes of the Termination Agreement and to utilize the funds in the Remediation Trust for their intended purpose, CRA and Tetra Tech, with the consent of DTSC, have elected to terminate the Remediation Trust and to have CRA establish an enterprise fund (“Enterprise Fund”) with the proceeds of the Remediation Trust in substantial conformance with Sections 22228 and 22241 of Public Resources Code, Sections 43500-43610.1 and sections of Title 27, California Code of Regulations (the “Regulations”).

Concurrently with the termination of the Remediation Agreements, CRA shall take all steps necessary to terminate the Remediation Trust. DTSC and Tetra Tech, as the beneficiary of the Remediation Trust, have consented to such termination concurrent with the termination of the Remediation Agreements.

Upon Termination, Tetra Tech and CRA shall, subject to the consent of DTSC and the Trustee, terminate the Trust Agreement and Tetra Tech shall transfer all of the assets and proceeds of the former Trust to CRA to be held and maintained by CRA as an Enterprise Fund pursuant to the EF Administration Agreement.

In order to establish and provide for the proper administration of the Enterprise Fund, CRA and DTSC shall also enter into an Enterprise Fund Administration Agreement (the "EF Administration Agreement"). However, part of the process for DTSC to approve the dissolution of the Trust as well as the commutation of the AIG EPP policy and the return of a portion of the funds to the CRA, was for the CRA to enter the EF Administration Agreement as well as demonstrate an ongoing flow of funds from the development to ensure the continued operation and maintenance of the remedial systems once they are installed and the Development Project completed.

In 2012, the City of Carson created two Community Facilities Districts ("CFDs") on the site. The first, CFD 2012-1, was created in order to collect revenue from the developers/property owners to fund the future maintenance of the remedial systems. The second was established to assess property owners for a share of the public infrastructure (e.g. streets) and allowed for a bond issue as a way of reimbursing the Master Developer for its costs in constructing such infrastructure.

No CFD payments have been received as no development has occurred. Such assessments will be placed on the tax rolls once individual portions of the project (called cells) are developed.

As part of the current approval of the CRA's Financial Assurance package with the DTSC, a pledge of future CFD revenues must be made by the CFD's governing body, which is the City Council. In this case, the City Council, acting solely as the governing board for Carson Community Facilities District 2012-1, pledges \$2,323,750 per year in CFD revenues over the life of the CFD toward the maintenance of the project's remedial systems. Such a pledge counts toward the CRA's Financial Assurance obligations toward ongoing operation and maintenance.

This action would allow Staff to complete the CalRecycle 114 (02/2010) Pledge of Revenue Requirements, as specified in Title 27, California Code of Regulations, Division 2, Subdivision 1, Chapter 6. It shall contain the original signature of the owner or operator of the solid waste landfill (the Chairman of the CRA). A blank copy of the form is attached as reference.

The owner of the parcel is the CRA. However, the "Operator" is defined as "(t)he person(s) to whom the approval to operate the facility is granted, and is responsible for the overall operation of the facility including but not limited to, complying with all applicable federal, state, and local requirements, and the design, construction, and physical operation of the operating area, and control the activities at a facility."

Over the life of the project, post-development, this entity is the CFD and not the CRA. Therefore, the Pledge of Revenue, which specifies covered costs and enters amount of annual pledged revenue from Pledge of Revenue Agreement, is approved by the CFD Board.

## **V. FISCAL IMPACT**

The \$2,323,750 is future revenue, at build-out, from the CFD and is not General Fund

revenue.

The pledge is not for additional revenue beyond the anticipated revenue for the CFD, nor are the uses for which the revenue is pledged beyond the scope of the CFD, as established.

## **VI. EXHIBITS**

1. RESOLUTION NO. 17-01-CFD 2012-1 (pgs. 5-6)
2. CalRecycle 114 - Pledge of Revenue Form (Blank) (pgs. 7-9)

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