Report to Mayor and City Council

Tuesday, May 02, 2017

Discussion

SUBJECT:

RECEIVE AND FILE A MEMORANDUM OF UNDERSTANDING AND CONSIDER AN AMENDMENT TO AN EXCLUSIVE RIGHT TO NEGOTIATE WITH CAM-CARSON, LLC, A DELAWARE LIMITED LIABILITY CORPORATION AND AN AFFILIATED ENTITY OF MACERICH, FOR THE DEVELOPMENT OF A FASHION OUTLET RETAIL CENTER ON CELL 2 OF A 157-ACRE PARCEL OWNED BY THE CARSON RECLAMATION AUTHORITY, THE FORMER CAL-COMPACT LANDFILL (CITY COUNCIL)

I. SUMMARY

The City Council is being asked to consider amending an Exclusive Right to Negotiate Agreement (the “ENA”) by and between the Carson Reclamation Authority (“Authority”), the City of Carson, CAM-CARSON, LLC, a Delaware limited liability company ("Developer”), an affiliate of The Macerich Company of Santa Monica, California and receive and file a Memorandum of Understanding (the “MOU”) by and between the Authority and the Developer for the development of a high end fashion outlet mall on a portion of the property.

Outline of Business Terms

The terms of the amended ENA are to reflect additional time in the project schedule for the Project to receive CEQA approval and to make other modifications to the agreement. The terms of the MOU, approved by the Carson Reclamation Authority are, broadly:

- The goal of the parties is to realize a grand opening in September 2020.
- Upon execution of the Reimbursement Agreement and ENA in 2016, Developer deposited $1,000,000 for land use entitlement consultant costs. The Reimbursement Agreement remains in effect and also requires paying for 50% of the Authority’s holding costs for Cell 2, approximately $63,000 per month.
- Upon execution of the MOU, Developer will advance to the City $4,000,000 as a deposit and a guarantee that Developer will perform under the MOU. Half of the Deposit is nonrefundable. Also, in the event of a failure to complete the project, the

Developer shall pay an additional $11,000,000 as consideration for lost opportunity.

- Developer will indemnify the Authority against any loss of the Authority's $5.6 million CALReUSE grant to the extent such loss results from Developer's failure to diligently pursue the Project.

- Working on its own or through its Horizontal Master Developer, the Authority will undertake all of the work on the site that retains environmental liability.

- Authority will construct the Onsite and Offsite Improvements such as all utilities, storm drains, curb, gutter, base course and final paving for public streets, sidewalks, street landscaping, signage and street lighting.

- Developer will provide $10 million in funds as a loan to pay for such Onsite and Offsite improvements, which shall be repaid with Sales Tax Assistance, (the "Infrastructure Cost Advance").

- Authority shall install foundation piles for buildings and other structures, pile caps, grade beams, utility shelves, pits, vaults, retaining walls, the vapor barrier system, under-slab utilities, at Developer's expense, which shall be repaid with Sales Tax Assistance.

- Authority shall construct the Structural Slab at Developer's expense.

- Developer shall undertake and pay for all vertical construction of the Project from top of Structural Slab.

- Authority shall process all approvals by DTSC, including a Phased Development Plan and other DTSC regulatory approvals.

- Authority shall oversee site-wide civil engineering, including the revised Tentative Tract Map, infrastructure plans, and Master Grading Plan.

- Authority shall undertake the revision of the EIR and Specific Plan, funded by Developer through the Reimbursement Agreement.

- Authority shall install Remedial Systems to be owned, constructed, operated and maintained by the Authority.

- Authority shall construct the Building Protection System, which includes below-ground and above-ground improvements, such as venting systems and gas monitoring systems, up to a cost cap.

- Authority shall retain ownership of the 405 Freeway Embankment and shall grant easements to Developer and Remainder Developers to erect and maintain freeway pylon signs and monument signs.

- Developer shall participate in the Authority's Insurance Program described in Exhibit "H" of the MOU.

- In consideration of the high cost of development, Authority will sell the Cell 2 Surface Lot to Developer for $1.00, free and clear of encumbrances other than the CFD and the effectiveness of the environmental covenants.

- To offset Contamination Development Costs in order to make development of the Project feasible, the Authority would rebate up to the sum of the Actual Contamination Development Cost and Infrastructure Cost Advance; such costs would be considered a loan from the Developer to the Authority, repayable from 50% of the 1% sales tax share on taxes paid to City from the Project.

- Actual Contamination Development Cost shall only be reimbursed to the extent such costs cause the Project not to produce a Required Return, and cause a Project Feasibility Gap. This will be determined as of a date selected by the Authority not more than 60 months after the grand opening of the Project.

II. RECOMMENDATION

TAKE the following actions:

1. RECEIVE AND FILE a Memorandum of Understanding by and between the Carson Reclamation Authority and CAM-CARSON, LLC, a Delaware limited liability company, an affiliate of The Macerich Company of Santa Monica, California;
2. APPROVE Amendment No. 1 to the Exclusive Right to Negotiate ("ENA") by and between the Authority, the City of Carson and CAM-CARSON, LLC, a Delaware limited liability company, an affiliate of The Macerich Company of Santa Monica, California; and
3. AUTHORIZE Mayor to execute Agreement in a form acceptable to the City Attorney.

III. ALTERNATIVES

TAKE another action the City Council deems appropriate.

IV. BACKGROUND

The City Council is being asked to consider amending an Exclusive Right to Negotiate Agreement (the "ENA") by and between the Carson Reclamation Authority ("Authority"), the City of Carson, CAM-CARSON, LLC, a Delaware limited liability company ("Developer"), an affiliate of The Macerich Company of Santa Monica, California and receive and file a Memorandum of Understanding (the "MOU") by and between the Authority and the Developer for the development of a high end fashion outlet mall on a portion of the property. The ENA is being presented for approval in a form acceptable to the Authority Counsel as the Developer's attorneys are reviewing language in two sections.

The 157-Acre Property

On May 18, 2015, the Authority acquired approximately 157 gross acres of real property in the City of Carson, as shown on the Site Map attached hereto as Exhibit "A" of the Agreement (the "Property"). The Property is divided into five (5) Cells as shown on Exhibit

"A" and is subject to The Boulevards at South Bay Specific Plan, approved on February 8, 2006, and amended on April 5, 2011 (the "Specific Plan"). The Property is a former landfill site, and on October 25, 1995, the California Department of Toxic Substances Control ("DTSC") approved a Remedial Action Plan ("RAP") for portions of the Property, which RAP requires the installation, operation and maintenance of certain remedial systems, including a landfill cap, gas extraction and treatment system, and groundwater collection and treatment system on the Property ("Remedial Systems").

The Property has been the subject of a preliminary subdivision map to subdivide it into a surface lot (the "Surface Lot") and a subsurface lot (the "Subsurface Lot"), which lots are referenced on Exhibit "B" of the Agreement as Parcels 1 (Subsurface Lot) and 2 (Surface Lot) of Parcel Map No. 70372. The Authority entered into the ENA with the Developer for the conveyance of the Surface Lot only of Cell 2, which is approximately 46.33 gross acres (the "Cell 2 Site") and the development thereon by Developer of a first-class regional fashion outlet shopping center.

Summary of Progress

Since July 7, 2016, when the Authority, City and Developer entered an ENA to negotiate a purchase agreement and a long-term development agreement for the factory outlet mall on Cell 2 of the former Cal-Compact Landfill Site, the focus has been on negotiating all of the business points in this MOU, while the design and entitlement work continues on the Project. Some of the other Project-related milestones during this period included:

1. On August 25, 2016, the Authority received seven (7) proposals from "master developers" for the remaining cells (i.e., a developer or developers for all areas other than Cell 2, or the "Remainder Developers"). A developer for Cells 3, 4, and 5 was recommended to the City Council in January, 2017, the Vestar Company, with a proposal for a combined power center/entertainment center. Cell 1 is still under consideration by a number of developers with concepts such as residential, mixed use, entertainment, or big box retail. Authority shall cooperate with Developer to assure that the development by Remainder Developers harmonize with and contribute to the success of the Project.

2. One master developer proposer, RE|Solutions ("RES"), was hired by the Authority in November on a consulting basis as the "environmental master developer" and has taken the lead on DTSC approvals, developing an overall Project Development Schedule, and other tasks to help coordinate all aspects of the project - vertical design and construction, environmental design and construction, regulatory approvals, and insurance and risk management into a single "horizontal brownfield development." The Authority has negotiated a Term Sheet with RES, which will lead to a contract for the Horizontal Master Developer work described later in this report.

3. Tetra Tech Termination and Release. On November 1, 2016 the Authority Board approved a voluntary termination and release of liability with Tetra Tech (TT) in order to accommodate the Phased Development of the 157 acre site. The Authority and TT closed on the Termination in late January, 2017. The Termination required the consent

of AIG pursuant to the AIG EPP policy. The EPP for operation and maintenance of the remedial systems was commuted and the Remediation Trust Account was dissolved and funds were returned and deposited into an Enterprise Fund account under DTSC; the funds provide the financial assurance to DTSC that the remediation work is able to be completed.

4. Phased Development Plan ("PDP"). A PDP has been drafted and received sign-off from TT and Beazley Eclipse, the Pollution Legal Liability Policy insurer. A Working Draft was submitted to DTSC once the Termination and Release Agreement with TT became effective, with the understanding that the addendum outlining general health and safety protocols for phased development may need to be amended once the Master Developer selection process is concluded and the two projects and schedules are reconciled.

5. Renewals of pollution liability policies, the Pollution Legal Liability policy, the Contractor's Pollution Liability policy, and the Professional Liability Insurance policy have been secured and funded by the Authority.

Negotiations

On July 7, 2016 the Authority, City and Developer entered an ENA to negotiate a purchase agreement and a long-term development agreement resulting in the conveyance of ownership of the Cell 2 Site to the Developer (the "Conveyance Instrument.") Due to the extraordinary costs of developing on a former landfill, the parties agreed to negotiate an arrangement by which Developer may be refunded a share of the annual sales tax revenues generated by the Project ("Tax Sharing") to the extent necessary to produce an acceptable economic return for the Project.

The goal of the parties is to realize a grand opening in September 2020, prior to Thanksgiving and the holiday season. Developer has provided the Authority with a schedule of construction of the Project and the Authority will obtain a similar schedule from the Remainder Developers. Representatives of the Authority, the Developer and Remainder Developers shall develop a coordinated schedule for all construction activity so that no project interferes with another.

Developer will agree to (i) develop the Project consistent with all applicable laws, ordinances, regulations, zoning, the General Plan and the applicable Specific Plan, and (ii) obtain design development review and approval from the City's Planning Commission and City Council. During the Initial Period of the ENA, the Developer submitted more detailed concept plans, site plans and Project descriptions to the City, including design themes, sufficient to allow evaluation of the architectural design and site layout.

During the same period, the Developer also provided the Authority a detailed pro forma showing the estimated budget for the development and construction of the Project. As a result of the extraordinary costs, Developer has requested substantial financial assistance from the Authority, without which the Project would not be economically feasible, including direct financial assistance, sales tax rebates, and installation of offsite public improvements by the City. The Authority acknowledges that the pro forma justifies the requested assistance as required for the Developer's return on investment.

Reimbursement of City and Authority Costs

The Authority and City will incur costs relating to the review, processing, preparation and approval of any additional, supplemental or modified entitlements required for the Project, including the preparation and/or review of such plans, studies, permits, conditions, site plans, general plan or zoning entitlements, environmental documents, and agreements as may be required for the Project ("Approvals").

Concurrent with executing the ENA and Reimbursement Agreement, the Developer paid $1,000,000 to City to reimburse certain City and Authority costs of negotiating and entering into the Conveyance Instrument, to include out of pocket third party costs for financial analysis, and a portion of the legal costs and similar costs; and commenced reimbursing the Authority 50% of the carrying costs for the Cell 2 Site.

Responsibility and Project Costs

The division of responsibility on the Site is driven in part by the environmental liability, as well as developing a manageable and equitable business deal for both sides. It is the intention of the parties that the Authority will (i) construct the Remedial Systems and Building Protection Systems ("BPS") in accordance with applicable governmental requirements, (ii) deliver foundation systems within the subsurface lot and a structural slab upon which Developer can construct, (iii) that Developer will not have to undertake construction or maintenance within the contaminated soils or groundwater of the Subsurface Lot, and (iv) that these mechanisms in accordance with the insurance provided for in the Agreements will limit Developer's exposure to environmental liability in the undertaking of the Project.

The Authority has reserved the right to contract with third parties to construct the Remedial Systems and perform its related obligations, to operate remedial systems, to manage the construction process and remedial systems, and provide various related expert services, including engaging an environmental remediation entity (the "Horizontal Master Developer") for the entire 157 Acre Site. The Authority and Developer have worked together to develop protocols for their respective consultants and contractors to coordinate and share information and comments with respect to plans and specifications, bidding materials, insurance, phasing, scheduling and consultants and contractors for the foregoing. Until completion by the Authority of its work on the Cell 2 Subsurface Lot, the Authority retains site control over Cell 2.

Working on its own or through its Horizontal Master Developer, the Authority will undertake all of the work on the site that involves environmental liability. Some, such as installing the piles or the structural slab, will be paid for by the Developer. Work falls on a spectrum from clearly environmental (the remedial systems) to purely vertical (the vertical development and core and shell of the mall). Some work undertaken by the Authority will be at the Developer's cost, and other work more clearly defined as belonging to one of the parties.

Regulatory Compliance and Remedial Systems Costs

Generally, the Authority is responsible for construction, operation and maintenance of the Remedial Systems and BPS, while the Developer is responsible for the construction, operation and maintenance of the vertical components of the Project. In addition to the Remedial Systems and vertical components, there are additional components that must be built, including the piles, pile caps and structural slab systems that contact the site's soils and are necessary to support the Project. The Parties have agreed that the allocation of responsibility and costs for these other improvements, shown in the "Graphic of Foundation and Remediation Systems" and "Responsibility Matrix", shall be as follows:

- The Authority shall perform site grading up to subgrade elevation for building slabs, parking lots, roads, lighting, signs, etc., including the import and export of any soils as needed and any redistributing contaminated fill materials and Surface Grading of the Cell 2 Surface Lot so as to accommodate the necessary soil barrier between the proposed foundation system and the trash that is to remain in place (the "Site Preparation Work"), which shall be consistent with the requirements of the Remainder Site pursuant to a Site-Wide Grading Plan for the entire 157 Acre Site, though work will only be performed on Cell 2. Developer will advance the funding for the performance and maintenance of such work as a part of the Contamination Development Cost per Section 8.2.5.8.4

- On-Cell paving, parking lot improvements, landscaping, lighting and signage will be undertaken by Developer. The Authority will deliver the Site with sufficient clean soil depth above the Landfill Cap so the Developer can construct surface parking lots and drive aisles and install signage, lighting and landscaping without impacting the regulated subsurface layer.

- The EIR for the Specific Plan requires that certain Offsite Improvements, including Del Amo Boulevard frontage, a section of Stamps Road, and Lenardo Road be made as a condition to development of the 157 Acre Site. The Authority will construct these at its cost subject to receiving funds loaned by Developer pursuant to MOU Section 7.3. Developer is providing $10 million in funds as a loan to pay for such improvements which shall be repaid with Sales Tax Assistance. Infrastructure includes all utilities, storm drains, curb, gutter, base course and final paving for public streets, sidewalks, street landscaping, signage and street lighting.

- The Authority shall engineer, design, obtain required approvals of and install and maintain all Storm Water Pollution Control Measures required under the applicable Urban Storm Water Mitigation Plan and other applicable regulations (the "Stormwater Work" which may be a part of the Site Preparation Work). A plan was approved in 2008 -2009 and infrastructure has already been installed.

- The Authority shall install foundation piles for buildings and other structures, pile caps, grade beams, utility shelves, pits, vaults, retaining walls, the vapor barrier system, under-slab utilities, (the "Sub-Foundation Systems") except for those, if any, to be

installed by Developer; “Sub-Foundation Systems” include the piles, the pile caps, landfill cap membrane tie-in (pile boots), pile systems for other site improvements such as fire hydrants and parking lot lighting. These costs are among those identified as the Contamination Development Cost where the Developer advances the funding for the construction and maintenance of such improvements and is reimbursed through a share of the sales taxes.

- The Authority shall construct the Structural Slab at Developer’s expense.

- Developer shall undertake and pay for all vertical construction of the Project from top of Structural Slab and shall own and maintain the slab.

- The Authority shall furnish and install all wet and dry utility stubs from the city street to the edge of Cell 2 Site; and construct underground utility runs within the Cell 2 Subsurface Lot from Authority-built utility lines at the property line to locations at Developer’s utility shelf, as specified by Developer. Infrastructure and Utilities on the Site are the Developer’s responsibility.

- The Authority shall process all approvals required by DTSC, including a PDP and other DTSC regulatory approvals necessary to complete the subsurface work and the construction of the Remedial Systems. The Authority will also develop and implement a site-wide Institutional Control Program, CC&Rs, and an Environmental Covenant recorded on the Site.

- The Authority shall oversee site-wide civil engineering, including the revised Tentative Tract Map separating Cells 1 and 2 and net of ROW and the 405 Embankment, which will not be conveyed to the Developer. Subject to DTSC approval in the amended regulatory agreements noted above, the Surface Lot line will be at the bottom of the structural slab above the BPS within the buildings, and a certain but yet-undefined number of feet below the surface in open areas. If and as necessary, the Authority will adjust horizontal and vertical subdivision lines to match the final design of project, at the Authority’s cost.

- The Authority shall undertake the revision of the EIR under the City’s normal project entitlement practices; the City always retains the responsibility for the environmental review of any large project, subject to a Reimbursement Agreement with the Developer. The Authority will process revisions to the Specific Plan as needed.

- Developer will share 1/3 of the cost with other Vertical Developers of the Specific Plan Amendment and the EIR/CEQA compliance. This work is already underway under the Reimbursement Agreement.

- The Authority shall maintain responsibility for the implementation of the EIR mitigation monitoring and reporting measures, including BPS. These include actions that must be taken to offset impacts from the planned remediation and development Project, as specified in the Final Environmental Impact Report.

- Developer will be responsible for any “normal course” EIR mitigation requirements, e.g. such as construction-related noise, dust, OSHA, etc. and mitigation measures required in the EIR and not

- The Authority shall install Remedial Systems (the “Remedial Systems”) to be owned, constructed, operated and maintained by the Authority including the Groundwater Collection and Treatment System, the Landfill Gas Collection System, and Landfill Liner and Cap. Capital expense for the Remedial Systems and BPS (up to the cap), shall be funded from the Cell 2 portion of the Authority’s funds described in the Authority Funding Plan. Maintenance expense will be paid through CFD 1.

- The Authority shall construct the BPS, which includes below-ground and above-ground improvements, such as venting systems and gas monitoring systems up to a cap of $9 per square foot of foundation slab, with the Developer responsible for the remaining cost of the BPS (subject to sales tax assistance per Section 1.1). The Parties shall cooperate to minimize the cost of the BPS in a manner acceptable to DTSC and LA County. BPS is described as follows:

    - There are two types of slab areas: (1) open slab with no building footprint above, like walkways or plazas; and (2) building slab directly under building envelopes that require a codified methane mitigation system.
    - Slabs under the latter will have an HDPE BPS liner mechanically attached to the slab/concrete and have the BPS venting system connected to the centralized methane monitoring system. All slab areas will have a 9”-12” thick layer of 1”-minus rock/crushed concrete and venting pipe.

- The Authority shall retain ownership of the 405 Freeway Embankment and shall grant easements to Developer and Remainder Developers to access, erect, maintain, power, repair and replace freeway pylon signs and additional freeway monument signs located on the 2,200-foot-long Embankment, pursuant to the Master Sign Program, the cost of which shall be borne by Developer and Remainder Developers and which will control the design and location of all 157 Acre Site signage, which must be consistent with the Specific Plan. The Authority shall also install and maintain the Embankment landscaping and irrigation; the maintenance cost will be assessed as part of CFD 1.

- Developer shall participate in the Authority's Insurance Program described in Exhibit "H" of the MOU. The Authority has obtained a comprehensive pollution legal liability ("PLL") program through a Lloyd's of London consortium of syndicates, commonly known as Beazley (the "Beazley PLL Policy"). The Beazley PLL Policy provides coverage for costs that the Authority is obligated to pay as a result of a pollution condition at, on, under, or migrating from the Insured Property. The premium for the Pre-Development PLL was fully paid for by the Authority without seeking reimbursement from developers. Once remedial construction activities begin, the "Development" PLL policy will replace the Beazley PLL Policy, with the cost of the premium allocated to the development partners. Developer will indemnify the Authority and City as to any claims from contractors, tenants, lenders and invitees resulting from Developer's activities or business operations on the Cell 2 Surface Lot, except for those related to the presence of hazardous materials in place or generated from materials in place prior to conveyance of the Cell 2 Surface Lot to Developer. A similar program exists for Contractors Pollution Liability and Professional Liability Insurance ("CPL/PLI") and with a master Builder's Risk Program.

The reason the CRA and the Developer are entering into an MOU instead of a Development Agreement is that the site is extremely complicated and the Project has a number of uncertainties. The Developer will have to spend great financial resources to refine the details of the project. Therefore, it was necessary to first go through an exercise of determining if the Authority and the Developer could even reach an economic deal that could work before the developer expended the necessary financial resources to delve into the technical, environmental and details of the Project. It will cost the developer in excess of ten million dollars to figure those details out. If this MOU is approved, the developer will then advance the financing for environmental and technical studies, to seek needed grants or permits from other government agencies, and to test interest among prospective commercial tenants. The previous Boulevards at South Bay Specific Plan was approved on February 8, 2006, and an EIR was certified. Likewise, an EIR was prepared for the Remedial Action Plan which considered the remedial systems such as the landfill gas and groundwater extraction systems. In order to fully analyze the proposed Project under CEQA, the parties must undertake a number of technical studies (such as traffic, air quality, geotechnical, hydrology, etc.) that will be used throughout the development and construction process and develop a detailed project schedule that captures and integrates the different aspects of the project, such as design, regulatory, CEQA, insurance underwriting, remedial construction and financing. Furthermore, if the MOU is approved the developer and CRA still have to seek DTSC approval of BPS modifications or the Phased Development Plan, as well as the final design of piles and other subsurface systems. Therefore, the proposed MOU is proposed solely in furtherance of refining the negotiation terms of the ENA and working out the economic terms of a deal to determine if a financial deal can be made where the developer can go spend financial resources for environmental and technical studies necessary for design and approval of the project.

Changes in Building Protection System Explained

The purpose of a BPS building system over, or in the vicinity of, a landfill is to prevent

Landfill Gas (LFG) from entering the above and below-grade building structures, where it can accumulate posing health risk concerns as well as explosive concerns when the methane concentrations reach or exceed five percent by volume in the atmosphere. DTSC-approved BPS components for a slab-on-grade development at the former Cal Compact landfill consist of the following:

1) A below-slab passive venting system consisting of a network of perforated pipes embedded in a permeable gravel layer under the entirety of each building slab that vent to the structure roof line. The passive venting system has been designed to accommodate an emergency blower to create an active venting system in the event of methane detections above a design threshold.
2) A secondary geomembrane system that would be mechanically attached to and seal the bottom of each building slab.
3) Continuous gas detectors in each of the vent risers programmed to alert appropriate personnel at different methane concentrations.

Staff and project consultants agree on the installation details for slab-on-grade construction but have several recommendations to improve the design. However, certain components of the BPS may not be required due to Macerich' podium design, since the proposed design already separates the occupied buildings from the methane source by an open air parking structure. In effect, with exception for elevator shafts and other equipment penetrations of the final cover, all components of the development are separated from the landfill cover with a well-defined air break between the parking level concrete slab and the bottom slab of the occupied building structures.

However, the Authority also understands that need for some level of BPS for the site may exist due to prior regulatory approval of a full BPS. Therefore, SCS has designed a slightly modified BPS somewhat less expensive to install; additionally, there will still need to be a BPS membrane installed in the approximately 35,800 square feet of proposed on-grade enclosed structures (waiting lounges, electrical rooms, utility rooms, etc.). The cost of the BPS for a slab without enclosed buildings above depends on several parameters, including complexity of the foundation and utility trenches/corridors.

V. FISCAL IMPACT

Since July 2016 the Developer has been paying for all out-of-pocket costs for preparing the Conveyance Instrument, including attorneys' fees, economic consultants, and other costs, as well as the City's out-of-pocket costs for processing any Site Plan or development application, including the preparation and/or review of such plans, studies, permits, conditions, site plans, general plan or zoning entitlements, environmental documents, and agreements as may be required for the Project.

This includes the Developer paying for 50% of the Authority's holding costs for Cell 2, largely a pro rata share of all recurring costs paid to the remediation contractor for items such as project management, construction management, storm water management, site security, vector control, weed abatement, perimeter gas monitoring, the operation of the landfill gas system and other such direct costs, at approximately $63,000 per month.

Because the entire 157 Acre Site, including the Cell 2 Subsurface Lot, is a contaminated landfill, the parties acknowledge that the cost to develop the Project on the Cell 2 Surface Lot could greatly exceed the cost to develop the Project on an uncontaminated parcel of native soil, and that therefore development of the Project on the Cell 2 Surface Lot may be financially infeasible without substantial financial assistance from the Authority. However, the Authority believes that the sales tax revenues to be generated by the Project and the benefits of economic development justify such financial assistance.

Part of the subsidy will come from a land write-down: the Authority will sell the Cell 2 Surface Lot to Developer for $1.00, free and clear of encumbrances other than the CFD and the effectiveness of the environmental covenants. The Authority shall retain the Cell 2 Subsurface Lot, right of way for Lenardo Road, and the Embankment.

The Authority is directly installing and the Remedial Systems and all of the Subsurface Systems. In many instances where the Developer will cover the Authority's costs, these costs will be reimbursed from sales tax paid from the Project. These are described as the "Contamination Development Cost," which is development costs paid or payable by Developer that result from the environmental condition of the 157 Acre Site in excess of costs normally incurred with non-contaminated sites. Over the past several months, the parties have worked to quantify the Contamination Development Cost and refine the method of offsetting them. Partly due to these costs, there may be a Feasibility Gap in the Project, based on a preliminary Project pro forma.

The Authority shall prepare a final total actual Contamination Development Cost showing all costs incurred by Developer to develop the Project (the "Actual Contamination Development Cost") upon the conclusion of the construction and opening of the Project.

A Feasibility Gap is the difference between the capitalized value of the net operating income of the Project capitalized at the Required Return, and a Project which would not achieve the Required Return (the "Acceptable Project Development Cost"). Based upon estimated Project revenues, an Acceptable Project Development Cost can be derived, and the Feasibility Gap is the difference between Acceptable Project Development Costs and Actual Project Development Cost. If the Actual Costs are higher than the Acceptable Costs, there is a Feasibility Gap which could be offset with public revenue.

Based on Developer's current projections of Project costs and anticipated net operating income from the Project, Developer has determined that it can achieve the Required Return only if the Authority pays the Actual Contamination Development Cost, provides the Offsite Improvements described above, constructs the Remedial System and BPS, and performs the Site Preparation Work at its expense. However, the Authority does not currently have funds to pay all of the Actual Contamination Development Costs. Furthermore, the Contamination Development Costs contribute to the Feasibility Gap but do not account for all of it.

The Authority will undertake its own obligations and will also perform the Contamination Development Cost Work for Developer, with the Developer funding the latter. To offset the Contamination Development Costs in order to make the Project feasible, the parties contemplated a sales tax assistance package based on 50% of the 1% share based on the

sales taxes paid to City from the Project. The need for the sales tax assistance is based upon the fact that a developer would not proceed with the Project without a reasonable assurance that it can achieve a reasonable rate of return on its costs, i.e., net operating income from the Project represents an 8% return on its total cost of developing the Project, to increase by 4% thereof each year in the first stabilized decade or so of operation of the Project (the "Required Return"). Failure to achieve the Required Return for the Project would produce a Project Feasibility Gap.

Therefore, the Developer will advance to the Authority (i) funds to pay the Actual Contamination Development Costs, and (ii) funds required to pay infrastructure costs incurred to construct the Offsite Improvements described above (the "Infrastructure Cost Advance") not to exceed $10,000,000. The total of the Actual Contamination Development Cost and Infrastructure Cost Advance is called the "Total Recovery Amount" and would be treated as a loan from the Developer to the Authority, repayable from sales taxes as described in the MOU. The Total Recovery Amount, or the loan from the Developer to the Authority, would be repaid by the Authority on the following terms (the "Recovery Terms"):

(i) Interest rate is 6% per annum compounded monthly accruing from the date of each advance;

(ii) The Authority would pay to Developer 50% of all of the City's share of sales taxes accruing from the Project (meaning only the Cell 2 Project), until the Total Recovery Amount and all interest accrued thereon is paid in full;

(iii) Loan Term would not exceed 25 years from the date of Developer's first receipt of sales tax reimbursements from the Project;

(iv) Any balance which could not be paid from such sales tax rebates by the end of the term would be forgiven;

(v) The portion of Total Recovery Amount comprised of the Actual Contamination Development Cost cannot exceed the Feasibility Gap; the method of adjusting such is described in Section 8.7 of the MOU;

(vi) Such sales tax receipts shall be applied first to accrued interest on, and then principal of, the Infrastructure Cost Advance, and then to accrued interest on, and then principal of, the Actual Contamination Development Cost;

(vii) There is no prepayment penalty; and

(viii) The repayment obligation shall terminate and all sums then outstanding shall be forgiven if the right to receive the Total Recovery Amount is transferred to an entity other than the transferee of the Project, or if the Project ceases operations for more than 180 consecutive days, subject to certain qualifications.

The "Look Back" Provision

The payoff of the Total Recovery Amount through sales taxes projected is based on estimates, but the Project may exceed expectations if either (i) the overall cost of the Project is less than estimated, or (ii) sales taxes generated exceed projections and thus cause the Total Recovery Amount to be paid off prior to the Loan Term. The Authority doesn't want to provide financial assistance if such assistance is not required to produce the Required Return, or the Total Recovery Amount could be repaid in less than 25 years, as Developer would then receive a windfall. Therefore, the parties have negotiated a "look back" provision to determine if the Project is being over-subsidized and make adjustments for the future.

The Actual Contamination Development Cost shall be actual costs determined at the end of construction. Moreover the Actual Contamination Development Cost shall only be reimbursed to the extent such costs cause the Project not to produce the Required Return, and cause a Project Feasibility Gap. This will be determined as of a date selected by the Authority not more than 60 months after the opening of the Project. Thus, the Actual Contamination Development Cost shall be reimbursed to the extent there is a Project Feasibility Gap, determined as follows:

- The Actual Project Development Cost of the entire Project (the "Actual Project Development Cost") shall be determined based on the cost reported by The Macerich Company in its SEC filings or on another audited financial report.

- The actual Project net operating income shall be determined for the full calendar year before the date of determination (the "Actual NOI"). The Actual NOI shall be based on an audited financial report.

- The "Acceptable Project Development Cost" shall be determined by dividing the Actual NOI by an amount equal to (i) 8%, increased by (ii) 4% for each year from the first anniversary of the opening of the Project to the date of determination.

- If the Acceptable Project Development Cost exceeds the Actual Project Development Cost then the difference shall be subtracted from the Actual Contamination Development Cost to determine the "Reimbursable Contamination Development Cost". In such event, City and the Authority shall repay from sales tax the Reimbursable Contamination Development Cost rather than the Actual Contamination Development Cost.

See Exhibit "J" in the MOU for an example of how the formula would work.

Other Deposits and Economic Terms

Upon execution of the Reimbursement Agreement and ENA in 2016, Developer deposited $1,000,000 for land use entitlement consultant costs. The Reimbursement Agreement remains in full force and effect.

Upon execution of the MOU, Developer will advance to the City $4,000,000 as a deposit and a guarantee that Developer will perform the terms of the MOU. One half of the Deposit is nonrefundable unless:

- Authority staff fails to recommend in good faith approval of a draft of the Development Agreement consistent with this MOU; or
- The City Council fails to conduct a public hearing thereon and formally vote to approve or disapprove the Development Agreement; or
- The Development Agreement includes one or more new economic terms not contemplated herein in aggregate costing the Developer $1million or more; or
- The Authority breaches this MOU.

The remainder of the Deposit is refundable unless there is a Developer default. A Developer Default consists of the following:

- Developer terminates negotiation of the Development Agreement or terminates the processing of the Entitlements or does not make sufficient progress to achieve the Schedule;
- Once the Development Agreement is executed, Developer refuses in writing to apply for building permits and commence construction of the improvements in accordance with the development schedule.
- Once the Development Agreement is executed, and the City issues building permits for the Project, Developer commences construction but fails to complete the Project and open for business in accordance with the development schedule.
- Developer fails to timely do any of the following: reimburse the Authority (i) for any costs it is required to reimburse under the Reimbursement Agreement, (ii) to pay the Carry Costs it is required to pay, (iii) reimburse the Authority for the Actual Contamination Development Costs or any other costs for the Cell 2 Surface Lot for work done by the Authority on behalf of Developer which Developer is required to reimburse, (iv) for the Infrastructure Cost Advance or (v) for any other costs Developer is required to pay hereunder.

In the event of any breach described in the sections above, in addition to the Authority retaining the entire Deposit, the Developer shall pay to the Authority an additional $11,000,000. This amount is not a penalty but rather a payment recognizing that the Authority has given Developer these development rights in lieu of negotiating on development proposals by many other entities.

Upon acquisition of the Cell 2 Surface Lot, Developer will also agree to indemnify the Authority against any loss of the Authority's $5.6 million CALReUSE grant to the extent

such loss results from Developer's failure to thereafter diligently pursue the Project.

VI. EXHIBITS

1. Amendment No. 1 to an Exclusive Agreement to Negotiate with the City of Carson and CAM-CARSON, LLC, a Delaware limited liability company. (pgs. 17-30)

2. Memorandum of Understanding with CAM-CARSON, LLC, a Delaware limited liability company. (*To be delivered under separate cover.*)

Prepared by: John Raymond, Director of Community Development