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Report to Carson Reclamation Authority

Tuesday, April 03, 2018

Discussion

SUBJECT:

CONSIDER A CONVEYANCING AGREEMENT 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 THE CELL 2 SURFACE LOT OF A 157-ACRE PARCEL OWNED BY THE CARSON RECLAMATION AUTHORITY, THE FORMER CAL-COMPACT LANDFILL; CONSIDER A COOPERATION AGREEMENT WITH THE CITY OF CARSON FOR THE REIMBURSEMENT OF SALES TAXES TO FUND PUBLIC INFRASTRUCTURE AND SITE DEVELOPMENTCOSTS OF THE CELL 2 SURFACE LOT OF A 157-ACRE PARCEL OWNED BY THE CARSON RECLAMATION AUTHORITY, THE FORMER CAL-COMPACT LANDFILL

I. SUMMARY

The Authority is being asked to consider entering into a Conveyancing Agreement (the “Agreement”) by and between the Carson Reclamation Authority (“Authority”) and CAM-CARSON, LLC, a Delaware limited liability company ("Developer”), an affiliate of The Macerich Company of Santa Monica, California for the development of a high end fashion outet mall.

Under the terms of the Conveyancing Agreement (described below), the Authority will convey to Developer approximately 41 net acres of the Surface Lot of Cell 2 and certain easement areas therein legally described in Exhibit “C-1” of the Agreement (“Cell 2 Surface Lot”), and will retain approximately 5.3 acres lying along the I-405 Freeway and between the freeway and the Cell 2 Surface Lot (“Embankment Lot”). The Authority will also convey certain easement rights to Developer for purposes of construction, operation and use of the Project and Project signage, including an easement in the Embankment Lot for the Developer Pylon Sign described below. The property and easement rights to be conveyed by the Authority to Developer are referred to as the “Developer Property.”

Concurrently with consideration of this Agreement by the Authority, it is anticipated that (1) City Council will hold a public hearing on Authority’s application for amendment of the Boulevards Specific Plan to be renamed the District at South Bay Specific Plan and Developer’s application for Site Plan and Design Review and Comprehensive Sign

Program, (2) certification of the Supplemental Environmental Impact Report for The District at South Bay Specific Plan, State Clearinghouse No. 2005051059 (the "SEIR") pursuant to Resolution No. 18-2620 and the adoption of the Specific Plan pursuant to Resolution No. 8 -2621 and adopted the Site Plan and Design Review (DOR) and Comprehensive Sign Program, pursuant to Resolution No. 18-2622; (3) City Council will consider a Development Agreement with CAM-CARSON, LLC for the Project; and (4) City and Authority will consider entering into a Cooperation Agreement whereby Authority would agree to construct certain public infrastructure on behalf of City and City would agree to provide sales tax proceeds to Authority to enable Authority to meet its obligations to, among other things, remediate Cell 2 and construct certain Offsite Improvements (as defined in the Agreement). The effectiveness of the Development Agreement, the Cooperation Agreement and the Conveyancing Agreement are contingent, one on the other and the priority of various agreements is further described in Section 16.3.2 of the Development Agreement. As required by the "Development Agreement Statute," Sections 65864 through 65869.5 of the Government Code as a condition to execution by City of the Development Agreement, the Conveyancing Agreement provides Developer with a legal or equitable interest in the Developer Property.

Fundamental Assumptions of Cooperation Agreement

Because the 157 Acre Site, including the Cell 2 Subsurface Lot, is a contaminated and poorly-compacted landfill subject to the RAP, the Parties acknowledge that development of the Project on the Cell 2 Site would be financially infeasible unless the Cell 2 Site itself were very substantially remediated and improved to address both its environmental and compaction issues. Additionally, Authority has a responsibility under the RAP to remediate the 157 Acre Site and has substantial funds to do so. Authority believes that the sales tax revenues to be generated by the Project, as well as the secondary benefits of economic development in this area of the City spurred by development of the Project, justify the expenditure of substantial funds to address those issues so as to permit such development.

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 market rate of return on its costs to build the Project, i.e., net operating income from the Project representing at least the "Required Return." Inability to achieve the Required Return for the Project would produce a financial "Feasibility Gap." Macerich has estimated that it will achieve the Required Return only if Authority pays the cost of the Site Development Improvements, defined below. Authority does not currently have funds to pay for the Site Development Improvements, and therefore Macerich has agreed to make the Site Development Advances as described in the Conveyancing Agreement and this Agreement. To reimburse the Site Development Advances (and Offsite Advances), the Parties have negotiated the Sales Tax Assistance Payments described herein. The Sales Tax Assistance Payments are intended to bridge the financial Feasibility Gap.

II. RECOMMENDATION

TAKE the following actions:

1. APPROVE a Conveyancing Agreement 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 for the development of a high end fashion outlet mall on approximately 41 net acres of the Surface Lot of Cell 2 and certain easement areas therein legally described in Exhibit “C-1” of the Agreement, in a form acceptable to Authority Counsel; and

2. APPROVE a Cooperation Agreement by and between Carson Reclamation Authority and the City of Carson for the Authority to install public infrastructure and Authority Improvements and perform other site work for City and to receive funds from City therefore calculated based on sales taxes received by City, in a form acceptable to Authority Counsel, and

3. APPROVE Resolution 18-04-CRJPA, “A RESOLUTION OF THE CARSON RECLAMATION AUTHORITY APPROVING A CONVEYANCING AGREEMENT TO SELL THAT CERTAIN CELL 2 SURFACE LOT OF THE 157 ACRE PARCEL OWNED BY THE CARSON RECLAMATION AUTHORITY AND APPROVING A COOPERATON AGREEMENT WITH THE CITY OF CARSON FOR THE REIMBURSEMENT OF SALES TAXES TO FUND PUBLIC INFRASTRUCTURE AND SITE DEVELOPMENT COSTS OF THE CELL 2 SURFACE LOT OF A 157-ACRE PARCEL OWNED BY THE CARSON RECLAMATION AUTHORITY, THE FORMER CAL-COMPACT LANDFILL” and

4. AUTHORIZE the Chairman to execute several agreements in a final form approved by Authority Counsel and authorizing the Executive Director to take other actions necessary to implement the Agreements.

III. ALTERNATIVES

To modify or disapprove the Resolutions or the Agreements.

IV. BACKGROUND

The Authority is being asked to consider entering into two agreements: (1) a Conveyancing Agreement (the “**Agreement**”) by and between the Carson Reclamation Authority (“Authority”) and CAM-CARSON, LLC, a Delaware limited liability company ("**Developer**”), an affiliate of The Macerich Company of Santa Monica, California, and (2) a Cooperation Agreement (the “**Cooperation Agreement**”) by and between Carson Reclamation Authority and the City of Carson for the Authority to install Offsite Improvements and other site work for City and to receive funds from City calculated based on sales taxes received by City, in a form acceptable to Authority Counsel for the development of a high end fashion outlet mall (the “**Project**”).

A. 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 157-Acre Site had sat vacant for decades due to the high cost of development because of its former use as a landfill. The Property was acquired by Carson Marketplace ("**Marketplace**") who developed the Boulevards Specific Plan in 2006.

With the approval of the Specific Plan, Marketplace was able to make important progress. First, Marketplace entered into a contract dated December 31, 2007 with Tetra Tech to design and construct the remedial systems for a fixed price. Second, insurance was arranged with a comprehensive pollution and remediation legal liability insurance policy through XL Environmental and a cost cap insurance policy through AIG. Thirdly, because these contracts were in place, when the City's redevelopment agency was dissolved with the dissolution of redevelopment, all of the contractual obligations including the Owner Participation Agreement were honored and treated as existing obligations under the law, bringing over $100MM of tax increment financing to the Property, without which the Property would not have been developable.

However, many challenges remained including the Great Recession, which ultimately derailed the Marketplace project, even though significant progress was made on constructing the remedial systems. The San Diego Chargers and Oakland Raiders worked on an 80,000 seat NFL Stadium which failed when the NFL voted for an Inglewood site. Along the way the City created a Reclamation Authority through a joint powers agreement so the Property could be developed without the City incurring liability for the cleanup. The Authority acquired the site on February 17, 2015 from the prior owner (Starwood) for $1.

Another accomplishment during the Marketplace ownership was that the 157 Acre Site was vertically subdivided into a surface lot (the "**Surface Lot**") and a subsurface lot (the " **Subsurface Lot**"), which lots are referenced on the "Designation of Parcels" attached to the Agreement as Exhibit "B" as Parcels 1 (Subsurface Lot) and 2 (Surface Lot) of Parcel Map No. 70372. Cell 2 Site is currently approximately 46 acres and is currently shown in Subdivision Map No. 70372 combined with Cell 1. The Surface Lot is currently shown on such subdivision map at an elevation two feet above the level of the proposed trash liner on the Cell 2 Site. Authority shall adjust the horizontal and vertical subdivision lines separating the Developer Property from horizontally and vertically adjoining lots so as to match the final design of the Project, at Authority's sole cost and as reasonably necessary to match the final Project design. Such adjustments shall (i) move the line separating Cells 1 and 2, (ii) adjust the vertical lot line between the Cell 2 Subsurface Lot and the Cell 2 Surface Lot to the bottom of the Project's foundation slab and as otherwise shown in the Exhibits to the Agreement, and (iii) separate the Embankment (defined in Section 8.7 of the

Agreement) from the Cell 2 Surface Lot. Authority has agreed to convey to Developer only a portion of the Surface Lot of Cell 2, which is approximately 41 acres (the "Cell 2 Surface Lot") for the purpose of developing a first-class regional fashion outlet shopping center. Authority shall retain all portions of the Cell 2 Site located below the Cell 2 Surface Lot (the "Cell 2 Subsurface Lot") and the Embankment Lot subject to the easements below.

B. Easements

The Cell 2 Surface Lot is being acquired by the Developer from the Authority subject to certain easements. The following easements (collectively, the "**New Easements")**, the form and further substance of which shall be negotiated and finalized as a condition of Closing unless otherwise waived as a condition by both Parties:

1. *Freeway Advertising Sign Easement.* An easement to Macerich to erect, access, maintain, power, repair, communicate with, replace and remove advertising signs on the areas shown as "Freeway Advertising Sign Easement Areas", with Authority retaining the right and obligation to maintain the parcel on which such advertising signs are located (other than the easement areas) in accordance with landscaping and maintenance standards to be negotiated between Authority and Developer as part of the easement.

2. *Wayfinding Sign Rights.* The right to include and maintain the Project's name and logo on wayfinding and directional signs at the Main Street 405 Freeway Ramp, Del Amo Boulevard and any other entrances to the 157 Acre Site, as well as within the 157 Acre Site, at the locations shown as "Wayfinding Sign Easement Areas". The design of such signs shall be typical for similar projects and shall provide for the overall 157 Acre Site project name and the names and logos of not more than five projects within the 157 Acre Site, which shall include the Project, with no other project's name or logo being larger or more prominent than those of the Project, and otherwise shall be subject to the prior approval of Developer.

3. *Subjacent Support Easement*. An easement over the Cell 2 Subsurface Lot to a level 500 feet below the upper surface thereof, and the Site Development Improvements therein, for support for the Project and the Cell 2 Surface Lot, which shall permit the Remediation Systems and any other uses not inconsistent with subjacent support of the Project.

4. *Utility Easements*. An easement for the delivery of water, gas, electricity, telephone, cable, fiber optic and other communications services and utilities, and the removal and drainage of sanitary waste and stormwater, over Authority's facilities for such utilities located insofar as possible in the Cell 2 Surface Lot to connections to such facilities in the public streets or other publicly-owned locations.

5. *Subsidence Easements*. An easement to permit encroachment of parking lot and similar improvements into the Cell 2 Subsurface Lot by virtue of compaction and subsidence of soils and other materials underlying the Cell 2 Surface Lot.

C. Summary of Progress

On July 7, 2016, the Authority, City and Developer entered an ENA to negotiate a purchase agreement and a long-term development agreement for the fashion outlet mall on Cell 2 of the former Cal-Compact Landfill Site. On June 20, 2017 the parties entered into a Memorandum of Understanding ("MOU") which negotiated the business points in this Agreement. Meanwhile, the design and entitlement work continued on the Project, culminating in the amendment of the Boulevards Specific Plan, Developer's application for Site Plan and Design Review and Comprehensive Sign Program, certification of the SEIR for The District at South Bay Specific Plan, and Developer's Site Plan and Design Overlay Review ("DOR") and Comprehensive Sign Program application also approved by resolution. Some of the other Project-related milestones during this period included:

D. Project Description

The Developer has proposed developing the Project on the Developer Property in two phases, consisting of development of a high-quality, state of the art, fashion outlet retail center of not less than 450,000 GBA square feet (for Phase I only) and up to 711,500 GBA square feet (taking into account Phase I and Phase II, which may be developed separately or concurrently), which may include, at the sole discretion of Developer, sit-down restaurant space of up to 15,000 GBA square feet, a VIP lounge, and the various take-out and on-site food and alcohol service uses permitted by right or with an administrative use permit or conditional use permit (in each case upon the approval by City of such permit) in the Specific Plan, and related signage on the Developer Property.

While individual stores will have varying high quality architectural frontages facing inward, the exterior, particularly facing the Freeway, will have superior architectural design and signage suitable for a high fashion outlet center, which will make the Project stand out from other I-405 Freeway projects. The preliminary site plan shows Developer's intention as to location, footprint, design and architecture of the Project.

The Project is also expected to provide substantial economic and employment opportunities for the community, with a goal of generating at least 1,600 new direct construction jobs, with another 1,000 indirect and induced construction jobs, as well as 1,500 new retail and related jobs. The Developer shall endeavor to maintain high standards of urban design, architecture, and development, including "Cal-Green" and LEED building standards, adherence to building codes (subject to such variances as the City may approve), best practices for environmental protection, energy efficiency, water conservation, and reduced greenhouse gas emissions.

E. Nature of the Agreement

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 participation by the Authority. The City used an independent financial consultant, Kotin & Associates, to verify this analysis as described below. However, the City and Authority believe the benefits of economic

development justify such investment.

The division of responsibility on the 157 Acre Site is driven in part by the environmental liability, as well as developing a manageable and equitable business deal for both sides. 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) the Developer will not have to undertake construction or maintenance within the contaminated soils or groundwater of the Subsurface Lot, although they will pay for the construction and maintenance and (iv) 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.

Due to the contaminated condition of the 157 Acre Site, the intent of Developer to acquire only non-contaminated property and the likelihood of settlement of the former landfill contents over time, it is intended by Authority and Developer that Authority retain the Subsurface Lot and the Embankment Lot. The vertical lot lines are being revised based on new grading plans and updated approval by DTSC of the location of the vertical lot separation. In the Agreement the Authority will convey the various components of the Developer Property pursuant to a metes and bounds description and the City will, upon due consideration of same, provide a certificate of compliance pursuant to the Subdivision Map Act as to each parcel so created.

The Authority has contracted 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 (the "Horizontal Master Developer") for the entire 157 Acre Site. The Authority and Developer have worked together to coordinate and share information 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 except for the equitable interest provided to the Developer in the Cell 2 Surface Lot to allow for the effectiveness of the Development Agreement.

Working through its Horizontal Master Developer, the Authority will undertake all of the work on the Property that involves environmental liability. Some work, 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.

These obligations are documented in the Agreement and the Cooperation Agreement. As discussed below, the Cooperation Agreement with the City obligates the Authority to construct the remedial system and infrastructure in accordance with City standards. In addition to the conveyance of the Developer Property pursuant to the Agreement, Authority will agree to carry out the following work and to provide the following assurances to City and Developer:

1. Remedial Systems. The Remedial Action Plan ("RAP") requires that the Remedial Systems be constructed and operated and maintained for many years to cap the landfill and remove gas and contaminants which would pollute groundwater. This work includes excavation and grading necessary to install such systems; site grading; and the excavation of soil and relocation and mitigation of trash layers. Authority will cause the construction and operation of (i) the Remedial Systems other than the Building Protection System ("BPS") at its sole cost, and (ii) the BPS, which shall be funded by Authority up to an agreed upon dollar cap.

2. Infrastructure. Under the terms of the Agreement, the Authority will construct required public offsite infrastructure and other improvements (the "Offsite Improvements"). Due to Authority's shortage of resources to complete all of its necessary work, Developer will advance Ten Million Dollars ($10,000,000) to the Authority for this purpose.

3. Excess Development Costs. Due to the contaminated condition of the 157 Acre Site and uncompacted condition of the soils thereon, resulting in excessive development costs, the 157 Acre Site has been undevelopable despite the interest of numerous developers over decades. These costs include grading and site work, and installing structural sub-foundation systems including piles, all of which must be done in contaminated soils using special safeguards. More specifically, prior to conveyance of the Developer Property to Developer, Authority shall carry out the work defined in the Conveyancing Agreement as the "**Site Development Improvements**", which includes the following: (i) installation of storm water systems (Storm Water Work); (ii) installation of piles and pile caps, vaults, under slab utilities ("Sub-Foundation Work"); (iii) establishing underground utility runs from the property lines ("Utility Work"); (iv) constructing the structural slab for the foundation of the buildings ("Foundation Work"). Developer shall advance certain additional funds (the "**Advances**") to Authority for purposes of performing the Site Development Improvements and the $10,000,000 for the Offsite Improvements (collectively referred to as the "**Authority Work**") which amounts (the "Advances") shall be advanced by Developer to Authority and repaid by Authority to Developer over a twenty-five (25) year period upon terms and conditions explained below. While the Authority shall perform the maintenance of the Site Development Improvements, Developer shall be responsible for the cost of such maintenance as set forth in the Conveyancing Agreement. The Authority Work along with the Remedial Systems are the **Authority Improvements**.

4. Financial Assistance. To remediate contamination of the 157 Acre Site and to

make the property marketable in order to create economic development opportunities for the benefit of City and its residents, City caused Authority to be formed and is providing funding to Authority in the form of a rebate of fifty percent (50%) of sales taxes generated by the Project and received by City (the "**Sales Tax Assistance**") for a 25-year period. The Sales Tax Assistance can be paid from any funds of the City but is calculated based upon a formula determined upon the terms and conditions and for the term set forth in the Cooperation Agreement and Conveyancing Agreement. This financial assistance will allow Authority to perform the Authority Work and reimburse the Developer for the Advances. In the absence of performance of the Authority Work by Authority, the landfill would remain contaminated brownfields property and would not be marketable.

5. Schedule. The Agreement requires the Project as approved to be Developed in accordance with a Schedule. The projected Grand Opening date is in July 2021, subject to extensions for Force Majeure.

6. Insurance. The Project contributes to a robust insurance program to provide coverage against environmental claims and provides protection to the public entities, developers, property owners and contractors carrying out construction on the 157 Acre Site, including coverage for general liability, personal injury, property damage and other claims and to which Developer pays its fair share as provided in the Agreement. Total insurance coverage provided is almost One Billion Dollars ($1,000,000,000) for all types of insurance provided by the program. This program includes a comprehensive pollution legal liability ("**PLL**") program that 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. A similar program exists for Contractors Pollution Liability and Professional Liability Insurance (" **CPL/PLI**") and with a master Comprehensive General Liability and Builder's Risk Program through an Owner Controlled Insurance Program ("**OCIP**"). The Developer will participate in the programs with the Authority on a pro rata or risk allocation basis.

F. Negotiations

In addition to maintaining its regulatory authority under State law, the City provides public infrastructure and services to the 157 Acre Site, including streets, sidewalks, parkways, sewer, water, drainage, lighting, and other utilities, and must assure accessibility to the 157 Acre Site ("**Infrastructure Obligations**"). The City will contract with the Authority to perform the City's Infrastructure Obligations to avoid any City liability for the remediation of the 157 Acre Site, which was a purpose for creating Authority in 2015. The Authority shall be responsible for constructing the Offsite Improvements (defined below) to serve the 157 Acre Site. In addition, Authority shall be responsible for certain site preparation work that is

being undertaken by the Authority as a result of the environmental and geotechnical condition of the 157 Acre Property, defined as “Site Development Improvements”. However, the Authority does not have sufficient funds to pay for the Offsite Improvements and Site Development Improvements. Developer is willing to advance funds to Authority to fund the Offsite Improvements and Site Development Costs. If Developer were unable to recover such advances, such development of the Project would be financially infeasible. In order to make the development of the Project financially feasible, the Parties have negotiated an arrangement whereby the City will turn over to Authority funds equal to 50% of sales taxes derived from the Project, and Authority will in turn pay over such amounts to Developer as recovery of its advances, for a period of up to twenty-five years, subject to certain limitations and exceptions, to the extent required to make the Project economically feasible.

G. Regulatory Compliance and Remedial Systems Costs

Authority shall construct the Remedial Systems at its sole cost (except for BPS, which is subject to a cost cap described in Section 6.1.2 of the Agreement) in accordance with applicable governmental requirements, including all activities required under the RAP and Compliance Framework Agreement with the DTSC. The Remedial Systems include the Groundwater Extraction and Treatment System, the Landfill Gas Collection and Control System, and landfill cap, and includes rough grading and trash consolidation of the Cell 2 Site, and compaction of imported fill on the Cell 2 Site to levels generally corresponding to the ultimate planned finished grade for the various areas of the Project (e.g., parking lots and fixtures therein, and the bottom of the building slab), as shown on the grading plan prepared by the civil engineer of record.

H. Division of Responsibility and Cost Sharing

While the Authority is responsible for construction, operation and maintenance of the Remedial Systems and BPS, 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 shall be as follows:

1. 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 consolidating 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, 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.

2. 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 and other public improvements at its cost, subject to receiving funds from Developer in the amount of $10,000,000, as a loan for such improvements which shall be repaid by the City from funds equivalent to sales taxes generated by the Project and payable when received pursuant to a formula in the Cooperation Agreement between City and Authority. Infrastructure includes all utilities, storm drains, curb, gutter, base course and final paving for public streets, sidewalks, street landscaping, signage and street lighting.

3. 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"). A plan was approved in 2008-2009 and some infrastructure has already been installed. Funding including for maintenance will come from Developer to be paid by Sales Tax Assistance.

4. 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. The Authority shall also construct the Structural Slab. All of the foregoing would be constructed at Developer's expense, subject to reimbursement from Sales Tax Assistance, and maintenance expenses would be treated the same way.

5. Developer shall undertake and pay for all vertical construction of the Project from top of Structural Slab and shall own and maintain all such improvements including the structural slab. 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.

6. 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 from Authority-built utility lines at the property line to locations at Developer's utility shelf, as specified by Developer. To the extent possible the utilities will be constructed in the Surface Lot so they can be maintained by Developer. Infrastructure and Utilities on the Site are the Developer's responsibility.

7. The Authority shall process all approvals required by DTSC, including the Roadmap to Occupancy and Management Approach to Phased Occupancy (and other DTSC documents related to phased occupancy of the 157 Acre Site) 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.

8. The Authority shall oversee the master civil engineering of the 157 Acre Site, including the revisions to Parcel Map No. 70372 to: (i) separate Cells 1 and 2 (they are currently combined as Parcel 1 on the map); (ii) separate the Embankment Lot from the Cell 2 Surface Lot; and, (iii) prior to closing, fix the property line between the Surface Lot and the Subsurface Lot line at the bottom of the structural slab above the BPS under the buildings, and at a distance of no less than one foot (1') above the landfill liner in non-building areas.

9. The Authority shall retain ownership of the Embankment Lot 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, described below.

10. The Authority has already undertaken the revision of the Specific Plan and EIR to reflect changes in existing conditions and changes to the Plan due to the Project. Developer participated in the cost of the EIR pursuant to the Reimbursement Agreement.

11. 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.

12. The Authority shall install Remedial Systems (the “Remedial Systems”) to be owned, constructed, operated and maintained by the Authority including the Groundwater Extraction and Treatment System, the Landfill Gas Collection and Control 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 Agreement clearly states that the Developer shall not make advances for, nor shall any Developer advances be used for, the Remedial Systems or any other work or improvements to remediate the contamination of any portion of the 157 Acre Site.

13. 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 $9.00 per square foot of foundation slab, with the Developer responsible for the remaining cost of the BPS, subject to negotiation with Authority. The Parties shall cooperate to minimize the cost of the BPS in a manner acceptable to DTSC and LA County. The BPS is described as follows:

    a) 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.

    b) 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:

        i.) A below-slab passive venting system consisting of a network of perforated pipes embedded in a permeable 9”-12” thick layer of 1”-minus rock/crushed concrete layer under the entirety of each building slab that vent to the structure roof line. The passive venting system has been designed to be connected to the centralized methane monitoring system and accommodate an emergency blower to create an active venting system in the event of methane detections above a design threshold.

        ii) A secondary geomembrane (HDPE) system that would be mechanically attached to and seal the bottom of each building slab.

        iii) Continuous gas detectors in each of the vent risers programmed to alert

appropriate personnel at different methane concentrations.

c) 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 the Developer's 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.

d) However, some level of BPS for the site exists due to prior regulatory approval of a full BPS. Therefore, the Authority 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.

I. Community Facilities Districts

Two (2) Community Facility Districts have been established by City under statutory authority to pay for, respectively (i) O&M for Remedial Systems (CFD 2012-1) (" **Remediation CFD**") costs and (ii) the costs of installation, operation and maintenance of Entry Signs and Entry Plazas and the costs of operation and maintenance of public infrastructure within the 157 Acre Site (CFD 2012-2) ("**Infrastructure CFD**"). These CFDs will be restructured by the City such that the Project will be charged only such annual amounts as are necessary to pay the Project's pro rata share, (i) for the Remediation CFD, of only those line items for operation and maintenance of the Remedial Systems set forth in the Exhibits required in connection with the 157 Acre Site (the "**O&M**") and (ii) for the Infrastructure CFD, (1) costs of operation and maintenance of public infrastructure within the 157 Acre Site and (2) costs of installation, operation and maintenance of the Entry Plazas, including Entry Signs as set in the Agreement.

Actual CFD assessments can rise or fall due to the actual costs of such line items; provided that, regardless of actual costs incurred by City, Authority or any community facilities district, Developer, the Project and the Developer Property shall not in any event be charged, collectively, by the Existing CFDs or the CFD for the items specified in clauses (i) and (ii)(1) above, more than One Dollar and Seventy-Five Cents ($1.75) per square foot of GBA on an annual basis. In addition, Developer shall be responsible to pay its pro rata share of the costs of installation, operation and maintenance of the Entry Plazas, including Entry Signs, which shall be equal to thirty percent (30%) of the reasonable costs incurred by the City in each year for such purpose. There shall be no tax or other financial burden imposed on the Developer Property or the improvements thereon on account of the CFD or any similar taxing authority of City or any agency or instrumentality of City or controlled by City, other than as set forth in the Project Agreement and the CFD shall be in lieu of any

other assessments, special taxes, fees or charges that may otherwise be charged on account of the types of services covered thereby.

J. Environmental Review

The original Carson Marketplace Specific Plan was subject to extensive environmental review with a Final EIR certified by the City Council on February 8, 2006, and was thereafter subject to legal challenge in Carson Coalition for Healthy Families v. City of Carson/Carson RDA, LASC Case No. BS102076, which case the City and former Carson Redevelopment Agency prevailed on both in the trial court and the Court of Appeal (Appellate Case No. B194923). An addendum to the Final EIR was approved by City in 2009. The District at South Bay Specific Plan and the Project has been subject to further environmental review including preparation of a Supplemental Environmental Impact Report for The District at South Bay Specific Plan, State Clearinghouse No. 2005051059 (the "SEIR") pursuant to Resolution No. 18-2620 and the adoption of the Specific Plan pursuant to Resolution No. 8-2621. The SEIR specifically identified that the implementation of the proposed modified Project would require certain approvals, including approval of the Cooperation Agreement and the Conveyancing Agreement.

Neither the Cooperation Agreement nor the Conveyancing Agreement changes the environmental assessment of the SEIR. Further, the SEIR was certified on April 3, 2018. The Carson Reclamation Authority further finds that no subsequent review is required under CEQA Guidelines section 15162 as since that time no substantial changes have been proposed in the project which will require major revisions of the previously certified SEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. Likewise, no substantial changes have occurred since that time with respect to the circumstances under which the project is undertaken which will require major revisions of the SEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. There is also no new information, which was not known and could not have been known at the time of the SEIR that the project will have significant effect not discussed in the SEIR. As such, the Carson Reclamation Authority finds the Cooperation Agreement and the Conveyancing Agreement have already been fully assessed in accordance with CEQA, no subsequent review is required under CEQA Guidelines section 15162, and no further action or review is required under CEQA.

K. Cooperation Agreement

1. General

The Cooperation Agreement is the mechanism by which the City and Authority

accomplish the following: (1) The Authority commits to construct the public infrastructure, called the "Offsite Improvements" which the City is obligated to provide under the Development Agreement to facilitate the Project and so that he City does not incur liability for working in the contaminated soil, (2) the Authority commits to construct all infrastructure in accordance with City ordinances and regulations, and prevailing wages, (3) the City commits to pay Authority for undertaking these obligations, funds equivalent to 50% of the sales taxes received by City for a period of up to 25 years in accordance with a formula in the Cooperation Agreement and identical to the formula provided in the Conveyancing Agreement, and described further herein.

A special fund, to be held separate and apart from all other funds of the City to be known as the "Cell 2 Surface Lot Revenues Fund" or by such other name as shall be designated by the City Manager of the City, into which fund shall be deposited sales tax revenues derived by the City from the Project as shall be necessary to enable the City to satisfy the City's payment obligations under the Cooperation Agreement.

All payment obligations of the City under the Cooperation Agreement shall be limited obligations of the City, payable solely from sales tax revenues derived from the Project on deposit in the special fund established.

2. Terms of Cooperation Agreement

Amongst other provisions, the Cooperation Agreement includes the following terms:

(a) The Sales Tax Assistance will reimburse Developer for Advances to construct the Offsite Improvements and the Site Development Improvements.
(b) Sales Tax Assistance is calculated and due only after the City receives the sales taxes from sales on the Project, but could be paid from any City funds in accordance with the formula and is paid from City to Authority.
(c) Payments are made quarterly, and within 180 days of the end of the Quarter. Generally the State Board of Equalization ("**BOE**") pays the City within 90 days of the end of the Quarter, the City and its consultant review the data and prepare a report which is received within 165 days from the end of the Quarter, and then the City would pay the Authority thereafter.
(d) Authority must perform all of its work in accordance with City ordinances and regulations and provisions of State law, including prohibitions against discrimination, payment of prevailing wages, and other requirements.

3. Enforcement by Developer

While not a party to the Cooperation Agreement, Developer has the right as a third party beneficiary to enforce its terms against the parties, and would have all of the rights the Authority has to enforce the agreement against the City should the City not make the required payments and if the Authority fails to act to enforce the agreement.

V. FISCAL IMPACT

A. Reimbursement Agreement

Upon execution of the Reimbursement Agreement and ENA in July 2016, Developer deposited $1,000,000 for land use entitlement consultant costs. Since then the Developer has been paying its fair share for the Authority's out-of-pocket costs for preparing the Conveyancing Agreement, 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.

The Reimbursement Agreement also requires the Developer to pay for 50% of the Authority's "holding costs" for Cell 2 (estimated at 27% of the whole 157 Acres) until the execution of the Development Agreement, at which point the percentage increases to 100% of Cell 2 costs, or approximately $127,000 per month. These amounts are subject to review of the Authority's actual operating costs. The holding cost has been defined to mean all costs incurred by the environmental contractor for 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, currently approximately $63,000 per month.

B. Other Deposits and Economic Terms

Pursuant to the MOU, the Developer deposited $4,000,000 with the Authority on June 28, 2017, for purposes of securing the Developer's performance with half the Deposit being nonrefundable if the Development Agreement is approved. Thirty-three percent of the Deposit is to be refunded upon the grand opening of Phase I of the Project, and 17% of the Deposit is refunded only upon the Grand Opening of Phase II.

Also, in the event of a failure to complete the project timely (subject to allowable delay such as force majeure), the Developer is to pay an additional $11,000,000 to the Authority as consideration for lost opportunity.

Developer will also 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.

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.

Based on Developer's projections of Project costs and anticipated net operating income from the Project termed the Required Return, defined below, Developer has determined that it can achieve the Required Return only if the Authority pays these actual additional development costs, provides the Offsite Improvements described above, constructs the Remedial System and BPS, all at its expense. However, the Authority does not currently have funds to pay all of these additional costs.

The Authority will undertake its own obligations at its own cost but will also perform certain excess subsurface work for the Developer, so that Developer does not incur liability for working in the contaminated soil. This excess site development work is termed the Site Development Improvements, and while performed by Authority will be funded by Developer. To offset these costs in order to make the Project feasible, the parties contemplated a sales tax assistance package based on 50% of the 1% share of 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 the 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. In many instances where the Developer will cover the Authority's costs, these costs will be reimbursed from sales tax paid from the Project through the City can make the payments from any of its funds. These extra development costs are those that result from the environmental condition of the 157 Acre Site in excess of costs normally incurred with non-contaminated sites. Partly due to these costs, there may be a Feasibility Gap in the Project, based on a Project pro forma.

The Authority shall prepare a final total actual summary showing all costs incurred by Developer to develop the Project 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 Sales Tax Assistance or other funds of City .

However, if construction has not commenced on Phase II by the seventh anniversary of the Grand Opening of Phase I of the Project, then, from and after the date of such seventh anniversary, the foregoing payment rate of 50% of the sales taxes received by the City accruing from the Project shall be changed to 45% percent of the sales taxes received by the City accruing from the Project from and after such seventh anniversary. If by the tenth anniversary of the Grand Opening of Phase I of the Project Developer commences construction on Phase II, then such payment rate shall be adjusted back to 50% of the sales taxes received by the City accruing from the Project from and after the Grand Opening of such Phase II but if the Grand Opening does not occur by then, the 50% is permanently reduced to 45%.

The reimbursement term ("Reimbursement Term") commences on the date of Developer's first receipt of sales tax reimbursements from the Project and ends on the twenty-fifth anniversary of such date, subject, however, to certain adjustments contained in the Agreement. If the payments are insufficient to fully repay the Total Recovery Amount, the portion of the balance unpaid at the expiration of the Reimbursement Term is forgiven.

C. 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 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 negotiated a "look back" provision to determine if the Project is being over-subsidized and make adjustments for the future. The terms in the "look back" are summarized as follows:

1. Aggregate Development Cost. Upon the conclusion of the construction and opening of Phase I of the Project, Authority shall provide a final accounting of the Site Development Advances. Such accounting shall be updated, if necessary, at the time of determination of the Feasibility Gap as described below. The actual development cost of the entire Project, including tenant improvements, shall be determined based on the costs reported by the Developer's parent, The Macerich Company, in its SEC filings, or, if not reported in such filings, then on another financial report that has been audited by a "Big Four" accounting firm. The actual development cost of the entire Project, plus the total amount of Offsite Advances and Site Development Advances, shall be the "Aggregate Development Cost."

2. Actual NOI. The actual Project real estate net operating income shall be determined for the full calendar year before the Calculation Date, excluding any Sales Tax Assistance Payments received by Developer and its affiliates (the "Actual NOI"). The Actual NOI shall be based on a financial report that has been audited by a "Big Four" accounting firm, unless there is a pending legal or regulatory challenge to such financial reporting, in which case the Actual NOI can be audited by a "Big Four" accounting firm retained by Authority. Additionally, if Developer has represented to any third Party in connection with an acquisition or loan transaction in the six months prior to the date of determination that the Actual NOI is higher than that contained in such financial report, then such higher Actual NOI shall be utilized.

3. Acceptable Development Cost. The "Acceptable Development Cost" shall be determined by dividing the Actual NOI by the return on cost that Macerich needs to achieve in order to move forward with the Project (the "Required Return"), which is an amount equal to (i) 8%, increased at a rate of (ii) 4% per annum from the first anniversary of the Grand Opening of the Project to the date of determination.

4. Feasibility Gap. If the Aggregate Development Cost is greater than the Acceptable Development Cost, then the difference shall be the "Feasibility Gap". If

there is a Feasibility Gap, Authority shall be required to reimburse on account of Macerich Site Development Advances the lesser of (i) the aggregate amount of such advances, and (ii) the Feasibility Gap. Sales Tax Assistance payments made prior to the date of such determination shall be credited to reimbursement of advances for the Authority Work in accordance with the Recovery Terms. If the Acceptable Development Cost is equal to or greater than the Aggregate Development Cost then Authority shall not be required to reimburse the Site Development Advances.

5. Payments Pending Determination of Feasibility Gap. Until the Feasibility Gap has been determined, all payments on account of the Total Recovery Amount shall be made in accordance with Section 7.2, with Sales Tax Assistance Payments credited first towards the Offsite Advances.

D. Conflicts

This staff report is extensive and summarizes the terms of the agreements among the parties, termed the **Project Agreements** (the **Development Agreement,** the **Conveyancing Agreement**, the **Cooperation Agreement**). As extensive as this report is, the Project Agreements are far more extensive and specific. In interpreting the Project Agreements, in the event the generalized summaries herein are inconsistent with the Project Agreements, the more specific terms of the Project Agreements prevail over the general descriptions herein.

VI. EXHIBITS

1. Resolution No. 18-04-CRJPA (Pgs. 21-30)
2. Conveyancing Agreement (Pg. 31)
3. Cooperation Agreement (Pgs 32-60)

1.

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