



Legislation Text

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Report to Carson Reclamation Authority

Tuesday, October 01, 2019

Discussion

SUBJECT:

CONSIDER A CARSON TRANSFER STATION AGREEMENT WITH USA WASTE OF CALIFORNIA, INC. ("USA WASTE") AND THE CITY OF CARSON RELATED TO A SETTLEMENT AGREEMENT BETWEEN THE CITY OF CARSON, USA WASTE, AND WASTE RESOURCES TECHNOLOGY ("WRT") (CARSON RECLAMATION AUTHORITY)

I. SUMMARY

This action by the Carson Reclamation Authority Board would consider a "Carson Transfer Station Agreement" ("Agreement", shown as Exhibit "A") between the City and USA Waste, which is incorporated into a Settlement Agreement between the City, USA Waste and the City's new franchise waste hauler, WRT. The Carson Transfer Station Agreement, however, is a stand-alone agreement, and Section 6 of the Agreement contemplates that if the City were to consider making an offer on certain USA Waste property adjacent to or near the current transfer station, the actual real property transaction would be undertaken by the CRA and not the City due to the potential for contamination. Therefore, the CRA would need to be a party to the Agreement.

This action (option) does not bind the CRA to acquire any property or undertake any site investigation or remediation; it only provides that if the parties do reach an agreement on the acquisition of such property and can complete an assemblage with adjacent non-USA Waste properties, the transaction(s) through Purchase and Sale Agreements would be approved by the CRA Board and property title would be taken in the name of the CRA, not the City. Any transaction would need to be mutually beneficial and would also likely have a third-party, private developer as part of the deal.

Litigation Background

Since March 2018, the City has been party to several litigation pieces relating to its award of an exclusive solid waste hauling franchise to WRT. The City's former franchised hauler, USA Waste, has challenged the City's award of franchise to WRT and the transition of certain solid waste accounts to WRT. The City and USA Waste have also had other longstanding disputes with respect to USA Waste's operation of a solid waste "transfer

station” in the City.

All parties to the litigation worked for several months towards a global settlement of all disputes and reached a global settlement package; the terms of this settlement were approved by the City Council in closed session on September 3, 2019 and ratified in open session on September 17, 2019. The settlement provides several benefits to the City, including:

- Dismissal and release from all pending, litigation;
- A onetime payment of \$1.2 Million to the City;
- A proposal to negotiate and effect at least \$5,000,000 in improvements to USA Waste's transfer station, including enclosing same, landscaping and development of a state of the art ventilation system;
- An option for the CRA to purchase certain parcels on Main Street for redevelopment purposes; and
- New, increased “host fees” payable to the City from USA Waste- estimated to generate approximately an additional \$500,000 in revenues to the City, annually;

As an integral component of the settlement, the City Council also approved a “First Amendment to Exclusive Franchise Agreement for Integrated Solid Waste Management Services” to harmonize the terms of WRT’s franchise with the terms of settlement.

II. RECOMMENDATION

CONSIDER TAKING the following actions:

1. **APPROVE** the “Carson Transfer Station Agreement” between the City of Carson, USA Waste, and the Carson Reclamation Authority, attached as Exhibit “A”. The terms of the Carson Transfer Station Agreement were approved by the Council in closed session and reported out by the City Attorney on September 3, 2019 and the agreements ratified by the City Council on its Regular September 17, 2019 Agenda; and
2. **AUTHORIZE** the Chairman to execute the Agreement, subject to Authority Counsel’s approval as to form.\
3. **DIRECT** the Reclamation Authority Secretary to obtain CRA signatures and record the Memorandum of Option pursuant to Section 6B of the Carson Transfer Station Agreement with the Los Angeles County Recorder.

III. ALTERNATIVES

Take other action as appropriate consistent with law.

IV. BACKGROUND

The Authority is only being asked to consider approval of the Carson Transfer Station Agreement, and not the Settlement Agreement between the parties nor the Amendment to the Franchise Agreement with WRT. Section 6 of the Agreement contains an Option to Purchase Main Street Parcels. The City considered that a substantial benefit it negotiated is that USA Waste will grant the CRA an “option to purchase” two parcels of real property located at the northwest corner of Main Street and Francisco (the “Main Street Parcels”). The purchase price for the Main Street Parcels will be mutually-agreed upon by USA Waste and the CRA, or determined by appraisal. These Parcels may be used for redevelopment by the CRA. The option to purchase the Main Street Parcels is for one year from the effective date of the Agreement and thereafter the CRA will have a “right of first refusal” to buy the Parcels until December 31, 2021.

Background on Dispute

On July 15, 2003, City granted to USA Waste a ten (10) year non-exclusive franchise for the collection, transportation and processing of solid waste from certain commercial and industrial premises in the City. USA Waste also held an exclusive franchise for the collection, transportation and processing of solid waste from residential premises in the City. However, on July 18, 2017, the City issued a request for proposals (RFP P171-19) from qualified solid waste companies to provide solid waste collection, transportation, recycling, and disposal services with the intent to enter into an exclusive franchise agreement for residential and commercial solid waste management services (the “RFP”).

As a result of the City’s RFP process, on or about December 5, 2017, the City Council authorized negotiations with WRT to enter into an exclusive franchise agreement for residential and commercial solid waste handling services, and on March 15, 2018, such agreement was awarded to WRT.

On March 15, 2018, USA Waste filed a Verified Petition for Writ of Mandate against the City and WRT, Los Angeles Superior Court Case No. BS172744, to overturn the City’s RFP award to WRT and other subsequent legal actions (Case No. BS173645). Other disputes and pleadings were attendant to these litigation actions, including the filing of a Cross-Complaint by the City (in Case No. BS173645) and the City’s issuance of legislative subpoenas to USA Waste. (Collectively, all actions referenced herein as the “Litigation”).

Additionally, USA Waste owns and operates the Carson Materials Recovery Facility/Transfer Station located at 135-401 Francisco Street, 19803-19809 Main Street, 19821 Main Street and 19831 Main Street, Carson, CA 90745 (“Transfer Station” or “Site”), which is permitted to receive, process, and arrange for disposal and transport of municipal solid waste. The Transfer Station has been a matter of dispute between the City and USA Waste for several years, namely:

- i. City and USA Waste dispute the expiration or termination date of the Transfer Station’s conditional use permit No. 391-92 and zoning and general plan designations associated with the Transfer Station;

- ii. City and USA Waste dispute whether additional permit fees are allegedly owed to the City relating to the operations of the Transfer Station under Carson Municipal Code §63153 or otherwise; and
- iii. City and USA Waste dispute whether any activities at the Transfer Station have resulted in or caused any nuisance due to odors or otherwise.
- iv. Collectively, the “Transfer Station Dispute.”

All parties to the Litigation worked diligently for several months towards a global settlement of the Litigation and the Transfer Station Dispute and reached a global Settlement package. The Carson Transfer Station Agreement (Exhibit “A” hereto) is an integral component of the Settlement.

Global Settlement / Carson Transfer Station Agreement

The Settlement includes mutual releases by all parties and requires prompt dismissal of the Litigation. The Settlement resolves the issue of USA Waste’s continued hauling services to commercial solid waste customers by stipulating to an end-date by which time USA Waste will relinquish all commercial hauling accounts to WRT. The Settlement also authorizes WRT to utilize USA Waste’s Transfer Station for purposes of “tipping” its solid waste collected in the City.

In addition to dismissing the Litigation, the Settlement includes the “Carson Transfer Station Agreement” between the City and USA Waste, which is attached and incorporated into the Settlement, and is also separately attached hereto as Exhibit “A”. The Carson Transfer Station Agreement, in conjunction with the Settlement of Litigation, is designed to settle the City’s Transfer Station Dispute with USA Waste.

The Agreement included a \$1.2 Million Dollar one-time payment to the City, and \$5 Million or more in Transfer Station Improvements by USA Waste. By obtaining entitlements to improve the Transfer Station to a state-of-the art condition, USA Waste would be permitted to operate the Station for 15 years (or up-to December 31, 2024). Contemplated Transfer Station improvements include:

- a. Landscaping and fencing improvements to beautify area;
- b. Foundational slab expansion;
- c. Ventilation/Air Filtration System installed to prevent odor issues;
- d. Remodel 2-story office building to be consistent with presentation boards;
- e. Demolition of certain facilities to accommodate additional space;
- f. Additional paving as needed;
- g. Relocate scale & scale house, replace load-out scales;
- h. Electrical upgrades and power to scales;
- i. Replace or put in place walls and translucent materials on Transfer Station building *metal & translucent) and appropriate doors;

- j. A wall or other agreed-upon visual barrier on the maintenance facility lot to improve appearance from Main Street.

There are other financial considerations as well. USA Waste agrees to reimburse the City for all actual City staff, City consultants and attorneys' time and materials reasonably expended in the course of the permitting and approval process related to the Transfer Station improvements and negotiations (with a cap of \$75,000 for attorneys' fees related to negotiations), and the resolution of a dispute over the amount of "host fees" that have historically been paid by USA Waste to the City for Waste's operation of the Transfer Station, resulting in a higher per-ton rate at the facility.

Option to Purchase Main Street Parcels

The Authority is only being asked to consider approval of this Agreement. Section 6 of the Agreement contains an Option to Purchase two parcels of real property located at the northwest corner of Main Street and Francisco (the "Main Street Parcels"). The purchase price for the Main Street Parcels will be mutually-agreed upon by USA Waste and the CRA, or determined by appraisal. These Parcels may be used for redevelopment by the CRA. The option to purchase the Main Street Parcels is for one year from the effective date and thereafter the CRA will have a "right of first refusal" to buy the Main Street Parcels until December 31, 2021.

Franchise Agreement Amendment

As a further component to the Settlement, the City Council approved that "First Amendment to Exclusive Franchise Agreement for Integrated Solid Waste Management Services" ("Amendment"). The Amendment merely harmonized the terms of WRT's solid waste handling franchise with the terms of the Settlement. As noted above, the Settlement contemplates that WRT will utilize USA Waste's Transfer Station for delivery of its solid waste collected from within the City. And, the parties have stipulated that USA Waste will relinquish all commercial hauling accounts to WRT by December 31, 2019.

V. FISCAL IMPACT

There should be no cost impacts to the CRA, as the acquisition of any property pursuant to the Agreement would be part of a Disposition and Development Agreement with a private development party. The City shall receive a \$1.2 Million Dollar in payment upon execution of all Agreements and higher per-ton host fees from USA Waste for continued operation of the Transfer Station, estimated at over \$500,000 in additional revenues to the City annually.

VI. EXHIBITS

- A. Carson Transfer Station Agreement (pgs. 6-37)

Prepared by: John S. Raymond, Executive Director