



## Legislation Text

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### Report to Carson Reclamation Authority

Wednesday, June 10, 2020

Discussion

#### **SUBJECT:**

**RATIFY CLOSED SESSION APPROVAL MADE ON JUNE 5, 2020 FOR A MEMORANDUM OF UNDERSTANDING OUTLINING MAJOR DEAL TERMS FOR OPTION AGREEMENT: CELLS 3, 4 AND 5 OF 157 ACRE SITE IN CARSON WITH FBD CARSON, LLC ("FBD"), AND A CORRESPONDING DEPOSIT AND REIMBURSEMENT AGREEMENT MADE BY FBD IN FAVOR OF THE CITY AND THE CARSON RECLAMATION AUTHORITY**

#### **I. SUMMARY**

As part of the ongoing effort to secure a development partner for Cells 3, 4, and 5 ("Remainder Cells") of the former Cal-Compact Landfill, in September 2019 the Carson Reclamation Authority ("Authority" / "CRA") issued an Invitation to Propose ("RFQ") to the general development community seeking a developer to undertake a project on the Remainder Cells. Given the Authority's experience working on the Cell 2 Project, the RFQ required the developers to acknowledge that they must bear the responsibility for all the project costs - vertical, horizontal, and remediation - and that their project pro forma should reflect that. Most of the proposals the Authority received were largely industrial/warehouse/fulfillment centers, given the strong financials of such uses, as opposed to retail, residential and other uses, which have been struggling.

In November, 2019, the Authority received seven (7) responses. Through a series of interviews by the Authority Board along with technical analysis by staff and consultants, the field was reduced first to four (4) firms, then two (2), which were Faring Capital, LLC ("Faring") and Panattoni Development. Faring was selected by the Authority Board to negotiate an agreement for Faring's acquisition of the Remainder Cells and future development thereon. The recommendation made to the Authority Board at its June 5, 2020 meeting was to approve a Memorandum of Understanding with FBD Carson, LLC, a partnership between Faring and Bridge Development ("Bridge") (Faring's joint venture partner). The purchase price for the Remainder Cells is an advance of \$45,000,000 and Faring and Bridge bare the entire cost of remediation of the Remainder Cells.

The Authority Board approved the MOU and the action was reported out at the end of the meeting by the Authority Counsel. For complete transparency, the Board has however

requested that the agreement be placed on the public meeting portion of an Authority Board public meeting, for formal approval.

## **II. RECOMMENDATION**

1. RATIFY CLOSED SESSION APPROVAL MADE ON JUNE 5, 2020 OF A MEMORANDUM OF UNDERSTANDING ("MOU") OUTLINING MAJOR DEAL TERMS FOR OPTION AGREEMENT: CELLS 3, 4 AND 5 OF 157 ACRE SITE IN CARSON WITH FBD CARSON, LLC ("FBD"), AND A CORRESPONDING DEPOSIT AND REIMBURSEMENT AGREEMENT ("REIMBURSEMENT AGREEMENT") MADE BY FBD IN FAVOR OF THE CITY AND THE CARSON RECLAMATION AUTHORITY
2. AUTHORIZE the Chairman or his/her designee to execute the MOU and the Reimbursement Agreement and all related documents in a form acceptable to the Authority Counsel.

1.

## **III. ALTERNATIVES**

TAKE another action the Authority Board deems appropriate.

## **IV. BACKGROUND**

Since the Carson Reclamation Authority ("Authority") took title to the former Cal Compact Landfill (also referred to as the 157 Acre Site, the "Site") in May, 2015, and the notification from the NFL that a stadium was not going to be built on the Site, it has made a number of attempts to secure a developer for Cells 1, 2, 3, 4, and 5. Following the NFL owner's decision to locate LA stadium in Inglewood, the Authority immediately commenced negotiating with CAM-Carson, LLC ("CAM") (a subsidiary of Macerich Development) for a fashion outlet mall ("Project") on Cell 2 of the Site. Such negotiations with CAM ultimately culminated with an agreement for the conveyance of Cell 2 to CAM for the construction of the Project, as set forth in the Conveyancing Agreement between CAM and the Authority, in September 2018 ("Conveyancing Agreement")

In September 2019, the Authority issued an Invitation to Propose ("RFQ") seeking a developer to undertake a development project on the Remainder Cells. While two previous RFQs seeking developer proposals had previously been issued by the Authority, which were ultimately unsuccessful, this new RFQ included much more information based on the Authority's experience on the Site and with the Cell 2 Project; thus the RFQ was much more specific than the previous ones in describing the developer's responsibilities, rather than deferring the discussion to the negotiation of the agreements. As such, the RFQ required the developers to acknowledge that they would need to bear the responsibility for all the project costs - vertical, horizontal, and remediation - and that their project pro forma should reflect that.

the RFQ developer proposers understood that the Site is subject to a Remedial Action Plan ("RAP") approved by DTSC in 1995. They understood that remediation work would include all remediation work and all financial assurances for the funding thereof required under the Compliance Framework Agreement ("CFA"), the RAP, the Management Approach to Phased Occupancy ("MAPO") and other applicable documents or regulatory requirements. Unlike in the Cell 2 Project, the approved developer would perform all Remediation Work on the Remainder Cells and other development work necessary on the Remainder Cells. The investigation of the environmental conditions, necessary testing and the development of the remediation plan on these Cells shall be undertaken by developer at the developer's expense.

Of the 7 proposals received in November, 2019, one was from Faring. Their proposal concentrates a 13 acre community park with commercial, restaurants and retail along Lenardo Drive and flexible logistic development along the back.

The Authority Board gave direction to negotiate with Faring and Bridge (Faring's joint venture partner) on March 9, 2020, and to engage in back up negotiation with Panattoni Development who had submitted an all industrial development.

The agreement was a couple of weeks from being finalized and executed when CAM served the CRA with a lawsuit. CAM's actions resulted in the Faring/Bridge team pausing to conduct further due diligence. They have now completed their additional due diligence as a result of CAM's lawsuit and are prepared to proceed. However, given a number of new issues raised and the complex nature of the transaction it appeared that an Option Agreement on the three cells would be the best structure, with a series of other related agreements negotiated at the same time. The negotiation of an Option Agreement has been ongoing since that time, with exchanges of drafts and the Parties are working on preparing the various documentation required for the Option Agreement and exhibits thereto. However, it is likely that it will be at least several more weeks to finalize executable documents.

As an interim agreement, it was determined that all of the major deal points could be captured in a much shorter MOU (as defined above), between Faring / Bridge's subsidiary entity FBD (defined above). The purpose of the MOU is to set forth the major terms of the transaction under the Option Agreement (and provide for FBD's reimbursement of Carry Costs as specified in the MOU), and so that the parties can execute the Reimbursement Agreement and FBD / Faring can deliver a deposit to the Authority to pay for costs of the City / Authority in negotiating the Option Agreement and processing the Project and to compensate the City / Authority for other matters as set forth in the Reimbursement Agreement.

The MOU describes the Project and the Option Rights FBD (as the developer) would receive under the Option Agreement, as well as the compensation the Authority would receive in consideration for those rights.

**OPTION RIGHTS.** The Option Agreement shall give FBD two options: Options A and B. Option A must be exercised by FBD if City approves the Project in a form substantially

consistent with the Scope of Development and the Site Plan shown in the MOU (the “Required Approvals”) and the required entitlements for the Project. If the Project is not approved but suggested corrective actions are identified by the City Council in its disapproval, FBD has the obligation to reprocess the entitlements and resolve the basis of such disapproval.

FBD has a second option, Option B, applicable in the event of unexcused failure to obtain Required Approvals and Entitlements for the Project including (i) City failure to consider Project after initial submittal or Re-Processing by Developer; (ii) City Council disapproves the Project but fails to identify actions in its disapproval which would address the reasons for the disapproval; (iii) City approval of a project substantially different from the Project (as described in the MOU); (iv) City approval is reversed through Adverse Judicial Judgment and Developer submits an application for Re-Processing, but City fails to consider the Re-Processing; or (v) if after Re-Processing of the Project, the Project is denied by the City Council; all of which actions are considered to be a “Carson Default”. A Carson Default is excused by an uncured Developer material default.

The Term of the Option Agreement will be up to two (2) years, provided that the Term is tolled during any litigation. Additionally, CRA Executive Director shall grant further extensions of up to 180 days administratively under certain conditions.

Title to the Remainder Cells shall only transfer following the approval of the entitlements that authorize and permit the development of the Project (“Entitlements”), following the expiration or passage of all applicable appeal periods and successful resolution of all litigation challenging such approval, if any.

**OPTION PRICE.** The Purchase Price for the Remainder Cells is \$45,000,000, which shall be deposited under two escrows (A/B escrows) and made in two advances (a First Advance and a Second Advance) The Purchase Price is considered Liquidated Damages in the event of a material default by the Developer (see Section 14).

**DOCUMENTS NEEDED FOR TRANSACTION.** As mentioned in this section, there are a number of different documents that are related to the Option but are separate from the Option Agreement itself. There are separate sets of agreements that would pertain to the different Options available to the Developer, for the two separate escrows (Escrow A and Escrow B). These agreements are listed below (along with the timeframe when the agreements need to be finalized):

- Option A:     Grant Deed [final form by Escrow A]
- Assignment/Bill of Sale [final form by Escrow A]
- Development Agreement [finalized prior to Final Closing]
- Subsurface License Agreement [final form by Escrow B]

Insurance Administration Agreement [final form by Escrow A]

CC&Rs [finalized prior to Closing/transfer of Remainder Cells]

Option B: First Advance Promissory Note [final form by Escrow A]

Second Advance Promissory Note [final by Second Advance]

Deed of Trust [final form by Escrow A]

Sign Lease [final form by Escrow A]

DIF Credit Agreement [final form by Escrow B]

Reconveyance/Release/Termination documents [by Escrow B]

**CARRY COST.** CRA has certain costs for the operation and maintenance (“O&M”) of the Remedial Systems which have been and will be constructed (“Carry Costs”). The Carry Costs have recently ranged from \$200,000 to \$445,000 per month on the entire Site. As of June 9, 2020, Developer shall commence paying the monthly pro rata Carry Costs to the CRA. Upon execution of the Option Agreement, Developer shall continue to pay for its pro rata share of the Carry Costs and shall also repay the CRA for the Carry Costs attributable to these Cells incurred by the CRA between March 9, 2020 (i.e., the date on which the CRA Board gave approval for staff and its attorneys to negotiate and prepare the Option Agreement with Developer) through June 9, 2020. Developer’s payment obligations for the Carry Costs are capped at \$250,000 per month or \$6,000,000 in the aggregate during the initial two year term of the Option Agreement.

**INSURANCE PROGRAM.** Developer must pay its fair share of the CRA’s insurance programs, including PLL, CPL/PLI, and OCIP, on a pro-rata or risk allocation basis, based on acreage or construction valuation (depending on the policy) and based on which policies Developer elects to be insured under.

**OFFSITE IMPROVEMENTS.** The CRA, using locally available funds through the City, shall design and construct the Lenardo Drive and the main stormwater infrastructure, as well as the backbone roadway and traffic improvements, and water sewer, drainage, power, and other utilities within the public right-of-way to the property line of the Remainder Cells, including utility stubs to the Property roadway and other off-site physical improvements required for development of the Project on the Property. Developer shall contribute to such costs, but the payment obligation is limited to 60% of the total costs of the offsite public infrastructure required to serve and support the Project; and with respect to the construction of Lenardo Drive only, the Parties shall establish a cap on Developer’s payment obligation which shall be delineated in an exhibit to the Option Agreement.

## **V. FISCAL IMPACT**

The MOU provides for the Developer to enter into a Reimbursement Agreement of \$2,000,000, of which \$250,000 is immediately available to the CRA for project related expenses such as legal costs; the balance would be available for the CRA’s costs in

processing the Project and its Entitlements, including CEQA studies. The Developer's payment of its share of the Carry Costs are estimated to be about \$200,000/month, which would be paid to the CRA to cover a portion of its O&M obligations. Finally, the Option Agreement, when executed, would require the Developer to pay the CRA a total of \$45,000,000 to be available for project expenditures.

## **VI. EXHIBITS**

1. MEMORANDUM OF UNDERSTANDING OUTLINING MAJOR DEAL TERMS FOR OPTION AGREEMENT: CELLS 3, 4 AND 5 OF 157 ACRE SITE IN CARSON WITH FBD CARSON, LLC (Pgs. 7-17)
  
2. DEPOSIT AND REIMBURSEMENT AGREEMENT ("REIMBURSEMENT AGREEMENT") MADE BY FBD IN FAVOR OF THE CITY AND THE CARSON RECLAMATION AUTHORITY (Pgs. 18-30)

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