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Report to Carson Reclamation Authority

Thursday, July 23, 2020

Discussion

SUBJECT:

CONSIDER OPTION AGREEMENT AND JOINT ESCROW INSTRUCTIONS AND AN AGREEMENT TO GRANT DEVELOPMENT IMPACT FEE CREDIT AGREEMENT AND FOR CONSTRUCTION OF PUBLIC INFRASTRUCTURE WITH FBD CARSON, LLC FOR CELLS 3, 4 AND 5 OF THE 157 ACRE SITE

I. SUMMARY

In September 2019 the Carson Reclamation Authority ("Authority") issued an Invitation to Propose ("RFQ") seeking a developer to undertake a project on Cells 3, 4, and 5 ("Remainder Cells") of the former Cal-Compact Landfill property ("157 Acre Site"). The RFQ required the developers to bear the responsibility for all the project costs - vertical, horizontal, and remediation -- based on the Authority's experience on the Cell 2 Project. Most of the proposals the Authority received were largely industrial/warehouse uses, given the strong real estate economics of such uses, as opposed to retail, residential and other uses, which have weakened over the past several years.

Following the RFQ, in March 2020, the Authority Board selected Faring Capital, LLC ("Faring") to proceed with negotiations for its proposed project on the Remainder Cells, to include a signature community park with food and beverage facilities, playground space, exhibition and/or museum space, and entertainment uses along with an industrial/fulfillment/logistics center along the back of the Remainder Cells ("Project"). On June 10, 2020, at a public meeting, the Authority Board approved a Memorandum of Understanding ("MOU") and a Reimbursement Agreement with FBD Carson, LLC ("FBD"), a partnership between Faring and Bridge Acquisition, LLC ("Bridge"). The MOU outlined the basic terms that would governing the development of FBD's proposed Project that would be more fully detailed in an Option Agreement between the parties.

The parties have negotiated the terms of the Option Agreement and seek approval from the Authority Board in order to move forward on the transaction. Under the Option Agreement, the purchase price for the Remainder Cells would be made in the form of two advances, totaling $45,000,000, and FBD would be required to bear the entire cost of the remediation and development of the Remainder Cells. In order for the Authority to receive the first advance, in the amount of $20,000,000 under the Option Agreement, the Authority

must enter into the Agreement to Grant Development Impact Fee Credit and for Construction of Public Infrastructure with FBD, and therefore, that agreement is also being presented to the Board for approval.

II. RECOMMENDATION

1. APPROVE OPTION AGREEMENT AND JOINT ESCROW INSTRUCTIONS AND RELATED DOCUMENTS FOR CELLS 3, 4 AND 5 OF 157 ACRE SITE WITH FBD CARSON, LLC; AND

2. APPROVE AN AGREEMENT TO GRANT DEVELOPMENT IMPACT FEE CREDIT AND FOR CONSTRUCTION OF PUBLIC INFRASTRUCTURE WITH FBD CARSON, LLC ("DIF CREDIT AGREEMENT"); AND

3. AUTHORIZE the Chairman or his/her designee to execute the Option Agreement, the DIF Credit Agreement, and all related documents in a form acceptable to the Authority Counsel, and with any minor modifications approved by the Authority Counsel.

1.

III. ALTERNATIVES

TAKE another action the Authority Board deems appropriate.

IV. BACKGROUND

Since the 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 several months later, the Authority has undertaken a number of efforts to secure a developer for Cells 1, 2, 3, 4, and 5. Following the NFL's decision to locate the LA stadium in Inglewood, the Authority immediately commenced negotiating with CAM-Carson, LLC ("CAM") (a subsidiary of Macerich Development) for a fashion outlet mall ("Cell 2 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.

In September 2019, the Authority issued an Invitation to Propose ("RFQ") seeking a developer to undertake a development project on the Remainder Cells. Negotiations arising from the Authority's two previous RFQs seeking developer proposals were ultimately unsuccessful, largely over issues related to economic feasibility, this RFQ included much more detailed information gleaned from the Authority's experience from the Cell 2 Project in order to inform proposers of the developer's responsibilities, rather than

deferring these discussions to the negotiation of the agreements. 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 reflected that.

The proposers were informed that the Site is subject to a Remedial Action Plan ("RAP") approved by DTSC in 1995, and that the environmental work would include all remediation work and all financial assurances for the funding 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 fund from its own sources and 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 would be undertaken by developer at the developer's expense.

Of the 7 proposals received in November, 2019, one was from Faring. Their Project proposes a 13 acre signature "community park" with commercial, restaurants and retail along Lenardo Drive, and industrial/fulfillment center development along the back of the Remainder Cells. While still somewhat conceptual, FBD anticipates the 13-acre community park element to be integrated and curated into an entertainment and dining hub in a post-COVID world that would be totally unique in the LA area:

1. Large and Small Dog Parks
2. Children's Playground
3. 6 to 8 Restaurants, with each restaurant being architecturally unique as well.
4. Giant Instagramable Art Pieces (similar to Robert Therrien's "Under the Chair" - the giant table and chair at The Broad in Downtown LA) and Instagram-worthy walls (similar to Paul Smith's wall on Melrose).
5. Cultural Programming that will include outdoor movie nights, picnics and other community gatherings

The Authority Board originally 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 a proposal for all industrial development. Faring and Bridge's joint venture entity is FBD Carson, LLC, which would be the Developer.

The Option Agreement was close to being finalized and executed when CAM served the Authority with a lawsuit over work on Cell 2. CAM's actions resulted in the Faring/Bridge team needing to conduct further due diligence and delayed negotiations. They completed their additional due diligence as a result of CAM's lawsuit and the MOU was approved in early June. Given the nature of the transaction, the parties agreed that an Option Agreement on the three cells is the best structure, with a series of other related agreements negotiated at the same time. The Option Agreement is presented here for approval.

Most of the major deal points were captured in the shorter MOU. The purpose of the MOU

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

Such compensation would take the form of two advances (1) a First Advance in the amount of $20,000,000, and (2) a Second Advance in the amount of $25,000,000. Ultimately, the First and Second Advances would be applied to the Purchase Price amount ($45,000,000) for the Remainder Cells if FBD is able to acquire the Remainder Cells. If not, however, the Advances would be secured by certain collateral documents in favor of FBD, including the DIF Credit Agreement, described below, a Promissory Note, a Deed of Trust, and a Covenant Agreement.

OPTION RIGHTS. The Option Agreement gives FBD two options: Options A and B, described below. 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 Option Agreement, subject to FBD's receipt of all required entitlements and CEQA Approvals that may be required for the Project (the "Required Approvals"). If the Project is not approved by the City Council or if litigation is initiated challenging such approvals, FBD must re-process the Project to address any corrective actions identified by the Council or in the litigation.

FBD's acquisition of the Property pursuant to Option A shall include (i) all permits, licenses, authorizations, consents, approvals and certificates relating to the Property, to the extent assignable from Authority to FBD, and (ii) all rights, privileges, easements, rights-of-way and appurtenances used or connected with the beneficial use or enjoyment of the Surface Lot of the Remainder Cells, including without limitation, development rights, and air rights.

FBD has a second option, Option B, applicable if FBD is unable to obtain the Required Approvals for the Project through no fault of its own, as follows (defined as an "Option B Trigger"): (i) City's failure to consider the 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 Option Agreement); (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. In order for FBD to exercise Option B following an Option B Trigger, it must give notice to the Authority and 90 days to the Authority in order to cure the event that caused the Option B Trigger.

If Option B is effectuated, the Developer will have the benefit of the DIF Credit Agreement (described below) and shall be entitled to a return of $25,000,000 (the "Second Advance"). In the event Authority fails to return the entire Second Advance, then FBD shall market the Remainder Cells for sale for a period of at least 12 months to a developer who is able to develop the Remainder Cells in accordance with the Specific Plan. Authority will have approval rights over the ultimate purchaser of the Remainder Cells, however. In the event the marketing is unsuccessful, then Developer shall be entitled to foreclose on the surface

lot of the Remainder Cells pursuant to the Deed of Trust (referenced above).

The Term of the Option Agreement will be up to two (2) years, provided that the Term is tolled during any litigation challenging the Project entitlements or CEQA approvals. Additionally, CRA Executive Director shall grant further extensions of up to 360 days administratively under certain conditions.

Title to the surface lot of the Remainder Cells shall only transfer following the approval of the entitlements and other Required Approvals that authorize and permit the development of the Project, following the expiration or passage of all applicable appeal periods and successful resolution of all litigation challenging such approval, if any.

The exhibits to the Option Agreement are as follows:

- Exhibit A: Site Map
- Exhibit B: Parcel Map
- Exhibit C: Form of Grant Deed
- Exhibit D: Entitlements; General Project Requirements
- Exhibit D-1: Preliminary Site Plan
- Exhibit E: Additional Terms of Transaction Regarding Infrastructure Improvements, Site Development Improvements, and Environmental Remediation Responsibilities
- Exhibit F: Subsidence Easement
- Exhibit G: Title Policy
- Exhibit H: Initial Schedule of Performance
- Exhibit I: Description of Insurance Program
- Exhibit J: Form of Insurance Administration Agreement
- Exhibit K: Infrastructure Improvements

DIF CREDIT AGREEMENT. The other Agreement for consideration is the “Agreement to Grant Development Impact Fee Credit Agreement and for Construction of Public Infrastructure” made by the Authority and City in favor of FBD (“DIF Credit Agreement”), which provides for, among other things, a transferable credit to Developer in the amount of $20,000,000 (“DIF Credit”) against any development impact fees for any project which may be undertaken by FBD or any other developer of a project in the City of Carson; and in exchange for which Authority will agree to use the $20,000,000 of proceeds solely to construct the public infrastructure required for the Site overall, on behalf of the City and

complete its current obligations under the CAM Agreement.

The DIF Credit Agreement only applies, however, with respect to Option B. In the In the event of a Closing under Option A, the DIF Credit Agreement will be terminated and the $20,000,000 in DIF Credits will be void.

Separately, however, under Option A, all development impact fees paid by FBD in connection with the Project shall be set aside and reserved by the City or Authority (as applicable) for the purpose of supplementing the Authority's ability to pay O&M costs relating to the 157 Acre Site until Cell 1 or Cell 2 has been developed and the Community Facilities District No. 2012-1 is generating sufficient income to pay the entirety of such O&M costs.

The City Council will also need to approve the DIF Credit Agreement.

OPTION PRICE. The Purchase Price for the Remainder Cells would be $45,000,000, which shall be made in two advances (a First Advance pursuant to Escrow A and a Second Advance pursuant to Escrow B).

DOCUMENTS NEEDED FOR TRANSACTION. There are a number of documents that are related to the Option Agreement but are separate from the Option Agreement itself. These separate agreements act as collateral for Developer's Option rights under the Option Agreement. Several of these agreements are included as Exhibits to the Option Agreement. Others, such as the Development Agreement, CC&Rs, Assignment, and others will be drafted in connection with the Developer's processing of its entitlements. Below is a list of the documentation required for the release of the First and Second Advances from Escrow A and Escrow B (and the timeframe when they must be finalized):

Grant Deed [final form by release of First Advance]

DIF Credit Agreement [executed upon release of First Advance]

License Agreement [final form by release of Second Advance]

Insurance Administration Agreement [final form by release of Second Advance]

Promissory Note [executed upon release of Second Advance

Deed of Trust [executed upon release of Second Advance]

Covenant Agreement [executed upon release of Second Advance]

A Certificate of Compliance for the Remainder Cells legal description [Finalized prior to release of Second Advance]

Reconveyance/Release/Termination documents [Executed upon release of Second Advance]

An accounting of outstanding costs for Cell 2 and budget of estimated

costs to complete Cell 2 Remedial Systems.

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. In addition, Developer must pay the Authority $912,974 for outstanding Carry Costs owed during the Authority's negotiation of the Option Agreement between March through June 2020.

INSURANCE PROGRAM. In the event of a closing under Option A, 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. In the event of a closing under Option A, the Authority, 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 Authority a total of $45,000,000 to be available for use by the Authority for the Site and infrastructure.

VI. EXHIBITS

The Exhibits will be provided on this website on July 23, 2020, prior to the meeting.

1. OPTION AGREEMENT AND JOINT ESCROW INSTRUCTIONS FOR CELLS 3, 4 AND 5 OF 157 ACRE SITE WITH FBD CARSON, LLC
   (To Be Provided) (pgs. 9-97)
2. Agreement to Grant Development Impact Fee Credit Agreement and for Construction of Public Infrastructure (To Be Provided) (pgs. 98-111)

1.

Prepared by: John S. Raymond, Executive Director

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