File #: 2020-865, **Version:** 1

Report to Carson Reclamation Authority

Wednesday, December 16, 2020

Discussion

SUBJECT:

CONSIDER OPTION AGREEMENT AND JOINT ESCROW INSTRUCTIONS WITH FARING CAPITAL, LLC, A DELAWARE LIMITED LIABILITY COMPANY AND FIDELITY NATIONAL TITLE INSURANCE COMPANY, A CALIFORNIA CORPORATION, ACTING AS THE ESCROW HOLDER AND TITLE COMPANY; AGREEMENT TO GRANT DEVELOPMENT IMPACT FEE CREDIT AND FOR CONSTRUCTION OF PUBLIC INFRASTRUCTURE WITH FARING CAPITAL, LLC; AGREEMENT TO GRANT DEVELOPMENT IMPACT FEE CREDIT WITH FARING CAPITAL, LLC; AND, A DEPOSIT AND REIMBURSEMENT AGREEMENT WITH FARING CAPITAL, 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, the 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.

This Option Agreement returns to Faring Capital, LLC. The parties have negotiated the terms of the Option Agreement and seek approval from the Board. 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 Faring would be required to bear the entire cost of the remediation and development of the Remainder Cells.

There are two Development Impact Fee Agreements, which provide security against the deposits under two different scenarios. Finally, the authority is asked to approve a new Reimbursement Agreement with Faring for the payment of City costs (legal, entitlement/CEQA) and the pro-rata share of the CRA's monthly Carrying Costs. The Option requires the Developer to release the remaining funds deposited in the Reimbursement Agreement of $1,750,000, the balance of what remained once the Authority withdrew $250,000 in June for project related expenses such as legal costs; these funds will be available for the Authority's costs in processing the Project and its Entitlements, including CEQA studies and legal fees. In addition, the Developer's share of the Carry Costs shall be 60%, estimated to be $250,000/month, which shall cover a portion of the CRA's O&M obligations. The amount accrued since March 9, 2020 is in excess of $2,250,000.

II. RECOMMENDATION

1. APPROVE OPTION AGREEMENT AND JOINT ESCROW INSTRUCTIONS by and among FARING CAPITAL, LLC, a Delaware limited liability company, the CARSON RECLAMATION AUTHORITY, a California joint powers authority, and FIDELITY NATIONAL TITLE INSURANCE COMPANY, a California corporation, acting as the escrow holder and title company for the development of Cells 3, 4 and 5 of the 157 ACRE; and

2. APPROVE AGREEMENT TO GRANT DEVELOPMENT IMPACT FEE CREDIT AND FOR CONSTRUCTION OF PUBLIC INFRASTRUCTURE WITH FARING CAPITAL, LLC; and

3. APPROVE AGREEMENT TO GRANT DEVELOPMENT IMPACT FEE CREDIT WITH FARING CAPITAL, LLC

4. APPROVE DEPOSIT AND REIMBURSEMENT AGREEMENT WITH FARING CAPITAL, LLC

5. AUTHORIZE the Chairman or his/her designee to execute the Option Agreement, the Development Impact Fee documents, the Deposit and Reimbursement Agreement and all related documents in a form acceptable to the Authority Counsel, with any minor modifications approved by the Authority Counsel.

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III. ALTERNATIVES

TAKE another action the Authority Board deems appropriate.

IV. BACKGROUND

In September 2019, the Authority issued an Invitation to Propose ("RFQ") seeking a developer to undertake a development project on the Remainder Cells. Because negotiations 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 learned 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 of the 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, the developer would fund and perform all Remediation Work on the Remainder Cells. The investigation of the environmental conditions, 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 12-acre signature "community park" with commercial, restaurants and retail along Lenardo Drive, and industrial/fulfillment center development along the back of the Remainder Cells. Faring anticipates the 12-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. Give the recent experience with indoor and outdoor dining during the pandemic, special consideration will be made to make these spaces resilient under future public health orders;
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

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The Authority Board originally gave direction to negotiate with Faring on March 9, 2020. Given the nature of the transaction, the parties agreed that an Option Agreement on the three cells was 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 an earlier MOU, which set forth the major terms of the transaction and provided for reimbursement of Carry Costs. The MOU described the Project and the Option Rights that 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 $12,500,000, and (2) a Second Advance in the amount of $32,500,000. Ultimately, the First and Second Advances would be applied to the Purchase Price amount ($45,000,000) for the Remainder Cells if Faring is able to acquire the Remainder Cells. If not, however, the Advances would be secured by certain collateral documents in favor of Faring.

OPTION RIGHTS. The Option Agreement gives Faring two options: Options A and B, described below. Option A must be exercised by Faring 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 Faring'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, Faring must re-process the Project to address any corrective actions identified by the Council or in the litigation.

OPTION A. Faring'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, 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.

Two Advances will be made to the Authority under Option A, the First Advance for $12,500,000 and the Second Advance for $32,500,000. The First Advance is released under the following conditions:

An executed "Agreement to Grant Development Impact Fee Credit Agreement and for Construction of Public Infrastructure" made by the Authority and City in favor of Developer ("DIF Agreement"), which provides for, among other things, a transferable credit to Developer in the amount of $12,500,000 ("DIF Credit") against any development impact fees for any project which may be undertaken by Developer or any other developer of a project in the City of Carson; and in exchange for which Authority will agree to use the $12,500,000 First Advance proceeds solely to construct the public infrastructure required for the Project on behalf of the City or complete its current obligations under the various agreements related to the CAM Agreement, as provided in the DIF Agreement.

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The two DIF Agreements referenced here - the DIF Agreement securing the First Advance, and the DIF Agreement securing the Carrying Cost reimbursement under the Contingent Termination, are included on this agenda for approval as well.

The Second Advance of $32,500,000 shall be made within ten (10) days and subsequently released to the Authority upon the first to occur of the following (i) issuance of the Required Approvals by the City Council and the occurrence of the Option A Closing in accordance with the terms and conditions herein, or (ii) recommencement of the Cell 2 Project by CAM Carson, LLC, final settlement or dismissal with prejudice of the CAM Litigation, payment in full by CAM of all outstanding monetary obligations due and owing pursuant to the CAM Agreement, full performance by CAM of all outstanding nonmonetary obligations due and owing pursuant to the CAM Agreement together with the provision by Authority to Developer of written evidence that each of the foregoing requirements have been satisfied The Developer may require the written evidence for compliance with (ii) of this Section prior to release of the Second Advance and may reject release of the Second Advance, in its sole and absolute discretion.

OPTION B. A second option, Option B, is applicable if Faring 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 Faring to exercise Option B following an Option B Trigger, it must give notice to the Authority and time to the Authority in order to cure the event that caused the Option B Trigger.

Under the Option A, the Developer will make the First Advance within 10 days of the Effective Date of the Agreement, after the project has cleared a 30-day Contingency Period during which the developer may withdraw from the Agreement for any reason ("Contingency Termination"). In the event of a Contingency Termination, the following applies:

> If the Developer exercises the Contingency Termination, then, within ten (10) days following the Contingency Date, Developer shall pay Authority the amount of all (i) Carry Costs attributable to the Remainder Cells incurred by the Authority between March 9, 2020 and the date of receipt by the Authority of the Contingency Termination Notice, and (ii) all City Costs owed by Developer under the Reimbursement Agreement through and until the date of such notice, less any amounts previously paid by Developer (collectively, the "Outstanding Payment Obligation**"**). In the event Developer exercises its Contingency Termination prior to the Contingency Date, Developer shall be entitled to reimbursement of all Carry Costs paid by Developer to the Authority (such amount, the "Carry Cost Repayment Amount**"**) in the form of a transferable credit for Development Impact Fees applicable to future development projects in the City, which shall be generally in the form of the draft DIF Agreement the Developer and the

Authority have agreed to (but the Carry Cost Repayment Amount would be in lieu of the $12.5M amount and Developer would be entitled to a reasonable rate of interest on such amount for up to three years following the Contingency Termination).

In the event Developer does not exercise the Contingency Termination on or before the Contingency Date, Developer shall be required to replenish the Escrow Deposit with the amount provided by the Authority to the Developer as its reasonable estimation of the City Costs necessary to complete the Required Approvals.

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.

CARRY COSTS. Developer shall reimburse one hundred percent (100%) of the Authority's monthly Carry Costs attributable to the Remainder Cells (i.e., 60% - its proportional share based on the acreage of the Remainder Cells in relation to the overall net Site acreage), in connection with, among other things, O&M for the Remedial Systems installed on the Site, which include the costs of maintaining the Site and operating the Remedial Systems, plus utilities, DTSC oversight and similar expenses), which costs fluctuate monthly but have been generally running at approximately $200,000 to $446,000 per month for the overall 157 Acre Site; provided, however, that in no event shall Developer be obligated to pay more than $250,000 per month or $6,000,000 in the aggregate during the initial 24-month Term of the Option Agreement to satisfy its obligations with respect to Carry Costs. Developer shall make monthly reimbursements of the Carry Costs attributable to the Remainder Cells within thirty (30) days following the Authority's notice of payment due therefor and delivery of an invoice with supporting documentation. This reimbursement responsibility is independent from Developer's responsibility for the City Costs (as defined in the Reimbursement Agreement) and the use of the Deposits (as defined in the Reimbursement Agreement) to pay for same. Developer shall continue to be responsible for the Carry Costs attributable to the Remainder Cells during the period of any Challenge Litigation and/or Re-Processing subject to the Carry Cost Cap.

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, Authority shall provide certain 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 (defined as the Infrastructure Improvements in Exhibit E); provided however, the Developer shall have the right to construct such Infrastructure

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Improvements (or portions thereof) on behalf of the Authority, with the Authority's approval. A complete list of the Infrastructure Improvements and the timing for installation/completion thereof is set forth on Exhibit K. While such improvements are typically performed by the City, the City will contract with Authority to perform and construct such Infrastructure Improvements to avoid any City liability for the remediation of the 157 Acre Site which was a purpose for creating the Authority.

V. FISCAL IMPACT

The Option requires the Developer to release the remaining funds deposited in the Reimbursement Agreement of $1,750,000, the balance of what remained once the Authority withdrew $250,000 in June for project related expenses such as legal costs; these funds will be available for the Authority's costs in processing the Project and its Entitlements, including CEQA studies and legal fees. In addition, the Developer's share of the Carry Costs shall be 60%, estimated to be $250,000/month, which shall cover a portion of the CRA's O&M obligations. The amount accrued since March 9, 2020 is in excess of $2,250,000. Finally, the Option Agreement requires 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. In addition, Exhibit K of the Option Agreement provides for a schedule of the cost sharing on the Site infrastructure. Finally, to the degree the Authority and Developer enter joint insurance programs or the Developer is added as Named Insureds on the Pollution Legal Liability or Contractor's Pollution Liability policies, the Authority would receive a pro rata share of the premium from the Developer.

A new Deposit and Reimbursement Agreement is included here for approval.

VI. EXHIBITS

1. OPTION AGREEMENT AND JOINT ESCROW INSTRUCTIONS by and among FARING CAPITAL, LLC, a Delaware limited liability company, the CARSON RECLAMATION AUTHORITY, a California joint powers authority, and FIDELITY NATIONAL TITLE INSURANCE COMPANY, a California corporation, acting as the escrow holder and title company (Pages 9-84)
2. AGREEMENT TO GRANT DEVELOPMENT IMPACT FEE CREDIT AND FOR CONSTRUCTION OF PUBLIC INFRASTRUCTURE WITH FARING CAPITAL, LLC (Pages 85-98)
3. AGREEMENT TO GRANT DEVELOPMENT IMPACT FEE CREDIT WITH FARING CAPITAL, LLC (Pages 99-107)

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4. DEPOSIT AND REIMBURSEMENT AGREEMENT WITH FARING CAPITAL, LLC (to be provided)

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Prepared by: John S. Raymond, Executive Director

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