



# CITY OF CARSON

## Legislation Text

File #: 2022-679, Version: 1

### Report to Mayor and City Council

Tuesday, August 02, 2022

Special Orders of the Day

#### SUBJECT:

**A PUBLIC HEARING TO CONSIDER ORDINANCE NO XX-2022, AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, APPROVING A FIRST AMENDMENT TO DEVELOPMENT AGREEMENT 13-2017 BETWEEN THE CITY OF CARSON AND CAM-CARSON, (CITY COUNCIL)**

#### **I. SUMMARY**

The public hearing before the City Council is to consider a First Amendment to Development Agreement (First Amendment), between CAM-Carson, LLC (Developer) and the City of Carson (City), which proposes certain changes to the Development Agreement originally entered into between Developer and the City on September 6, 2018, pursuant to Ordinance No. 13-2017 (DA), for a portion of the 157-acre site (157-Acre Site or Project Site) generally known as the former Cal Compact Landfill, located at 20400 Main Street.

Development Agreements and their amendments are approved by ordinance, but the City Clerk's Office does not assign an ordinance number until after an item is considered by Planning Commission, which was on August 1, 2022.

The property subject to the DA and the First Amendment constitutes approximately 41-acres (Cell 2) of the 157-Acre Site, which was previously entitled in 2018 per DA 13-17 and certain other related agreements, for a high-quality, state of the art, fashion outlet retail center of up to 711,500 GBA square feet (Project). The Project was previously analyzed pursuant to a Supplemental Environmental Impact Report (2018 SEIR) per the California Environmental Quality Act (CEQA) adopted by the City on April 3, 2018, and the Project was further analyzed under CEQA pursuant to that certain Supplemental Environmental Impact Report approved by the City in connection with a revised development proposal for Cells 3, 4 and 5 (constituting approximately 96 acres) of the 157 Acre Site, in May 2022 (2022 SEIR). The scope and scale of the Project remain unchanged under the terms of the First Amendment, and there are no circumstances present that would require a new, subsequent, or supplemental environmental impact report for the City's approval of the First Amendment, under the provisions of CEQA.

After execution of the DA, the Carson Reclamation Authority ("Authority") commenced the

installation of the Remedial Systems and Site Development Improvements in 2018 and Developer made certain Site Development Advances, all as provided for in the Project Agreements. All initially capitalized terms which are undefined herein are defined and clearly set forth in the First Amendment and the DA.

A dispute arose between the Developer, City, and Authority as to Authority's ability to complete the Remedial Systems and Site Development Improvements and thus, construction temporarily ceased in early 2020. In April 2020, Developer filed suit in that certain litigation captioned CAM-Carson, LLC v. Carson Reclamation Authority, et. al, Case No. 20STCV16461, (the "Litigation") alleging, in part, breaches of the Project Agreements by Authority and City, and thereafter Authority filed counterclaims in the Litigation.

After a mediation of the disputes in the Litigation, the Developer has requested to return to the Project and Developer, City, and Authority have determined to proceed with the Project pursuant to the terms of the First Amendment, and certain other related amendments to the Project Agreements. A more complete discussion of the Project Agreements is included below. **II. RECOMMENDATION**

TAKE the following actions:

1. **OPEN** the public hearing.
2. **TAKE** public testimony and accept any written and/or oral communications.
3. **CLOSE** the public hearing.
4. **MAKE** findings under the California Environmental Quality Act (CEQA) that, on the basis of substantial evidence based on the entire administrative record, this Amendment is consistent with all applicable plans, rules, regulations and official policies of City and evaluated the potential environmental impacts of this First Amendment and determined that any potential impacts have been analyzed pursuant to the 2018 SEIR and 2022 SEIR (each having a State Clearinghouse No. 2005051059), in accordance with CEQA.
5. **INTRODUCE** for first reading, by title only and with full reading waived, of "ORDINANCE NO. XX-2022, AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, APPROVING A FIRST AMENDMENT TO DEVELOPMENT AGREEMENT 13-2017 BETWEEN THE CITY OF CARSON AND CAM-CARSON, LLC"

### **III. ALTERNATIVES**

**TAKE** such other action as the City Council deems appropriate, consistent with the requirements of the law.

#### **IV. BACKGROUND**

The City and Developer entered into a Development Agreement in 2018 (DA 13-17) under which City granted Developer certain vested rights to proceed with development of the approximately 41-acre portion ("Cell 2") of the 157-Acre Site with a high-quality, state of the art, fashion outlet retail center of up to 711,500 GBA square feet (the "Project"). The development of the Project was projected to provide significant public benefits as set forth under the terms of the Development Agreement.

Concurrently with execution of the Development Agreement, (i) Authority and Developer entered into a Conveyancing Agreement on September 6, 2018 (the "Conveyancing Agreement"), as modified by an amendment dated September 6, 2018 (the "2018 Amendment to Conveyancing Agreement"), pursuant to which Developer was to acquire a fee simple interest or ground lease for the Cell 2 Surface Lot, among other things; and (ii) City and Authority entered into a Cooperation Agreement dated as of September 6, 2018 (the "Cooperation Agreement", together with the Conveyancing Agreement and Development Agreement, the "Project Agreements"), pursuant to which Authority agreed to perform City's infrastructure obligations under the Project Agreements and cooperate with the parties to the Project Agreements to facilitate the Project, and City agreed to pay to Authority one-half of the sales taxes received by City attributable to the Project during a 25-year term as more fully set forth in the Cooperation Agreement.

After execution of the Project Agreements, Authority commenced the installation of the Remedial Systems and Site Development Improvements and Developer made certain Site Development Advances, all as provided for in the Project Agreements. In the fall of 2019, a dispute arose between the Developer and Authority as to Authority's ability to complete the Remedial Systems and Site Development Improvements as set forth in the Project Agreements. In April 2020, Developer filed suit in that certain litigation captioned CAM-Carson, LLC v. Carson Reclamation Authority, et. al, Case No. 20STCV16461, (the "Litigation") alleging, in part, breaches of the Project Agreements by Authority and it also sued the City under an alter-ego claim. Thereafter Authority filed counterclaims in the Litigation alleging, in part, that Developer owed Authority over ten million dollars (\$10,000,000) for Site Development Advances.

Developer has asked to come back to the Project. The Conveyancing Agreement between the Authority and Developer will be amended to provide that the Developer will now finalize all remedial work at its own expense with a monetary contribution from the Authority. As part of a global settlement of the lawsuits: (a) City provides Developer with all reports, information and documents in City's possession related to the Cell 2 Site and the City terminates any and all contracts entered into by City with respect to the Cell 2 Site; (b) Authority deposits \$32.5M (the "Remediation Escrow Deposit") into an escrow account (the "Remediation Escrow Account") which shall be utilized by Developer to pay for the Remaining Horizontal Work to enable the development of the Project, subject to mutually agreeable escrow instructions between the Authority and the Developer, (c) Developer, as agent for Authority, shall complete the Remaining Horizontal Work for the Cell 2 Site in order to allow for the development of the Project (which work was previously required to be completed by the Authority under the Conveyancing Agreement and estimated to cost over

\$60M), and (d) Developer is reimbursed for the Remaining Horizontal Work, Offsite Advances, Site Development Advances and other payments as provided in the Project Agreements, through the City's reimbursement of one-half of the sales taxes derived from the Project during a thirty-two (32)-year term, all as provided in the Project Agreements (as amended by the First Amendment and the Related Amendments (as defined below)).

The benefits of the Project: once completed the Project is estimated to generate \$3.6 million a year of gross sales tax, with \$1.8 million a year of sales tax for the City. As a former landfill, the Site has been blighted and undeveloped since its closure for over five decades ago and will be finally developed. The Project will bring over 1,200 construction jobs and 1,600 permanent jobs, and hundreds of thousands of new visitors to the city each year. The remedial systems for that cell will be completed, which will help in reducing methane gas through completed landfill gas collection and control systems.

Along with the approval of the First Amendment, Authority and Developer are proposing to enter into a Second Amendment to Conveyancing Agreement (the "Amendment to Conveyancing Agreement"), in order to enable the effectuate terms necessary for the new terms of the deal between the City and the Developer to proceed with the Project. The terms under the proposed Amendment to Conveyancing Agreement (which shall require Authority Board approval) will allow for Developer to perform due diligence on the existing / installed Remedial Systems and Site Development Improvements (previously installed by the Authority and its contractors), and work with the Authority to potentially revise certain terms under the Conveyancing Agreement, including the Pylon Sign Easement Area and Location of Pylon Signs, the List of Offsite Improvements with Projected Costs and the corresponding Conditions of Approval for the Project and the 2018 SEIR Mitigation Measures, the Project Schedule, and the terms of the Insurance Administration Agreement.

Also, the City and Authority will enter into an Amendment to Cooperation Agreement (the "Amendment to Cooperation Agreement" and, together with the Amendment to Conveyancing Agreement, the "Related Amendments") to provide that Authority shall have Developer perform or fund completion of the Remaining Horizontal Work, the cost of which shall be included in the Advances that are subject to reimbursement under the Sales Tax Assistance provided under the Amendment to Cooperation Agreement, which amendment extends the term of such reimbursement to up to the earlier of thirty-two (32) years from the date of Developer's first receipt of sales tax reimbursement from the Project or the date on which the Total Recovery Amount is paid, and that in light of the extent of the Advances to be made by Developer that the Feasibility Gap analysis shall no longer be required.

Accordingly, the First Amendment proposes to extend the term of the reimbursement for the Sales Tax Assistance to Developer from twenty-five (25) years to thirty-two (32) years and provides other modifications consistent with the Related Amendments.

## CEQA

In connection with the approval of the original Project, a Supplemental Environmental

Impact Report for the District at South Bay Specific Plan, State Clearinghouse No. 2005051059, was certified by City as in compliance with CEQA (the "2018 Final SEIR"). Thereafter, in connection with the City's approval of a revised development proposal for the 157 Acre Site pursuant to an amendment to the District at South Bay Specific Plan ("2022 Specific Plan") (which includes the Project), the City certified a further Supplemental Environmental Impact Report for the development of the 157 Acre Site (SCH No. 2005051059 / April 2022) (the "2022 Final SEIR"). On August 1, 2022, the Planning Commission of the City, after giving notice pursuant to the applicable California Government Code provisions, held a public hearing on the First Amendment and recommended approval of the First Amendment to the City Council. One of the actions on this agenda is for the City Council to find, on the basis of substantial evidence based on the entire administrative record, that the First Amendment is consistent with all applicable plans, rules, regulations and official policies of City and that the City evaluated the potential environmental impacts of the First Amendment and determined that any potential impacts have been analyzed pursuant to the 2018 Final SEIR and the 2022 Final SEIR, in accordance with CEQA. Therefore, there are no circumstances present that would require a new, subsequent, or supplemental environmental impact report for the First Amendment, under the provisions of CEQA.

#### Stay of Litigation

Immediately following the execution of the First Amendment, Authority, City and Developer shall jointly seek a stay of all Litigation until thirty (30) days after the end of the Diligence Period (as defined in the Amendment to Conveyancing Agreement) as the same may be extended pursuant to the Amendment to Conveyancing Agreement subject to consent of Court). Upon the occurrence of all of the following: (a) the deposit of the Remediation Escrow Deposit by the Authority; (b) the end of the Diligence Period under the Amendment to Conveyancing Agreement as may be extended pursuant to the terms and conditions set forth therein, if Developer has not previously terminated the Amendment to the Conveyancing Agreement, and (c) expiration of all applicable challenge or appeal periods, including litigation, to the First Amendment and any Related Amendments (or successful resolution of any and all such challenges and appeals, including litigation), then within two (2) business days of the latest to occur of clauses (a), (b), and (c) above, (i) Developer, Authority and City shall dismiss the Litigation, (ii) Developer, Authority, City, and the Successor Agency shall enter into a mutual release of claims related to the Litigation and the existing horizontal improvements, and (iii) Authority and City shall assist and support Developer in finalizing a mutual release with RE Solutions related to the Litigation. The forms of the mutual releases are attached to the First Amendment as Exhibit A and Exhibit B.

#### Due Diligence

Immediately upon execution of the First Amendment, Authority and City shall provide Developer access to any reports, information, and documents in their possession, custody or control related to the Cell 2 Site and reasonably necessary for Developer and its consultants to undertake and complete the inspection and review of the previously constructed Remedial Systems and Site Development Improvements, title, utilities, infrastructure and any other matters associated with the development of the Cell 2 Site,

including, but not limited to, any reports, contracts, information and documentation related to remediation of the 157 Acre Site. The Due Diligence period set forth in the First Amendment and the Related Amendments is expected to be 90 days, and during such period, Developer may terminate the First Amendment and the Related Amendments, in its discretion.

## **V. FISCAL IMPACT**

Upon the development of the Project pursuant to the DA and First Amendment, the City will derive significant sales taxes from the Project. The Project was estimated to produce an \$3.6 million a year in sales tax, which would be shared between the City and the Developer at the rate of 50% for a period of 32 years, still providing significant residual sales tax revenue to the City. The Developer will also make a significant contribution to the construction of Site infrastructure.

## **VI. EXHIBITS**

1. CAM DA CC PUB HEARING NOTICE (pg. 7-8)
2. Carson - First Amendment to DA Ordinance (CAM-Carson LLC) (pgs.9-23)
3. Carson-CAM Amendment to Development Agreement (pgs. 24-39)

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Prepared by: John S. Raymond, Assistant City Manager-Economic Development