



Legislation Text

File #: 2022-769, Version: 1

Report to Carson Reclamation Authority

Tuesday, September 06, 2022

Consent

SUBJECT:

CONSIDER A LETTER AGREEMENT FOR LEGAL SERVICES ("LETTER AGREEMENT") WITH ORRICK, HERRINGTON & SUTCLIFFE LLP, REGARDING CERTAIN TRANSACTIONAL AGREEMENTS AMONG THE CARSON RECLAMATION AUTHORITY, THE CITY OF CARSON, AND CAM-CARSON, LLC)

I. SUMMARY

Under the previously approved Amendment to Cooperation Agreement between the City of Carson ("City") and the Carson Reclamation Authority ("Authority"), the City and Authority are required to provide to CAM-Carson LLC ("CAM") an opinion letter from Orrick, Herrington & Sutcliffe LLP ("Orrick") within 30 days of execution of the Amendment to Cooperation Agreement, that the execution and delivery of the Amendment to Conveyancing Agreement and the Amendment to Cooperation Agreement will not adversely affect the valid and binding nature of the sales tax sharing structure contained within the original 2018 Conveyancing Agreement and Cooperation Agreement, among the City, Authority, and CAM. Orrick will be retained directly by the Authority and the City, and therefore Authority is its client, but CAM has the obligation to pay 100% of the legal fees of Orrick. The Authority Board's approval of the Letter Agreement shall be subject to subsequent approval from the City Council.

II. RECOMMENDATION

1. APPROVE an engagement letter for the performance of legal services by Orrick pursuant to the attached Letter Agreement for Legal Services ("Letter Agreement") in a form acceptable to Authority Counsel;

2. ALTERNATIVES

TAKE no action.

3. BACKGROUND

Orrick, the City, and the Authority entered into an engagement letter agreement for legal services in March 2018 (the “Agreement”), related to the one or more agreements between the City and the Authority and between the Authority and CAM, to finance certain site work required for the construction of the Fashion Outlets of Los Angeles project. Pursuant to the Agreement, Orrick provided various legal services specified. The Agreement provided that, except as otherwise provided in the Agreement, Orrick’s services did not include the delivery of any legal opinions, but also provided that should the City, Authority, or CAM request that Orrick provide any legal opinion and Orrick should agree to provide such legal opinion, Orrick shall be paid an additional fee for the risk and value of the opinion, in such amount as shall be agreed among Orrick and the other parties.

In connection with the execution and delivery of a First Amendment to Development Agreement between the City and the Developer, the execution and delivery of a Second Amendment to Conveyancing Agreement (the “Amendment to Conveyancing Agreement”) between the Authority and the Developer, and the execution and delivery of an Amendment of Cooperation Agreement (the “Amendment to Cooperation Agreement”), between the City and the Authority, the Developer has requested that Orrick deliver an opinion to the effect that the execution and delivery of the Amendment to Conveyancing Agreement and the Amendment to Cooperation Agreement will not, in and of themselves, adversely affect the valid and binding nature as pertains to the City and Authority of the sales tax structure sharing arrangement set forth under the Conveyancing Agreement and the Cooperation Agreement (the “Orrick Opinion”).

Subject to its review of the Development Agreement, the Conveyancing Agreement, the Cooperation Agreement, the judgment entered by the Los Angeles Superior Court dated April 15, 2019 (the “Validation Action”) and such other documents, certificates and opinions, and upon conclusion of such investigation of law and fact as Orrick shall deem necessary to render such opinion, Orrick expects to be able to deliver the Opinion.

Upon Orrick’s advising the City, Authority, and Developer that it has completed its analysis and is prepared to deliver the Opinion, Orrick shall be paid a fixed fee of \$45,000. Such fee shall be a fixed amount without regard to the amount of time expended by Orrick’s attorneys in connection therewith or their hourly rates.

Orrick understands and agrees that Orrick’s fees with respect to the Opinion shall be paid by the Developer and the City and Authority shall have no obligation to pay such fees. Orrick shall submit invoices to the Developer for payment and shall not submit invoices to the City or the Authority.

However, although Orrick’s fees and expenses will be paid by the Developer, in providing services with respect to the Opinion, Orrick will represent the City and the Authority and take direction from the City and the Authority and will not represent or have any attorney-

client relationship with the Developer.

4. FISCAL IMPACT

None. Under the proposed Letter Agreement, Orrick is being retained directly by the Authority and City, and therefore are the firm's clients, and CAM is solely responsible for directly paying 100% of the legal fees for the services required to be performed.

5. EXHIBITS

Letter Agreement for Legal Services among the Authority, the City, and Orrick, Herrington & Sutcliffe LLP (pgs. 4-7)

Prepared by: John S. Raymond, Executive Director