

**CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
CALIFORNIA RECYCLE UNDERUTILIZED SITES REMEDIATION PROGRAM
Meeting Date: October 20, 2020**

Request to Approve a Feasible Plan to Fund the Completion of the Remediation of a Brownfield Site under the California Recycle Underutilized Sites (CALReUSE) Remediation Program

Prepared by: *Ethan Wieser*

Applicant:	Carson Reclamation Authority	Type of Funding:	Grant
Project Name:	Los Angeles Premium Outlets	Amount Disbursed:	\$5,000,000 (fully disbursed on 11/30/09)
Project Location:	City of Carson (Los Angeles County)	Prior Actions:	Approved 11/19/08 Amended 10/20/15 Amended 04/19/16 Amended 08/16/16 Amended 01/15/19 Amended 06/16/20

Summary The Carson Reclamation Authority (“Grantee” or “CRA”) delivered a letter to the California Pollution Control Financing Authority (“CPCFA”) on September 21, 2020 (Attachment A), describing a feasible plan to fund the completion of the remediation of the Cell 2 site. As part of the Grantee’s opportunity to cure the default declared at the June 16, 2020 CPCFA Board (Board) Meeting, the Board required the Grantee to present a feasible plan to fund the completion of the remediation.

Background of the Default On January 15, 2019, the Board approved an extension of the Infill Grant Agreement to December 31, 2021 and modified the benchmarks to the seven benchmarks listed below:

- 1) The CRA agreed to provide CPCFA with a certificate of occupancy for the Carson Figueroa Affordable Housing, LP Veterans Village of Carson housing development by December 31, 2019.
- 2) The CRA agreed to provide CPCFA with a certificate of occupancy for the Carson Arts, LP Carson Arts Colony housing development by December 31, 2019.
- 3) The CRA agreed to provide CPCFA with the Department of Toxic Substances Control’s written approval of the design of remedial systems for the Brownfield site by June 30, 2019, which would allow the remedial systems to be in place and for vertical development of the outlet mall.

- 4) The CRA agreed to provide CPCFA with a copy of a Health Risk Evaluation (“HRE”), approved by the Department of Toxic Substances Control for the Brownfield site by January 31, 2020, which would allow for non-hazardous trained workers to construct the outlet mall.
- 5) The CRA agreed to provide CPCFA with a copy of a Remedial Action Completion Report (“RACR”), approved by the Department of Toxic Substances Control for the Brownfield site by March 31, 2020, which would certify the remediation had been completed.
- 6) The CRA agreed to provide CPCFA with a copy of a Health Risk Assessment (“HRA”), approved by the Department of Toxic Substances Control for the Brownfield site by December 31, 2021, which allows the City of Carson to issue occupancy permits for the buildings.
- 7) The CRA agreed to provide CPCFA with occupancy permits for the Brownfield Development Project no later than December 31, 2021, which will demonstrate to CPCFA that the outlet mall is complete and available for economic use.

CRA met the first three benchmarks of the Infill Grant Agreement by completing both housing projects and providing the Certificates of Occupancy on December 30, 2019, and obtaining DTSC’s approval for the design of the remedial systems on June 24, 2019.

Due to a lack of funding available, construction of the remedial systems came to a halt in late 2019 and the Grantee subsequently missed its next two benchmarks which were, submitting an approved HRE to CPCFA by January 31, 2020, and submitting an approved RACR by March 31, 2020. CRA states that they are approximately 80% complete with the remedial work, but have run out of funding to complete the remediation on the Cell 2 site of the outlet mall. The major delays cited were a significant increase in the waste consolidation required on the site and excessive rainfall in 2019 that delayed the remediation and increased costs.

On June 16, 2020, the Board found the Grantee to be in default for the two missed benchmarks and provided CRA an opportunity to cure the default by:

- 1) Presenting the Board with a feasible plan to fund the completion of the site remediation at the October 2020 Board meeting; and
- 2) Presenting the Board with alternative project milestones acceptable to CPCFA at the November 2020 Board meeting.

CRA Funding Plan The Carson Reclamation Authority, per a letter dated September 21, 2020 (Attachment A), provided a plan to fund the remediation of the Cell 2 site.

Estimates of the remaining costs to complete the remediation of the Cell 2 site is \$40 million, however the Grantee acknowledges this remains just an estimate. CRA provides that the barrier to determining the actual costs of the remediation revolve around settling an \$80 million lawsuit brought against the Grantee in the spring of 2020 by the outlet mall developer, CAM-Carson, LLC. Once resolved, the Grantee will need to rebid the remaining environmental work. In addition, while

the Grantee is hopeful the lawsuit will be resolved and CAM-Carson completes the outlet mall, CRA acknowledged should a new developer be brought onboard the project would likely need design changes that would also affect the costs of remediation.

The Grantee has identified two potential sources of funds to pay for the remediation. The primary source identified is \$45 million from the sale of Cells 3, 4, and 5 (which are not a part of the CALReUSE Infill Grant Agreement), to FBD Carson, LLC. CRA is in negotiations with FBD Carson, LLC, for the sale of Cells 3, 4, and 5.

The second potential funding source identified by CRA would come from the issuance of \$90 million in bonds by the Carson Successor Agency (“Successor Agency”). The Successor Agency approved the \$90 million bond issuance on January 28, 2020, however under the Redevelopment Dissolution Act, the issuance requires approval from the Los Angeles County Consolidated Oversight Board (“Oversight Board”) and the Department of Finance (“DOF”). The Oversight Board did not approve the issuance, and CRA requested a review by DOF. The Successor Agency has entered into litigation with both the Oversight Board and the DOF for the issuance of \$90 million in bonds they believe to be an enforceable obligation under the Redevelopment Dissolution Act.

Staff Analysis Upon review of the plan submitted, staff has outlined the following potential issues that may impact the Boards ability to determine whether to accept or deny the Grantee’s feasible funding plan:

- 1) An accurate estimate of the costs to complete the remediation will not be available until the CAM-Carson lawsuit is resolved, when either CAM-Carson resumes development or a new developer is selected and brought onboard.
- 2) If the sale to FBD Carson, LLC, goes through, the Grantee may need to use a portion of the \$45 million in proceeds to cover the infrastructure costs, as CRA is required to pay for 40% of the offsite infrastructure costs for Cells 3, 4, and 5. If the infrastructure costs are significant, there may not be enough left from the \$45 million to complete the Cell 2 remediation.
 - a. In the letter, CRA identified \$22.4 million in City Measure R/Measure M and a \$10 million advance from CAM-Carson could cover a portion of the infrastructure costs, but this again would depend on the resolution of the CAM-Carson lawsuit.
- 3) The authorization of the potential \$90 million bond issuance by the Carson Successor Agency needs to be resolved with the Los Angeles County Consolidated Oversight Board and the Department of Finance before these funds could be counted on. CRA has not provided an estimated timeline for this action.

Next Steps Per the direction of the Board on June 16, 2020, CRA has delivered a feasible plan to fund the completion of the remediation. CRA spent considerable effort and funding to complete the remediation, and completed both affordable housing projects as required by the Infill Grant Agreement. However, as noted in the analysis section of this report, staff has concerns with the uncertainty of the funding sources, and that the funding identified will be adequate to complete the remediation required by the Infill Grant Agreement.

In light of this uncertainty, and with the possibility of COVID-19 creating further impacts to this project, as with all development projects in California, staff is seeking direction from the Board on whether to accept or reject the feasible plan to fund provided by CRA, or any other direction from the Board to further the purpose of the program. Below are some of the potential options for the Board's consideration:

- 1) Accept the feasible plan to fund, submitted by the Carson Reclamation Authority, that would complete the first part of the default cure; or
- 2) Not accept the feasible plan to fund, submitted by the Carson Reclamation Authority, that would prevent the Grantee from curing the default and require the forfeiture of grant funds, negatively impacting the cleanup and development of the site; or
- 3) Extend the cure period until October 2021 to allow CRA to solidify a feasible plan to fund and develop alternative project milestones; or
- 4) Accept the CRA's feasible plan to fund, but add additional milestones that the Grantee must meet to remain in compliance with the Grant. For this selection CPCFA staff would present the Board with suggested milestones at the November 2020 Board meeting.

CARSON RECLAMATION AUTHORITY

September 21, 2020

Mr. Ethan Wieser, Project Manager
CAL ReUSE Program
California Pollution Control Financing Authority
P.O. Box 942809
Sacramento, California 94209

Re: Carson Reclamation Authority – October CPCFA Meeting

Dear Ethan:

At its June 16, 2020 Board meeting, the CPCFA Board approved amending Resolution No. 19-03-01 presenting the Carson Reclamation Authority (CRA) with an opportunity to appear at the CPCFA's October 2020 Board meeting to present the CPCFA with a feasible plan to fund completion of the site remediation and appear at CPCFA's November 2020 Board meeting to present the CPCFA with alternative project milestones for the CPCFA's consideration.

The amended resolution also recognized that the CRA has completed the first three benchmarks, including both affordable housing projects, and removed the requirement to complete a Health Risk Assessment and then obtain occupancy permits for the outlet mall within the term of the Infill Grant Agreement. This is a critical point because affordable housing was a major focus of the program, and the brownfield project itself has evolved since the original award of the grant, and even over the past several years that the CRA has owned the parcel. The CRA anticipates that the milestones we propose in November will be centered on the acquisition and installation of the membrane liner, since it was what the grant funds were used for, is quantifiable, and necessary for the approval of the RACR for Cell 2.

An August 19, we held a follow-up call to discuss the timetable for getting you the information you will need to make the recommendation to the Board described above. Part of that was to get you the information needed for the October meeting by today, and the information for the November meeting by mid-October.

The history of the project and the nature of the delay are well documented, particularly in my March 6, 2020 letter responding to CPCFA's Draft Letter of Non-Compliance, so I don't need to restate it here. The Board is requesting an update from June and the presentation of a feasible funding plan that shows how the CRA could fund the completion of our required work. In October we will provide a set of alternative milestones for review at the November meeting.

Mr. Ethan Wieser
California Pollution Control Financing Authority
September 21, 2020
Page 2

CRA Current Funding

During the spring, we discussed the possibility that the CRA, through the City's Successor Agency, could bond for the additional funding necessary to complete the remedial work on Cell 2. That option is discussed in more detail below. One of the other financing alternatives we proposed, however, was the negotiation with a developer for the development of Cells 3, 4, and 5. This option has now moved to the forefront of our strategy. While those cells are no longer part of the scope of our project for the purposes of the Grant Milestones, this agreement is critical because one of the threshold requirements is that the developer is required to pre-fund \$45M in residual land value payments to the CRA at the beginning of the project, for the CRA to be able to use on Cell 2. We have been very transparent with the developer about the use of the funds. The development partnership, FBD Carson, LLC (FBD), is comprised of Faring Capital, a residential and mixed-use developer based in West Hollywood, and Bridge Development, based in Texas and one of the largest brownfields industrial developers in the U.S. Bridge brings brownfields experience and equity capital from the Texas State Teachers' Pension Fund, so we believe their continued collective participation in the project represents a vote of confidence in the site. Because of a number of elements of the deal, including the relatively up-front payment of the residual land value and other issues related to land use and entitlements, it has taken longer than expected to negotiate the agreements, but the item is scheduled to go to the CRA Board on October 6. The first payment from them would be received a few days after that.

Of equal importance to the upfront payment for the land is their agreement that FBD is also responsible for funding and performing all of the horizontal development and vertical development on their cells; in other words, taking all of the financial risk on the project. They have also agreed to fund site infrastructure, such as the construction of the main road through the site and other off-site improvements, on a pro rata (60/40) basis. The \$45M payment, though, was intended to be sufficient to complete the remedial work on Cell 2 and bring CAM back into the project and fulfill its obligations.

As you know, CAM did file litigation against the CRA, City and Successor Agency on April 30, 2020, seeking recovery for the \$80M it claims it has already invested in the Site Development Improvements and the Project (note: the CRA has only been reimbursed \$27M by CAM to date). Once the CRA is able to demonstrate it has available funds to pay for the Remedial Systems, CAM should restart paying for the Site Development Improvements costs and retract its Claim. In terms of the overall project schedule and its completion, the CRA believed that CAM was still seeking to begin vertical construction as soon as they can, but the COVID-19 environment for in-person shopping has shifted that equation dramatically in the past few months, and it is still an open question as to when malls of any type will return to full capacity.

Mr. Ethan Wieser
California Pollution Control Financing Authority
September 21, 2020
Page 3

As far as locking down the Cell 2 costs against the \$40 million the CRA anticipated to complete, the amount is impacted by a number of variables that have changed since the beginning of the Project, including CAM's failure to make payments required by the Conveyancing Agreement and their work stoppage beginning in November 2019 and CRA's work stoppage in January of 2020. TRC Solutions, Inc., the environmental contractor, has demobilized, and it is likely their work – the remedial system work -- will be rebid. In addition, without a new developer or Project for Cell 2, or an estimated date on which CAM would return to the Project without any design changes the precise dollar amount necessary to complete installation of the Remedial Systems on the Cell 2 Site still remains an estimate.

However, assuming the CAM litigation is settled based on the receipt of \$45M from FBD and the improvement in retail forecasts, the CRA also expects to receive a \$10M advance from CAM toward the construction of site infrastructure, including Lenardo Road. This advance, combined with \$22.4M in City Measure R/Measure M (County transportation sales tax) bond funds and FBD's commitment to pay 60% of site improvement costs, should cover most of the costs of the site infrastructure and reduce the CRA's burden on the \$45M from FBD for non-Cell 2 costs. Of course, this scenario only works if CAM or another developer meets the obligations on Cell 2.

The CRA had also proposed Carson Successor Agency (former RDA) bonding for all or part of the funds needed, though we there are Oversight Board and DOF issues to resolve first.

On January 28, 2020, the Successor Agency approved the issuance of new 2020 Series C Bonds: of up to \$90,000,000, based on the Successor Agency's bonding capacity from new tax increment, but the bonds ended up being not approved by the County Oversight Board in April. Expecting the Oversight Board to approve the action and authorize the issuance of the Bonds, the Successor Agency had requested the State Department of Finance ("DOF") to review the action. The Successor Agency is now in litigation with DOF (and the Oversight Board) in Sacramento Superior Court, the required venue for RDA dissolution-related claims. The outcome of this is outside the CRA's control, as it requires the approval of a judge, the County Oversight Board and the DOF. The CRA and Successor Agency are continuing to pursue the litigation because even with the \$45M from FBD, the overall site still has a gap because the desired land use on Cell 1 is residential (approved for up to 1,200 units) but such a Cell 1 project will never be feasible unless the CRA subsidizes the cost of the remedial systems. Only warehousing/logistics could be built on the site without subsidy.

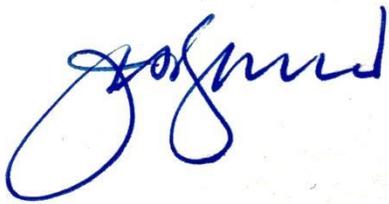
We are grateful that CPCFA has continued to be patient and cooperative while the CRA works out all of the issues contained in this letter. By mid-October, we should be able to provide firmer dates and milestones on the overall project, as required by the Resolution. The FBD agreements should be approved in early October, as noted, and the funding

Mr. Ethan Wieser
California Pollution Control Financing Authority
September 21, 2020
Page 4

provided by the agreements should be set in motion by the date of the October Board meeting.

I am available by email at jraymond@carson.ca.us or telephone at (310) 952-1773 or my cell phone at 760-902-1903. Cell phone is almost always better, especially now. You can also reach Sunny Soltani at ssoltani@awattorneys.com or her cell phone at (949) 533-8155. Thank you again for your support.

Respectfully,



John S. Raymond
Executive Director

cc:

Janae Davis, CPCFA
Sunny Soltani, Aleshire & Wynder
Dave Aleshire, Aleshire & Wynder
Danny Aleshire, Aleshire & Wynder