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GIBSON DUNN

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CITY OF SANTA CLARA
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September 24, 2018

VIA OVERNIGHT MAIL AND EMAIL

City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attn: Deanna J. Santana, Acting City Manager

Re: City Place Santa Clara – Notice of Force Majeure Under DDA Section 24.2 (San Jose CEQA Litigation and Delay in Regulatory Permitting)

Dear Ms. Santana:

This firm represents Related Santa Clara, LLC (“Related”) in connection with the City Place Santa Clara project (the “Project”). Related and the City of Santa Clara (the “City”) have entered into that certain Disposition and Development Agreement, dated as of August 12, 2016, in connection with the Project (the “DDA”). Article 24 of the DDA permits the extension of various time-sensitive performance obligations thereunder due to events of Force Majeure (as that term is defined in the DDA). This letter provides the City with notice of certain events of Force Majeure that have or are anticipated to occur, in accordance with the notice requirements of Section 24.2 of the DDA.

Section 14.1 of the DDA provides that the parties will enter into a Landfill Operation and Management Agreement (the “O&M Agreement”) within “ninety (90) days after the Effective Date, or within thirty (30) days after the date on which all necessary Authorizations upon which the execution of the Landfill Operation and Management Agreement is contingent have issued, whichever is later.” The Project obtained approval of the Waste Discharge Requirements Order on May 12, 2017 (the “WDRs”). Therefore, the parties had a requirement under the DDA to enter into the O&M Agreement by June 11, 2017 (i.e., thirty days after May 12, 2017).

On June 5, 2017 (prior to the expiration of the 30-day period under Section 14.1 of the DDA), Related’s environmental counsel, Deborah Schmall, sent a proposed draft of the O&M Agreement to the City that incorporated the required terms from the DDA and the WDRs. The City’s outside counsel provided comments on July 3, 2017 and Ms. Schmall provided timely and responsive comments to the City on July 17, 2017. Since that time, the City has failed to engage with Related to fulfill the requirement under Section 14.1 to enter into the final O&M Agreement. In the weeks after the July 17, 2017 and continuing over the past 14 months, Steve Eimer from Related has put the City on notice numerous times that the failure to respond to

City of Santa Clara
September 24, 2018
Page 2

the O&M Agreement draft would cause project delays. Despite these continuous notices, the City has provided no comments or drafts on the July 17, 2017 draft.

Under Section 24.1.1 of the DDA, Force Majeure includes the Developer's "inability to obtain on a timely basis other approvals required for commencement and completion of the improvements contemplated for the Project (assuming that Developer is using commercially reasonable efforts to obtain such approvals)." Force Majeure also includes "actions or inquiries by a Governmental Authority that results in a delay."

The O&M Agreement is required by: (i) the Post-Closure Land Use Plan, the future Revised Corrective Action and Post-Closure Maintenance Plan, and the future revised Closure Plan, as required of Landfill owners and operators under Title 27 regulations; (ii) the WDRs; and (iii) four Mitigation Measures specified in Exhibit M that were contained in the final approved Environmental Impact Report and Mitigation Monitoring and Reporting Plan for the Project. In addition, the obligations of Developer and the Tenant under each Ground Lease, including the required insurance, will be determined by the final O&M Agreement. Without the O&M Agreement, Developer cannot implement the Project, enter into a Ground Lease, obtain the necessary insurance or have any certainty of its landfill O&M obligations.

As a result, the inability to enter into the O&M Agreement constitutes an event of Force Majeure. Without the certainty of its obligations and the pricing of its insurance for compliance, Developer, as a reasonably prudent developer, is prevented from exercising the Phase Option under the current Schedule of Performance (which sets an outside date of December 13, 2018), and is prevented from committing the significant equity and/or debt resources to prepare a DAP Submittal for a proposed development plan in accordance with the current Schedule of Performance.

Section 24.2 of the DDA provides that "[t]he period of an Excusable Delay or Force Majeure shall commence to run from the time of the commencement of the cause and, subject to Section 24.3 hereof, shall run for the duration of the event of Excusable Delay or Force Majeure. The Party claiming Excusable Delay or Force Majeure shall provide notice to the other applicable Parties of such Excusable Delay or Force Majeure within a reasonable time following the commencement of the cause." As described above, Mr. Eimer provided the City team with notice on numerous occasions that its failure to respond to the July 17, 2017 draft would cause Project delays. Allowing for a reasonable response time of thirty days for the City to respond to the July 17, 2017 draft, we therefore consider this Force Majeure delay to have commenced on August 17, 2017. The event of Force Majeure continues to this day, as the City still has not responded to the O&M Agreement. The duration of the event of Force Majeure that commenced on August 17, 2017 will expire after the parties enter into the final O&M

GIBSON DUNN

City of Santa Clara
September 24, 2018
Page 3

Agreement and Related is able to procure the type and amount of insurance required thereunder to implement the Project.

Please do not hesitate to contact me with any questions.

Sincerely,



Neil Sekhri

NHS/djm

cc:

Brian Doyle, City Attorney (by email and overnight mail) ✓

Anna Shimko (by email and mail)

Steve Eimer (by email)

Joshua Young (by email)

Jennifer McCool (by email)