



## Agenda Report

21-657

Agenda Date: 7/13/2021

### REPORT TO COUNCIL

#### SUBJECT

Actions Related to Soil Stockpiling License Agreement with Related Santa Clara to Allow the Storage of Dirt on Parcel 4 of the former Santa Clara Municipal Landfill (former Santa Clara Golf and Tennis Club)

#### COUNCIL PILLAR

Promote and Enhance Economic, Housing and Transportation Development

#### BACKGROUND

On June 28, 2016, Council took action on a series of project entitlement approvals including certifying an Environmental Impact Report (EIR) and approving a Disposition and Development Agreement (DDA) and a Development Agreement (DA) with Related Santa Clara, LLC (Developer) for the development of the Related Santa Clara Project (Project) located on an approximately 240-acre site north of Tasman Drive.

The entire Project includes the development of up to 9.16 million gross square feet of office buildings; retail, food and beverage, and entertainment facilities; residential units; hotel rooms; surface and structured parking facilities; new open space and roads, landscaping, and tree replacement; and new/upgraded/expanded infrastructure and utilities.

Development of the Project generally located at 5155 Stars and Stripes Drive involves repurposing a closed municipal golf course located on a former municipal landfill property (the Landfill). The City will continue to own the subsurface portion of the Landfill and the Developer will ground lease "airspace parcels" for the development of the Project. While the first phase of the Project (involving about 14 acres along Tasman Drive) is not above the Landfill, all other phases of the Project involve the Landfill area. California State laws and regulatory agencies impose long-term maintenance and monitoring obligations on the City as the owner and operator of closed landfill facilities.

Due to elevation changes in the topography across the entire site, there is a need to import significant quantities of soil in order to elevate the ground level of the overall Project. To facilitate efficient implementation of the Project plan, Developer has determined that certain activities (i.e., early site preparation, soil stockpiling and other activities non-intrusive to landfill) should commence prior to the execution of a Ground Lease on Phase 2. As the availability of the quantity of soil necessary is unpredictable, the early import of soil would provide the Developer with more time to acquire the quantity and quality (composition and free of hazardous materials) of soil needed such that the construction of Phase 2 can occur in a more timely and predictable manner. Developer has requested a License Agreement from the City to engage in these activities.

These same activities (i.e., early site preparation, soil stockpiling and other non-intrusive activities such as construction staging and parking) will also require longer-term access to Phase 3 and Phase 4 prior to execution of a Ground Lease for those Phases. Accordingly, Developer has requested the License from the City to also include property currently designated as Phases 3 and 4. (Attachment 1)

## **DISCUSSION**

Any use of a closed landfill is closely monitored and regulated by several local and State agencies including but not limited to the Regional Water Quality Control Board (RWQCB) and the County Local Enforcement Agency (LEA). The development of a project on a closed landfill is significantly more challenging and inherently carries with it more risk than developing on a non-landfill property.

Since the 2016 Project approvals, Council has approved several agreements with the Developer which are intended to facilitate the construction of the project, the eventual execution of Ground Leases and the future operation of the landfill and development. Unfortunately, the COVID-19 pandemic has caused a delay in the overall development timeline but the Developer continues to advance agreements and scopes of work to position itself and the City to quickly convey the ground lease and commence construction on Phase 1 as the economy and financial markets reopen. Recently approved agreements include:

*Landfill Post-Closure Operation and Management Agreement (April 2020):* The Landfill Post-Closure Operation and Management (Landfill O&M) Agreement allocates responsibility between the City and Developer for: the ownership, operation, maintenance and management of the Landfill; design and construction of the landfill systems and defines minimum insurance programs and coverage terms to protect the City's interest in the project. (RTC# 20-464)

*Temporary Road Maintenance Agreement (July 2020):* The Temporary Road Agreement provides that the Developer will be responsible for the maintenance of the new Stars & Stripes Road extension from the Great America Transit Center to Great America Parkway. (RTC# 20-686)

*Interim Parking Rights Agreement (October 2020):* The Interim Parking Rights Agreement with Forty Niners SC Stadium Company (StadCo) provides for among other items the construction/operation of an interim parking facility on a portion of the golf course. The identified Interim 49ers Parking Area is within the proposed License Area boundaries and is identified as Phase 4 of the Related Project. (RTC# 20-1064)

In mid-2020, the Developer prepared a Soil Import Plan describing the proposed activity to occur on the Landfill and the methods and practices to be employed to protect the Landfill systems and meet other regulatory requirements. The Soil Import Plan includes an Evaluation Process for Import Fill which provides for the testing and evaluation of soil prior to its arrival onsite. As part of the Evaluation Process for Import Fill, a Submittal Checklist for Soil Import and the Soil Acceptance Request forms were also prepared to assure appropriate documentation for the City as to the quality and character of the soil to be brought onto City property. The Soil Import Plan was approved by the RWQCB on September 30, 2020 and by the County LEA on November 20, 2020. The Checklist and Acceptance Request forms were reviewed and approved by City staff in January and February 2021 respectively.

The proposed License Agreement would allow the Developer to use City land for early site

preparation, soil stockpiling and other activities non-intrusive to landfill. The City's consideration of the Developer's request is tied directly to the public-private partnership for the development of the golf course and the Project Agreements already executed. Since the License area is on the former landfill and City has executed a DDA and DA with the Developer, there are very limited alternate uses of the golf course prior to the start of development that would be consistent with State landfill regulatory requirements and the existing project agreements. While there have been delays to the start of the project because of the pandemic, the Developer is in compliance with the DDA Schedule of Performance. As mentioned in the BACKGROUND section of this report, Council approval of the recommended action would facilitate the overall development of the Project.

Key terms of proposed Agreement include:

Scope of Activity: Soil may be excavated from Phase 1 and moved to the License Area or may be imported from offsite to the License Area. The soil shall be either compacted or loosely stockpiled. In addition, Developer may use the License Area for storage of construction materials and equipment for Project and for construction worker parking. Developer will be responsible for performing the general upkeep, repair and maintenance obligations on the entire License Area.

Term: The License will commence upon Developer's notice to the City stating their intention to use the License Area and will expire upon 1) the execution of a Ground Lease for the Phase or 2) ninety days after the outside date to ground lease the property as described in the DDA.

Upon termination of the License, the Developer is responsible to remove all stockpiled soil and will restore the License Area to a rough graded and compacted condition.

Soil Placement - Soil must be placed in areas approved by the City in accordance with the Stockpile Areas as noted in Attachment 1. These areas were identified as areas that would not impact the groundwater monitoring and the landfill gas collection systems within the Landfill. Stockpiled Soil shall not be placed higher than elevation 55 feet. The proposed Agreement provides for limitations on the total amount of soil to be brought onto the License Area and to be compacted.

It should be noted that the License Area does not include any area which has been designated as the future community park.

Permitting and Regulatory Compliance - During the License Period, Developer shall comply with the approved Soil Import Plan and all regulatory requirements imposed by the City, RWQCB and County LEA and/or any other agency with jurisdiction over the activities to be performed by Developer.

In carrying out the Soil Import Plan, the Developer will submit data and a review package (Submittal Checklist for Soil Import and the Soil Acceptance Request forms) for City approval prior to any soil import. The City will review and respond with an approval or denial within 10 business days.

Maintenance and Inspections - Developer is required to maintain all Stockpiled Soil and compacted soil including performing any work, repairs, replacements or modifications necessary to maintain compliance with the permitting and regulatory agency requirements. The City has the right to review soil data submittals and to inspect and monitor the Developer's activity on site. To the extent the City's cost to perform these inspection activities are not funded by the fees collected by the City, the Developer will fund the City's costs as provided by the Development Agreement and DDA.

Consideration - In exchange for the use of the License Area, the Developer has agreed to perform general maintenance and upkeep of the License Area and the Interim 49ers Parking Area before construction commences, (and thereby relieving the City of its maintenance activities) and install and maintain fencing as necessary on the perimeter of the License Area.

The Developer is also assuming risk of operational and emergency requirements caused by its activities in the License Area. This will shift the general responsibility for any emergency and general repair of the landfill systems to Developer unless the Developer can prove otherwise. In absence of the proposed Agreement, the risk would remain the City's. The Developer is also responsible for any bodily injury occurring on the License Area that does not result directly from the gross negligence of the City. Again this agreement shifts general liabilities and risk from the City to the Developer. A dedicated contract pollution insurance with a \$5,000,000 limit will be secured by the Developer. The procurement of this insurance will significantly reduce liabilities and general risk from the City to the Developer.

As additional consideration to the City for the License Agreement, within 30 days of the Effective Date of the Agreement the Developer will either 1) commence the demolition of the clubhouse structure, driving range, banquet hall, Fire Station 10 and the Parks maintenance structure or 2) provide on-site security for the City buildings to minimize vandalism of the buildings and other City infrastructure in the area. Since the closure of the City structures, the vandalism of City buildings and facilities in the area have caused the City to expend more than \$100,000 in repairs. In order to address ongoing vandalism, the City was also expending approximately \$37,000/month for contract security. The recommended agreement would allow for the removal of an attractive nuisance and the reduction of risk to the City.

The vacant City buildings on Stars & Stripes pose an attractive nuisance for vandals and the unhoused seeking shelter. Protecting the building from encampments has also been raised as an issue of concern by County LEA. The Developer will be permitted access to the property and buildings to perform the demolition work through a separate agreement that includes the City's standard labor compliance provisions.

Financial Security - Developer will obtain a performance bond in an amount of up to \$5,000,000 to secure the removal of the Stockpiled Soil in the event the License terminates, and the City must remove the soil. A performance bond of \$2,500,000 must be secured upon the initiation of soil import activity.

Securing and importing clean soil in the quantities necessary to implement the Project plan is anticipated to take some time and the Developer's interest is to be able to secure soil acceptable to the City as it becomes available to position the Project - and especially Phase 2 - to expedite development.

## **ENVIRONMENTAL REVIEW**

On June 28, 2016, the City of Santa Clara certified the Final Environmental Impact Report (Final EIR), adopted a Statement of Overriding Considerations (SOC), and adopted a Mitigation Monitoring or Reporting Program (MMRP) for the Related Santa Clara project [SCH#2014072078]. Since certification of the EIR, the City adopted three addenda to the EIR in connection with its approval of Development Area Plans (DAP) for Phases 1 and 2 and approval of an Interim Parking Rights

Agreement (the addenda, together with the certified Final EIR, are referred to as the EIR).

As described in this report, the Related Santa Clara project has been revised to change the methodology and phasing of the site preparation and grading activities for Phases 1 through 4 on Parcels 4 and 5 of the Related Santa Clara project as compared to the original project analyzed in the EIR. The original EIR assumed no offsite import or export of soil and only short-term stockpiling of soil on site. The changes would involve importing soil from offsite, necessitating truck trips for soil delivery, and stockpiling soil for periods longer than 10 days to support construction activities and site preparation. Accordingly, to ensure that the potential impacts of the revised soil import and earthwork plans were thoroughly analyzed in accordance with the California Environmental Quality Act (CEQA), the City prepared an Addendum to the EIR (comprised of two documents: a preliminary analysis from ICF and a separate review memo from ESA), which is attached to this report (Attachment 2).

The Addendum to the EIR documents analysis specific to the revised soil import and earthwork plans, and it found that implementation of the revised plan would not require preparation of a supplemental or subsequent EIR. The revised plan is within the level of development the City Council previously approved as part of the MCP and the DAPs and analyzed in the EIR, and is generally consistent with the development assumptions within the EIR, and thus it is within the impact envelope of the Project as analyzed in the EIR. The Addendum concludes that the revised plan would not cause new significant environmental impacts not previously identified in the EIR, or result in a substantial increase in the severity of previously identified significant unavoidable impacts. Therefore, the Addendum provides substantial evidence to support the conclusion that the potential environmental impacts associated with the revised soil import and earthwork plans facilitated by the License have already been adequately analyzed in the EIR that the City previously certified, and no further review or analysis under CEQA is required.

### **FISCAL IMPACT**

Approval of the recommended action and execution of the Agreement will provide cost savings to the City for the overall maintenance associated with the former golf course property and for the security of the vacant City buildings and infrastructure. In addition, the Developer's obligation to maintain the License area and remove the City structures along Stars & Stripes reduces the City's liabilities associated with the vacant properties.

Staff has estimated potential cost savings associated with preventative maintenance of the License area, operational maintenance, emergency repair, fencing, security, demolition of City structures, performance bonds and insurance is in excess of \$1.3 million. The maintenance, insurance and security savings are annual amounts estimated at more than \$800,000 annually. Unquantifiable savings to the City is the shift of responsibility and risk from the City to the Developer for activities on the License area.

### **COORDINATION**

This report was coordinated with City Attorney's Office.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a

Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

### **RECOMMENDATION**

That the Council:

1. Adopt the EIR Addendum to CityPlace Santa Clara (Related Santa Clara) EIR for the soil import and earthwork activity; and
2. Approve and authorize the City Manager to execute Soil Stockpiling License Agreement with Related Santa Clara to Allow the Storage of Dirt on Parcel 4 of the former Santa Clara Municipal Landfill (former Santa Clara Golf and Tennis Club).

Reviewed by: Ruth Mizobe Shikada, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. Map
2. Addendum
3. Soil Stockpiling License Agreement