

DRAFT PRECONSTRUCTION AGREEMENT**CONSULTANT****SL Carson Builders, LLC**17962 Cowan
Irvine, CA 92614**CLIENT****Carson Reclamation Authority**701 E. Carson Street
Carson, CA 90745

- I. **PROJECT NAME:** District at South Bay Lenardo Street Improvements
- II. This **PRECONSTRUCTION AGREEMENT** ("Agreement") is entered into between Client and Consultant to provide the Preconstruction Services as listed in Appendix "B" Scope of Work (attached hereto). The Preconstruction Services will be performed in accordance with the schedule and terms section below or up to the point when the drawings are mutually agreed upon to allow for Subcontractor trade awards, at which time this Agreement will convert to an Owner and Contractor Agreement in a form of a Cost of the Work plus a Fee with Guaranteed Maximum Price via an amended and restated Master Agreement for Civil Improvements with RE Solutions with Carson Reclamation Authority as a third part beneficiary, substantially in the form per the previous SL Carson Builders and RE Solutions Master Agreement dated February 19, 2018.
- III. **BASIS OF COMPENSATION** ("Compensation") Client will pay Consultant a monthly preconstruction fee based on actual hours expended at the fixed hourly rates attached as Appendix "D," "Consultant Rate Sheet," plus the direct expenses identified in Appendix "D." The Compensation to be paid to Consultant **shall be on a Time & Material basis not exceed \$248,888.00 without prior written authorization by way of Change Order to this Agreement.**
- IV. **SCHEDULE** ("Schedule") of services provided by Consultant will commence on **06/17/2024** with the intention to start Construction on (To be Determined).
- V. **OTHER TERMS:** Services covered by this Agreement will be performed in accordance with the Provisions as attached to this Agreement and summarized below:

Appendix "A": General Provisions

Appendix "B": Scope of Preconstruction Services

Appendix "C": Preconstruction Scope of Services Cost Breakdown

Appendix "D": SLCB Staff Consulting Fixed Labor Rates Per Hour

Appendix "E": Proposed Form of Contract: an amended and restated Master Agreement for Civil Improvements with RE Solutions with Carson Reclamation Authority as a third part beneficiary, substantially in the form per the previous SL Carson Builders and RE Solutions Master Agreement dated February 19, 2018.

This Agreement supersedes all prior Agreements and understandings and may only be changed by written amendment executed by both parties.

Accepted for Client:

Accepted for Consultant:

CARSON RECLAMATION AUTHORITY**SL CARSON BUILDERS, LLC**

By: _____

By: _____

Name:

Name: Lee Watkins

Title:

Title: President / COO

Date:

Date:

APPENDIX "A"

GENERAL PROVISIONS

1. Authorization to Proceed and Agreement Intent

Execution of the Agreement by the Client is authorization for Consultant to proceed with the Services unless otherwise specified in this Agreement. This Agreement is entered into with the commitment of both parties to negotiate in good faith to ultimately execute a Construction Agreement, substantially in the form AIA-A102-2007 and AIA-A201-2007 with SL Carson Builder's standard modifications.

2. Client Responsibility

The Client shall provide full information regarding requirements for the Project, and Consultant shall be entitled to rely upon the accuracy and completeness thereof. Consultant accepts no liability or responsibility for the accuracy or completeness of information that may be supplied by Client or its agents, if any. The Client shall designate, when necessary, a representative authorized to act on the Client's behalf with respect to the Project. The Client, and not the Consultant, shall be responsible for paying the Client's Design Consultants and any of Client's other Consultants for any services rendered by them in connection with the project, inclusive of the redesign of alternative systems considered by Client, Client's Design Consultants and Consultant which may result from the performance of Consultant's services under this Agreement.

3. Cost Projections

Any cost projections or project economic evaluations provided by Consultant will be developed on the basis of experience and judgment. Consultant has no control over market conditions and therefore, Consultant cannot warrant cost projections, bids or ultimate construction cost.

4. Standard of Care

The standard of care applicable to Consultant's Services will be the degree of skill and diligence normally employed by Consultants performing the same or similar services.

5. Termination

This Agreement may be terminated for convenience on 30 days' written notice from either party, or for cause, if either party fails substantially to perform through no fault of the other and does not commence correction of such non-performance within five (5) days of written notice from the other party. Upon termination, Consultant will be paid for all authorized services performed up to the termination as well as related close-out costs. In the event of termination by either party, all work provided by Consultant and its Sub-Consultants will remain the property of Consultant for its use. If no notice of termination is given, relationships and obligations are terminated upon completion of all applicable requirements of this Agreement.

6. Payment to Consultant

Monthly invoices will be issued by Consultant for all services performed under this Agreement. Invoices are due upon receipt and payable 15 days after receipt. Interest at Bank of America's reference rate plus two points will be charged on all past-due amounts. Interest on past due amounts is calculated from due date until date payment is received. Payments will first be credited to interest and then to payable amount.

7. Consultant Services

All instruments of services, including studies, samples, drawings, plans, specifications, CAD products, as-builts, reports, electronic media or other instruments of service prepared by Consultant or any of its sub-consultants under this Agreement shall become the property of the Client upon Consultant being paid in full by Client for all consulting services rendered.

8. Limitation of Liability

Consultant's liability for client's damages shall not exceed the compensation received by Consultant under this Agreement.

9. Severability and Survival

If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability and indemnities shall survive termination of this Agreement for any cause.

10. Asbestos or Hazardous Substances

To the maximum extent permitted by law, the Client will indemnify, defend and hold harmless Consultant and its officers, employees, sub-consultants and agents from all claims, damages, losses and expenses, including but not limited to, direct, indirect, or consequential damages and attorney's fees arising out of or relating to the presence, discharge, release, or escape of hazardous substances contaminants or asbestos on or from the project.

11. Interpretation

The limitations of liability and indemnities will apply to consultant's liability under any and all legal theories, including but not limited to breach of contract or warranty; tort, including negligence; strict liability, statutory liability; or any other causes of action; and, shall apply to Consultant's officers, employees or Subcontractors.

12. No Third-Party Beneficiaries

This Agreement gives no rights or benefits to anyone other than the Client and Consultant and has no third-party beneficiaries. Consultant's services are defined solely by this Agreement and not by any other contract or Agreement that may be associated with the project.

13. Changes

Client may at any time, by written order, make changes to the Services called for hereunder. If any such change causes an increase or decrease in the cost or the time of the performance of any portion of the Services under this Agreement, an adjustment shall be made in the amount as agreed upon, and this Agreement shall be modified in writing, signed by Client and Consultant, accordingly.

14. Insurance

14.1 Amounts of Insurance Coverage. Consultant shall procure and maintain in force, at its sole cost and expense, the following insurance policies: (a) worker's compensation with employer's liability limits of One Million Dollars (\$1,000,000.00) per employee; (b) commercial general liability for bodily injury and property damage liability claims with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate (per project), including premises liability with no explosion, collapse or underground exclusions, products and completed operations liability, blanket contractual, and broad form property damage liability; (c) commercial automobile liability for bodily injury and property damage with limits of not less than One Million Dollars (\$1,000,000.00) each accident for all

owned, non-owned and hired automobiles; and (when applicable) (d) professional errors and omissions liability insurance in the minimum amount of Two Million Dollars (\$2,000,000.00)

14.2 Terms of Insurance. Consultant's insurance shall be from an insurance carrier with an A. M. Best rating of A-, IX or better, shall be on the ISO occurrence form CG 00 01 or such other form as may be approved by Owner, and shall name Owner, Owner's lender and other parties specified by Client as additional insureds as their interests may appear. "Claims Made" forms are not acceptable, except with respect to the professional errors and omissions liability policy. Each certificate of insurance shall state that such insurance will not be cancelled or reduced in coverage until after thirty (30) days' prior written notice of cancellation or reduction in coverage has been given to Owner, except in the event of non-payment of premium, in which case there shall be ten (10) days' unqualified written notice. Subrogation against Client shall be waived with respect to all policies of Consultant. Consultant's insurance policy shall be endorsed to indicate that Consultant's insurance coverage is primary and any insurance maintained by Client is non-contributing. Failure to maintain insurance coverage in accordance with the provisions hereof shall constitute a breach of this Agreement and shall entitle Client to withhold payments required hereunder or to suspend or terminate Consultant. Consultant agrees to keep all coverage required hereunder in full force and effect for a period not less than one (1) year following the completion of the Consultant Services. Before Consultant performs any portion of the Consultant Services, but in any event no later than seven (7) days after this Agreement is entered into, Consultant shall provide Client with certificates evidencing the insurance coverage and the additional insured endorsements and waivers required by paragraph 12. Vendor shall provide full and certified copies of all insurance policies if requested by Owner.

15. Attorneys' Fees

In the event of any action or proceeding brought by either party against the other under this Agreement, the prevailing party shall be entitled to recover its actual attorneys' fees and all fees, costs and expenses incurred for prosecution, defense, consultation, or advice in such action or proceeding.

16. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the state in which the Project is located.

17. Entire Agreement

This Agreement, together with the exhibits attached hereto, represents the entire agreement by and between Client and Consultant with respect to the Consultant Services to be performed under this Agreement and all other matters contained herein and supersedes all prior negotiations, representations, proposals, or agreements regarding the Consultant Services or such other matters. This Agreement may be modified or supplemented only by a written instrument signed by both Client and Consultant.

18. Waiver

No waiver by either party hereto of any term or provision hereof shall constitute or signify a continuing waiver of any such term or provisions, or of any other terms or provisions under this Agreement.

19. Notices

Any notice, demand or approval, consent or any other communication required or desired to be given under this Agreement shall be in writing, shall be addressed to the parties at their respective addresses set forth in this Agreement, and shall be deemed given when personally served, or, if sent by Federal Express or other recognized overnight delivery service, upon receipt thereof, or if given by mail, which shall be by mailing in the United States mail, postage prepaid, certified mail, return receipt requested, upon the expiration of 48 hours after the mailing thereof.

20. Dispute Resolution

21.1. **Dispute Defined.** For purposes of this Section 21, “Disputes” shall mean all unresolved claims, counterclaims, disputes, controversies, and other matters in question between Consultant and Client arising out of or relating to this Contract or the breach thereof.

21.2. **Performance of Parties to Continue.** Unless otherwise agreed in writing during the period in which any Dispute is outstanding, Consultant shall continue to perform its services and carry out its other responsibilities in accordance with this Contract, and Client shall continue to pay for the undisputed portion of Consultant’s services, as provided hereunder.

21.3. **Mediation.** Client and Consultant shall submit all Disputes to mediation prior to either party initiating arbitration pursuant to Section 21.4 below. Unless the parties mutually agree otherwise, such mediation shall be conducted in accordance with the with the JAMS procedures for appointment of a mediator, if the parties cannot agree on a mediator. Upon either party’s decision to submit a Dispute to mediation, such party shall serve written notice on the other party and shall propose the identity of a mediator. Upon receipt of such notice, the non-initiating party shall respond in writing to the initiating party within ten (10) business days by either accepting the initiating party’s proposed mediator or by proposing an alternate mediator. In the event that only one party proposes a mediator within such 10-day period, the mediator that has been proposed shall be selected. In the event that Client and Consultant both propose mediators within such 10-day period, and the parties cannot agree as to the identity of the mediator within a further 10-day period, the mediator shall be appointed in accordance with the JAMS Construction Arbitration Rules. If any Dispute has not been resolved within forty-five (45) days after submission thereof to mediation, either party may initiate arbitration for the resolution of such Dispute. Client and Consultant each hereby consents to the exclusive jurisdiction and venue, for purposes of resolution of any Dispute of the Superior Court in the City and County of Orange.

21.4. **Arbitration.** Unless the parties mutually agree otherwise, disputes not resolved by mediation pursuant to Section 21.3 shall be resolved in Orange County, California by arbitration through the Judicial Arbitration and Mediation Service (“JAMS”) or other alternative dispute resolution agency mutually acceptable to the parties. Such arbitration shall be in accordance with the JAMS Construction Arbitration Rules currently in effect. Following the forty-five (45) day period allowed for mediation pursuant to Section 21.3 above, the initiating party shall file a demand for arbitration with the other party to the Contract and with JAMS. In no event shall such demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations. Client and Consultant each hereby stipulates to any consolidation or joinder with respect to any arbitration proceeding involving or arising out of the Project. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Contract shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The party filing a notice of demand for arbitration must assert in the demand all Disputes then known to that party on which arbitration is permitted to be demanded. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. In the event of any arbitration hereunder or any action or proceeding to enforce any arbitration award hereunder, the prevailing party, as determined by the arbitrator or arbitrators or court, shall be entitled to recover from the other party all costs and expenses, including court costs, arbitration fees and reasonable attorneys’ fees, incurred by the prevailing party in connection with such arbitration, action or proceeding.

21.5. **Subcontract Requirements.** Consultant agrees that the provisions of this Section 21 shall be included in all subcontracts related to the Work into which it may enter, and that if any dispute subject to arbitration under this Section 21 involves such subcontract, the rights and liabilities of Client, Consultant and all Subcontractors, Sub-subcontractors who may be involved shall be determined in the single arbitration proceeding, to the extent possible.

APPENDIX "B"

SCOPE OF PRECONSTRUCTION SERVICES

The Preconstruction Services to be provided by Consultant to Client consist of the following:

1. Consultant shall jointly schedule and attend regular meetings with the Client and Client's Construction Manager, to the extent described within Appendix "C". The Consultant shall consult with the Client and Client's Construction Manager and other Design Consultants regarding site use and improvements, and the selection of materials, building systems and equipment. The Consultant shall provide recommendations on actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement; and factors related to construction cost including estimates of alternative designs or materials, preliminary estimates and possible economies.
2. When Project requirements have been sufficiently identified, the Consultant shall prepare, and periodically update, a preliminary Project schedule for review by the Client's Construction Manager and the Client's approval. The Consultant shall obtain the Client's, Client's Construction Manager's and Client's Design Consultants input for the portion of the preliminary Project schedule relating to the performance of the Client's Design Consultant's services. The Consultant shall coordinate and integrate the preliminary Project schedule with the activities of the Client, the Client's Construction Manager and Client's Design Consultants and Consultant. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, as needed the Client's tenant's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedule may not be met, the Consultant shall notify the Client and Client's Construction Manager.
3. When the Client has sufficiently identified the Project requirements and the Client's Design Consultants has prepared other basic design criteria, the Consultant shall prepare, for the review and approval of the Client and Client's Construction Manager, a trade subcontractor bid packages in preparation for a future Guaranteed Maximum Price Contract.
 - 3.1.1. The time frame associated with each task shall be as mutually agreed but no less than as follows:
 - a. 90% Construction Document Estimate (GMP): Eight (8) – Ten (10) Weeks
4. The Consultant shall recommend to the Client and Client's Construction Manager a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead time items are procured by the Client, they shall be procured on terms and conditions acceptable to the Consultant. Upon the Client's acceptance of the Consultant's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Client to the Consultant, who shall accept responsibility for such items as if procured by the Consultant. The Consultant shall expedite the delivery of long-lead time items.
5. Consultant's Preconstruction Services shall include assisting the Client, Client's Construction Manager and Client's Design Consultants with the "Constructability" analysis on items specifically identified, with initial plan review feedback through the process of a partnership approach with hand selected Subcontractors or an outside Third-Party Plan Review Consultant. The plan review feedback provided by the Consultant does not alleviate the Client, the Client' Construction Manager and Design Team responsibility to implement their own plan review and for the overall coordination of the Documents. Client shall ensure all (Client or Consultant) provided plan review feedback is incorporated into the Construction Documents, prior to pricing the GMP, at no cost to the Consultant.

APPENDIX "C"

Preconstruction Scope of Services Cost Breakdown



Client RE Solutions / Carson Reclamation Authority
Project District at South Bay Lenardo Street Improvements
DATE: June 17, 2024

Services Commencement Date: 6/17/2024
 Services Completion Date: 8/23/2024
 Total Precon Duration (wks): 10.0

	Description	Hours Per Week	Weeks	Hourly Rate	Extended Amount
Cost Estimating Services					\$ 180,940
	90% CD's- Control Budget				NIC
	Excluded				NIC
90% CD's- Set GMP					\$ 180,940
	K.McCarty - PX @ 40% average	16.00	10.00	\$ 253.00	\$ 40,480.00
	J.Latcha - SPM @ 40% average	16.00	8.00	\$ 216.00	\$ 27,648.00
	TBD - PM @100%	40.00	8.00	\$ 183.00	\$ 58,560.00
	TBD - SPE @100%	40.00	6.00	\$ 127.00	\$ 30,480.00
	TBD - Project Coordinator	4.00	8.00	\$ 102.00	\$ 3,264.00
	TBD - Project Accountant	2.00	8.00	\$ 116.00	\$ 1,856.00
	P.Peterson - Sr. Superintendent	4.00	8.00	\$ 216.00	\$ 6,912.00
	R.Cavecche - SVP Operations	2.00	10.00	\$ 312.00	\$ 6,240.00
	Legal Expenses - Allowance	1.00	10.00	\$ 450.00	\$ 4,500.00
	Misc Expenses Allowance (Plan Repro / Travel, etc..)	1.00	1.00	\$ 1,000.00	\$ 1,000.00
Constructability Review Services					
	Define Documents that will be Reviewed				NIC
	3rd Party CheckSET Review	0.00	0.00	\$ -	NIC
	Snyder Langston Review - Included above	0.00	0.00	\$ -	NIC
	Subcontractor Review	0.00	0.00	\$ -	NIC
Phasing, Staging, and Access Planning Services					NIC
	Excluded				NIC
Project Scheduling Services					\$ 4,944
	Schedule - Create Initial Schedule by Scheduler	8.00	2.00	\$ 206.00	\$ 3,296.00
	Schedule - Revisions by Scheduler	4.00	2.00	\$ 206.00	\$ 1,648.00
Building Information Modeling (BIM) Services					
	Clash Detection, Coordination and Resolution				NIC
	BIM Manager	0.00	0.00	\$ -	NIC
	Snyder Langston Review	0.00	0.00	\$ -	NIC
Preconstruction Administration/Coordination Services					\$ 63,004
	Ad Hoc Preconstruction Services Performed to Date				\$ 63,003.50
	K.McCarty - PX (12/15/23 thru 6/15/24)	7.00	26.00	\$ 253.00	\$ 46,046.00
	Legal Expenses (1/1/2024 thru 5/30/24)	1.00	1.00	\$ 16,957.50	\$ 16,957.50
	Continuous Estimating Feedback/Target Value Delivery				NIC
		0.00	0.00	\$ -	NIC

TOTAL Preconstruction Services Allowance: \$ 248,888

APPENDIX "D"

CONSULTANT RATE SHEET

Incorporated herein by reference, please refer to the attached SL Carson Builders Staff Consulting Fixed Labor Rates Per Hour.

B) Direct Expenses

Consultant's direct expenses, when part of the basis of compensation, are those costs incurred on or directly for the project, including but not limited to, necessary transportation costs, meals and lodging, computer services, word processing services, telephone, printing, binding and reproduction charges, all costs associated with outside consultants, subcontractors and other outside services and facilities and other similar costs. Reimbursement for direct expenses will be on the basis of actual charges plus 10% when furnished by commercial sources and on the basis of current rates when furnished by Consultant.

Appendix "D"
SL Carson Builders, LLC
STAFF CONSULTING FIXED LABOR RATES PER HOUR
EFFECTIVE 9/1/23

District at South Bay Lenardo Street Improvements
 RE Solutions / Carson Reclamation Authority

Date: 17-Jun-24

	EFFECTIVE FROM 9/1/23 TO 8/31/24	FROM 9/1/24 TO 8/31/25	FROM 9/1/25 TO 8/31/26
PRINCIPAL	338.00	355.00	373.00
SR VICE PRESIDENT	312.00	328.00	344.00
VICE PRESIDENT	279.00	293.00	308.00
PROJECT EXECUTIVE	253.00	266.00	279.00
PROJECT DIRECTOR	238.00	250.00	263.00
SR PROJECT MANAGER	216.00	227.00	238.00
PROJECT MANAGER	183.00	192.00	202.00
ASST PROJECT MANAGER	143.00	150.00	158.00
SENIOR PROJECT ENGINEER	127.00	133.00	140.00
BIM COORDINATOR	162.00	170.00	179.00
PROJECT ENGINEER	98.00	103.00	108.00
GENERAL SUPERINTENDENT	238.00	250.00	263.00
SENIOR SUPERINTENDENT	216.00	227.00	238.00
SUPERINTENDENT	183.00	192.00	202.00
ASSISTANT SUPERINTENDENT	127.00	133.00	140.00
VICE PRESIDENT ESTIMATING	312.00	328.00	344.00
SENIOR ESTIMATOR	216.00	227.00	238.00
ESTIMATOR	183.00	192.00	202.00
SCHEDULER (Consultant @ cost \$187.00 +10%)	206.00	216.00	227.00
SAFETY MANAGER	197.00	207.00	217.00
PROJECT COORDINATOR	102.00	107.00	112.00
PROJECT ACCOUNTANT	116.00	122.00	128.00
CLERK/INTERN	82.00	86.00	90.00

EQUIPMENT:

COMPUTERS w/ Project Management Software

\$1,000 PER MONTH