

**DEVELOPMENT AND ENVIRONMENTAL REMEDIATION  
PROPERTY MANAGEMENT AGREEMENT**

**BY AND BETWEEN**

**CARSON RECLAMATION AUTHORITY**

**AND**

**RE | SOLUTIONS, LLC**

**DATED AS OF**

**JUNE \_\_, 2017**

## DEVELOPMENT AND ENVIRONMENTAL REMEDIATION PROPERTY MANAGEMENT AGREEMENT

THIS ENVIRONMENTAL REMEDIATION AND PROPERTY MANAGEMENT AGREEMENT (this “**Agreement**”) is made as of June \_\_, 2017 (the “**Effective Date**”), by and between the CARSON RECLAMATION AUTHORITY, a joint powers authority formed under the laws of the State of California (“**CRA**”) and RE | SOLUTIONS, LLC, a Colorado limited liability company (“**RES**”).

### WITNESSETH:

#### A. *The Property*

WHEREAS, CRA is the owner of the 157-acre parcel located at 20300 Main Street in Carson, California, commonly known as the former Cal Compact Landfill and shown on the Site Map attached hereto as Exhibit A-1 (the “**Property**”), having acquired the Property pursuant to the May 18, 2015 Settlement, Release, and Indemnity Agreement with the previous owner, Carson Marketplace, LLC.

WHEREAS, the Property is subject to a tentative tract map that subdivides it into a surface lot (the “**Surface Lot**”) and a subsurface lot (the “**Subsurface Lot**”), which lots are referenced on the “Designation of Parcels” attached hereto as Exhibit A-2 as Parcels 1 (Subsurface Lot) and 2 (Surface Lot) of Parcel Map No. 70372.

WHEREAS, for environmental remediation purposes, the RAP divides the Property into five (5) cells (each, a “**Cell**”) as shown on Exhibit A-3 and the Property is subject to the Specific Plan.

#### B. *Regulatory Background*

WHEREAS, the Property had received municipal and industrial wastes from between approximately 1959 to 1964, which wastes resulted in contamination to soil and groundwater on and near the Property.

WHEREAS, on May 25, 1995, DTSC issued a Remedial Action Order and Consent Order pursuant to Sections 25355.5(a)(1)(B) and 25355.5(a)(1)(C) of the California Health and Safety Code (the “**Consent Order**”), which established a schedule for removing and/or remedying such contamination.

WHEREAS, in October of 1995, pursuant to the terms of the Consent Order, the DTSC approved a Final Remedial Action Plan for the area of the Property with known contamination (as may be amended, the “**RAP**”).

WHEREAS, on February 4, 2004 DTSC resolved claims against BKK Corporation in the case styled as *The California Department of Toxic Substances Control v. Commercial Realty Projects, Inc. et al.*, in the United States District Court for the Central District of California (as may be amended, the “**Consent Decree**”).

WHEREAS, on September 28, 2006, DTSC and Carson Marketplace LLC, the then-owner of the Property and a responsible party under the Consent Order and RAP entered into a Compliance Framework Agreement, as amended by that certain First Amendment to Compliance Framework Agreement dated as of December 31, 2007, as amended, for the purpose of setting forth a plan for implementing the RAP (as may be amended, the “CFA”).

WHEREAS, an environmental review process was previously undertaken pursuant to CEQA for the Property in connection with the approval of the Specific Plan (the “**Prior CEQA Review**”). The City has not yet determined whether or to what extent the Prior CEQA Review satisfies the need for environmental review as to the Project and what additional CEQA determinations are required to complete the Project.

WHEREAS, CRA is currently working with DTSC to develop the scope and terms of certain of the DTSC Documents, as more fully described in Section 5.08(a) hereof.

C. *Vertical Development*

WHEREAS, CRA has been negotiating with potential Vertical Developers for the vertical development of certain of the Cells of the Property.

WHEREAS, CRA has entered into an exclusive negotiation agreement dated July 7, 2016 and a memorandum of understanding dated as of May \_\_, 2017 with CAM-Carson LLC, a subsidiary of The Macerich Company (“**Macerich**”) for the development of the Surface Lot of Cell 2.

WHEREAS, CRA intends to enter into an exclusive negotiation agreement and a memorandum of understanding with a subsidiary of Vestar for the development of the Surface Lot of Cells 3, 4 and 5.

WHEREAS, no Vertical Developer has yet been selected for the Surface Lot of Cell 1.

D. *Existing Contracts*

WHEREAS, the following contracts are hereinafter referred to collectively as the “**Existing Contracts**”: (i) Master Services Agreement dated as of January 25, 2017 between Stearns Conrad and Schmidt Consulting Engineers, Inc. d/b/a SCS Engineers and CRA (the “**SCS Contract**”); and (ii) Contract Services Agreement dated as of October 18, 2016 between the City and Michael Baker International.

WHEREAS, the City and Environmental Science Associates have entered into a Contract Services Agreement dated as of October 18, 2016 (the “**CEQA Contract**”).

E. *Insurance*

WHEREAS, CRA has obtained a comprehensive pollution legal liability (“**PLL**”) program through a Lloyd’s of London consortium of syndicates, led by Lloyds Syndicates 623 and 2623, which are both commonly known as Beazley (the “**Predevelopment PLL**”).

WHEREAS, CRA has obtained a Contractors Environmental and Professional Coverage Policy, No. PPK1590707 from Tokio Marine Specialty Insurance Company (the “**Predevelopment CPL/PLI**”).

WHEREAS, prior to the commencement of the Development Period, CRA intends to obtain broader and more comprehensive pollution legal liability insurance in form and substance similar to the Predevelopment PLL with limits of liability equal to or greater than \$150 million in the aggregate (the “**Development PLL**”).

WHEREAS, prior to the commencement of the Development Period, CRA intends to obtain broader contractors pollution liability and owner’s professional liability coverage in form and substance similar to the Predevelopment CPL/PLI with limits of liability equal to or greater than \$75 million in the aggregate (the “**Development CPL/PLI**”).

WHEREAS, on or before the commencement of the Development Period, CRA, in conjunction with Macerich, intends to obtain one or more “wrap” insurance programs to support the RES Work and the vertical construction work to be conducted on and under the Property, including without limitation, Commercial General Liability, Builder’s Risk, earthquake and related coverages, which programs shall have terms and limits in at least such amounts as may be required to be maintained by CRA pursuant to the definitive agreements between CRA and the Vertical Developers (collectively, the “**Development Insurance Programs**”).

F. *RFQ and Selection of RES as Development Manager*

WHEREAS, on or about August 26, 2016, RES submitted a response to CRA’s RFQ for a master developer.

WHEREAS, as a result of the RFQ and CRA’s review of RES’s response and statement of qualifications, CRA selected RES to perform the RES Work.

G. *RES Work and the Project*

WHEREAS, CRA desires to retain RES as its development manager to coordinate, oversee and implement the following work related to the Property and the Project (collectively, and together with the Predevelopment Services and the Development Services, the “**RES Work**”): (1) the performance of CRA’s on-going operation and management obligations under the RAP, Consent Decree and CFA, even if amended (the “**O&M Obligations**”), (2) the pursuit of the land use approvals and regulatory permits required for the completion of the Environmental Improvements and Infrastructure Improvements, (3) the design and construction of the environmental improvements for the Property that CRA is required to deliver under the definitive agreements with the Vertical Developers (the “**Environmental Improvements**”) and (4) the design and construction of the other improvements that CRA is required to deliver under the definitive agreements with the Vertical Developers (the “**Infrastructure Improvements**”), each as further set forth on **Exhibit B** attached hereto and Article V of this Agreement. The parties acknowledge that certain of the Infrastructure Improvements also are required by and serve a function contemplated by the required environmental remedy for the Property.

WHEREAS, the RES Work, together with the anticipated vertical development of all Cells of the Property is sometimes collectively referred to herein as the “**Project**”.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the promises and covenants herein contained, and for good and valuable consideration and intending to be legally bound, CRA and RES agree as follows:

### **ARTICLE I** **DEFINITIONS**

1.01. **Defined Terms.** As used in this Agreement, the following capitalized terms have the following meanings:

- (a) “**Acceptance Notice**” is defined in Section 7.02.
- (b) “**Agreement**” means this Environmental Remediation and Property Management Agreement by and between CRA and RES.
- (c) “**Applicable Laws**” means any applicable federal, state or local laws and all Environmental Laws.
- (d) “**Bankruptcy Code**” means the Bankruptcy Reform Act of 1978 (11 USC § 101-1330) as now or hereafter amended or recodified.
- (e) “**Baseline Remedy**” is defined in Section 7.01(a).
- (f) “**Baseline Remedy Notice**” is defined in Section 7.01(b).
- (g) “**BPS**” means building protection systems intended to prevent infiltration of landfill gas from entering into occupied portions of a building or structure and containing required gas monitoring and alarm components, all in a manner approved by Los Angeles County, California and DTSC, as applicable. [**ABOVE GROUND COMPONENTS**]
- (h) “**Cell**” is defined in the recitals.
- (i) “**CEQA**” means the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., of the California Public Resources Code.
- (j) “**Certificate of Occupancy**” means a certificate or document issued by the local Government Authority or building department certifying a building’s compliance with applicable building codes and other Applicable Laws, and indicating it to be in a condition suitable for occupancy.
- (k) “**CFA**” is defined in the recitals.

(l) “CRA” means the Carson Reclamation Authority, which at all times hereunder shall act by and through its Executive Director, unless otherwise expressly provided herein.

(m) “City” means the City of Carson, California.

(n) “Collateral Assignment” is defined in Section 5.10(f).

(o) “Consent Decree” is defined in the recitals.

(p) “Consent Order” is defined in the recitals.

(q) “Cost Reduction Fee” is defined in Section 4.06.

(r) “CRA Indemnified Parties” means CRA, the City of Carson and their respective officers, directors, and employees.

(s) “CRA Master Account” is defined in Section 6.03(a).

(t) “CRA Objection” is defined in Section 6.04.

(u) “CRA Review Date” is defined in Section 6.04.

(v) “CRA” means Carson Reclamation Authority, a joint powers authority formed under the laws of the State of California

(w) “Damages” mean any damage, claim, fine, penalty, liability, or expense, including, without limitation, reasonable attorneys’ fees, court costs and other expenses of any legal proceeding.

(x) “Development CPL/PLI” is defined in the recitals.

(y) “Development Insurance Programs” is defined in the recitals.

(z) “Development Period” is defined in Section 5.02.

(aa) “Development PLL” is defined in the recitals.

(bb) “Development Services” is defined in Section 5.02.

(cc) “DTSC Documents” means collectively, the RAP, the Consent Order, the Consent Decree, the CFA and items (i) through (iv) of Section 5.08(a).

(dd) “DTSC” means the California Environmental Protection Agency, Department of Toxic Substances Control.

(ee) “Effective Date” means June \_\_, 2017.

(ff) **“Enterprise Fund”** means that account maintained by CRA under the Enterprise Fund Administration Agreement between CRA and DTSC dated [\_\_\_\_], 2017.

(gg) **“Environment”** means surface or ground water, drinking water supply, land, surface or subsurface strata, the ambient air, and the sediment underlying any surface water.

(hh) **“Environmental Certification Document(s)”** means any document evidencing the completion of the environmental review that CRA or any other regulatory agency is required to complete under CEQA (whether as a lead or responsible agency) with respect to a discretionary review related to the Project, including, without limitation (as applicable), a notice of exemption, negative declaration or mitigated negative declaration adopted by CRA or an addendum to an existing environmental report, supplemental environmental report or separate environmental impact report certified by CRA.

(ii) **“Environmental Condition”** means the presence, whether disclosed or undisclosed, in the Environment of any Hazardous Material, in concentrations that exceed applicable regulatory standards or that may require Remedial Action by a Governmental Authority or existing on, at, or under the Property as of the Effective Date.

(jj) **“Environmental Improvements”** is defined in the recitals.

(kk) **“Environmental Laws”** means any applicable federal, state or local laws, statutes, ordinances, rules, regulations, orders, now or hereafter in effect, imposing liability, establishing standards of conduct or otherwise relating to protection of the environment (including natural resources, surface water, groundwater, soils, and indoor and ambient air), health and safety, or the presence, generation, treatment, storage, disposal, discharge or threatened discharge, transport or handling of any hazardous material, including, without limitation, the DTSC Documents, as the same may be amended from time to time.

(ll) **“Environmental Liability Fee”** is defined in Section 4.02.

(mm) **“Environmental Remediation Damages”** mean any and all necessary, out of pocket expenditures required by any Governmental Authority for Remedial Action with respect to any Environmental Condition at the Property.

(nn) **“ESA”** means Environmental Science Associates

(oo) **“Event of Default”** is defined in Section 10.01.

(pp) **“Existing Contracts”** is defined in the recitals.

(qq) **“Fees”** is defined in Section 4.01.

(rr) **“Force Majeure”** is defined in Section 11.14.

(ss) **“Global Sources and Uses”** is defined in Section 6.01.

(tt) **“Governmental Authority”** means any foreign, federal, state, municipal or local government, governmental authority, regulatory or administrative agency, governmental commission, department, board, bureau, court, tribunal, arbitrator or arbitral body with jurisdiction over the Property or the Remedial Action.

(uu) **“Hazardous Material”** means and includes any substance that is or contains (i) any “Hazardous Substance” as now defined in Section 101(14) of CERCLA or any regulations promulgated under CERCLA; (ii) any “hazardous waste” as now or hereafter defined in RCRA or any regulations promulgated under RCRA; (iii) any substance now or hereafter regulated under TSCA or OSHA or any regulations promulgated under TSCA or OSHA; (iv) petroleum, petroleum byproducts, gasoline, diesel fuel, or other petroleum hydrocarbons; (v) ACM, in any form, whether friable or non-friable; (vi) polychlorinated biphenyls; (vii) lead and lead containing materials; or (viii) landfill gas; (ix) any additional substance, material or waste (A) the presence of which on or about the Property (1) requires reporting, investigation or remediation under any Environmental Laws (as hereinabove defined), (2) causes or threatens to cause a nuisance on the Property or any adjacent property or poses or threatens to pose a hazard to the health or safety of persons on the Property or any adjacent property, or (3) which, if emanated or migrated from the Property, would constitute a trespass, or (B) which is determined by any Governmental Authority to pose a present or potential hazard to human health or the Environment.

(vv) **“HAZWOPER”** means Hazardous Waste Operations and Emergency Response as provided under 29 CFR Part 1910.120.

(ww) **“Infrastructure General Contractor”** is defined in Section 5.10(c).

(xx) **“Infrastructure Improvements”** is defined in the recitals.

(yy) **“Macerich”** is defined in the recitals.

(zz) **“Manage”** or **“Managed”** or **“Management”** means to exert control over Hazardous Material or to handle, generate, treat, store, dispose or transport Hazardous Material, or to arrange for the disposal of Hazardous Material.

(aaa) **“Master Invoice”** is defined in Section 6.04.

(bbb) **“MBI”** means Michael Baker International.

(ccc) **“Minimum Monthly Fee”** is defined in Section 4.03.

(ddd) **“MMF Credit”** is defined in Section 4.05.

(eee) **“New Contaminants”** means Hazardous Material released into the Environment in, on, under or about the Property after the Effective Date as a result of the use or conduct of activities on the Property by CRA, RES or either of their subtenants, licensees, contractors, subcontractors, materialmen, suppliers, delivery services or invitees, or Environmental Conditions to the extent such Environmental Conditions have been exacerbated



by uses or activities conducted on the Property by CRA, RES or their contractors, subcontractors, invitees or licensees, after the Effective Date.

(fff) “**O&M Obligations**” is defined in the recitals.

(ggg) “**OSHA**” means Occupational Safety and Health Act of 1970 (29 U.S.C. §651 et. seq.)

(hhh) “**PLL**” is defined in the recitals.

(iii) “**Predevelopment CPL/PLI**” is defined in the recitals.

(jjj) “**Predevelopment PLL**” is defined in the recitals.

(kkk) “**Predevelopment Services**” is defined in Section 5.01.

(lll) “**Prior CEQA Review**” is defined in the recitals.

(mmm) “**Project Budget**” is defined in Section 6.02.

(nnn) “**Project**” is defined in the recitals.

(ooo) “**Property**” is defined in the recitals.

(ppp) “**Prospective Purchaser Agreement**” means an agreement entered into with DTSC regarding environmental responsibility and liability limitations pursuant to California Health & Safety Code Section 5300 et. seq.

(qqq) “**RACR**” or “**Remedial Action Completion Report**” means a report that documents to DTSC that all remedial actions proposed by the RAP have been completed for one or more Cells.

(rrr) “**RAP**” is defined in the recitals.

(sss) “**RCRA**” means the Resource Conservation and Recovery Act, as amended (42 U.S.C. §6901 et. seq.)

(ttt) “**Regulatory Approvals**” is defined in Section 5.08(a).

(uuu) “**Remedial Action**” means any investigation, containment, removal, remedy, clean-up, response or abatement of any Environmental Condition or New Contaminants, as applicable, including any negotiations, discussions and other communications with Governmental Authorities or third parties with respect to any ongoing or potential or threatened investigation, containment, removal, remedy, clean-up, response or abatement of any Environmental Condition or New Contaminants, as applicable.

(vvv) “**RES Master Account**” is defined in Section 6.03(b).

(www) “**RES Transfer**” is defined in Section 3.04.

- (xxx) **“RES Transfer Period”** is defined in Section 3.04.
- (yyy) **“RES Work Completion Date”** is defined in Section 3.02.
- (zzz) **“RES Work”** is defined in the recitals
- (aaaa) **“RES”** means RE | Solutions, LLC, a Colorado limited liability company..
- (bbbb) **“RFBs”** means requests for bids.
- (cccc) **“RFQ/RFB Process”** is defined in Section 5.10(a).
- (dddd) **“RFQs”** means requests for qualifications.
- (eeee) **“Right of First Offer Period”** is defined in Section 7.02.
- (ffff) **“Right of First Offer”** is defined in Section 7.02.
- (gggg) **“Right of First Offer Notice”** is defined in Section 7.02.
- (hhhh) **“Roadmap to Occupancy”** means details of the processes required to obtain any necessary DTSC, South Coast Air Quality Management District, City of Carson and Los Angeles County approvals of the various remedial systems and BPS in order to issue all applicable permits to support development and issuance of Certificates of Occupancy for buildings and structures located at the Project.
- (iiii) **“SCS”** means Stearns Conrad and Schmidt Consulting Engineers, Inc. d/b/a SCS Engineers.
- (jjjj) **“Services Fee”** is defined in Section 4.04.
- (kkkk) **“Site Grading Work”** is defined in Section 5.09(b).
- (llll) **“Site O&M Costs”** is defined in Section 4.06(a).
- (mmmm) **“Site O&M Savings”** is defined in Section 4.06(b).
- (nnnn) **“Specific Plan”** means The Boulevards at South Bay Specific Plan, approved on February 8, 2006, and amended on April 5, 2011.
- (oooo) **“Standard of Care”** is defined in Section 5.11.
- (pppp) **“Stormwater Work”** is defined in Section 5.09(c).
- (qqqq) **“Subsurface Lot”** is defined in the recitals.
- (rrrr) **“Surface Lot”** is defined in the recitals.
- (ssss) **“Term”** means the term of this Agreement as provided in Section 3.01.

(tttt) “**Termination Date**” is defined in Section 3.03(a).

(uuuu) “**TRC**” means TRC Solutions, Inc.

(vvvv) “**TSCA**” means Toxic Substances Control Act, as amended (15 U.S.C. §2601 et. seq.)

(www) “**Urban Storm Water Mitigation Plan**” means a plan for managing stormwater on the property that meets all requirements of the County of Los Angeles Urban Runoff and Storm Water NPDES permit issued by the Los Angeles Regional Water Quality Control Board.

(xxxx) “**Utility Work**” is defined in Section 5.09(d).

(yyyy) “**Vertical Developer**” means any developer selected by CRA to develop and construct vertical improvements on one or more Cells of the Surface Lot.

(zzzz) “**Work Product**” is defined in Section 5.18.

## ARTICLE II APPOINTMENT OF RES

2.01. Appointment of RES. CRA hereby appoints RES and RES hereby accepts appointment on the terms and conditions hereinafter provided as CRA’s environmental and development manager to manage and coordinate the performance of the RES Work. RES shall not be an employee of CRA but shall act as CRA’s agent, with such agency limited to the scope set forth in this Agreement.

2.02. Representations and Covenants. RES represents and warrants that it has, and will maintain during the Term, the full right, power and authority, including any required licenses, permits or approvals, to enter into this Agreement and to perform the RES Work required herein, and upon the conditions and for the term and compensation set forth herein. RES further represents that it is experienced and capable in the planning, entitlement, construction and implementation of complex environmental remediation and development projects similar to the Project. Subject to the provisions of this Agreement, RES covenants and agrees to perform the RES Work in compliance with all Applicable Laws.

2.03. Representatives and Personnel of RES. The following principals of RES (“Principals”) are hereby designated as being the principals and representatives of RES authorized to act in its behalf with respect to the work specified herein and to make all decisions in connection therewith:

(Name)	(Title)
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It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for CRA to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the

services hereunder. All personnel of RES, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by RES without the express written approval of CRA. Additionally, RES shall utilize only competent personnel to perform services pursuant to this Agreement. RES shall make every reasonable effort to maintain the stability and continuity of RES's staff and subcontractors, if any, assigned to perform the services required under this Agreement. RES shall notify CRA of any changes in CRA's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

### ARTICLE III TERM

3.01. Commencement and Term. The term of this Agreement shall commence as of the Effective Date. Unless sooner terminated pursuant Section 3.03 below, this Agreement shall continue in full force and effect until the RES Work Completion Date has occurred and all acts of RES and CRA contemplated under this Agreement have been fully completed (the "**Term**").

3.02. RES Work Completion Date. The RES Work shall be deemed complete upon the later to occur of the following ("the "**RES Work Completion Date**"):

(a) the date upon which all of the Environmental Improvements are completed as evidenced by DTSC's approval of a RACR for all Cells [**REVISE TO INCLUDE BPS INSTALLATION**]; and

(b) the date on which the Infrastructure Improvements have been completed, as evidenced by (i) for the portions of the improvements to be accepted by the City or a utility company/district for permanent maintenance, such (quasi-)public entity has completed a walkthrough inspection of the applicable improvements, RES has caused the completion/correction of any punch-list items identified in such inspection and such (quasi-) public entity has initiated the procedure for accepting such improvements for permanent maintenance (subject to any warranty obligations) and (ii) for the portions of the improvements to be owned and maintained by a private entity, RES has caused the civil engineer of record to issue a written certification in favor of CRA and the applicable Vertical Developer stating that such improvements have been completed pursuant to the applicable plans and specifications.

3.03. Termination Rights.

(a) CRA may terminate this Agreement upon sending notice to RES designating a specific date for termination (the "**Termination Date**") upon any of the following occurrences:

- (i) the occurrence and continuance of a RES Event of Default;
- (ii) any conversion of funds or willful misconduct by RES or any of its principals, directors, officers or employees related to this Agreement;

(iii) a change in control of RES pursuant to which Mary Hashem and Stuart Miner no longer maintain majority ownership of and responsibility for the day-to-day operations of RES and RES Work, or the death, permanent disability or termination of Mary Hashem or Stuart Miner;

(iv) CRA's election to suspend or terminate any portion of the Project at CRA's sole discretion provided that at least thirty (30) days prior written notice of such election is provided by CRA to RES;

(v) (A) The filing of a petition by RES for relief under the Bankruptcy Code, or under any other present or future state or federal law regarding bankruptcy, reorganization or other debtor relief law; (B) the filing of any pleading or an answer by RES in any involuntary proceeding under the Bankruptcy Code or other debtor relief law which admits the jurisdiction of the court or the petition's material allegations regarding RES's insolvency; (C) a general assignment by RES for the benefit of creditors; or (D) RES applying for, or the appointment of, a receiver, trustee, custodian or liquidator of RES or any of its property; or

(vi) RES's failure to effect a full dismissal of any involuntary petition under the Bankruptcy Code or under any other debtor relief law that is filed against RES prior to the earlier of the entry of any court order granting relief sought in such involuntary petition or the date that is ninety (90) days after the date of filing of such involuntary petition.

(b) RES may terminate this Agreement upon (i) written notice to CRA upon the occurrence and continuance of a CRA Event of Default, or (ii) thirty (30) days' prior written notice to CRA in the event that CRA ceases pursue the development of the Project for any consecutive period of one-hundred eighty (180) days subject to reasonable extension upon the occurrence of a Force Majeure event.

Upon such termination of this Agreement pursuant to clause (a) or (b) above, RES shall retain its status under any insurance policies under which CRA or any Vertical Developer has named RES as an additional insured prior to the date of such termination.

Notwithstanding the foregoing, if RES elects to terminate this Agreement pursuant to clause (b)(ii) above, RES shall be entitled to implement the completion of the Baseline Remedy for any uncompleted Cells and shall be entitled to receive a fee from CRA equal to one-half (1/2) of any remaining unpaid Liability Assumption Fee hereunder that otherwise would have been payable to RES pursuant to this Agreement, which fee shall be due and payable upon DTSC's approval of a RACR for all of the uncompleted Cells. In such event, the only RES Work to be performed by RES shall be the Baseline Remedy, and the Termination Date shall be deemed to be the date of DTSC's approval of a RACR for all of the uncompleted Cells.

(c) Notwithstanding anything to the contrary herein, CRA may at any time and for any reason or no reason whatsoever terminate this Agreement for convenience by delivering to RES at least thirty (30) days advance written notice of CRA's selected Termination Date. Upon receipt of such notice, RES shall, unless the notice directs otherwise, immediately begin to transition the RES Work as directed by CRA prior to the Termination Date. Upon such termination, RES shall be entitled to payment for the actual cost of the RES Work completed in

conformity with this Agreement through and including the Termination Date, plus a termination fee from CRA equal to one-half (1/2) of any remaining unpaid Liability Assumption Fee that would have become due under a milestone to RES under this Agreement. In such event, RES shall retain its status under all of the insurance programs provided by CRA, as set forth in Section 5.07 hereof.

(d) Either party may terminate this Agreement upon thirty (30) days' prior written notice in the event that, notwithstanding RES's proper and timely performance under this Agreement, (i) CRA has unreasonably failed to approve any budget or line-item required for RES to continue its performance under this Agreement in excess of Two Hundred Fifty Thousand Dollars (\$250,000) individually or in the aggregate, and (ii) the parties are unable to resolve such failure to approve pursuant to the dispute resolution provisions of Section 10.03(a) below for a consecutive period of one hundred eighty (180) days.

3.04. RES Transfer Period. In the event that this Agreement is terminated by CRA, CRA may, at its sole discretion, designate a replacement or substitute contractor (the "**RES Transfer Period**") to replace RES and to complete the RES Work. RES shall continue to diligently perform the RES Work and to comply with the terms of this Agreement until the end of the RES Transfer Period or such earlier date prescribed by CRA by written notice to RES. During or after the RES Transfer Period, RES shall, immediately upon the request of CRA execute any and all agreements, documents or materials requested by CRA to assign or transfer to the new contractor all of RES's right, title and interest in and to all materials, contracts, subcontracts, processes, and other documents necessary to complete the RES Work (collectively, the "**RES Transfer**"). RES hereby grants to CRA its full and complete power-of-attorney, which shall be deemed to be coupled with an interest, for the purpose of completing and effectuating the RES Transfer. Upon the completion of the RES Transfer, this Agreement shall be terminated and shall be null and void, except that, for those provisions that expressly survive termination.

3.05. In the event that CRA terminates this Agreement pursuant to provisions 3.03(a)(1)(2)(5)(6), then CRA shall not have any obligation or duty to continue compensating RES for any work performed after the date of event described as a cause for termination under each respective provision. The CRA may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the CRA to give notice of the RES default shall not be deemed to result in a waiver of the CRA's legal rights or any rights arising out of any provision of this Agreement.

3.06. Records. Upon any termination of this Agreement and no later than ten (10) business days following the Termination Date, RES shall deliver to CRA or to such party as shall be designated by CRA in writing to RES any of the following: (a) a detailed final accounting of the Project costs up to and including the date of termination, together with all of the records, contracts, and other documents pertaining to the Property, the Project or CRA in the possession or control of RES and any personal property in RES's possession or control belonging to CRA; (b) any funds relating to the Project which may be in RES's possession or control; (c) receipts for deposits, or unpaid bills which pertain to the Property; and (d) any other documents (including, without limitation, proposals, service agreements, and construction bid documents), property or items relating to the Property in its possession or control. RES shall be entitled to

retain copies of any records returned to CRA pursuant to this Section 3.05.

3.07. Post Termination Matters. Any checks or other funds, invoices or documents received by RES after the Termination Date shall be delivered immediately upon receipt by RES to CRA or to such other party as shall be designated by CRA in writing to RES.

3.08. Survival of Obligations. Except as specifically provided herein, RES's obligations under this Agreement shall survive the Termination Date with respect to returning agreements, books and records, and the remittance of any funds to CRA and otherwise restoring to CRA any other items associated with management and control of the Property. CRA's obligations with respect to the payment of any fees or reimbursements due to RES on account of any periods prior to the Termination Date shall survive the termination or expiration of this Agreement. Both parties' obligations with respect to Article VIII (Indemnification, Release and Covenants) shall survive the Termination Date.

3.09. Rights Cumulative. The rights of termination specifically provided herein shall be cumulative and shall be in addition to the enumerated rights of termination of this Agreement inuring to the parties by operation of law or otherwise.

#### ARTICLE IV COMPENSATION

4.01. Fees. In return for RES's performance of its obligations under this Agreement, CRA shall pay the Project Mobilization Fee, the Project Completion Fees, Minimum Monthly Fee, the Services Fee and the Cost Reduction Fee to RES, each as further defined below (collectively, the "**Fees**").

4.02. Mobilization Fee. CRA shall pay RES a fee of Three Hundred Thousand Dollars (\$300,000), which shall be payable to RES upon the Effective Date of this Agreement in compensation for startup costs incurred by RES to mobilize the staff and material resources to meet all project requirements;

4.03. Project Completion Fees.

(a) \$400,000 will be paid upon (i) final approval by DTSC of a RACR and/or any other regulatory approvals needed for vertical development for Cell 2 and (ii) the date the civil engineer of record has issued a written certification in favor of CRA and the Vertical Developer for Cell 2 stating that Infrastructure Improvements to be owned by such Vertical Developer have been completed pursuant to the applicable plans and specifications – based on current schedules, this date is estimated to be xxxxxx (parties understand this is an estimated time and that this date might change based on events which may be outside of RES's control. RES shall however use all reasonable effort to coordinate all parties involved to meet this deadline. If RES meets the deadline of xxxx however, another \$100,000 of the \$900,000 RES Work Completion shall become due upon timely meeting of this deadline);

(b) \$400,000 will be paid upon (i) approval by DTSC of a RACR and/or any other regulatory approvals needed for vertical development for Cells 3, 4 and 5 and (ii) the date

the civil engineer of record has issued a written certification in favor of CRA and the Vertical Developer for Cells 3, 4 and 5 stating that Infrastructure Improvements to be owned by such Vertical Developer have been completed pursuant to the applicable plans and specifications; and

(c) \$400,000 will be paid upon (i) approval by DTSC of a RACR and/or any other regulatory approvals needed for vertical development for Cell 1 and (ii) the date the civil engineer of record has issues a written certification in favor of CRA and the Vertical Developer for Cell 1 stating that Infrastructure Improvements to be owned by such Vertical Developer have been completed pursuant to the applicable plans and specifications.

4.04. Incentive Payment.

\$900,000 will be paid upon RES Work Completion Date.

4.05. Minimum Monthly Fee. Commencing on the Effective Date and thereafter through and including the RES Work Completion Date, CRA shall pay to RES a monthly minimum fee of \$33,333.34 on or before the fifth (5<sup>th</sup>) calendar day of each month (each, a “**Minimum Monthly Fee**”). The Minimum Monthly Fee shall be prorated for any partial month. The Services Fee payable for any month shall be credited against the applicable Minimum Monthly Fee.

4.06. Services Fee. CRA shall pay RES a monthly fee equal to five percent (5%) of the third-party costs incurred for the RES Work during each month of the Term (the “**Services Fee**”), as such third-party costs are evidenced by the Master Invoices submitted by RES and approved by the CRA pursuant to Section 6.04 herein. Each monthly Services Fee shall be payable to RES monthly commencing upon the first disbursement for RES Work by CRA from the CRA Master Account pursuant to Section 6.04 herein. Each monthly Services Fee shall be paid to RES concurrently with CRA’s funding of the corresponding approved Master Invoice costs into the RES Master Account. The calculation of the Services Fee shall include (a) all third-party costs incurred by CRA under any Existing Contracts, and (b) all third-party costs incurred by RES for the performance of the RES Work; provided, however, any reimbursable expenses incurred by RES that are paid directly by CRA (and which CRA does not need to advance) and any amounts paid by the City under the CEQA Contract shall be excluded from the calculation. The Services Fee shall not include any amounts for time spent performing the RES Work by RES principals and employees.

4.07. MMF Credit. Concurrent with the delivery of the annual audits of the books and records of the Project conducted under Section 6.06 hereof but in no event later than June 30 of each calendar year, RES shall conduct an audit of the Minimum Monthly Fees and Services Fees paid under this Agreement for the prior calendar year. In the event that the sum of the Minimum Monthly Fees and the Services Fees paid to RES during any calendar year during the Term exceeds five percent (5%) of the aggregate amount of RES Work for which Services Fees are payable under this Agreement (without consideration of the Minimum Monthly Fee), then such excess amount (the “**MMF Credit**”) shall be deducted from the Minimum Monthly Fee and Services Fees payable to RES the following year until the amount of the MMF Credit is credited to CRA in full. Any portion of the MMF Credit not credited to CRA in full upon the expiration or earlier termination of this Agreement shall be refunded to CRA by RES within sixty (60)



calendar days of such expiration or earlier termination.

4.08. Cost Reduction Fee. CRA shall pay RES a fee (the “**Cost Reduction Fee**”) equal to fifteen percent (15%) of the Site O&M Savings, payable within sixty (60) days after the end of any calendar year during the Term and defined as follows:

(a) the aggregate annualized amount of CRA’s actual costs incurred from February 1, 2017 through June 30, 2017 for site security, vector control, stormwater management, project management and all other cost categories evidenced by and included in the SCS Contract (the “**Site O&M Costs**”), which amount is projected to be approximately \$4,200,000; less

(b) the aggregate annualized amount of the reduction in Site O&M Costs realized prior to the Effective Date as a result of the prevailing wage reclassification of certain services under the Existing Contract with SCS, which amount is projected to be approximately **\$300,000**; less

(c) the aggregate amount of actual Site O&M Costs incurred by CRA in any succeeding single calendar year after calendar year 2017 through and including the RES Work Completion Date (the difference in items (i) and (ii) is referred to herein as the “**Site O&M Savings**”).

The amount set forth in Section 4.06(a) shall be adjusted annually for inflation at an inflation rate of 3%. For avoidance of doubt, the first Cost Reduction Fee payable pursuant to this Section 4.06 shall be paid on or before March 1, 2019 for the Site O&M Savings (if any) realized in calendar year 2018.

4.09.

## ARTICLE V RES RESPONSIBILITIES

5.01. Predevelopment Services Generally. RES shall perform the site management and predevelopment services listed in Sections 5.04 through Section 5.09 and on Exhibit B attached hereto (collectively, the “**Predevelopment Services**”). The Predevelopment Services shall commence upon the Effective Date and continue throughout the Term, including without limitation, during the Development Period, as applicable.

5.02. Development Services Generally. Upon (a) the approval of the City’s amendment to the Specific Plan which is underway as of the Effective Date; (b) receipt by CRA of the Regulatory Approvals; (c) the adoption of any required Environmental Certification Documents and the expiration of all appeal periods thereunder; and (d) CRA’s execution of definitive agreements with one or more Vertical Developers for the development of Cell 2 and Cells 3, 4 and 5 of the Project, the Predevelopment Services set forth herein shall be expanded to include the development specific services described in Section 5.09 herein and on Exhibit B attached hereto (collectively, “**Development Services**”). Upon the satisfaction of items (a) through (d) of this Section 5.02, CRA shall provide written notice thereof to RES and the delivery of such

written notice shall be deemed to be the commencement of the “**Development Period**”. Prior to the commencement of the Development Period, RES shall use its best efforts to finalize and obtain DTSC approval of the DTSC Documents. RES acknowledges that CRA retains its full discretion to approve any Environmental Certification Documents. Notwithstanding the foregoing to the contrary, the parties agree that Environmental Certification Documents are not required for the implementation of the Baseline Remedy in conjunction with the land use and environmental approval obtained prior to the Effective Date.

5.03. Overlap of Predevelopment and Development Services. The parties acknowledge and agree that the distinction between Predevelopment Services and Development Services is fluid and some of the RES Work may be conducted both as Predevelopment Services and thereafter as Development Services.

5.04. Manage and Implement the Existing Contracts and Coordinate the CEQA Contract. During the remaining term of the Existing Contracts, each of SCS and MBI will continue to perform the approved work scopes in the applicable Existing Contracts with CRA. All payments to be made pursuant to the Existing Contracts will be paid directly from CRA to SCS and MBI. Notwithstanding the foregoing, RES shall: (a) manage and direct all work under the Existing Contracts as the agent of and attorney-in-fact for CRA; (b) review and approve all invoices in accordance with and under the terms of the Existing Contracts prior to payment thereof; (c) oversee and enforce SCS’s and MBI’s timely performance of their respective obligations under the Existing Contracts; and (d) coordinate and assist CRA in connection with ESA’s obligations under the CEQA Contract. Upon expiration of the Existing Contracts, as applicable, or completion of the specific work scopes by the applicable counterparties thereto, as reasonably determined by RES, RES will be responsible for obtaining bids for replacement contracts in accordance with Section 5.10 below. The parties anticipate that the Existing Contracts will expire or be terminated prior to the commencement of the Development Period.

5.05. Oversee Property Generally. RES shall oversee the O&M Obligations, including, without limitation, the general maintenance and upkeep of the Property. RES shall act as the primary point of contact for the performance of required environmental remediation and ongoing operation and environmental work conducted at, on or under the Property and coordinate access to the Property for all third party developers, consultants, engineers and any other party needing access to the Property.

5.06. Coordinate with Vertical Developers.

(a) RES shall work with the Vertical Developers, subject to CRA’s approval, to develop plans for the schedule of the RES Work, including coordinating construction access prior to commencement of any construction. To the extent practicable prior to the commencement of the Development Period, RES shall meet with the Vertical Developers to develop and implement a coordinated schedule for all construction activities so that no project interferes with another or with the performance of any RES Work. This schedule shall also be utilized by RES to develop its infrastructure phasing plan, on behalf of CRA, which shall be provided to the Vertical Developers for their review and approval.

(b) RES shall work together with the Vertical Developers to develop protocols for each of their respective consultants and contractors to coordinate and share information and comments with respect to plans and specifications, bidding materials, insurance, phasing, scheduling for all construction work, such Protocols shall be submitted to the CRA in writing and are subject to approval by the CRA Executive Director.

(c) RES shall schedule regular calls or meetings to update CRA regarding the progress of the RES Work at the Property (no less frequently than once per week) and as may be more frequently needed to address progress with the RES Work and the Vertical Developers prior to and during the Development Period.

(d) Although CRA is ultimately responsible for selecting the Vertical Developers and approving any definitive development agreements, RES shall be responsible for day-to-day communications and oversight of the Vertical Developers and for overseeing and managing the activities of the Vertical Developers on or with respect to the Property. RES shall implement the RES Work in a manner so as to (i) minimize areas of possible conflict and overlapping jurisdictions among the separate contractors and subcontractors on the job; (ii) ensure feasibility, constructability and compatibility with existing remediation, buildings, building design and site conditions; (iii) identify conflicts, omissions, discrepancies or deficiencies between the contract documents and shall make recommendations for alternative solutions whenever design details, material selections or specifications can be modified, consistent with CRA's requirements and sound construction and environmental remediation practices; and (iv) properly assign and coordinate all phases of work for the RES Work. ALL THIS (ANY SOLUTIONS) HAS TO BE SUBJECT TO CRA APPROVAL

#### 5.07. Insurance.

(a) *Process Claims and Manage Environmental Insurance.* Throughout the Term, as part of the RES Work, RES shall be responsible for:

(i) consulting with CRA and its legal counsel to support the underwriting of the Development PLL, the Development CPL and any other builder's risk, property or general liability policies required for the Project; and

(ii) administering the addition and removal, as applicable, of named and additional insureds on the Development CPL/PLI and the Development PLL in conjunction with CRA and its broker for such policies.

(iii) RES shall at all times be granted the same status as CRA (i.e. Named Insured, Additional Insured, etc.) on and under the Predevelopment PLL, the Predevelopment CPL/PLI, the Development PLL, the Development CPL/PLI and the Development Insurance Programs. RES shall waive subrogation against CRA and the Vertical Developers in connection with such insurance programs.

(b) *RES's Insurance Requirements.* During the Term, RES shall maintain in effect, at RES's cost, which costs will not be reimbursed by CRA, the following insurance to the extent such insurance is available upon commercially reasonable terms:

(i) Commercial General Liability including blanket contractual liability coverage sufficiently broad to cover the indemnification obligations under this Agreement; with limits of not less than \$1,000,000 each occurrence; \$2,000,000 general aggregate; \$2,000,000 Products/Completed Operations aggregate; \$1,000,000 Personal & Advertising Injury; and including coverage for broad form property damage and independent contractors.

(ii) Automobile Liability including coverage for owned, hired and non-owned vehicles, with bodily injury and property damage combined single limits of not less than \$1,000,000 each accident.

(iii) Umbrella Liability Insurance, following the form of and naming the Commercial General, Automobile and Employers' Liability policies as underlying, with limits per occurrence and aggregate of not less than Three Million Dollars (\$3,000,000).

(iv) Workers' Compensation and Employer's Liability: in compliance with applicable Federal and State laws; with Employer's Liability limits in the amount, if any, required by law including waiver of subrogation in favor of the Additional Insureds and any other party specified by CRA at any time and from time to time.

(v) Professional Liability (Errors & Omissions) Insurance with a combined limit of at least Two Million Dollars (\$2,000,000).

(vi) Employee dishonesty insurance in an amount not less than \$1,000,000 covering all of RES's employees who handle or have access to funds paid by CRA hereunder (policy to be placed within ten business days of the Effective Date).

The parties hereby agree that if any insurance required by this Section 5.07(b) covers the same perils/subject matter as the insurance policies obtained pursuant to Recital E, the insurance policies obtained pursuant to Recital E shall be primary and the insurance required by this Section 5.07(b) shall be non-contributory to such insurance policies.

(c) CRA shall name RES as an additional insured under any insurance policies obtained by the CRA pursuant to Recital E and shall require the Vertical Developers to grant RES the same status as CRA (i.e. Named Insured, Additional Insured, etc.) on and under the Development Insurance Programs.

(d) All policies of insurance shall be issued by insurers which are authorized to do business in California and which are rated by AM Best not lower than A-VIII. All policies of insurance except item (v) above shall name CRA as an additional insured and RES shall deliver certificates to CRA evidencing such coverage and providing that such policy shall not be subject to cancellation, change in coverage, reduction of limits or non-renewal except after written notice to CRA not less than thirty (30) days prior to the effective date thereto.

(e) Notwithstanding anything contained herein to the contrary, the insurance coverages required under this Section 5.07 shall be subject to reasonable modification by CRA from time to time upon no less than fifteen (15) days' prior written notice to RES. The increased

cost of such modification shall, however, be deemed a reimbursable expense pursuant to this Article V. The insurance coverage in items (i) through (v) above may be placed on an “excess and difference in conditions” basis to the Development Insurance Programs. The insurance coverage in item (vi) above may be placed on an “excess and difference in conditions” basis to the Development CPL/PLI.

5.08. Manage and Coordinate Regulatory Approval.

(a) RES shall manage and oversee the implementation of the Existing Contracts and coordinate with the City to facilitate the CEQA approvals needed to conduct the RES Work and to obtain Environmental Certification Documents for the Project. RES shall also be responsible for overseeing and managing the environmental regulatory approvals required to complete the RES Work, including without limitation, approval by DTSC and other applicable Governmental Authorities of remedial design documents, BPS designs, piles and related components (the “**Regulatory Approvals**”). RES shall also negotiate the terms of the following key regulatory documents with DTSC on behalf of and with the approval of CRA:

(i) new regulatory documents that provide clarity regarding the boundaries of the “Upper Operable Unit” and soils on the Property that are subject to DTSC regulation under the RAP;

(ii) new regulatory documents that provide clarity on the Roadmap to Occupancy in a phased development of the Property, including without limitation, approvals by DTSC needed to initiate vertical construction with and without HAZWOPER trained workers on any Cell of the Property and to occupy specific buildings or structures constructed thereon;

(iii) a new updated institutional control plan and environmental covenant applicable to the contemplated phased development of the Property; and

(iv) a new set of covenants, conditions and restrictions applicable to the contemplated phased vertical development of the Property.

(b) Notwithstanding the foregoing, RES shall identify any other governmental and development approvals necessary (and the policies and procedures associated with obtaining such approvals) to complete the RES Work and to construct, complete, operate and deliver the portions of the Property to the Vertical Developers, and advise CRA with respect to such matters.

(c) RES shall prepare, submit and prosecute applications to, and be responsible for the negotiation and settlement of, any and all necessary or appropriate agreements with utility companies, public agencies and municipal and other Governmental Authorities, including all development approvals, all public reports and all utility, sewer and similar easements and services necessary to complete the RES Work. All approvals, and all easements, services and other similar matters obtained for the benefit of the Project shall be obtained in the name of CRA.

(d) RES shall coordinate with CRA to develop and implement a strategic community outreach plan to determine the scope of Project stakeholder issues, develop support for the Project and manage any opposition.

(e) Notwithstanding RES's primary role in managing and implementing the Regulatory Approvals process and negotiating the DTSC Documents, CRA's approval will be required prior to the execution or delivery by CRA of any regulatory submissions to DTSC or to any other Governmental Authority.

5.09. Development Services. RES shall perform the following Development Services upon commencement of the Development Period.

(a) RES shall oversee and manage all field work through one or more full-time personnel during implementation of the RES Work.

(b) RES shall perform site grading in accordance with the site-wide Property grading plan approved by CRA during the Predevelopment Period and approved by Vertical Developers and all required Governmental Authorities. For purposes of this Agreement, site grading includes required relocation of trash up to subgrade elevation for building slabs, parking lots, roads, lighting, signs, etc., including the import and export of any soils as needed and any and all necessary relocation and mitigation of the existing trash layers so as to accommodate the necessary soil barrier between the proposed foundation system and the trash that is to remain in place (collectively, the "**Site Grading Work**"). Notwithstanding the foregoing, RES shall commence (or cause its contractors to commence) the Site Grading Work as soon as (and to the extent) such work is permitted and approved by the applicable Governmental Authority and all required CEQA approvals have been obtained to allow the commencement of such Site Grading Work.

(c) RES shall engineer, design and obtain required approvals of and install and maintain all storm water pollution control measures required under the Urban Storm Water Mitigation Plan for the Property and other applicable regulations (collectively, the "**Stormwater Work**").

(d) RES shall furnish and install all wet and dry utility stubs from the City street to the edge of any applicable Cell; and construct underground utility runs with the Subsurface Lot from RES-built utility lines at the property line to locations at the Vertical Developers' utility shelf, as agreed upon with the Vertical Developers (collectively, the "**Utility Work**").

(e) RES shall implement, perform and oversee the performance of the Infrastructure Improvements.

(f) RES shall calculate and deliver to CRA as part of its development and submission of the Project Budget cash flow projections for CRA funding required from the Enterprise Fund.

(g) RES shall oversee and implement plans and specifications and any associated value engineering analysis regarding the schedule, design, planning, construction,

systems, and other criteria and alternatives relating to RES Work and prepare project schedules as required by CRA for pre-design, design and construction phases of the Project. RES shall update such schedules on a monthly or more frequent basis as required by CRA.

(h) RES shall coordinate with the Vertical Developers' design consultants to (i) facilitate their timely development and processing of the structural systems (piles, pile caps and foundations/slabs) for their respective buildings and (ii) ensure that the BPS for such buildings is properly incorporated into such plans.

(i) RES shall implement procedures for obtaining lien releases and waivers in connection with each CRA payment from all contractors, subcontractors and other mechanic's and materialmen's lien claimants and pursuant to such procedures, obtain partial, conditional and final lien releases and waivers.

(j) RES shall keep CRA informed as to job progress, including providing written job progress reports, by the fifteenth (15<sup>th</sup>) day of each month during the term hereof, or more frequently if reasonably required by CRA.

(k) RES shall coordinate the confirmation of substantial and final completion, scheduling and coordinating inspections, reviewing the accuracy of punch-lists of incomplete or unsatisfactory work prepared by applicable contractors, subcontractors, municipal inspectors, and/or Vertical Developers for the RES Work or the Project, and arranging for and supervising the completion of all punch-list items and final acceptance thereof on behalf of CRA.

(l) Perform such other services similar in type and obligation to those listed above reasonably requested by CRA, preparing such other reasonably requested schedules, reports, budgets and other technical data, and attending such meetings during the Term as CRA may reasonably request in order to assist in the preparation of the contract documents, Project Budgets, cost estimates, any proposed changes in any Project Budget or construction schedule or in any other documents and instruments relative to the RES Work or the Project, as necessary or appropriate so that completion of the RES Work may be accomplished within the budgetary and time objectives specified herein.

5.10. Bidding and Hiring Subcontractors. With the exception of the Existing Contracts currently in full force and effect, and any amendments thereto, RES shall enter into all contracts with third parties necessary to perform and complete the RES Work as more fully set forth herein.

(a) *Procurement.* RES shall be responsible for issuing RFQs or RFBs with bid specifications necessary to select and contract for portions of the RES Work to be provided at the Property from time to time (the "**RFQ/RFB Process**"). CRA shall approve the form of RFQs and RFBs in advance and shall have ultimate authority on selection of any general contractor, consultant, engineer or other third party performing work at or with respect to the Property. All third party contracts shall require the third party consultants, contractors and engineers to: (i) indemnify and name CRA as an additional insured and waive subrogation to the same extent as RES hereunder; (ii) consent to the assignment of any warranties and guarantees to CRA or its designee; (iii) comply with all Applicable Laws, regulations and ordinances and

requirements of any Governmental Approval applicable to the RES Work; and (iv) to the extent applicable, pay prevailing wages for construction work subject to prevailing wage classifications as may be approved by RES and CRA in advance. Notwithstanding anything to the contrary provided herein, the bidding process shall provide a preference for contractors who have significant institutional knowledge of the Property and the development projects contemplated for the Property and such preference shall be incorporated into the bidding procedures. RES shall bid the various contracts, review contractor submissions and score responses against the criteria approved by CRA and, if requested by CRA, present to the CRA board a summary of any RFQ/RFB Process results (including preparing charts comparing the reputation, anticipated compensation and experience of each bidder). CRA's approval shall be required for any contracts executed by RES for any of the RES Work.

(b) *Selection of Environmental Remediation General Contractor.* The parties acknowledge that TRC is hereby approved by CRA as the "Environmental Designer" and "Environmental General Contractor" with respect to the remedial systems (landfill gas, landfill cap systems), for quality assurance, pricing, engineering and design of the BPS and the work set forth in Section 5.09(g) above. TRC will assist and support RES in preparing the bid packages provided in Section 5.10(a) above, pursuant to its contract with RES and in accordance with the terms hereof. TRC will also support RES on developing and refining the Global Sources and Uses and the Project Budget. CRA's approval of the contract between TRC and RES shall be required prior to execution of such contract by RES.

(c) *Selection of Infrastructure General Contractor.* RES has not yet selected, and CRA has not yet approved, the infrastructure general contractor ("**Infrastructure General Contractor**"). The Infrastructure General Contractor shall be responsible for construction of any improvements included within the RES Work not included in the scope of work to be delivered by the Environmental General Contractor. RES shall coordinate and manage the selection of the infrastructure general contractor pursuant to the RFQ/RFB Process contemplated in Section 5.10(a) hereof. CRA's approval shall be required prior to the execution of any contract with the Infrastructure General Contractor.

(d) *Bidding of SCS Contract.* RES shall be responsible for rebidding the contract for the O&M Obligations currently addressed by the SCS Contract and required by the RAP pursuant to the RFQ/RFB Process contemplated in Section 5.10(a) hereof. RES shall rebid the O&M Obligations upon the expiration or earlier termination of the SCS Contract.

(e) *Selection of General Other Contractors and Consultants.* Within thirty (30) days of the Effective Date, RES shall begin the solicitation of a civil engineer, soils engineer, structural engineer, landscape architect and joint trench (utility) consultant. RES shall promptly notify CRA of any other contractors and consultants that RES intends to solicit and retain in order to conduct the RES Work. All such contractors and consultants shall be required to participate in the RFQ/RFB Process described herein. RES will coordinate and manage the selection of any contractors and consultants pursuant to the RFQ/RFB Process contemplated in this Section 5.10 and CRA's approval shall be required prior to the execution of any such contracts.



(f) *Collateral Assignment of Contracts.* RES agrees that CRA shall be entitled to condition its approval of any contract entered into by RES pursuant to this Section 5.10 on CRA's receipt of the third-party's consent to RES's collateral assignment of such contract to CRA in accordance with the form Collateral Assignment of Project Documents attached hereto as Exhibit C (the "**Collateral Assignment**"), which RES shall execute and deliver to CRA on the Effective Date.

5.11. Standard of Care. The RES Work shall be implemented using the following standards of care ("**Standard of Care**"):

(a) RES shall use its best efforts to implement RES Work using professional standards equivalent to the best management practices for environmental construction projects nationally.

(b) RES shall use diligent and good faith efforts to avoid cost overruns and change orders and shall use diligent and good faith efforts to reduce the aggregate cost of the RES Work.

(c) RES shall maintain a level of workplace safety equivalent to first-rate best management practices in the environmental remediation industry.

(d) RES shall use diligent and good faith efforts to conform to the approved schedule for the RES Work and to complete RES Work as soon as practicable and in compliance with the terms of the Project schedule and the definitive agreements with Vertical Developers. To that end, RES shall be responsible for keeping subcontractors on task and schedule. Delays caused by subcontractors in the RES Work shall be deemed as delays caused by RES.

(e) RES shall diligently coordinate its activities with DTSC and other regulatory agencies and obtain any DTSC or other regulatory agencies' approvals required from time to time, comply with all requirements under the approved RAP and the applicable DTSC Documents, as the same may be updated or modified.

5.12. Books and Records; Required Reports.

(a) RES shall maintain records of all transactions relating to the RES Work, including, without limitation, invoices, draw requests, receipts, bids, warranties, prevailing wage payroll records and all correspondence and data relating thereto. RES shall make such records available at any time for audit by CRA's accountants and for inspection by CRA and its designees. RES shall have the obligation to promptly duplicate and remit copies of any such records to CRA upon CRA's request. During the Term, RES shall make available to CRA upon request all such records via the electronic "legal project management" portal established by Greenberg Traurig, LLP for the Project.

(b) Reports Prepared by RES. RES shall keep, maintain and prepare the books of account related to the performance of the RES Work, which shall be kept and maintained by RES in accordance with CRA's customary accounting method (which shall be the cash or accrual method), applied on a consistent basis applicable to real estate development. RES shall prepare a reconciliation of such books and records to cash receipts and disbursements.

The books of account shall be kept at the principal place of business of RES, and shall at all times be available for inspection by CRA. Unless otherwise instructed in writing by CRA, upon the earlier expiration or termination of this Agreement, all such books of accounts shall be delivered to CRA.

5.13. Timely Responses. RES shall respond to CRA's inquiries and requests in a timely manner (taking into account the nature of the inquiry/request) in the performance of its obligations under this Article V. CRA shall respond to RES's inquiries and requests in a timely manner (taking into account the nature of the inquiry/request).

5.14. No Additional Compensation. Except for the fees and costs payable to RES under this Agreement by CRA, RES shall not accept any compensation from any third party related to the Property, the RES Work or the Project, including, but not limited to commissions, rebates or kickbacks of any kind or manner.

5.15. Ownership of Documents. All of the surveys, specifications, field data, field notes, test data, estimates, plans, prints, molds, drawings, designs and specifications, computations, sketches, photographs, presentations, renderings, computer programs and all other materials, installations and implementations relating to the RES Work or the Project (collectively, the "**Work Product**") are and shall remain, together with all copyright privileges, the property of CRA whether the Project for which they are made is executed or completed, and RES hereby grants to CRA an exclusive license of its copyright in the Work Product. During the Term, all Work Product in RES's possession and control shall be made available to CRA upon request via the electronic "legal project management" portal established by Greenberg Traurig, LLP for the Project. Upon the earlier expiration or termination of this Agreement, all Work Product in RES's possession or control shall be delivered to CRA or its designee.

5.16. RES must be aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more and must fully comply and cause all its subcontractors where applicable with such Prevailing Wage Laws. RES shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the RES's principal place of business and at the project site. RES shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

## ARTICLE VI BUDGETS AND PAYMENT MECHANICS

6.01. Develop Global Sources and Uses.

(a) *Develop Global Sources and Uses.* The initial global sources and uses estimate (the “**Global Sources and Uses**”) showing the estimated sources and uses of all monies anticipated to be received and expended in connection with the Project and anticipated to be incurred during the entire Term is attached hereto as Exhibit D. The Global Sources and Uses shall be periodically updated by RES with input from CRA third party consultants retained by RES and to reflect changes in the transactions with Vertical Developers, the status of Regulatory Approvals and receipt of engineered cost estimates for various components of the RES Work. The items in the Global Sources and Uses shall be detailed on a line item basis for review and approval by CRA. Such costs set forth in the Global Sources and Uses shall be incorporated into the rolling Project Budgets prepared in accordance with Section 6.02 below and updated regularly during the Term. The parties acknowledge that the Global Sources and Uses is an estimate and will require real-time updates during the Term. 5% fee capped at \$6.7 or ???

(b) *Value Engineering Review.* In connection with preparing the Global Sources and Uses, RES shall perform a value engineering review of the O&M Obligations required to be performed at the Property as of the Effective Date and the third party costs associated therewith. Based on such review, RES shall recommend changes to the current O&M Obligations that are intended to result in an aggregate, net potential savings for CRA. Upon CRA’s approval, RES shall oversee and implement the pursuit of any third party approvals required for the implementation of such savings.

6.02. Project Budgets. On or before a date that is thirty (30) days after the Effective Date, RES shall prepare an initial budget for CRA’s review and approval setting forth all anticipated expenses for the RES Work (including without limitation, all fees payable to RES hereunder) for the following sixty (60) days (the “**Project Budget**”). Throughout the Term, RES shall continue to deliver rolling Project Budget updates every thirty (30) days. The Project Budgets will be the basis of CRA’s payment and transfer of funds to CRA in accordance with Section 6.04 below and are subject to CRA’s approval. Notwithstanding anything to the contrary contained herein, CRA’s written approval shall be required for any increase of five percent (5%) or more of any single line item in any Project Budget for any thirty (30) day period, or for any changes that in the aggregate result in the lesser of: (a) a ten percent (10%) increase in the total amount of any Project Budget for any thirty (30) day period; or (b) \$50,000.

The parties acknowledge that the Global Sources and Uses and Project Budgets are to be prepared and updated from time to time based on information available at the time each version is prepared and that costs and revenues will be adjusted (up or down) as more specific information is obtained.

6.03. Operating Accounts.

(a) *CRA Master Account.* CRA shall open a new “custody account” at BNY Mellon and shall use that account to fund the approved Project Budget from time to time for consecutive sixty (60) day periods (the “**CRA Master Account**”). To the extent that the 60 day Project Budget requires payments from the Enterprise Fund monies maintained by CRA, CRA will transfer such funds from the Enterprise Fund into the new custody account in accordance with the terms of the Enterprise Fund Administration Agreement.

(b) *RES Master Account.* RES shall establish an escrow account in its name with BNY Mellon (the “**RES Master Account**”). RES will deliver the required by BNY Mellon to establish the RES Master Account.

6.04. Payment of Project Costs. RES shall submit a master invoice (“**Master Invoice**”) to CRA no more than one (1) time each calendar month during the Term. The Master Invoice shall contain a description of all RES Work performed during the preceding calendar month by RES or its subcontractors. The Master Invoice shall include all necessary back-up documentation required by CRA, including the actual invoices submitted by the subcontractors to RES and reasonably detailed descriptions of the elements of the RES Work performed and unit costs or time records associated therewith, as applicable, and shall be accompanied by conditional lien waivers from third party subcontractors in a form acceptable to CRA with respect to all RES Work. The Master Invoice shall also describe in detail the fees due and payable to RES hereunder for the RES Work during the preceding calendar month. CRA shall have a period of fifteen (15) calendar days (the “**CRA Review Date**”) to object to one or more costs or line item expenses contained in the Master Invoice on the basis that such costs (i) are unreasonable; (ii) exceed those amounts set forth for such costs in the Project Budget; (iii) are not supported by appropriate lien waivers or backup documentation from RES or its subcontractors; or (iv) are otherwise not included as approved line items or costs in the Project Budget (each, a “**CRA Objection**”). In the event of a CRA Objection, CRA and RES shall use commercially reasonable efforts to resolve such CRA Objection as soon as practicable, but no fees will be payable by CRA on any amount subject to a pending CRA Objection until such CRA Objection is finally resolved. Notwithstanding the foregoing, all costs set forth in the Master Invoice that are not the subject of a pending CRA Objection shall be paid by CRA on or before a date that is ten (10) days after CRA Review Date by CRA transferring funds from CRA Master Account directly to the RES Master Account.

6.05. Variances and Emergency Expenses. Upon approval of the Global Sources and Uses and/or any Project Budget by CRA, RES shall use diligent and commercially reasonable efforts to implement and perform the RES Work substantially in accordance with the same; provided, however, CRA acknowledges and agrees that RES will not be responsible for any variances from the Global Sources and Uses and any Project Budget except to the extent that such variances are the result of RES’s negligent act or omission, breach of this Agreement, willful misconduct or fraud. In the event that RES determines that circumstances require material changes in the Global Sources and Uses or any Project Budget, RES shall notify CRA as soon as possible after the need for such changes becomes apparent to RES. RES shall not, without CRA’s prior approval, incur any expense on behalf of the Project or the Property that is not expressly included in the Global Sources and Uses or any Project Budget; provided,

however, that RES may, without CRA's approval: (i) pay any expenses which are necessary for the continued operation of the Project and which are not within the reasonable control of RES; provided that such expenses are within the variances permitted by Section 6.02 above; or (ii) so long as RES provides notice to CRA of such expense as soon as reasonably practicable, pay any expense regardless of amount which, in RES's good faith judgment, are immediately necessary to prevent an imminent and substantial endangerment to human health or the Environment or respond to a bona fide emergency.

6.06. Annual Audits. RES shall conduct an annual audit of the books and records of the Project made by a firm of certified public accountants or other auditors approved by CRA, which audit shall be certified as to the accuracy of such financial statements and notes and the preparation thereof in accordance with generally accepted accounting principles applied on a consistent basis. Notwithstanding the foregoing or anything herein to the contrary, if any audit reveals commercially unreasonable expenses or discrepancies in the costs paid by CRA hereunder in excess of four percent (4%) of the aggregate amount paid by CRA under this Agreement in any calendar year for which such audit is conducted, the cost of such audit shall be at RES's expense. Any overages improperly charged to and paid by CRA discovered through such audit will be deducted from the subsequent disbursement to RES as a credit to CRA, together with interest thereon at a rate of five percent (5%) per annum.

## ARTICLE VII BASELINE REMEDY AND RIGHT OF FIRST OFFER

### 7.01. Baseline Remedy.

(a) The parties acknowledge that CRA or its predecessors in title have previously received certain approvals necessary to implement portions of the RES Work at the Property in response to the Consent Decree and RAP. While CRA desires to implement the approved environmental remedy in conjunction with the phased vertical development of the Property, it is acknowledged and agreed that the environmental remedy should be completed so as to ensure that at a minimum, the Property contains no Cells without installed groundwater treatment and landfill gas treatment systems, landfill caps and such other improvements necessary to obtain a RACR in place (the "**Baseline Remedy**"), whether or not the approved development with Vertical Developers ultimately proceeds at all Cells of the Property. Accordingly, in the event that the Baseline Remedy is not complete on all Cells of the Property on or before a date that is four (4) years from the Effective Date, RES shall have the right to complete the Baseline Remedy on any Cell of the Property that does not have a completed Baseline Remedy, at CRA's cost and expense.

(b) Prior to commencing the Baseline Remedy, RES shall provide ninety (90) days prior written notice to CRA of its intention to implement the Baseline Remedy on any Cell of the Property where such Baseline Remedy has not yet been completed (the "**Baseline Remedy Notice**"). The Baseline Remedy Notice shall include a list of the proposed contractors and subcontractors that will be retained by RES to perform the Baseline Remedy; provided, however, that prior to selecting any such contractor or subcontractor, RES shall coordinate and manage the selection of such contractor or subcontractor pursuant to the RFQ/RFB Process contemplated in

Section 5.10(a) hereof. CRA's approval shall be required prior to the execution of any contract with any contractor or subcontractor in connection with the Baseline Remedy.

7.02. Right of First Offer. In the event that no definitive development agreement or exclusive negotiating agreement is entered into between CRA and a Vertical Developer for Cell 1 of the Property on or before a date that is four (4) years from the Effective Date hereof, then for a period of five (5) years thereafter ("**Right of First Offer Period**"), RES shall have a right of first offer on Cell 1 of the Property on the following terms. CRA shall provide written notice to RES at any time during the Right of First Offer Period that CRA intends to market Cell 1 of the Property for sale a residential development (the "**Right of First Offer Notice**"). The Right of First Offer Notice shall contain the material terms of CRA's proposed sale of Cell 1. Upon receipt of the Right of First Offer Notice, RES shall have the first right to elect to purchase Cell 1 and develop it for residential purposes (the "**Right of First Offer**"). If RES desires to exercise its Right of First Offer, then RES shall give written notice to CRA within thirty (30) days after receiving the Right of First Offer Notice from CRA (the "**Acceptance Notice**") accepting the terms set forth in the Right of First Offer Notice or outlining the terms on which RES would purchase Cell 1. If RES fails to timely send the Acceptance Notice within such thirty (30) day period or CRA and RES are unable to agree on terms for the sale of Cell 1 and execute a non-binding letter of intent reflecting the same within such thirty (30) day period, then CRA shall be free to sell and/or market Cell 1 to a prospective third party Vertical Developer for residential development on terms equal to or better than those set forth in the Right of First Offer Notice. If CRA receives a bona fide unsolicited offer from a third party to develop Cell 1 of the Property for residential purposes during the Right of First Offer Period on terms which CRA is willing to accept, CRA shall provide the Right of First Offer Notice to RES setting forth the material terms of such offer and RES may exercise its Right of First Offer within thirty (30) days after receiving the Right of First Offer Notice by sending an Acceptance Notice. If RES fails to exercise the Right of First Offer by sending the Acceptance Notice within such thirty (30) day period, then CRA shall be free to proceed with the proposed transaction and contract with such Vertical Developer to develop Cell 1 of the Property for residential uses. Notwithstanding anything to the contrary herein, the Right of First Offer only applies to the proposed residential development of Cell 1 and CRA shall be free to contract with any Vertical Developer for the purpose of developing Cell 1 as commercial property without providing any Right of First Offer Notice to RES.

## ARTICLE VIII INDEMNIFICATION, RELEASE AND COVENANTS

### 8.01. Indemnification and Release.

(a) RES shall release, indemnify, defend and hold harmless the CRA Indemnified Parties from and against any Damages resulting from or arising out of the performance of the RES Work conducted on, at or under the Property by RES or its contractors, subcontractors, agents and employees (including Damages resulting from or arising out of injury to or death of any third party or damage to or destruction of any property sustained or incurred by any third party); provided, however, the indemnification obligations of RES hereunder shall not include (i) any Damages caused by the negligence or willful misconduct of any CRA Indemnified Parties; and (ii) the defense or payment of loss or Damages arising out of claims for

bodily injury or property damage brought by third parties against CRA and pertaining to the Property, the RES Work or the Project.

(b) RES shall release, indemnify, defend and hold harmless CRA Indemnified Parties from and against all Damages, resulting from or arising out of (i) the negligent acts or omissions or willful misconduct by RES; and (ii) any material breach by RES of this Agreement (including an Event of Default by RES hereunder). Notwithstanding the foregoing, RES's indemnification for Damages relating to environmental matters shall be exclusively governed by Section 8.01(a) above.

8.02. Liability Assumption. RES shall not seek a Prospective Purchaser Agreement or any equivalent liability protection from DTSC in connection with the performance of the RES Work and shall not claim any "bona fide prospective purchaser" defense or status in connection with the same. RES shall be responsible for signing any waste manifests or similar documentation attributable to the RES Work. It is the intention of the parties hereto that the liability of RES under applicable law with respect to the Property shall be the same as CRA and that RES shall be considered an "operator" of the Property under Environmental Laws.

8.03. Non-liability of City or CRA Officers and Employees. No officer or employee of the City or CRA shall be personally liable to RES, or any successor in interest, in the event of any default or breach by the City or CRA under this Agreement or for any amount which may become due to RES or to its successor, or for breach of any obligation of the terms of this Agreement.

8.04. Conflict of Interest.

(a) RES covenants that neither it, nor any officer, member or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of CRA or which would in any way hinder RES's performance of services under this Agreement. RES further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of CRA. RES agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CRA and the City in the performance of this Agreement.

(b) No officer or employee of the City or CRA Indemnified Party shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects her/his financial interest or the financial interest of any corporation, limited liability company, partnership or association in which (s)he is, directly or indirectly, interested, in violation of any state statute or regulation.

(c) The determination of "financial interest" shall be consistent with state law and shall not include interests found to be "remote" or "non-interests" pursuant to Government Code Sections 1091 or 1091.5. RES warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official or CRA or any of their respective, officers, or employees, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. RES further warrants

and represents that it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, employee or CRA Indemnified Party, as a result or consequence of obtaining or being awarded any agreement. RES is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

RES's Authorized Initials \_\_\_\_\_

8.05. Covenant Against Discrimination. RES covenants that, by and for itself and its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class in the performance of this Agreement. RES shall take affirmative action to insure that contractors, consultants and subcontractors are employed and are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class.

8.06. Unauthorized Aliens. RES hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should RES so employ, either directly or indirectly, such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City or CRA for such use of unauthorized aliens, RES hereby agrees to and shall reimburse City and CRA, as applicable, for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City and CRA, as applicable.

## ARTICLE IX LIMITATIONS ON AUTHORITY OF RES

9.01. Execution of Contracts. Unless otherwise specified herein or required by Applicable Laws, RES shall negotiate to the benefit of the CRA, execute all contracts necessary to implement and perform the RES Work or individual components thereof, subject to compliance with the RFQ/RFB Process described in Section 5.10(a) hereof and the terms of this Agreement.

9.02. General Construction of Agreement. RES and CRA agree that the authority of RES to act on behalf of CRA is to be construed so that unless such authority is specifically granted pursuant to the terms and provisions of this Agreement, then it is the intention of the parties for RES not to have authority to act on behalf of CRA or to bind CRA to any obligation to any third party. RES shall include provisions in its contracts with Subcontractors that no third party shall be entitled to take a position that CRA is bound to or obligated to such third party based on the actions of RES purporting to act on CRA's behalf.

9.03. Specific Limitations on Authority. Without limiting the generality of the



foregoing provisions of this Article IX, listed below is a list of non comprehensive but specific authorities that CRA is withholding from RES unless superseded by written permission from CRA Board.

(a) CRA's approval shall be required for all submissions to DTSC or to other Governmental Authorities made during the Term and not otherwise expressly provided for herein.

(b) CRA's approval shall be required for the execution of any contract or agreement, or any amendment or modification of any contract or agreement not otherwise expressly provided for herein. For the avoidance of doubt, the parties agree that the following documents and agreements shall require CRA's prior written approval:

(i) contracts or expenditures in excess of \$5,000 individually or \$15,000 in the aggregate including those with any subcontractors;

(ii) legal documents involving pending or threatened litigation;

(iii) changes in land use plans or CEQA documents;

(iv) any definitive agreement (or modification or amendment thereto) with any Vertical Developer;

(v) any note, mortgage, loan agreement or other document evidencing or pertaining to any financing of the Property or any other asset of CRA (or any amendment or modification of any such document); and

(vi) any commitment, letter of intent, term sheet or other similar agreement pertaining to any of the foregoing agreements, whether or not binding or purporting to be binding on CRA.

(c) CRA's approval shall be required for the expenditure of any sum by RES not included within the Global Sources and Uses or any Project Budget, except as provided in Section 6.05.

(d) CRA's approval shall be required for the termination of any entitlements or approvals received from any Governmental Authority with respect to the Project.

9.04. Effectiveness of Approval not to be Implied. RES specifically acknowledges that (a) no approval of CRA shall be effective for any purpose or shall be binding upon CRA unless such approval is in writing; (b) in no event shall the failure of CRA to respond to any request for approval made by RES be deemed CRA's approval of such matter; and (c) any approval granted by CRA pursuant to this Agreement in respect of any matter or thing may be subsequently revoked by CRA.

ARTICLE X  
DEFAULT AND DISPUTES

10.01. Default.

(a) If either party breaches or defaults on its non-monetary obligations of this Agreement, such breaching or defaulting party shall have thirty (30) days after notice thereof by the non-breaching party to cure such default or breach; provided that if such default or breach reasonably requires longer than thirty (30) days to cure, upon the prior written consent of the non-defaulting party (which consent shall not be unreasonably withheld), the defaulting or breaching party shall be permitted additional time to cure such default, so long as the breaching party commences a cure within such time and diligently and continuously prosecutes the cure of the breach or default to completion within ninety (90) days of the date that the cure first commenced. After expiration of such notice, cure periods and extensions, such default shall be deemed an “**Event of Default**” hereunder.

(b) The failure by RES and any of its agents or subcontractors to timely and diligently perform the RES Work in the time and manner required hereunder after receipt of written notice thereof from CRA and the failure of RES to cure the same as provided in item (a) above shall be deemed to be an Event of Default hereunder.

10.02. Remedies.

(a) Upon an Event of Default by RES, CRA shall not have any obligation or duty to continue compensating RES for any work performed after the date of the Event of Default. During the occurrence and continuance of an Event of Default by RES, CRA shall, at its election either (i) continue to fund any third party costs included in any approved portion of the Master Invoices to permit RES to effectively implement any cure of such Event of Default or (ii) or disburse funds directly to such third party under the Collateral Assignment. If RES does not cure such Event of Default, CRA may take necessary steps to terminate this Agreement as provided under Section 3.02 hereof (in which event RES shall commence the RES Transfer contemplated in Section 3.03 hereof) and may, at its discretion exercise any remedies available to CRA under the Collateral Assignment with respect to any contract held by RES for the RES Work.

(b) In addition to any other rights or remedies provided herein, either party may take any and all legal action, in law or in equity, to cure, correct or remedy any Event of Default, to recover damages for any Event of Default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement, all of which are expressly reserved hereunder.

10.03. Dispute Resolution. Disputes arising under this Agreement shall be resolved as follows:

(a) *Prevention of Claims/Meet and Confer.* The parties agree that they share an interest in preventing misunderstandings that could become claims against one another under this Agreement. The parties agree to attempt to identify and discuss in advance in good faith any areas of potential misunderstanding that could lead to a dispute. If either party identifies an issue

of disagreement, the parties agree to engage in a face-to-face or immediate telephonic discussion of the matter within five (5) calendar days of the initial request. Notwithstanding the foregoing, the failure of any party to meet and confer as provided herein shall not impair the exercise of remedies available at law or in equity for any Event of Default hereunder.

(b) *Attorney's Fees.* The prevailing party in a dispute arising under this Agreement shall be entitled to attorneys' fees, interest, costs and expenses of dispute resolution up to a maximum amount of Two Hundred Fifty Thousand Dollars (\$250,000); provided, however, in the event that any final decision establishes that the breach of this Agreement was the result of any party's fraud or willful misconduct, the Two Hundred Fifty Thousand-Dollar (\$250,000) limitation on recovery of costs and expenses shall not apply.

(c) *Survival.* This Section 10.03 shall expressly survive the expiration or earlier termination of this Agreement.

## ARTICLE XI GENERAL PROVISIONS

11.01. Prevailing Wage. RES acknowledges that publicly assisted projects can be subject to the payment of prevailing wages and that in general the heavier the involvement of the public agency, the more likely the project would be subject to prevailing wage and similar policies. RES retains the right to select its own contractors (subject to the approvals and procedures provided for herein), and will be exclusively responsible for complying with all prevailing wage and similar policies to the extent that such laws or regulations apply to RES's obligations under this Agreement.

11.02. Office Space. RES shall be entitled to maintain, without cost, an office at the Property. Such office would initially be located in the existing construction trailers and, when applicable, thereafter be located on the Property in the landfill operations center, development construction trailer, or other mutually acceptable location.

11.03. Mechanic's Liens. RES shall not suffer or permit any mechanics' lien claims to be filed or otherwise asserted against the Property and will promptly bond or discharge the same if any claims for lien or any proceedings for the enforcement thereof are filed or commenced. If RES fails to promptly bond or discharge any mechanics' lien claim filed or otherwise asserted or to contest any such claims, then CRA may at its election (but shall not be required to) procure the release and discharge of any such claim and any judgment or decree thereon, without inquiring into or investigating the amount, validity or enforceability of such lien or claim and any amounts expended by CRA shall be deducted from RES's subsequent Master Invoice and be retained by CRA.

11.04. Relationship. RES and CRA shall not be construed as joint venturers or general partners of each other and neither shall have the power to bind or obligate the other party except as set forth in this Agreement. Nothing contained in this Agreement shall be deemed or construed to obligate CRA for or on account of any debts or obligation of RES other than debts incurred by RES for the benefit of CRA in accordance with the provisions of this Agreement.

11.05. Assignment. This Agreement is not assignable by either party hereto without

prior written consent of the other party, which consent shall be at the sole discretion of such non-requesting party.

11.06. Benefits and Obligations. The covenants and agreements herein contained shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, executors, successors and assigns including any successor or reconstituted municipal entity succeeding CRA.

11.07. Notices. All notices, demands, or other communications under this Agreement shall be in writing and shall be delivered to the appropriate party at the address set forth below (subject to change from time to time by written notice to all other parties to this Agreement). All notices, demands or other communications shall be considered as properly given if sent by: (a) electronic mail and regular mail; or (b) overnight express mail, charges prepaid. Notices so sent shall be deemed effective one (1) business day after mailing or the same day as sent for electronic delivery. For purposes of notice, the addresses of the parties shall be:

For CRA:

John S. Raymond  
Director of Community Development  
City of Carson, California  
701 E. Carson Street  
Carson, CA 90745  
Telephone: (310) 952-1773  
Email: [jraymond@carson.ca.us](mailto:jraymond@carson.ca.us)

with a copy to:

Curtis B. Toll, Esq.  
Greenberg Traurig, LLP  
2700 Two Commerce Square  
2001 Market Street  
Philadelphia, PA 19103  
Telephone: (215) 988-7804  
Email: [tollc@gtlaw.com](mailto:tollc@gtlaw.com)

Sunny K. Soltani, Esq.  
Aleshire & Wynder, LLP  
18881 Von Karman Avenue, Suite 1700  
Irvine, CA 92612  
Telephone: (949) 223-1170  
Email: [ssoltani@awattorneys.com](mailto:ssoltani@awattorneys.com)

RES: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(\_\_\_\_) \_\_\_\_\_  
Email: \_\_\_\_\_

11.08. Entire Agreement. This Agreement is the entire agreement between the parties with respect to the subject matter hereof, and no alteration, modification, amendment or interpretation hereof shall be binding unless in writing and signed by both parties.

11.09. Severability. If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstance, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

11.10. Applicable Law. This Agreement shall be construed and enforced in accordance with the internal laws of the State of California without regard to conflict of law principles.

11.11. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument. Signatures transmitted electronically shall be deemed originals for all purposes of this Agreement.

11.12. No Waiver. No failure by CRA or RES to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy in the event of a breach hereunder, and no acceptance of any funds from RES or CRA during the continuance of any such breach, shall constitute a waiver of any such breach or of any such covenant, agreement, term or condition.

11.13. Waiver of Consequential Damages. As material consideration for each party's agreement to enter into this Agreement, each party expressly waives the remedies of consequential damages and lost profits on account of the other party's default under this Agreement. Subject to the express provisions of this Agreement, the foregoing waiver shall not limit a party's right to seek and obtain direct damages as a result of any Event of Default under this Agreement.

11.14. Force Majeure. As used herein, "**Force Majeure**" means any cessation, interruption or delay in the performance of a party's obligations (excluding payment obligations) to the extent proximately caused by events beyond such party's reasonable control which were not reasonably foreseeable by such party or reasonably avoidable by such party and occurring without such party's fault or negligence, including, without limitation, due to earthquake, flood, fire, storm, natural disaster, act of God, war, sabotage, terrorism, armed conflict, riots, vandalism, restraint of government, governmental acts, injunctions, labor strike, lockout, boycott, unforeseen environmental conditions of the site, unforeseen economic down turn or other similar events beyond the reasonable control of such party; provided that such party relying upon this provision for any delay caused by Force Majeure (i) gives prompt written notice

thereof to the other party to this Agreement with full details of the cause relied upon, and (ii) takes reasonable steps to mitigate the effects of the force majeure event. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

11.15. Time of Essence. Time is of the essence in the performance of each and every provision of this Agreement.

11.16. Approval by CRA. Unless otherwise expressly noted herein, “approval by CRA” or similar phrase shall mean the approval of the Executive Director of CRA.

[SIGNATURE PAGES FOLLOW]

DRAFT

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

**CARSON RECLAMATION  
AUTHORITY:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**RE | SOLUTIONS, LLC:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

**GREENBERG TRAURIG, LLP,**  
Special Counsel to Carson  
Reclamation Authority

By: \_\_\_\_\_  
Cutis B. Toll  
Shareholder

Schedule 4.06(b)

Cost Categories

DRAFT



Exhibit A-1

Site Map of the Property

DRAFT

Exhibit A-2

Designation of Parcels

DRAFT

Exhibit A-3

Cells

DRAFT

Exhibit B

RES Work

In addition to the Predevelopment Services and Development Services set forth in the Agreement, the RES Work shall include the following:

A. Additional Predevelopment Services:

TO BE DETERMINED

B. Additional Development Services:

TO BE DETERMINED

DRAFT

Exhibit C

Form of Collateral Assignment of Project Documents

**COLLATERAL ASSIGNMENT OF PROJECT DOCUMENTS**

This **COLLATERAL ASSIGNMENT OF PROJECT DOCUMENTS** (this “**Assignment**”) is dated as of June \_\_, 2017 and made by [\_\_\_\_], a [\_\_\_\_] (“**RES**”), to CARSON RECLAMATION AUTHORITY, a joint powers authority formed under the laws of the State of California (“**CRA**”).

**RECITALS:**

**WHEREAS**, pursuant to that Environmental Remediation and Property Management Agreement between CRA and RES dated as of June \_\_, 2017 (the “**Development Agreement**”) RES is performing the RES Work at the 157-acre parcel located at 20300 Main Street in Carson, California, commonly known as the former Cal Compact Landfill and more fully described in the Development Agreement (the “**Project**”);

**WHEREAS**, RES anticipates entering into various agreements with contractors, subcontractors and consultants in order to perform the RES Work (the “**Project Contracts**”);

**WHEREAS**, in connection with the performance of the RES Work, RES has obtained or will obtain certain approvals and permits (the “**Project Permits**”); and

**WHEREAS**, in connection with performing the RES Work, RES uses or plans to use certain marketing materials, including logos, trade names and trademarks (the “**Marketing Materials**”).

**NOW THEREFORE**, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to secure RES’s performance of its obligations to CRA under the Development Agreement, RES agrees as follows:

Section 1. Assignment; Security Interests RES hereby assigns and transfers to CRA, and hereby creates in favor of CRA a security interest in and to, all of RES’s right, title and interest in and to the following: (a) the Project Contracts; (b) the Project Permits; (c) the Marketing Materials, including the trade names and trademarks, if any; (d) any and all other contracts, agreements, plans, licenses, permits or other items, whether now or hereafter executed, granted, received, acquired or issued to or by RES in connection with the RES Work; and (f) all proceeds and products thereof, and all accounts, contract rights and general intangibles related to the foregoing (all of the foregoing being hereinafter sometimes referred to collectively as the “**Project Documents**”). This Assignment is given as collateral security only, and so long as no Event of Default has occurred and is continuing and the Development Agreement has not been

terminated, RES shall have and may exercise all rights as owner or holder of the Project Documents which are not inconsistent with the provisions of the Development Agreement.

Section 2. Representations and Warranties RES hereby represents and warrants to CRA as of the date hereof, that (a) RES has not assigned, transferred, mortgaged, pledged or otherwise encumbered any of its right, title and interest in, to and under the Project Documents and no part of such right, title and interest is subject to any lien or other encumbrance; (b) none of the Project Contracts existing as of the date hereof has been amended, modified or supplemented; (c) RES has paid all sums required to be paid by it prior to the date hereof under the terms of the Project Contracts; and (d) no default exists by RES under the Project Contracts and, to RES's knowledge, no default exists by any of the counter parties thereunder.

Section 3. Affirmative Covenants RES hereby covenants with CRA that RES shall (a) perform and observe all covenants and agreements to be performed and observed by RES under the Project Contracts and the Project Permits; (b) enforce, the performance and observance of all covenants and agreements to be performed or observed by the contracting parties under the Project Contracts; (c) appear in and defend any action or proceeding arising out of or in connection with any of the Project Documents; and (d) promptly give CRA copies of any notices of default given or received by RES under any of the Project Documents.

Section 4. Negative Covenants RES hereby covenants with CRA that RES shall not (a) except as otherwise contemplated by the Development Agreement, assign, transfer, mortgage, pledge or otherwise encumber, or permit to accrue or suffer to exist any lien or other encumbrance on or in, any of the right, title and interest of RES in, to and under the Project Documents; (b) without the prior written consent of CRA, which shall not be unreasonably withheld, delayed or denied, amend or modify any of the terms of the Project Contracts, except pursuant to change orders executed in compliance with the Development Agreement and Project Contracts approved by CRA; (c) without the prior written consent of CRA, which shall not be unreasonably withheld, delayed or denied, terminate the Project Contracts or give or join in any material waiver, consent or approval with respect to the Project Contracts; (d) without the prior written consent of CRA, which shall not be unreasonably withheld, delayed or denied, settle or compromise any material claim against any third party under the Project Contracts; (e) without the prior written consent of CRA, which shall not be unreasonably withheld, delayed or denied, waive any default under or material breach of the Project Contracts; or (f) take any other action in connection with the Project Contracts or the Project Permits which would materially impair the value of the rights or interests of RES or CRA thereunder or therein.

Section 5. Recognition of CRA RES hereby irrevocably directs the contracting party to, or the grantor of, any Project Document, whether specifically described herein or otherwise, to the extent not prohibited by such Project Document or applicable law, upon request of CRA to recognize and accept CRA as the holder of such Project Document for any and all purposes. RES shall require the holder of such Project Document to execute an Acknowledgement and Consent to Assignment in the form attached hereto as Exhibit A. RES does hereby irrevocably constitute and appoint for so long as this Assignment remains in effect, as its true and lawful attorney in fact coupled with an interest, after the occurrence of an Event of Default under the Development Agreement or the termination of the Development Agreement, CRA to demand and enforce compliance with the terms and conditions of the Project Documents and all benefits thereunder.

Section 6. Right of CRA to Cure RES Defaults□If RES shall fail to pay, perform or observe any of its covenants or agreements hereunder and such failure shall continue for ten (10) business days following notice to RES, CRA may pay, perform or observe the same and collect the costs thereof, which costs shall be deducted from the Fees disbursed to RES under the Development Agreement.

Section 7. CRA Not Liable; Indemnification□Anything contained herein or in any of the Project Documents to the contrary notwithstanding; (a) RES shall at all times remain solely liable under the Project Documents to perform all of the obligations of RES thereunder to the same extent as if this Assignment had not been executed; (b) neither this Assignment nor any action or inaction on the part of RES or CRA shall release RES from any of its obligations under the Project Documents or constitute an assumption of any such obligation or liability under the Project Documents or otherwise by reason of or arising out of this Assignment, nor shall CRA be required or obligated in any manner to make any payment or perform any other obligation of RES under or pursuant to the Project Documents, or to make any inquiry as to the nature or sufficiency of any payment received by CRA, or to present or file any claim, or to take any action to collect or enforce the payment of any amounts which have been assigned to CRA or to which it may be entitled at any time or times. RES shall and does hereby agree to indemnify CRA and hold CRA harmless from and against any and all liability, loss or damage which they may or might incur, and from and against any and all claims and demands whatsoever which may be asserted against it or them, in connection with or with respect to the Project Documents or this Assignment, whether by reason of any alleged obligation or undertaking on its or their part to perform or discharge any of the covenants or agreements contained in the Project Documents, or otherwise except to the extent caused by the gross negligence or willful misconduct of CRA. Should CRA incur any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be paid by RES to CRA immediately upon demand until fully paid.

Section 8. Default□If an Event of Default shall occur under the Development Agreement or the Development Agreement is terminated as provided for thereunder, CRA may perform any of the obligations and exercise any of the rights, powers, privileges and remedies of RES, and do any and all acts, matters and other things that RES is entitled to do, under or with respect to the Project Documents, including without limitation enforcing the Project Contracts and paying, settling or compromising any existing bills or claims thereunder.

Section 9. Further Assurances□From time to time upon the request of CRA, RES shall promptly and duly execute, acknowledge and deliver any and all such further instruments and documents as CRA may deem reasonably necessary or desirable to carry out the purpose and intent of this Assignment or to enable CRA to enforce any of its rights hereunder.

Section 10. Amendments, Waivers; Third Party Beneficiary□This Assignment shall not be amended, modified, waived, changed, discharged or terminated except by an instrument in writing signed by the parties hereto, with the prior written consent of CRA.

Section 11. No Implied Waiver; Cumulative Remedies□No course of dealing and no delay or failure of CRA in exercising any right, power or privilege under this Assignment shall affect any other or future exercise thereof or exercise of any other right, power or privilege; nor shall any

single or partial exercise of any such right, power or privilege or any abandonment or discontinuance of steps to enforce such a right, power or privilege preclude any further exercise thereof or of any other right, power or privilege. The rights and remedies of CRA under this Assignment are cumulative and not exclusive of any rights or remedies which CRA would otherwise have under the Development Agreement, at law or in equity.

Section 12. Notices□All notices, requests, demands, directions and other communications under the provisions of this Assignment shall be sent pursuant to and subject to the provisions of the Development Agreement.

Section 13. Severability□If any term or provision of this Assignment or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Assignment, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Assignment shall be valid and enforceable to the fullest extent permitted by law without giving effect to conflict of laws principles.

Section 14. Governing Law□This Assignment and all matters arising out of or related to this Assignment shall be governed by, and construed in accordance with, the laws of the State of California, without regard to conflict of laws principles.

Section 15. Successors and Assigns□This Assignment shall bind RES and its successors and assigns, and shall inure to the benefit of CRA and its successors and assigns.

Section 16. Definitions□Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Development Agreement.

Section 17. Counterparts; Electronic Signatures□This Assignment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. To the fullest extent permitted by applicable law, electronically transmitted or facsimile signatures shall constitute original signatures for all purposes under this Assignment.

[The remainder of this page is left intentionally blank.]



**IN WITNESS WHEREOF**, RES has duly executed and delivered this Collateral Assignment of Project Documents as of the date first above written.

[\_\_\_\_\_],

By: \_\_\_\_\_

Name:

Title:

DRAFT

Exhibit A

Form Consent to Assignment

**ACKNOWLEDGMENT AND CONSENT OF [CONSULTANT/CONTRACTOR]**

\_\_\_\_\_, 201\_\_

Carson Reclamation Authority  
City of Carson, California  
701 E. Carson Street  
Carson, CA 90745  
Attention: John S. Raymond  
Director of Community Development

Ladies and Gentlemen:

The undersigned ("Consultant") has executed an agreement (the "Consultant Contract") dated \_\_\_\_\_, between Consultant and [RE Solutions, LLC] (the "Company") pursuant to which Consultant has agreed to perform the services set forth in the Consultant Contract for the project located in the City of Carson, California, and known as the former Cal Compact Landfill (the "Project") and more fully described in the Consultant Contract.

Consultant understands that the Carson Reclamation Authority ("CRA") and the Company entered into an Environmental Remediation and Property Management Agreement dated as of June \_\_, 2017 (the "CRA Development Agreement"); and that the Company has assigned to CRA all of its right, title and interest in and to the Consultant Contract pursuant to a certain Collateral Assignment of Project Documents, dated as of June \_\_, 2017 (the "Assignment"), in order to secure its obligations under the CRA Development Agreement.

Intending to be legally bound hereby, Consultant hereby covenants, represents and warrants, and agrees as follows:

1. Consultant (a) consents to the Assignment, and (b) agrees that if CRA gives notice to Consultant that the Company is in default under the CRA Development Agreement or that the CRA Development Agreement has been terminated, Consultant shall, at CRA's request, and notwithstanding any default by the Company under the Consultant Contract, continue performance on CRA's behalf under the Consultant Contract in accordance with the terms thereof; provided, that CRA pay for services provided to CRA from and after such request, in accordance with the payment terms of the Consultant Contract. Consultant understands that CRA has no obligation to exercise CRA's rights under the Assignment.

2. In the event that CRA requests Consultant continue performance on CRA's behalf as set forth in paragraph 1 above, Consultant shall attorn to CRA and recognize CRA as the counter-party under the Consultant Contract, and the Consultant Contract shall continue in full force and effect as a direct contract between CRA and Consultant for the full term thereof; provided, however, that CRA shall not be:

- (i) liable for any act or omission of Company (including omission of payment);
- (ii) subject to any offsets or defenses which Consultant might have against Company; or
- (iii) bound by any amendment or modification of the Consultant Contract not consented to in writing by CRA.

3. Consultant represents and warrants that the Consultant Contract is in full force and effect, and neither the Company nor Consultant is in default thereunder.

4. Consultant shall not, without CRA's prior written consent, agree to the amendment or modification of the Consultant Contract, except with respect to modifications or change orders which have been approved in accordance with the CRA Development Agreement, and further agrees that it will not terminate the Consultant Contract or cease to perform its work thereunder for any reason, including but not limited to the Company's failure to make payments to the Consultant, without first giving written notice to CRA of such intention at least thirty (30) days before taking such action.

5. Consultant acknowledges and agrees that it is not entitled to rely upon the provisions of the CRA Development Agreement and it is not a third party beneficiary thereof.

6. Consultant agrees that CRA shall have no obligations or liability to Consultant under the Consultant Contract or this letter unless and until CRA gives notice to Consultant pursuant to paragraph 1 hereof and only thereafter to the extent that Consultant performs under the Consultant Contract on CRA's behalf.

7. Consultant shall not assign its rights or obligations under the Consultant Contract without CRA's prior written consent, which may be withheld in CRA's sole discretion.

8. Consultant hereby covenants and agrees that in the event any of the payments under the CRA Development Agreement are disbursed directly to Consultant, it will receive and hold any such proceeds as a trust fund for the purpose of paying the costs of the labor, equipment and supplies used in performing the services for the Project and will apply these same first to payment of such costs before using any part thereof for any other purposes.

9. Consultant covenants and agrees that upon CRA's request it shall furnish to CRA a current list of all persons or firms with whom Consultant has entered into subcontracts or other

agreements relating to the performance of work or furnishing of materials in connection with the Project, together with a statement as to the status of each of such subcontracts or agreements and the respective amounts, if any, owed by Consultant thereunder.

10. The officer executing this instrument on behalf of Consultant hereby personally certifies that he or she is authorized to do so.

11. Consultant represents and warrants that it has full authority under all applicable state and local laws and regulations to perform its obligations under the Consultant Contract in accordance with the terms thereof.

12. This letter shall be binding upon Consultant and its successors and permitted assigns and shall inure to the benefit of CRA and its successors and assigns.

[Signature page follows]

Very truly yours,

[Consultant]

By: \_\_\_\_\_

Name:

Title:

DRAFT

Exhibit D

Initial Global Sources and Uses

DRAFT