

SOIL DELIVERY AGREEMENT

This Soil Delivery Agreement (hereinafter "**Agreement**") is entered into as of this ____ day of September, 2019, by and between RE | Solutions, LLC, a Colorado limited liability company, whose address is 1525 Raleigh St., Suite 240, Denver, CO 80204 (hereinafter "**RES**"), and Granite Construction Company, a California corporation, whose address is 303 W. Lincoln Ave. Suite, Anaheim, CA 92805 (hereinafter "**Granite**"). This Agreement is acknowledged and agreed to by the Carson Reclamation Authority, a joint powers authority formed under the laws of the State of California ("**CRA**"), as the owner of the Premises (defined below).

RECITALS

- A. The CRA owns and controls approximately 157 acres of real property located in Carson, California, located at 20400 Main Street, Carson, California, located between the Del Amo Bridge and the Avalon Boulevard exit on the California 405 freeway (hereinafter "**Premises**").
- B. RES is currently overseeing the environmental remediation and development management of the Premises. The parties hereto acknowledge and agree that this Agreement is entered into pursuant to RES' obligations set forth in that certain Amended & Restated Environmental Remediation and Development Management Agreement, dated as of June 20, 2019, by and between the CRA and RES (the "**Development Agreement**").
- B. Granite is performing site improvement work at Los Angeles World Airways (hereafter "**Construction Site**") under an agreement with Delta Airlines. As a result of the work being performed by Granite at the Construction Site, there will be surplus soil available at the Construction Site (hereinafter "**Surplus Soil**") and Granite requires a depository site for such Surplus Soil.
- C. Testing of the Surplus Soil for contaminated, toxic or hazardous conditions or constituents is being performed by a third party testing company, Burns & McDonnell Company, Inc. ("**B&M**"), under contract to Delta Airlines pursuant to testing protocols mandated by the California Department of Toxic Substances Control ("**DTSC**"). The preliminary test results have been shared with RES.
- D. RES has indicated a desire to have Granite transport and deliver to the Premises approximately 50,000 – 65,000 cubic yards of Surplus Soil for RES's use on the Premises. Granite will transport and deliver Surplus Soil to the Premises free of any charges, fees, or expenses, subject to, and in accordance with, the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Granite and RES covenant and agree to the following terms and conditions:

1.0 Recitals Incorporated. Recitals A-D are incorporated herein by this reference as though fully set forth.

2.0 Term. This Agreement shall be effective as of the date first above written and shall terminate on the first to occur of the following: (i) November 1, 2019; (ii) delivery of the quantity of Surplus Soil to the Premises (in the amount as RES and Granite shall agree upon); or (iii) the supply of Surplus Soil is exhausted or no longer available (hereinafter "**Term**"). Granite makes no warranty or guaranty as to the quantity of Surplus Soil that will be available from the Construction Site or the quantity of Surplus Soil that will be available during the Term.

EXHIBIT NO. 1

3.0 Delivery of Surplus Soil. RES grants to Granite the right during the Term to enter upon and deliver Surplus Soil to the Premises at such times as shall be mutually agreed to by RES and Granite; provided, however, that DTSC and RES shall have first approved of the test results and reports issued by B&M for the Surplus Soil and found the Surplus Soil is satisfactory for import onto the Premises. Notwithstanding anything to the contrary herein, Granite's employees, contractors, subcontractors, representatives and agents (collectively, "**Granite Parties**"), shall not be allowed to personally enter upon the Premises (meaning that they shall be allowed to access the Premises via trucks or other vehicles to offload the Surplus Soil, but shall not be allowed to leave their trucks or other vehicles and/or personally enter upon the Premises) without compliance with the requirements of the DTSC for accessing the Premises, including without limitation, training as required by the Hazardous Waste Operations and Emergency Response as provided under 29 CFR Part 1910.120. The Surplus Soil shall be stockpiled on the Premises at such locations as RES and Granite shall mutually agree upon in advance.

4.0. Acknowledgments of the Parties.

(a) By RES. RES recognizes and accepts that Granite (i) does not own any of the Surplus Soil but has the right to dispose of the Surplus Soil as provided in this Agreement; (ii) has not performed any testing of any nature of the Surplus Soil; (iii) makes no representation, claim or warranty with respect to the fitness of the Surplus Soil for any particular use or purpose, and (iv) fully disclaims any warranties, express or implied, with respect to the Surplus Soil, including the condition or make-up of the Surplus Soil, to the fullest extent permitted by law.

(b) By Granite. Granite acknowledges and agrees that it will derive a substantial benefit from RES's acceptance of the Surplus Soil on the Premises.

5.0 Soil Tests. RES has not performed any independent testing of the Surplus Soil but is relying upon the testing protocol and test results performed by B&M. RES will, based on its independent review of the protocol, test results, and other documentation provided by B&M, and subject to DTSC's approval of the import of the Surplus Soil to the Premises, determine for itself that the Surplus Soil is adequate and sufficient for the purposes intended by RES and RES accepts the Surplus Soil based on such information.

6.0 Procurement of Permits/Licenses. RES shall be responsible for the procurement of any permits or licenses and the payment of fees and all other requirements, if any, specified or required by any governmental agency having jurisdiction with regard to the deposit of the Surplus Soil on the Premises.

7.0. Indemnification Provisions.

(a) By RES. RES releases and/or waives any cause of action or other rights it may otherwise have against Granite for any liability or responsibility whatsoever with respect to (i) the testing and the test results and the condition or contents of the Surplus Soil or any other feature of the Surplus Soil including its fitness for any purpose or any other claims and (ii) all other claims for damage of any kind, which may be suffered or incurred directly or indirectly by RES by reason of the deposit and/or placement of Surplus Soil on the Premises regardless of the cause of action upon which such a claim may be based. To the fullest extent permitted by law, RES shall indemnify, defend and hold harmless Granite and its employees, agents, officers and directors from, and against, all damages, liabilities, suits, claims, injuries, demands and expenses of any nature (including, but not limited to, reasonable attorneys' fees and costs) that arise out of, result from or are in any way due to the acceptance and/or use of the Surplus Soil by RES.

(b) By Granite. Granite agrees to indemnify, defend and hold harmless RES, CRA, City and its affiliated agencies, and their respective officers, employees and agents ("**Indemnified Parties**") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, or liabilities whether actual or threatened (including reasonable attorneys' fees and costs) (collectively, "**Claims or Liabilities**") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the operations or activities of Granite, its officers, employees, agents, subcontractors, invitees, or any individual or entity for which Granite is legally liable ("**Granite Parties**"), to the extent such Claims or Liabilities are caused by or result from the negligent acts, omissions, reckless or willful misconduct of Granite or the Granite Parties, or Granite or Granite Parties' failure to perform any term, provision, covenant or condition of this Agreement.

The indemnity obligations under this Section 7.0 shall survive termination of this Agreement.

8.0. Granite's Obligations. Granite will deliver, or cause to be delivered, Surplus Soil consistent with the test results to the Premises in accordance with the requirements of this Agreement utilizing equipment and labor as deemed necessary by Granite. Granite shall, at all time, comply with the terms and requirements under the Soil Management Plan, dated July 24, 2008, and amended in July 2019 pursuant to an Addendum (as so amended, the "**SMP**"), to the extent the SMP governs the delivery of the Surplus Soil the Premises. As set forth above, all truck drivers delivering Surplus Soil are prohibited from exiting their vehicles at all times while on the Premises. Granite is not responsible for sweeping, dust control, stockpile management, SWPP, grading or compacting of the Surplus Soil on the Premises or any other costs other than delivery of the Surplus Soil to the Premises.

9.0. Independent Contractors. RES and Granite are each independent contractors and this Agreement shall not be construed to create any relationship of co-partner, joint venturer, principal and agent or employer and employee.

10.0. No Sale of Property. The delivery and deposit of Surplus Soil on the Premises shall not be construed as an agreement for the sale of tangible personal property.

11.0. Insurance. During the Term of this Agreement, Granite shall be responsible for obtaining and maintaining the insurance coverage set forth in **Exhibit A**, attached hereto and incorporated herein, in accordance with the terms and conditions set forth in **Exhibit A** ("**Insurance Requirements**").

12.0 Miscellaneous Terms.

- (a) The representatives of Granite who shall have the authority to approve any of the matters which require future agreement or approval herein shall be Mike Hedding. The representatives of Granite who shall have the authority to approve any of the matters which require future agreement or approval herein shall be Stuart Miner or Will Lansche.
- (b) It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may only be amended or modified by a written document executed by both parties.
- (c) This Agreement and all terms and conditions hereof shall be governed by and construed and enforced in accordance with the laws of the State of California.

- (d) Any term herein can be waived only by a written waiver signed by the party against whom such waiver is to be asserted.
- (e) This Agreement may be executed in multiple counterparts, each of which when so executed shall be deemed an original, and all of which, together, shall constitute one and the same instrument. The signature of any party to this Agreement transmitted to any other party by facsimile or e-mail shall be deemed an original signature of the transmitting party.
- (f) This Agreement shall inure to the benefit of and bind the respective successors and assigns of RES and Granite.
- (g) This Agreement integrates and supersedes all prior understandings or agreements on the subject matter hereof.
- (h) The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.
- (i) Exhibits A and B attached hereto, are each incorporated herein by this reference

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

RE | SOLUTIONS, LLC

GRANITE CONSTRUCTION COMPANY

By: _____

By: _____

Name: Stuart L. Miner
Title: Principal

Name: _____
Title: _____

APPROVAL BY THE CRA:

The Development Agreement requires that the CRA approves as to form any contracts RES enters into in relation to the Premises with any contractor or subcontractor, and therefore the CRA hereby executes this Agreement for the sole purpose of fulfilling said approval requirement and for no other purpose.

CARSON RECLAMATION AUTHORITY

By: _____
John Raymond, CRA Executive Director

Date: _____

ALESHIRE & WYNDER, LLP

Sunny K. Soltani, Esq.
Legal Counsel for CRA

EXHIBIT A

INSURANCE REQUIREMENTS

A. Granite and/or its contractors, subcontractors, or representatives accessing the Premises (collectively, “**Granite Entities**”) shall procure and maintain, at its sole cost and expense, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of the, CRA, City and City’s affiliated agencies, RES as well as the entities set forth in **Exhibit B** attached to this Agreement (all such entities set forth on **Exhibit B**, the “**Covered Parties**”):

- i. Commercial General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000 per occurrence or if a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit.
- ii. Worker’s Compensation Insurance. A policy of worker’s compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for Granite against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Granite in the course of carrying out the work or services contemplated in this Agreement.
- iii. Automotive Insurance (Form CA 0001 (Ed 1/87) including “any auto” and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage with a combined single limit liability of at least \$1,000,000. Said policy shall include coverage for owned, non-owned, leased, hired cars, and any other automobile.

B. All of the Granite Entities shall furnish separate certificates and endorsements to RES. All coverages for contractors / subcontractors shall be subject to all of the requirements stated herein, including expressly, the obligation to name Granite and the Covered Parties as additional insureds on the policies listed above, with the exception of Worker’s Compensation.

C. Unless otherwise approved in writing by the RES, all of the above policies of insurance shall be primary insurance and shall name the Covered Parties, as additional insureds and any insurance maintained by RES, CRA, or City and their respective officers, employees or agents may apply in excess of, and not contribute with Granite’s insurance. Granite shall ensure that its insurer(s) (and its subcontractor(s) insurer(s)) for all policies of insurance shall waive all rights of subrogation and contribution it/they may have against the Covered Parties, and insurers. The insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to RES. In the event any of said policies of insurance are cancelled, Granite shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Exhibit A to RES. No work or services or access allowed to the Premises under this Agreement shall commence until Granite has provided RES with Certificates of Insurance, additional insured endorsement forms or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the RES. RES reserves the right to inspect complete, certified copies of and endorsement to all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to RES.

The insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived in writing by RES due to unique circumstances.

EXHIBIT B

COVERED PARTIES

1. CAM-Carson LLC
2. Macerich Management Company
3. Macerich FOLA LLC
4. SI-Carson LLC
5. The Macerich Partnership, L.P.
6. The Macerich Company
7. Simon Property Group, L.P.
8. Carson Reclamation Authority
9. City of Carson
10. RE Solutions, LLC
11. SL Carson Builders, LLC
12. TRC Solutions, Inc.
13. TRC Companies, Inc.
14. Carson Redevelopment Agency
15. Community Facilities District No. 2012-1 of the City of Carson
16. Community Facilities District No. 2012-2 of the City of Carson
17. City of Carson Housing Authority

With respect to each of the above-referenced entities, all owned, managed, controlled, non-controlled and subsidiary companies, corporations, entities, joint ventures, limited liability companies, partnerships, and their constituent partners and members, all lenders for Covered Parties with respect to the Premises, and ground lessors of the Premises or improvements thereon, each as indicated by notice from RES or the CRA to Granite.