

## **SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This Settlement Agreement and Mutual Release ("Agreement") dated for reference purposes December 10, 2020, is entered into by and between SL CARSON BUILDERS, LLC, a Delaware limited liability company ("SLCB"), and SNYDER LANGSTON, LLC, a Delaware limited liability company ("SL") on the one hand, and CARSON RECLAMATION AUTHORITY, a California joint powers authority ("CRA") and RE / SOLUTIONS, LLC, a Colorado limited liability company ("RES"), on the other hand. SLCB, SL, CRA and RES may each hereinafter be referred to as a "Party" or collectively as the "Parties."

### **RECITALS**

A. Whereas, CRA is a public entity joint powers authority comprised of Community Facilities District 2012-1, Community Facilities District 2012-2, and the Carson Housing Authority. The CRA is the owner of the 157-acre parcel of real property with a common address of 20400 S. Main Street, Carson, California, which real property was formerly known as the Cal Compact Landfill ("Property" or "Site").

B. Whereas, on or about July 12, 2017, CRA and RES entered into a written "Environmental Remediation and Development Management Agreement," which was subsequently amended and restated in its entirety by an "Amended and Restated Environmental Remediation and Development Management Agreement" dated as of June 20, 2018 ("Prime Contract"), pursuant to which RES agreed to act as the development manager to coordinate, oversee and implement certain construction work to be performed with respect to the Property.

C. Whereas, on or about February 19, 2018, RES and SLCB entered into a written contract identified as the "Master Agreement for Civil Improvements" ("Master Agreement"), pursuant to which SLCB would act as a contractor to perform the construction of certain site work, infrastructure improvements and foundation systems on the Property.

D. Whereas, the purpose of the Prime Contract and the Master Agreement was to implement a Conveyancing Agreement, entered into in September 2018, by the CRA and CAM-Carson LLC, which provided for the remediation of a former landfill (the “157 Acre Site”) and the installation of improvements which would constitute the foundation for an outlet mall development to be constructed by CAM-Carson on a portion of the former landfill (the “Project”). Under Section 6 of the Conveyancing Agreement, CAM-Carson was to fund construction of “Offsite Improvements” and “Site Development Improvements” (both as defined in the Conveyancing Agreement) , which were to be installed and constructed by SLCB pursuant to the Master Agreement. CAM-Carson’s attorneys from the law firm of Lathan & Watkins were actually involved in drafting and negotiating the Master Agreement and thus CAM-Carson was fully aware of its terms.

E. Whereas, pursuant to the provisions of the Master Agreement, RES and SLCB entered into Work Orders, as defined in the Master Agreement, which Work Orders identified the specific work to be performed by SLCB, the schedule for performing the work, and the compensation to be paid to SLCB for the work. Payment for the work performed by SLCB would be approved and made by CRA to RES which, in turn, would pay SLCB.

F. Whereas, on or about September 6, 2018, RES and SLCB executed Work Order No. 2 pursuant to which SLCB would construct certain improvements identified as the “Foundations and Related Work for the Horizontal Package—CAM-Carson Work Only” on the Property. SLCB performed work under Work Order No. 2 until November 25, 2019, when work was stopped at the direction of CRA and RES prior to the entire scope of work being performed. SLCB has not received full payment for the work performed under Work Order No. 2.

G. Whereas, on or about September 6, 2018, RES and SLCB executed Work Order No. 3 pursuant to which SLCB would construct certain improvements identified as the “Foundations and Related Work for the Horizontal Package—CRA Work Only” on the Property. SLCB performed work under Work Order No. 3 until November 25, 2019, when work was stopped at the direction of CRA and RES prior to the entire scope of work being performed. SLCB has not received full payment for the work performed under Work Order No. 3.

H. Whereas, in October 2019, CAM-Carson stopped making the payments to CRA required of it by the Conveyancing Agreement. The amounts owed but unpaid by CAM-Carson presently exceed \$10 million. CAM-Carson's failure to meet its financial obligations under the Conveyancing Agreement led directly to CRA's inability to timely pay RES, and RES's inability to pay SLCB under the Prime Contract and Master Agreement.

I. Whereas, on April 14, 2020, SLCB served on CRA certain Stop Payment Notices based upon the amounts owed to SLCB under Work Order No. 2 and Work Order No. 3. Said Stop Payment Notices were in accordance with Civil Code Section 9350 et seq.

J. Whereas, on July 16, 2020, SLCB filed a Complaint against CRA and RES in the Los Angeles County Superior Court, which Complaint was assigned Case No. 20STCV26830 ("Lawsuit"), in which SLCB sought to enforce the Stop Payment Notices served with respect to the amounts owed to SLCB under Work Order No. 2 and Work Order No. 3.

K. Whereas, at various times, SLCB subcontractors and suppliers filed complaints in Los Angeles County Superior Court against SLCB, CRA, and RES based on non-payment. These cases are styled *Pacific Steel Group v. SL Carson Builders et al*, Case No. 20STCV23042, *Largo Concrete v. SL Carson Builders et al*, Case No. 20STCV23064, *Keller North America, Inc. v. SL Carson Builders et al*, Case No. 20CMCV0187, *Keller North America, Inc. v. SL Carson Builders et al*, Case No. 20CMCV0188, and *A&A Ready Mix v. SL Carson Builders et al*, Case No. 20CMCV00166.

L. Whereas, as of the date of this Agreement, SLCB contends that it is owed the sum of \$7,794,767.00 under Work Order No. 2, which amount includes the cost for all work performed by SLCB and its subcontractors, interest on past due amounts, and costs to be incurred for demobilization and close out of Work Order No. 2. Included in the amount of \$7,794,767.00 is retention in the sum of \$1,469,227.00, held by RES.

M. Whereas, as of the date of this Agreement, SLCB contends that it is owed the sum of \$150,529.00 under Work Order No. 3, which amount includes the cost for all work performed by SLCB and its subcontractors, interest on past due amounts, and costs to be incurred for

demobilization and close out of Work Order No. 3. Included in the amount of \$150,529.00 is retention in the sum of \$10,871.00, held by RES.

N. Whereas, as of the date of this Agreement, there is certain reinforcing steel that was purchased for use in the construction of Work Order No. 2 and which is currently being stored off-site. A UCC-1 financing statement was previously filed in favor of the RES with respect to said reinforcing steel. The value of such steel is approximately \$1.13 million.

O. As of the date of this Agreement, there are approximately \$1.58 million in outstanding potential change orders ("PCOs") owed to SLCB and its subcontractors due to changed conditions, delay, and loss of productivity incurred during the course of construction. These PCO's were initiated by subcontractors and notice was provided to CRA and RES as required by the terms of the Master Agreement. These PCO's had not yet become formal change orders to the Work Orders due to work being stopped at the direction of CRA and RES in November 2019.

P. Whereas, the Parties desire to enter into a full, complete and final compromise and settlement with regard to the amounts claimed by SLCB to be owed with respect to Work Order No. 2, Work Order No. 3, and the PCOs.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants, agreements and representations set forth herein, the Parties hereby agree as follows:

1. **Incorporation of Recitals:** Each of the above recitals is incorporated herein by this reference as though set forth in full.
2. **Payment to SLCB:** Within three (3) business days after this Agreement has been approved by the CRA Board, the following payments ("Settlement Payments") shall be placed in the Aleshire & Wynder LLP Client Trust Account for the benefit of SLCB:
  - a. CRA shall deposit the sum of \$6,465,198.00; and

- b. RES shall deposit the sum of \$1,480,098.00.

The sum of the Settlement Payments is \$7,945,296.00 and shall be referred to as the “Settlement Sum.” The CRA shall instruct Aleshire & Wynder, LLP that the Settlement Sum shall be released to SLCB within two (2) business days following delivery to Aleshire & Wynder LLP of the “Release Documents” specified in Section 4, below.

Within five (5) business days following its receipt of the Settlement Sum, the following amounts shall be paid by SLCB to the following subcontractors:

- a. Largo (including its subcontractor Pacific Steel Group and its supplier, A&A Ready Mixed Concrete): \$3,478,823.00;
- b. Keller North America: \$1,367,693.00;
- c. Murray Company: \$481,797.00;
- d. Michael Baker: \$207,543;
- e. Unison: \$103,587; and
- f. Sukut: \$25,633.00

The remaining amount shall be retained by SLCB. ; however, if the sums paid in settlement per the agreements set forth in paragraph 4f are less than the amounts actually owed by SLCB per its contracts with such subcontractors and material suppliers, then such amount shall be deducted from the Settlement Sum and refunded to CRA. The intent of this provision is to assure that because SLCB is being paid in full for its work it does not receive a windfall by compromise settlements with its subcontractors and material suppliers

3. **Transfer of Ownership of Reinforcing Steel:** In consideration for the waiver of approximately \$1.58 million in PCOs, ownership of the reinforcing steel currently stored off-site shall be transferred to Pacific Steel Group, a sub-tier subcontractor to Largo Concrete, Inc., a subcontractor to SLCB. Within three (3) business days after this Agreement has been approved by the CRA Board, CRA and/or RES shall file a termination of the UCC-1 financing statement

(i.e. a UCC-3) with respect to the reinforcing steel stored off-site, the CRA and RES agree to relinquish ownership of said reinforcing steel as evidenced by the termination of the UCC-1 filing, the CRA and RES waive and release any right, title or claim of interest to the reinforcing steel stored off-site which is being transferred to Pacific Steel Group, and the CRA and/or RES shall execute and deliver any other documentation necessary to relinquish ownership of said reinforcing steel. Nothing herein shall be deemed to affect the ownership of any and all reinforcing steel currently stored or located on the Property.

4. **Release Documents:** As a condition precedent to the payment of the Settlement Sum set forth in paragraph 2, above, SLCB shall deliver each of the following Release Documents to counsel for the CRA. Counsel for the CRA shall hold the Release Documents in trust, and shall not file, record or use the Release Documents in any way until the Settlement Payments have been received and successfully negotiated by SLCB. The Release Documents are as follows:

- a. A Conditional Waiver and Release Upon Final Payment from SLCB for each Work Order, in the amounts set forth in Recital paragraphs L and M;
- b. An original Release of Stop Payment Notice with respect to the Stop Payment Notice for Work Order No. 2 from SLCB and all plaintiffs in the actions set forth in Recital paragraph K, to the extent such plaintiff performed work under Work Order No. 2;
- c. An original Release of Stop Payment Notice with respect to the Stop Payment Notice for Work Order No. 3 from SLCB and all plaintiffs in the actions set forth in Recital paragraph K, to the extent such plaintiff performed work under Work Order No. 3;
- d. An original Request for Dismissal of the Lawsuit (entire action, with prejudice) and Requests for Dismissal (entire action, with prejudice) for all actions set forth in Recital paragraph K;

- e. A Conditional Waiver and Release Upon Final Payment from each of the Subcontractors identified in paragraph 2, in the amounts set forth in paragraph 2; and
- f. Signed settlement agreements between SLCB and each of the plaintiffs in the actions set forth in Recital paragraph K.

5. **Releases:** Except for the obligations imposed by this Agreement, the Parties hereto agree as follows:

- a. SLCB does hereby release, remise and forever discharge CRA, RES and their respective members, member agencies, shareholders, directors, officers, employees, agents, joint venturers, parents, subsidiaries, successors, assigns, insurers and sureties from any and all claims, cross-claims, damages, indebtedness, liabilities, accounts, reckonings, demands, obligations, costs, expenses, attorneys' fees, liens, actions and causes of action of every kind and nature whatsoever, whether known or unknown, suspected or unsuspected, arising out of or related to the monies claimed to be owed to SLCB and its subcontractors and suppliers for work performed prior to the date of this Agreement pursuant to Work Orders 2 and 3.
- b. CRA and RES do hereby release, remise and forever discharge SLCB and its members, shareholders, directors, officers, employees, agents, joint venturers, parents, subsidiaries, successors, assigns, insurers and sureties from any and all claims, cross-claims, damages, indebtedness, liabilities, accounts, reckonings, demands, obligations, costs, expenses, attorneys' fees, liens, actions and causes of action of every kind and nature whatsoever, whether known or unknown, suspected or unsuspected, arising out of or related to the monies claimed to be owed to SLCB and its subcontractors and suppliers for work performed prior to the date of this Agreement pursuant to Work Orders 2 and 3.
- c. The releases of claims in subparagraphs 5(a) and 5(b) and the waivers set forth in paragraph 6 do not extend to any claims under any warranty, for latent defects, or



for personal injury, arising from or relating in any way to the work performed by SLCB or its subcontractors and suppliers. Nor do the release of claims in subparagraphs 5(a) and 5(b) extend to any claims arising from or involving fraud or willful misconduct. Further, the provisions of subparagraphs 5(a) and 5(b) do not extend or relate to any work performed by SLCB or its subcontractors and suppliers after the date of this Agreement. SLCB and its subcontractors do not warrant any damage to work or materials, including but not limited to any reinforcing steel stored on site, that occurred after SLCB and its subcontractors stopped work caused by the work of others.

6. **Waiver of Civil Code Section 1542**: Each of the Parties represents, acknowledges and agrees that it has been advised by legal counsel of its choice of section 1542 of the California Civil Code, which provides as follows:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

Except as expressly provided in this Agreement, each of the Parties specifically waives any and all rights and/or benefits it has or may have under California Civil Code section 1542 or any other statutes or common law principles of similar substance and effect, and further represents, acknowledges and agrees that his knowing and voluntary waiver of the provisions of California Civil Code section 1542 is an essential and material term of this Agreement without which the consideration set forth herein and relating hereto would not have been delivered.

7. **Indemnification**: Provided that CRA and RES have made the Settlement Payments described in paragraph 2, hereof, and commencing on SLCB's receipt of the Settlement Sum, SLCB and SL shall defend, reimburse for staff time reasonably necessary to defend, indemnify and hold CRA, its member agencies, and RES harmless from any and all claims and lawsuits brought now or in the future by any subcontractors or suppliers to SLCB



with respect to Work Order No. 2 and Work Order No. 3. As a condition to said defense and indemnification, the Parties further agree as follows:

- a. Concurrently with the payment of the Settlement Payments, or as soon as possible after new claims or lawsuits by subcontractors or suppliers to SLCB are asserted, CRA, its member agencies, and RES shall tender to SLCB and SL for defense and indemnification any and all claims or lawsuits of subcontractors or suppliers to SLCB with respect to Work Order No. 2 and Work Order No. 3. SLCB and SL shall be entitled to retain counsel of their choice, subject to the reasonable objection of CRA and RES, to defend CRA, its member agencies, and RES with respect to said claims or lawsuits. CRA and RES agree to waive any conflict of interest which arises by virtue of SLCB and SL desiring to retain the same counsel that represents SLCB, and specifically agree to the same counsel representing SLCB, CRA, its member agencies, and RES with respect to any subcontractor or supplier claim or lawsuit.
- b. Notwithstanding any other provision herein to the contrary, SLCB and SL shall not be obligated to reimburse, indemnify or hold harmless the CRA, its member agencies, or RES with respect to any costs, expenses or attorneys' fees incurred by CRA, its member agencies or RES prior to SLCB's receipt of the Settlement Sum and the tender by CRA, its member agencies, and/or RES pursuant to this paragraph 7.

8. **Status of Master Agreement and Work Order:** The Parties agree that no further work shall be performed under Work Order No. 2 and Work Order No. 3, and said Work Orders shall be deemed closed as of the date of execution of this Agreement. Any further work to be performed by SLCB under the Master Agreement shall be performed pursuant to a new Work Order to be negotiated by the Parties. The Parties further agree that the Master Agreement between RES and SLCB shall remain in full force and effect.

9. **No Effect Upon Prime Contract:** Neither this Agreement nor the Parties' performance hereunder shall be deemed to modify, waive, alter or release any rights, remedies or obligations by and between CRA and RES under the Prime Contract or applicable law.

10. **Additional Documentation:** The Parties agree to execute such other and further documentation that may be necessary to effectuate the intention of this Agreement.

11. **Binding on Successors:** The terms of this Agreement shall be binding upon and shall inure to the benefit of the Parties' successors, assigns, members, shareholders, directors, officers, employees, agents, insurers, sureties and the legal representatives of each of them.

12. **No Other Representations or Warranties:** There are no representations, warranties, promises or other statements upon which the Parties have relied, by whatever name called, express or implied, written or oral, except as expressly set forth in this Agreement. The only representations, promises, warranties, or other statements upon which the Parties have relied are as set forth in this Agreement.

13. **Additional Facts:** In entering this Agreement, each of the Parties acknowledges that it may hereafter discover facts different from, or in addition to, those which it now knows or believes to be true with respect to the releases herein made and agrees that every release herein made by it is now and will remain effective notwithstanding the existence or the discovery of such additional facts.

14. **Warranties:** Each of the Parties expressly represents, warrants and agrees as follows:

- a. There has been no assignment, sale, transfer or hypothecation, by operation of law or otherwise, of any claim, right, cause of action, demand, obligation, liability or interest released;
- b. Each of the Parties has received independent legal advice from its attorneys with respect to the advisability of making the settlement provided for herein, with respect to the advisability of executing this Agreement, and with respect to the meaning of California Civil Code section 1542;
- c. Each of the Parties has made such investigation of the facts pertaining to the settlement and this Agreement and of all the matters pertaining to it as it deems necessary;

- d. Each of the Parties or responsible officer or agent thereof has read this Agreement and understands the contents thereof. Each of the individuals executing this Agreement on behalf of the respective party possesses the power and authority to do so and thereby binds his respective party;
- e. Each term of this Agreement is contractual and not merely a recital; and
- f. Each of the Parties is the sole owner of the respective aforementioned claims and demands and does hereby agree and undertake to indemnify and save entirely harmless those Parties released hereby from any and all claims, demands, liens, or suits, including, but not limited to, the expenses of defense thereof, which may hereafter be asserted by any other person or persons claiming any interest in or to the said claim, demand, or cause of action hereinabove set forth.

15. **Construction and Jurisdiction:** This Agreement is to be executed and delivered within the State of California, and its validity, construction and performance shall be governed by the laws of the State of California. Pursuant to C.C.P. section 664.6, the Parties request that the Court in the Lawsuit retain jurisdiction over the Parties to enforce the terms of this Agreement. Such request to the Court shall be prepared by counsel for SLCB.

16. **Interpretation:** Each of the Parties has participated in the preparation of this Agreement, and the Parties agree that the Agreement and its terms shall not be construed in favor or against any Party by virtue of the identity of its preparer.

17. **Attorneys' Fees:** Should suit be brought to enforce any or all of the provisions of this Agreement, to obtain a declaration of rights under it, to rescind it, or by reason of a breach of any term, warranty or condition set forth in it, the prevailing party in said suit shall be entitled to reasonable attorneys' fees and costs. Except as provided in this paragraph, each of the Parties shall be responsible for its own costs and attorneys' fees. Further, CRA, its member agencies, and RES shall agree to a mutual waiver of attorneys' fees and costs with each Plaintiff in the lawsuits identified in Recital paragraph K.

18. **Execution in Counterparts:** This Agreement may be executed in one document signed by all Parties, or in counterparts, some or all of which may be transmitted by facsimile or in .pdf format and each of which will be deemed an original. If executed in separate counterparts, all such counterparts shall constitute but one and the same document which may be sufficiently evidenced by one counterpart signed by the party who is to be charged with it, and an electronic or digital signature shall be effective the same as an original.”.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day, month and year below written.

Dated: December 10, 2020

SL CARSON BUILDERS, LLC, a Delaware limited liability company

By: [Signature]  
Name: JOHN F. ROCHFORD  
Title: Chairman & CEO

Dated: December 10, 2020

SNYDER LANGSTON, LLC, a Delaware limited liability company

By: [Signature]  
Name: JASON RICH  
Title: PRESIDENT/COO

Dated: December \_\_, 2020

CARSON RECLAMATION AUTHORITY, a California joint powers authority

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: December \_\_\_, 2020

RE / SOLUTIONS, LLC, a Colorado limited liability  
company

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

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

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