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Title: CONSIDER THIRD AMENDMENT TO A SETTLEMENT AGREEMENT WITH RE|SOLUTIONS, LLC

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Attachments: 1. CRA_RES - Settlement Agreement - Third Amendment (JR)

Date	Ver.	Action By	Action	Result
12/4/2023	1	Carson Reclamation Authority		

Report to Carson Reclamation Authority

Monday, December 04, 2023

Consent

SUBJECT:

CONSIDER THIRD AMENDMENT TO A SETTLEMENT AGREEMENT WITH RE|SOLUTIONS, LLC

I. SUMMARY

In November 2022, the Carson Reclamation Authority (“Authority”) entered into a Settlement Agreement (“Agreement”) with RE|Solutions, LLC, a Colorado limited liability company (“RES”), which provided for the termination of the DMA (defined below) and the orderly wind-down of RES’s responsibilities for the 157 Acre Site.

On July 12, 2017, the Parties entered into an Environmental Remediation and Development Management Agreement (the “Original DMA”), which provided for, among other things, RES to provide for all the environmental and development management services required by the Authority for the former Cal-Compact Landfill (the “Property” or “157 Acre Site”). On June 20, 2019, the Parties entered into an Amended and Restated Environmental Remediation and Development Management Agreement (the “DMA”), which amended, restated, and superseded all provisions under the Original DMA for the development of Cell 2 (the “CAM Project”) and other cells on the Property (the “Remainder Cells”).

The CAM Project has been subject to litigation involving CAM-Carson, LLC (“CAM”) for several years, and CAM and the Parties are working toward settling the litigation (“CAM

Litigation”) and on the potential return of CAM to the CAM Project.

The Parties entered the Agreement to provide for (a) the transition of the management of the Property from RES to the Authority or its designee, (b) the termination of the DMA, and (c) the execution and delivery of certain Release Agreements to fully and finally resolve the CAM Litigation (in the event CAM returns to the CAM Property).

This extension and amendment recognize that RES has been tasked with predevelopment work on the construction of Lenardo Road as well as the coordination of sitewide plans and other environmental issues related to the private developers on Cell 2 and Cells 3, 4, and 5, and that the Authority has not yet brought a replacement on-site manager or construction manager on board. This Amendment allows these scope items and extends the term of the Agreement to allow for the smooth transition to new entities.

II. RECOMMENDATION

1. **APPROVE** a Third Agreement to a Settlement Agreement with RE|Solutions, LLC.
2. **AUTHORIZE** the Executive Director to execute the document and related documents in a form acceptable to the Authority Counsel.

III. ALTERNATIVES

TAKE another action the Board deems appropriate.

IV. BACKGROUND

The original Agreement provided for a “Wind-Down Term” commencing on the Effective Date and expiring ninety (90) days later, during which time, RES will cooperate to transfer the contracts it is managing on behalf of the Authority to the Authority or its designee and allow for the orderly transition of its services. However, if CAM’s Diligence Period is extended, the Authority may extend the Wind-Down Term for up to an additional ninety (90) calendar days upon delivery of written notice to RES.

The Parties agreed that the DMA shall terminate effective upon the expiration of the Wind-Down Term (as may be extended). CAM’s diligence period has now been extended to December 15, 2023, and they have requested a few additional months. The first and second amendments dealt with the wind-down date and having it track with the CAM diligence date, among other items.

It still remains the case that in the event that the Diligence Period under the Conveyancing Agreement Amendment expires and CAM elects to terminate the Conveyancing Agreement Amendment and revive/continue with the Litigation, the Authority shall provide notice to RES, and the Wind-Down Term and the Settlement Agreement shall terminate upon the terms and conditions set forth in such notice from the Authority (provided, however, any

such terms and conditions shall not expand or increase any obligations of RES), except for the specific terms described in the Settlement Agreement which survive the expiration or termination of the agreement.

During the Wind-Down Term, RES was not required to maintain the staffing commitment set forth in the DMA except to ensure sufficient staffing to serve the requirements of the Authority during the Wind-Down Term. RES was also not required to perform certain other responsibilities set forth in the DMA. However, during the Diligence Period, RES has been tasked with predevelopment work on the construction of Lenardo Road as well as the coordination of sitewide plans and other environmental issues related to the private developers on Cell 2 and Cells 3, 4, and 5, and the Authority has not yet brought a replacement on-site manager or construction manager on board. This Amendment allows these scope items and extends the term of the Settlement Agreement to allow for the smooth transition to new project management entities. The subcontractors still working for RES are listed in the exhibits of the Amendment.

If the Authority requests that RES assign any one of the project subcontracts to the Authority or its designee during the Wind-Down Term, from and after the assignment of such project subcontract, RES shall no longer be responsible for the management or payment of the applicable subcontractor.

The compensation due to RES from the Authority shall still be limited to (a) payment of RES' invoiced time based on the hourly rates set forth in the Settlement Agreement for the performance of RES's responsibilities under the DMA, (b) reimbursement of approved project expenses, and (c) reimbursement of approved project subcontractor costs for work performed prior to as applicable.

Under the provisions of the DMA, nearly all the contractors working on the site are contracted to RES and not directly to the Authority. The assignment of all the project subcontracts has been previously approved as the Parties entered into a Collateral Assignment of Project Documents, dated June 20, 2019 (the "Collateral Assignment"), under which RES assigned and transferred all project subcontracts to the Authority, and gave a security interest in and to all of RES' right, title, and interest in the project subcontracts. The Authority will directly assume the obligations of RES under each project subcontract by notice to such project subcontractor, but this has not occurred yet. On or before the expiration or termination of the Wind-Down Period, the Authority shall give notice to each project subcontractor of the Authority's election to terminate the DMA and require performance of the subcontractor under the applicable subcontract, in favor of the Authority.

In addition to the predevelopment work on Lenardo Drive, RES shall assist the Authority in its responses to CGO's requests related to the environmental design, and CAM's due diligence requests and generally with CAM's investigations of the Property during the Diligence Period.

V. FISCAL IMPACT

There is no fiscal impact of the Settlement Agreement and this Amendment as it preserves

the contractual status quo. The services RES currently provides for its hourly fee - contract management, site management, public outreach, and environmental advisory services, will need to be replaced through a combination of new staff positions and construction management services, and a new environmental contractor. The full cost of replacing RES is unknown at this point.

VI. EXHIBITS

1. Third Amendment to a Settlement Agreement with RE|Solutions, LLC (pgs. 5-9)

Prepared by: John S. Raymond, Executive Director