

**CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
CALIFORNIA RECYCLE UNDERUTILIZED SITES REMEDIATION PROGRAM
Meeting Date: July 20, 2021**

Request to Approve an Updated Feasible Plan to Fund the Completion of the Remediation and to Accept the Proposed Project Milestones of a Brownfield Site Under the California Recycle Underutilized Sites (CALReUSE) Remediation Program

Prepared by: *Ethan Wieser*

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| Applicant: | Carson Reclamation Authority | Type of Funding: | Grant |
| | | Amount Disbursed: | \$5,000,000 (fully disbursed on 11/30/09) |
| Project Name: | Los Angeles Premium Outlets | Resolution No. | 21-03-003 |
| Project Location: | City of Carson (Los Angeles County) | Prior Actions: | Approved 11/19/08 Amended 10/20/15 Amended 04/19/16 Amended 08/16/16 Amended 01/15/19 Amended 06/16/20 Amended 10/20/20 Amended 01/20/21 |

Summary The Carson Reclamation Authority (“Grantee”) delivered a letter to the California Pollution Control Financing Authority (“CPCFA”) on June 30, 2021, (Attachment A) describing an updated feasible plan to fund the remediation and proposal of alternative project milestones of a former landfill as requested by the CPCFA Board at the January 19, 2021, CPCFA Board meeting. The Grantee’s request appears to meet the CPCFA Board’s direction; however, due to the still evolving nature of the various funding and legal issues, CPCFA staff is recommending an extension of the California Recycle Underutilized Sites (“CALReUSE”) Remediation Program Infill Grant Agreement (“the CALReUSE Grant”) and cure period until April 30, 2022. CPCFA staff recommends having the Grantee appear at the April 2022 CPCFA Board meeting to present an updated funding plan and alternative project milestones.

An abbreviated time line of events for this CALReUSE Grant is provided immediately following the Background of Default section.

Background of the Project The CPCFA Board approved an Infill Grant Agreement to Carson Marketplace, LLC, (“Carson Marketplace”) on November 19, 2008, to fund the remediation of a 157-acre former landfill (original “Brownfield Site”) that last operated in

1968. Hazardous substances associated with the landfill had been detected in subsurface soil and groundwater. The intended multi-use development called Boulevards at South Bay included a 400-unit (61 affordable) apartment complex identified for the Infill Development Project (“Housing”) required by the CALReUSE Grant. The Remediation Action Plan (“RAP”) approved by the Department of Toxic Substances Control (“DTSC”) included a groundwater extraction and treatment system, a landfill gas extraction and treatment system, and a liner system over each cell. Although the completion of the entire RAP would be necessary for the closeout documentation required for the CALReUSE Grant’s Brownfield Infill Project (“Remediation”), the entire estimated cost was nearly \$160 million. The purchase and installation of \$5 million of geotextile liner to serve as the barrier between the cells and future development was identified as the Remediation expense that would be reimbursed by the CALReUSE Grant.

In 2009, Carson Marketplace received the entire \$5 million CALReUSE Grant as an eligible reimbursement for Remediation expenses. A substantial portion of the Remediation was accomplished, with the remaining work on hold as it was being coordinated with the design and construction of the vertical portion of development. Due to the serious economic and real estate impacts of the Great Recession of 2008, the completion of both the Remediation and Housing were delayed, as was the case for many other CALReUSE projects during that time.

In 2015, Boulevards at South Bay was sold in a series of transactions intended to result in the development of a National Football League (“NFL”) stadium. During that process the Grantee took title and indemnified Carson Marketplace as part of a Settlement, Release and Indemnity Agreement (“Settlement”) with the Grantee, the City of Carson (“City”), and the Carson Successor Agency (“Successor Agency”) to the Carson Redevelopment Agency (“Successor”) in lieu of foreclosure. The Settlement was approved by the Department of Finance (“DOF”). The transfer of the Brownfield Site and the obligations to complete the RAP were approved by DTSC. When CPCFA was notified after these events had occurred, CPCFA invited the Grantee to submit a request to transfer the Grant from Carson Marketplace to the Grantee and for a short-term extension in order to prepare an amended CALReUSE Grant application (“Amended Application”) based on the NFL stadium. The CPCFA Board approved the request on October 20, 2015, for a short-term extension to April 30, 2016, with the deadline for the Application being February 16, 2016.

The Grantee was forced to adjust the intended development at the Brownfield Site when the NFL approved a different location for the NFL stadium on January 11, 2016. As required, the Grantee submitted an Application to CPCFA. However, a CPCFA staff evaluation concluded that due to the limited timeframe, not all elements were adequately developed. On April 19, 2016, the CPCFA Board approved a six-month extension to allow the Grantee to submit an updated Amended Application, with the understanding the Housing location would not be at the Brownfield Site due to the technical and oversight challenges that had been found to exist.

In July 2016, the Grantee provided an updated Amended Application. Due to the complexity of developing the entire 157-acre former landfill, the Grantee proposed narrowing the Brownfield Site to the approximately 42-acre Cell 2 ("Cell 2") as part of a phased development approach. The Grantee and the City had entered a negotiation agreement for a high-end fashion outlet mall ("Outlet Mall") on Cell 2 with CAM-CARSON, LLC, ("CAM-CARSON"), an entity of mall developer Macerich. The Amended Application also included 86 housing units (84 affordable) between two housing developments known as Carson Figueroa Affordable Housing, LP, Veterans Village of Carson ("Veterans Village"), and Carson Arts, LP, Carson Arts Colony ("Arts Colony"). The Amended Application satisfactorily addressed CPCFA staff's previous concerns. The funds disbursed were necessary and allocable to the ability to complete the Remediation and Outlet Mall on Cell 2. Since the entire landfill was contaminated, the subsurface remedial work under Cells 1-5 was all required to make it possible to develop any portion of the Brownfield Site. Although the total housing units were a lesser quantity than the original CALReUSE Grant stated, the percentage of affordable housing was higher than what would have been provided for in the original CALReUSE Grant. In addition, the housing developments were new to the City's development pipeline and compliance with the terms of the CALReUSE Grant was instrumental in the negotiations between the City and the developers. On August 16, 2016, the CPCFA Board approved the amendment of the Brownfield Site and Housing, the addition of benchmarks, the extension of the Grant term to December 31, 2020, and a changed project name of Factory Outlets of Los Angeles.

As of late 2018, the Grantee succeeded in meeting the first two of the four benchmarks required of the CALReUSE Grant:

- 1) Recordation of development agreements restricting affordability of both housing projects by March 21, 2017.
- 2) Execution of a development agreement for the Outlet Mall by October 31, 2017.
- 3) Completion of a Health Risk Assessment ("HRA") completed by DTSC by January 31, 2019.
- 4) Occupancy permits for the Outlet Mall by December 31, 2020.

In addition, both the Veterans Village and the Arts Colony were on track for completion by December 30, 2019, the first phase of Cell 2's remedial systems design for vertical development had been submitted to DTSC, and construction of the Outlet Mall had begun with pile driving tests. Due to the negotiations between the Grantee and DTSC regarding the approval of a phased occupancy plan taking 18 months rather than the two to three months anticipated, the Grantee recognized it would be unable to meet the upcoming benchmarks and requested modifications of the benchmarks with a variety of due dates and an extension of the CALReUSE Grant term to December 31, 2021. On January 15, 2019, the CPCFA Board approved the request, including a changed project name of Los Angeles Premium Outlets.

Background of the Default Three of the seven modified benchmarks contained in the extension of the CALReUSE Grant approved on January 15, 2019, were met:

- 1) Certificate of Occupancy for the Veterans Village Housing was due December 31, 2019, and was provided on December 30, 2019.
- 2) Certificate of Occupancy for the Arts Colony Housing was due December 31, 2019, and was provided on December 30, 2019.
- 3) DTSC's written approval of the design of remedial systems for Cell 2, which allows the remedial systems to be constructed and the vertical development of the Outlet Mall, was due by June 30, 2019, and was provided on June 24, 2019.

The Housing portion of the Grant was completed on time. However, due to increased costs and delays caused by a significant increase over the expected volume of landfilled waste to be consolidated and excessive rainfall in 2019, the activities for the Remediation portion of the CALReUSE Grant came to a halt in late 2019 due to a lack of available funding. The Grantee subsequently missed the next two benchmarks:

- 4) A copy of a Health Risk Evaluation ("HRE"), approved by DTSC for Cell 2, which would allow non-hazardous trained workers on-site to construct the Outlet Mall, was due by January 31, 2020.
- 5) A copy of a Remedial Action Completion Report ("RACR") for Cell 2, approved by DTSC for Cell 2, was due by March 31, 2020.

In addition, two benchmarks that addressed the development of the Outlet Mall, rather than the Remediation of Cell 2, were not yet due and remained:

- 6) A copy of a HRA, approved by DTSC for Cell 2, by December 31, 2021.
- 7) Occupancy permits for the Outlet Mall by December 31, 2021.

At the June 16, 2020, CPCFA Board meeting, the Grantee stated remedial work was approximately 80% complete. However, the Grantee still needed to pursue further funding sources to complete the Remediation on Cell 2. On June 16, 2020, the CPCFA Board approved the removal of benchmarks six and seven that addressed the development of the Outlet Mall while leaving in place benchmarks four and five that addressed the Remediation of Cell 2. Further, the CPCFA Board found the Grantee to be in default for benchmarks four and five and provided the Grantee an opportunity to cure the default of the two benchmarks by:

- 1) Presenting the CPCFA Board with a feasible plan to fund the completion of the Remediation of Cell 2 at the October 20, 2020, CPCFA Board meeting; and
- 2) Presenting the CPCFA Board with alternative project milestones acceptable to the CPCFA Board at the November 17, 2020, CPCFA Board meeting.

The Grantee, per a letter dated September 21, 2020, provided a feasible plan to fund the Remediation of the Cell 2 site. The primary sources of funding were the proposed sale of Cells 3, 4, and 5 (which are not part of the CALReUSE Grant), and the issuance of bonds by the Successor (subject to approval by Los Angeles County Consolidated Oversight Board and DOF). The Grantee asserted that the funding plan amount was based on an estimate for completing the Remediation of Cell 2, which will be finalized

after a lawsuit brought against the Grantee in the spring of 2020 by CAM-CARSON is settled.

At the October 20, 2020, CPCFA Board meeting, the CPCFA Board acknowledged that the Grantee delivered a feasible plan to fund per the direction of the CPCFA Board at the June 16, 2020, CPCFA Board meeting; that the Grantee spent considerable effort and funding toward completing the Remediation of Cell 2; and that the Grantee completed the Housing with affordable units as required by the Grant. The CPCFA Board further acknowledged the uncertainties associated with the proposed funding sources and the uncertainty for all California development projects caused by the COVID-19 pandemic. Accordingly, on October 20, 2020, the CPCFA Board approved extending the default cure period to January 18, 2021.

The Grantee, per a letter dated January 5, 2021, provided an update on the proposed feasible plan to fund and alternative project milestones as directed by the CPCFA Board on October 20, 2020. The letter outlines a pending deal for the sale of Cells 3, 4, and 5 to Faring Capital, LLC, (“Faring”) for \$45 million that is in the due diligence period; the possible issuance of bonds to raise a revenue source currently subject to ongoing litigation; and the efforts to resolve the lawsuit brought by CAM-CARSON in order to continue the development of Cell 2 with either CAM-CARSON or a new developer. In addition, the installation of the remaining geotextile liner is proposed as an alternative project milestone to replace benchmarks four and five.

At the January 19, 2021, CPCFA Board meeting, due to the still-evolving impacts of the COVID-19 pandemic on retail, gathering places, and the entire development process in California, as well as the pending nature of the sale to Faring, the possible bond issuance, and the situation with CAM-CARSON limiting the data available for evaluation of future events and alternative project milestones, the CPCFA Board approved the feasible plan to fund and extended the cure period to allow for the submission and evaluation of an updated feasible plan to fund and alternative project milestones by July 6, 2021, to be presented at the July 20, 2021, CPCFA Board meeting.

Timeline of Events

- **November 2008** – The CPCFA Board approved a \$5 million CALReUSE grant for Carson Marketplace for the remediation of a 157-acre former landfill, and the development of 400 housing units (61 affordable).
- **November 2009** – The entire \$5 million CALReUSE Grant is disbursed to Carson Marketplace.
- **June 2015** – CPCFA staff learned that the 157-acre site was sold without CPCFA Board consent to an entity proposing an NFL stadium on the site. Additionally, the property was transferred to the Grantee for pollution liability reasons.
- **October 2015** – The CPCFA Board approved the transfer of the CALReUSE Grant to the Grantee and a Grant extension from October 2015 until April 2016.

The Grantee also agreed to submit an Amended Application detailing the new brownfield Remediation project and the associated infill Housing project by February 2016.

- **January 2016** – The NFL ownership group declined the request by the Oakland Raiders and San Diego Chargers to develop a shared stadium at the 157-acre Brownfield Site.
- **February 2016** – The Grantee delivered an amended application to CPCFA staff. Staff’s assessment was that the application lacked a development timeline and that the proposed affordable housing did not meet the CALReUSE Remediation Program’s requirements to produce or promote housing.
- **April 2016** – The CPCFA Board provided the Grantee with a six-month extension to the CALReUSE Grant to provide the Grantee time to amend the application and address CPCFA staff’s concerns.
- **August 2016** – The CPCFA Board approved the Grantee’s request provided in the amended application to: extend the project from October 2016 to December 31, 2020; redefine the Brownfield Site from the 157-acre site to the 42-acre portion known as Cell 2; and develop 86 housing units (84 affordable). The CPCFA Board also approved four specific milestones for the Grantee to meet.
- **January 2019** – The Grantee met the first two milestones. Due to delays in approvals for the phased development of the Brownfield Site and the Grantee’s inability to meet the next two milestones, the CPCFA Board approved the Grantee’s request for a modification of the milestones and a one-year extension of the CALReUSE Grant until December 31, 2021.
- **December 2019** – The Grantee completed both housing projects.
- **January and March 2020** – Due to a lack of funding, the Grantee was unable to complete the Remediation and consequently missed the January 31, 2020, and March 30, 2020, milestones. At this time the Grantee represented that they were about 80% complete with the Remediation.
- **June 2020** – The CPCFA Board held the Grantee in default for the missed January 2020 and March 2020 milestones. The CPCFA Board provided the Grantee with an opportunity to cure the default by providing the CPCFA Board with a feasible plan to fund the Remediation by the October 2020 CPCFA Board meeting and presenting the CPCFA Board with alternative milestones to consider at the November 2020 CPCFA Board meeting.
- **September 2020** – The Grantee provided a plan to fund the Remediation, which identified two potential funding sources. The primary funding source identified was potential proceeds from the sale of Cells 3, 4, and 5 that could be used to cover the cost of remediating Cell 2. The alternative funding source identified by the Grantee was proceeds from the sale of \$90 million in bonds as a result of an enforceable obligation, which requires DOF approval.
- **October 2020** – In recognition of the completed affordable Housing projects, the considerable effort and funding necessary to complete the Remediation, and the uncertainty with the funding plan, the CPCFA Board provided the Grantee with

an extension of the cure period until the January 19, 2021, CPCFA Board meeting. .

- **January 2021** – The CPCFA Board approved an additional extension to the cure period to the July 20, 2021, CPCFA Board meeting due to ongoing uncertainties caused by the COVID-19 pandemic and the still evolving timeline for resolving the funding and litigation issues.

Current Request On June 30, 2021, the Grantee delivered a letter to CPCFA staff with an update to the feasible plan to fund and a proposal of alternative milestones. The sale of Cells 3, 4, and 5 to Faring has taken place, and the Grantee received the first \$12.5 million in proceeds on January 19, 2021. The Grantee is currently processing a Supplemental Environmental Impact Report (“SEIR”) for the Faring project, which is anticipated to be released in mid-July 2021. The project and SEIR approval are expected to go to the City’s City Council in September/October 2021, with the remaining \$32.5 million payment to the Grantee expected to follow upon approval.

The Grantee remains in litigation with CAM-CARSON and is still in the discovery and pre-trial motion phase. On March 15, 2021, the Los Angeles County Superior Court granted a demurrer to the City and the Successor Agency, removing them from the action, and approved the removal of the negligence and negligent supervision claims against the Grantee, making the legal action largely a contractual matter. The Grantee’s belief is that with the Faring agreement done, all of the factors necessary for CAM-CARSON to return to the project are in place. Mediation between the Grantee and CAM-CARSON is set for July 16, 2021. In addition, CAM-CARSON owes the Grantee approximately \$25 million for work performed, unpaid carrying costs, and an advance on site infrastructure.

If CAM-CARSON opts not to pursue the project, the Grantee states that it will move as quickly as possible to negotiate with another developer for Cell 2. The Grantee acknowledged that the process of finding a new developer, negotiating a new agreement, and determining how a new project would fit on top of the already-installed improvements could take several months.

The Grantee has also proposed a second source of funding to complete the Remediation via a bond issuance through the Successor Agency. The Successor Agency requested authorization from the Los Angeles County Consolidated Oversight Board and DOF for the issuance of new bonds of up to \$90 million, based on the Successor Agency’s bonding capacity and an outstanding enforceable obligation, for all or part of the funds needed to complete the remediation of the entire 157-acre site. The issuance of bonds was not approved by the Los Angeles County Consolidated Oversight Board or by DOF in 2020. The Successor Agency filed litigation against both parties in Sacramento County Superior Court. The litigation briefs have been filed, and the hearing is scheduled for mid-August 2021.

The Grantee has proposed the following as alternative project milestones:

- A copy of a HRE, approved by DTSC for Cell 2, which would allow non-hazardous trained workers on-site to construct the Outlet Mall, completed by October 31, 2022.
- A copy of a RACR for Cell 2, approved by DTSC for Cell 2, completed by December 31, 2023.

Staff Analysis The Grantee appears to have met the CPCFA Board's request at the January 19, 2021, meeting by providing an updated feasible plan to fund the site Remediation and proposed alternative project milestones for the CPCFA Board's consideration. Funding still hinges on several key points, including the approval of the SEIR for the Faring project (anticipated in October 2021), resolution of the CAM-CARSON litigation (mediation in July 2021), and a successful litigation outcome with DOF for the \$90 million bond issuance (court date mid-August 2021).

The proposed alternative milestones presented by the Grantee are the same two previous missed milestones with updated delivery dates. These both appear to be reasonable and appropriate milestones leading to the completed Remediation of the Cell 2 site. The Grantee acknowledged that in order to meet the milestones, CAM-CARSON would need to resume construction within about nine months from the mediation date of July 16, 2021. If the mediation is not successful, or should the construction not restart within the nine-month timeframe, the Grantee will likely need further modifications or risk an event of default on the proposed milestones.

Staff Recommendation Based on all of the information provided to CPCFA staff, a successful outcome of the project is still possible. The completion of the project would serve the residents of Carson as a catalyst to the redevelopment of a large and complicated brownfield site and provide an example of the viability of the reuse of former landfills.

The Grantee's updated funding timeline has provided CPCFA with key action dates to resolving the various funding and litigation issues complicating the development. Since these items must resolve in order to avoid a future event of default on the proposed milestones, CPCFA staff is recommending:

- 1) A further extension of the cure period until the April 2022 CPCFA Board meeting;
and
- 2) An extension to the term of the CALReUSE Grant until April 30, 2022.

Alternatively, the CPCFA Board may also choose to consider any of the following options:

Agenda Item 4.B.
Resolution No. 21-03-003

- 1) Accept the proposal from the Grantee's request letter by extending the term of the Grant until December 31, 2023, and cure the event of default by accepting the updated feasible plan to fund the remaining remediation and accept the proposed milestones of:
 - a. A copy of a HRE, approved by DTSC for Cell 2, which would allow non-hazardous trained workers on-site to construct the Outlet Mall, shall be provided by October 31, 2022.
 - b. A copy of a RACR for Cell 2, approved by DTSC for Cell 2, shall be completed by December 31, 2023; or
- 2) Not accept the updated feasible plan to fund and the proposed alternative milestones submitted by the Grantee, which would prevent the Grantee from curing the event of default, and require the forfeiture of CALReUSE Grant funds in the amount of \$5 million and, thus, negatively impact the cleanup and development of the brownfield site; or
- 3) Any other action that the CPCFA Board finds to be appropriate.

**RESOLUTION NO. 21-03-003
A RESOLUTION OF
THE CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY APPROVING
AN EXTENSION TO THE TERM OF THE INFILL GRANT AGREEMENT AND AN
EXTENSION TO THE CURE PERIOD OF A BROWNFIELD SITE UNDER THE
CALIFORNIA RECYCLE UNDERUTILIZED SITES REMEDIATION PROGRAM**

July 20, 2021

WHEREAS, the California Pollution Control Financing Authority (the “Authority”), a public instrumentality of the State of California, on November 19, 2008, approved a California Recycle Underutilized Sites Remediation Program (“CALReUSE”) grant for the Boulevards at South Bay project (the “Project”) in the amount of \$5,000,000 and pre-approved additional grant funding in an amount not to exceed \$10,000,000 subject to certain conditions, as reflected in that Resolution (the “Resolution”); and

WHEREAS, the grant was transferred to the Carson Reclamation Authority, a California joint powers agency whose members include the Carson Housing Authority and Community Facilities Districts 2012-1 and 2012-2, at the Authority’s October 20, 2015, Board meeting; and

WHEREAS, on October 20, 2015, the Authority extended the term of the Infill Grant Agreement to April 30, 2016, to provide the Carson Reclamation Authority an opportunity to submit an amended application with adequate information regarding the Brownfield Remediation Project and Infill Development Project to this Authority by February 16, 2016; and

WHEREAS, the amended application submitted by the Carson Reclamation Authority on February 16, 2016, did not meet the regulatory requirements of CALReUSE; and

WHEREAS, based on information and good faith representations submitted by the Carson Reclamation Authority on April 18, 2016, the Authority found that due to a recent change in leadership and direction related to the development project, it was in the public interest to grant a short term extension of 120 days solely to provide the Carson Reclamation Authority with a final opportunity to substantiate to the Authority the reasonable likelihood that it would complete all required elements of the Infill Grant Agreement dated July 29, 2009, including, but not limited to:

1. A timeframe and schedule for the completion of the Remediation Work for the entire Project site, including final approval by the Department of Toxic Substances Control;
2. A timeframe and schedule for the development of the Brownfield Infill Project for the entire Project site, including all required certificates of occupancy; and

3. An Infill Development Project including a residential component that meets or exceeds the housing commitment in the original Infill Grant Agreement and that is promoted by the Carson Reclamation Authority's acquisition of the Infill Grant Award.

WHEREAS, the Carson Reclamation Authority provided an amended application to the Authority on July 15, 2016, which proposed specific Project amendments to meet the regulatory requirements of CALReUSE; and

WHEREAS, on August 15, 2016, the Authority extended the term of the Infill Grant Agreement to December 31, 2020; reduced the scope of the Brownfield Development Project from the larger 157-acre Site to the easternmost 42 acres, now defined as Cell 2; accepted the two Infill Housing Projects; and included specific benchmarks the Grantee was required to meet to avoid an event of default under the extended Infill Grant Agreement; and

WHEREAS, on January 15, 2019, the Authority extended the term of the Infill Grant Agreement to December 31, 2021, changed the name of the project to Los Angeles Premium Outlets, and set specific benchmarks the Grantee was required to meet to avoid an event of default under the extended Infill Grant Agreement; and

WHEREAS, on June 16, 2020, the Authority declared an event of default for two missed milestones and provided the Grantee with an opportunity to cure the default by providing the Authority with a feasible plan to fund the remaining remediation and providing alternative project milestones acceptable to the Authority by November 6, 2020; and

WHEREAS, on October 20, 2020, the Authority extended the cure period to 90 days after the October Authority meeting for the Grantee to further develop a feasible plan to fund the remediation and provide alternative project milestones; and

WHEREAS, on January 19, 2021, the Authority accepted the feasible plan to fund and extended the cure period to 182 days after the January Authority meeting for the Grantee to further update a feasible plan to fund the remediation and provide alternative project milestones; and

WHEREAS, the Authority finds that extending the cure period to the April 2022 Authority meeting to allow the Grantee time to further update a feasible plan to fund the remediation and provide alternative project milestones is in the public interest and advances the purposes of CALReUSE; and

WHEREAS, the Authority finds that extending the term of the Infill Grant Agreement until April 30, 2022, to allow the Grantee to continue developing the cure for the event of default is in the public interest and advances the purposes of CALReUSE; and

WHEREAS, approval for amending the Infill Grant Agreement dated July 29, 2009, is sought;

NOW, THEREFORE, BE IT RESOLVED by the California Pollution Control Financing Authority, as follows:

Section 1. The Authority hereby extends the term of the Infill Grant Agreement until April 30, 2022.

Section 2. The Authority hereby extends the default cure period to the April 2022 Authority meeting. If the Grantee is unable to develop an updated feasible plan to fund the completion of the site remediation and present alternative project milestones acceptable to the Authority on or before the last day of the cure period, the Authority will require the forfeiture of grant funds.

Section 3. The Carson Reclamation Authority shall submit its written proposal by March 11, 2022, and appear at the April 2022 Authority meeting to present the Authority with an updated feasible plan to fund the completion of the site remediation and to present alternative project milestones for the Authority's consideration.

Section 4. The Authority authorizes the Executive Director and Deputy Executive Director to take the steps necessary with respect to the Applicant to approve any changes in the Project if determined to be in the public interest and advances the purposes of CALReUSE and report to the Authority any action taken.

Section 5. Except as specifically amended by this Resolution, all provisions and conditions of the Infill Grant Agreement dated July 29, 2009, as amended thereafter, shall remain unchanged and in full force and effect.

Attachment A

Carson Reclamation Authority

June 30, 2021

Mr. Ethan Wieser, Project Manager
CAL ReUSE Program
California Pollution Control Financing Authority
P.O. Box 942809
Sacramento, California 94209

Re: Carson Reclamation Authority – July 2021 CPCFA Meeting

Dear Ethan:

As you know, at its January, 2021 meeting the CPCFA Board (Authority) granted the Carson Reclamation Authority (CRA) additional time to develop a feasible funding plan to fund completion of the site remediation for the development of Cell 2 and to propose certain project milestones, including alternative project milestones for the Authority's consideration. This project update, along with updated milestones to complete the remediation work, is provided in order to be considered at the Authority's July, 2021 meeting.

Previously, the Authority recognized that the CRA has completed the first three original benchmarks, including both affordable housing projects, and removed the requirement to complete a Health Risk Assessment and then obtain occupancy permits for the outlet mall within the term of the Infill Grant Agreement.

CRA Feasible Funding Plan

The feasible funding plan proposed by the CRA includes funds from several sources: an amount due to the CRA from CAM-Carson LLC (CAM), with whom the CRA is currently in litigation, or a substitute developer on Cell 2; the Faring Capital, LLC (Faring) project on Cells 3, 4, and 5, which provides a partial source of funds to complete Cell 2; and the issuance of Tax Allocation Bonds by the Carson Successor Agency, which bonds are also the subject of litigation against the County Oversight Board and California Department of Finance (DOF) their failure to approve the bonds which would cover the remediation shortfall. The Faring and CAM-Carson funds, together, would comprise nearly \$70,000,000, while the estimated cost to complete the Cell 2 remediation work in early 2020 was slightly less than \$40,000,000. Infrastructure obligations of the CRA and O&M during the remaining construction period and other

administrative costs would use the rest of the funds. The Tax Allocation Bonds were anticipated to cover any remaining shortfall on Cell 2 and site infrastructure, as well as the estimated remedial system costs on Cell 1, the last cell on the 157 acre site.

Faring Capital, LLC Project

Faring has agreed to (i) construct all of the remedial systems on Cells 3, 4, and 5 at their own cost without a contribution or subsidy from the CRA, and (ii) pay a “residual value” of \$45,000,000 for the site in two upfront payments. It was estimated in early 2020 that such an amount would be enough to complete the Cell 2 remedial work.

The CRA is currently processing a Supplemental EIR (SEIR) for the Faring project, which is anticipated to be released in mid-July. The project and SEIR approval is expected to go to City Council in September/October 2021. Faring’s first option payment of \$12,500,000 (plus accrued carrying costs and other costs) was received by the CRA on January 19, 2021; the second \$32,500,000 is due upon the earlier of (i) receiving their entitlement from the City, or (ii) CAM is prepared to recommence its work on Cell 2 and has paid the CRA its outstanding obligations under the original Conveyancing Agreement.

Of equal importance to the upfront payment for the land is that Faring has agreed to fund and perform all of the horizontal development and vertical development on their cells; in other words, take all of the financial risk on their project. They have also agreed to fund site infrastructure, such as the construction of the main road through the site and other offsite improvements, on a pro rata (60/40) basis. The \$45,000,000 payment, though, was intended to be sufficient to complete the remedial work on Cell 2 and bring CAM back into the project and fulfill its obligations. Faring is obligated to pay other additional funds to the CRA, too, including reimbursing the CRA up to \$250,000 per month toward the O&M cost, paying all of the CRA’s entitlement and legal costs associated with the project, and reimbursing the CRA a pro rata share of the CRA’s Pollution Legal Liability insurance policy, in excess of \$2,000,000.

Tax Allocation Bonds

In early 2020, the CRA had also proposed the Carson Successor Agency (former RDA) bond for all or part of the funds needed to complete the remediation work on the entire 157-acre site through the issuance of new bonds of up to \$90,000,000, based on the Successor Agency’s bonding capacity and an outstanding enforceable obligation. The bonds, however, were not approved by the County Oversight Board or by DOF in 2020. The Successor Agency filed litigation against both parties in Sacramento Superior Court.

The litigation briefs have been filed and the hearing is scheduled for mid-August, 2021. Even with the \$45,000,000 from Faring and even with Faring bearing their own remedial system costs on Cell 3, 4, and 5, the CRA still has O&M costs and site infrastructure obligation to cover during the development period. Because the desired land use on Cell 1 is residential (approved for up to 1,200 units) such a Cell 1 project will never be feasible unless the CRA subsidizes at least a portion of the cost of the remedial systems.

CAM Litigation

While the CRA remains in litigation with CAM and is still in the discovery and pre-trial motion phase, on March 15, 2021, the Los Angeles Superior Court granted a demurrer to the City of Carson and the Successor Agency, removing them from the action, and approved the removal of the negligence and negligent supervision claims against the CRA, making the legal action largely a contractual matter (notwithstanding the appeal rights of CAM-Carson).

Our hope now is that with the Faring agreement done, all of the factors necessary for CAM to return to the project are in place. The next step in the litigation – mediation – shall occur on July 16. The CRA does not know CAM’s position, but under the terms of the Conveyancing Agreement, CAM’s contractual remedies are limited to marketing the property to another developer and recovering its investment from the proceeds; there is clearly market interest in the Site so that remedy remains available. CAM owes the CRA approximately \$13,000,000 for work performed by the CRA, for which it is required to reimburse, and another \$2,000,000 or so in unpaid carrying costs. Finally, CAM committed an advance of \$10,000,000 toward the construction of site infrastructure.

The post-pandemic reopening in California has unlocked pent-up demand in brick and mortar retail, and retail rent collections by landlords have returned to near prepandemic levels. If CAM opts not to pursue the project, the CRA will move as quickly as possible to negotiate with another developer for Cell 2. The question then would be how quickly the existing improvements, meaning the already-installed piles, liner, BPS, and slab, could be made usable for a different project. That process of finding a new developer, negotiating a new agreement, and determining how a new project would fit on top of the already-installed improvements, however, could take several months.

Request for Milestone Amendment

The CRA is grateful that Authority has continued to be cooperative while the CRA works through the issues discussed in this letter. The CRA requests the Authority accept the Feasible Funding Plan outlined above and consider the amendments to the Grant Agreement milestones which were unmet in June 2020:

- 4) A copy of a Health Risk Evaluation (“HRE”), approved by DTSC for Cell 2, which would allow non-hazardous trained workers on-site to construct the Outlet Mall, was due by *October 31, 2022*.
- 5) A copy of a Remedial Action Completion Report (“RACR”) for Cell 2, approved by DTSC for Cell 2 shall be completed by *December 31, 2023*.
- 6) ~~A copy of a Health Risk Assessment (“HRA”), approved by DTSC for Cell 2 by December 31, 2021.~~
- 7) ~~Occupancy permits for the Outlet Mall by December 31, 2021.~~

**Agenda Item 4.B.
Resolution No. 21-03-003**

The Authority has already removed the last two milestones – the HRA and the Certificate of Occupancy – from the milestone schedule as they are somewhat duplicative of the RACR, which is intended to prove the landfill remedial systems have been installed.

In terms of “working backwards” from the RACR date, the date of the HRE, when non-hazardous-materials trained workers could be allowed on-site to construct the Outlet Mall, is about 14 months before the RACR, and about 15 months from the date of the Authority’s July 20 meeting. Completing the installation of the remaining remedial systems would take about 5-6 months of construction work, which gives the CRA about 9 months from its mediation date with CAM to restart construction. That timeframe will be more achievable if the outcome of the mediation is positive and CAM and the CRA decide to return to work; it will be more complicated if the CRA needs to bring in another developer to complete the project. As always, we will keep you and the CPCFA leadership updated on the progress of negotiations and construction.

I am available by email at jraymond@carson.ca.us or telephone at (310) 952-1773 or my cell phone at 760-902-1903. Thank you again for your support.

Respectfully,



John S. Raymond
Executive Director

Cc; Sunny Soltani, Authority Counsel
Danny Aleshire, Deputy Authority Counsel