

Settlement and Release by and between
CDM Smith, Inc. and City of Galveston

This agreement is entered into between the City of Galveston, a municipality organized pursuant to the Constitution and Laws of the State of Texas (hereinafter referred to as "City") and CDM Smith, Inc. a Massachusetts corporation doing business in the State of Texas.

The purpose of this agreement is to settle Case No. 13-CV-0844, *CDM Smith, Inc. v. City of Galveston*, in the 56th Judicial District Court of Galveston County, Texas (Galveston County case) as well as certain claims pending between them in Case Number D-1_GN-13-002497 *General Land Office v. City of Galveston and CDM Smith, Inc.*, In the 201st Judicial District Court of Travis County Texas,

The suit involved the interpretation and application of the following listed agreements: a) the initial Agreement with the Texas Department of Housing and Community Affairs and the City of Galveston, Contract No. 70090008 (original, first amendment, and second amendment); b) re-designated GLO Contract with the City of Galveston Contract No. 10-5277-000-5283, (third amendment and fourth amendment. and the Agreement between City of Galveston and Camp Dresser & McKee, Inc. for Community Development Block Grant Management Services signed by City Manager Steve LeBlanc on October 27,2009 as amended (hereinafter the City Contract).

The purpose of this agreement is to finally resolve the litigation between the parties in accordance with the terms and provisions herein.

- I. Resolution of the Galveston County case:
 - 1) The parties agree:
 - a. A judgment in favor of CDM Smith for a total amount of Fifteen Million Seven Hundred Twenty Five Thousand Sixty Eight Dollars and Forty Nine Cents (\$15,725,068.49) on November 1, 2018. The parties have agreed to settle that case for the amount of Thirteen Million Five Hundred Thousand Dollars (\$13,500,000.00).
 - b. Payment of the aforementioned settlement amount shall be paid by December 31, 2018.

- 2) Upon payment by the City as provided in the previous paragraph, CDM will file with the Galveston District Clerk a Final Release and Satisfaction of Judgment which generally releases and forever discharges the City and its employees, officers, directors, successors, assigns, and attorneys, from any and all claims, demands, and causes of action of whatever kind or character arising out of the events alleged, or which could have been alleged in the Galveston County case, and/or the underlying agreement(s), which it now has or may have in the future against the City based on any events that have occurred or are alleged to have occurred prior to the date this Settlement Agreement is executed. Upon the filing of the Final Release and Satisfaction of Judgment, each party will file a notice with the Court withdrawing any motions each may have before the Court.

- 3) The City and CDM agree that jurisdiction and venue for any dispute related to the Release and Settlement Agreement between them will be in the 56th Judicial District Court in Galveston County, Texas before Judge Lonnie Cox in Cause No. 13-CV-0844, and all claims and defenses of immunity and exemption are waived as to causes of action and claims relating to the Settlement Agreement.

- 4) Subject to Paragraph 7 below, the City releases all claims and defenses, known or unknown, now and in the future, against CDM related to its work under the City Contract , including, but not limited to, any claims or defenses of overbilling, poor performance, insufficient staffing, prior material breach, misrepresentation, failure to insure or indemnify, lack of benefits received, form of invoices and task codes, setoff claims, Historic homes damages, duplication of effort claims, ineligibility of work or invoices under CDBG-DR guidelines or City or State laws or regulations, sovereign or governmental immunity or exemption, mutual mistake, fraud, ambiguity, failure of consideration, no duty, waiver, ratification, abandonment, unclean hands, and failure of any condition precedent or pay-if-paid clause, among other claims or defenses. This release also applies to City initiated audits and clawbacks. However the parties acknowledge an audit may be initiated by HUD and this Paragraph will not be operative to any clawback resulting from a HUD audit, or an audit done by the GLO at the request or direction of HUD.

- 5) Any breach of the Settlement Agreement by the City, including, but not limited to, any failure of the City to make timely payments to CDM, will require the City to pay CDM all of its attorneys' fees and costs incurred in this matter and to be incurred to enforce the Settlement Agreement and to collect the full amount of the

Final Judgment in the Galveston County case plus post-judgment interest accrued at the highest rate allowed by law on such amount.

- 6) The City will pay to CDM any amount it recovers from the GLO or the United States Department of Housing and Urban Development (HUD) or any third party for work performed by CDM under the City Contract that is in excess of the amounts paid or agreed to be paid to CDM under the Release and Settlement Agreement.
- 7) It is mutually agreed among the parties that, consistent with the provision in the contract that the obligation of CDM to repay any previously paid amounts in the event they are disallowed by the United States Department of Housing and Urban Development (HUD), shall continue in effect after this Settlement Agreement, and shall also apply any disallowance applied to the General Land Office (GLO). This obligation shall apply only to the previously paid amount of Eight Million Four Hundred Thousand Dollars (\$8,400,000) during the conduct of the work by CDM as program administrator. This obligation of CDM shall apply in either the event of action by HUD to recover such previously paid amounts from the City or from GLO. Under this provision either the City or GLO may enforce the cited provision and directly recover any amounts of money which are repaid or required to be repaid to HUD.
- 8) The City will provide CDM a positive reference for the services it provided pursuant to the contract. A copy of the letter the City will issue in response to such a request is attached as Exhibit A. The City agrees that the failure to use this positive reference for CDM is a material breach and default by the City of the Settlement Agreement and will result in the remaining amount of the Final Judgment in the Galveston County case of \$15,725,068.49 plus post-judgment interest accrued at the highest rate allowed by law on such amount being immediately due and payable to the CDM. No notice or demand by CDM shall be required for such a default by the City.
- 9) The City agrees that it will not make, issue, or publish future statements or communications concerning CDM or its performance contrary to the positive reference provided for in the previous paragraph. This provision is not violated by the production of public information as defined and required by the Texas Public Information Act Chapter 552 of the Texas Government Code in accordance with the provisions and procedures in the act.

- 10) Within three business days of receipt of payment, CDM will through it counsel, file with the 56th Judicial District of Galveston County a Release and Satisfaction of the Judgment entered in the Galveston County case.

II. Resolution of the Travis County case.

Case Number D-1_GN-13-002497 *General Land Office v. City of Galveston and CDM Smith, Inc.*, In the 201st Judicial District Court of Travis County Texas, will be resolved separately pursuant to dismissal detailed in a Rule 11 agreement filed by the parties prior to the execution of this agreement. Under that Rule 11 Agreement, CDM and City have agreed with the GLO to dismiss CDM and GLO employees from this case under the conditions therein described. A copy of that Rule 11 agreement is attached and its provisions incorporated herein as if fully set forth.

III. Miscellaneous Provisions

- 11) This Settlement Agreement shall be governed and construed in accordance with laws of the State of Texas, except that any conflict of law rule of that jurisdiction that may require reference to the laws of some other jurisdiction shall be disregarded.
- 12) The parties agree that this Settlement Agreement is entered into for settlement purposes only in order to avoid further trouble, cost, and expense, and it is further agreed that no party admits liability or damages to anyone other party as the result of the events that form the basis of the either suit, but expressly deny any and all such liability.
- 13) This Settlement Agreement has been prepared by the joint efforts of the respective attorneys for each of the parties.
- 14) If any provision of this Settlement Agreement is or may be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless survive and continue in full force and effect without being impaired or invalidated in any way.
- 15) None of the parties to this Settlement Agreement have expressed any facts, representations, agreements, undertakings, or express or implied warranties, except as expressly contained in this Settlement Agreement.

- 16) The Settlement Agreement shall continue perpetually and shall be binding upon the parties and their heirs, successors, and assigns and shall inure to the benefit of the parties and their heirs, successors, and assigns.
- 17) This Settlement Agreement represents the entire agreement of the parties and supersedes all prior written or oral agreements, and the terms are contractual and not mere recitals.
- 18) This Settlement Agreement may be executed in multiple counterparts, each of which shall be deemed as an original, but all of which shall constitute one and the same instrument. A copy of this Settlement Agreement shall be as valid, binding, and enforceable as the original.
- 19) This Settlement Agreement may not be amended, altered, modified, or changed in any way except in writing signed by all the parties to this Settlement Agreement.
- 20) All titles, headings, and captions used in this Settlement Agreement have been included for administrative convenience only and do not constitute matters to be construed in interpreting this Settlement Agreement.
- 21) Each Party hereto acknowledges that it has been fully advised by counsel of its choosing as to the terms and provisions of this Settlement Agreement and each party understands and agrees that this Settlement Agreement is in compromise and settlement of disputed claims.
- 22) Each Party agrees to execute any further documents, including any declaration, oath, affidavit, confirmation or other instrument, necessary or appropriate to complete, effectuate or give full effect to the terms of this Settlement Agreement, notwithstanding the provisions set forth in Paragraph 8 above.

THE PARTIES EXPRESSLY WARRANT THAT THEY HAVE CAREFULLY READ THIS SETTLEMENT AGREEMENT AND ALL EXHIBITS ATTACHED TO THIS SETTLEMENT AGREEMENT, UNDERSTAND ITS CONTENTS, AND SIGN THIS SETTLEMENT AGREEMENT AS THEIR OWN FREE ACT.

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement, effective as of the date first above written.

CDM Smith, Inc.

By: Mario J. Marzaccio
Its: General Counsel & Senior Vice Pres.

Dated: December 29, 2018

The City of Galveston

By: [Signature]
Its: City Manager

Dated: December 29, 2018

EXHIBIT A

FORM LETTER OF REFERENCE FOR CDM

Dear _____

This is in response to your request for a reference for CDM Smith. We understand you may retain CDM Smith to provide program management services related to your disaster management program. We are pleased to give this positive referral.

The City of Galveston utilized CDM Smith as its program administrator for the CDBG Disaster Recovery program. The primary goal of the program was to repair citizens' houses damaged or destroyed by Hurricane IKE. The City received its funding from the State first from the Texas Department of Housing and Community Affairs. Due to some issues at the state level, the funding agency was changed to the General Land Office.

Unfortunately for the City of Galveston and CDM, the state's administration was sometimes chaotic. The TDHCA, the GLO and other state agencies changed program guidelines several times during the program, requiring additional work to be done with each change and requiring more time to accomplish it. Because of the resulting delays caused by the state, the City had determined to extend its contract with CDM beyond its expiration date. Instead, for whatever reason, the state dictated to the City that it not renew the CDM contract or lose all program funding.

From the City's point of view, CDM Smith implemented an effective program to screen applicants and ensure they met federally mandated guidelines. They were instrumental in developing specifications for the repair of houses and assisted in the procurement of contractors to perform the work. We are quite sure that but for the interference of the state in the administration of the program, that CDM would have successfully completed the program for the City; as it was they performed professionally and effectively under very difficult circumstances.

As the years have gone by and similar programs have been instituted across the country, some of the procedural issues which dogged the Galveston program have been resolved. We know no reason why you would not choose CDM as your administrator; we are sure they will serve you well. But no matter what course you determine to pursue we wish you the greatest success.

Case No. D-1-GN-13-002497

GENERAL LAND OFFICE	*	IN THE DISTRICT COURT OF
	*	
Plaintiff	*	
	*	
v.	*	TRAVIS COUNTY TEXAS
	*	
CITY OF GALVESTON AND	*	
CDM SMITH, INC.	*	
	*	
Defendants	*	201st JUDICIAL DISTRICT

RULE 11 AGREEMENT

TO THE HONORABLE COURT:

Come now the Parties, the General Land Office (GLO), the City of Galveston (City) and CDM Smith, Inc. (CDM), and, pursuant to Tex.R.Civ.Pro. Rule 11, file this Agreement to provide for the dismissal of claims with prejudice by the GLO and the City against CDM; by CDM against the GLO and the City; and by CDM and the City against GLO officials and employees in their official and/or individual capacities, whether or not now named and/or currently employed by the GLO. The parties agree to the partial disposition of this case as follows:

- 1) CDM and the City contemplate a settlement agreement being reached and a final payment being made by the City to CDM in complete satisfaction of a judgment rendered in a related case identified as Case No. 13-CV-0844, CDM Smith Inc. v. City of Galveston, in the 56th Judicial District of Galveston County, Texas (the "Galveston County case"). Upon such final payment, CDM will file a Notice of Full Release and Satisfaction of Judgment with the 56th Judicial District Court of Galveston County effecting final and complete settlement and dismissal of that case as provided by the parties thereto in a separate settlement agreement.

- 2) Upon receipt by both the GLO and the City of a copy of the Notice of Full Release and Satisfaction of Judgment filed by CDM with the 56th Judicial District Court of Galveston County, the Parties will jointly file a notice of nonsuit with prejudice of any and all claims presented or which could be presented in the instant litigation a) by or against CDM and b) against any and all GLO officials and employees in their official and/or individual capacities, whether or not currently employed by the GLO, including, but not limited to: Jorge Ramirez, Maureen Mahoney, Pete Phillips, Mark Havens and David Repp. The City further stipulates and agrees that it will not add any GLO officials or employees as defendants in either their official or individual capacities. The Parties acknowledge that the Travis County case will continue between the City and the GLO, that the GLO's pending motion to lift temporary stay and/or abatement for the limited purposes of pursuing sanctions will survive the contemplated dismissal with prejudice of CDM from the Travis County case and that the GLO will not file additional motions seeking any relief from CDM for conduct prior to the date of this Rule 11 Agreement.

- 3) Consistent with the provision in the Agreement between the City and CDM for Community Development Block Grant

Disaster Recovery Management Services signed by Galveston City Manager Steve LeBlanc on October 27, 2009, as amended. It is mutually agreed among the Parties that the obligation of CDM to repay any previously paid CDBG-DR funds in the event they are disallowed by the United States Department of Housing and Urban Development (HUD), shall continue in effect, and shall also apply to any disallowance applied to the GLO by HUD. This obligation shall apply only to the previously paid amount of Eight Million Four Hundred Thousand Dollars (\$8,400,000) during the conduct of the work by CDM as program administrator. This obligation of CDM shall apply in the event of action by HUD to recover such previously paid amounts by HUD from the City or from the GLO. Under this provision either the City or the GLO may enforce the cited provision and directly recover any amounts previously paid by HUD which are repaid or required to be repaid to HUD.

Signed by the parties through their respective counsel as follows on this the dates indicated next to their signatures below on separate signature pages.

SIGNATURE PAGES FOLLOW

For the General Land Office

Mark Ostar with permission and for Mitzi Shannon

Mitzi Shannon

State Bar Number 20328100

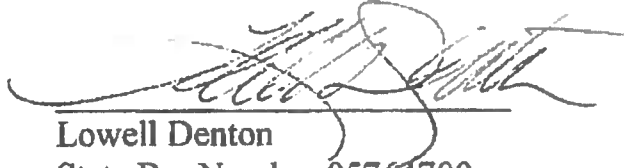
KEMP SMITH LLP

221 North Kansas, Suite 1700

El Paso, Texas 79901

915 533 4424

For the City of Galveston:

A handwritten signature in black ink, appearing to read 'Lowell Denton', written over a horizontal line.

Lowell Denton

State Bar Number 05764700

Denton Navarro Rocha & Bernal PC

2517 N. Main Avenue

San Antonio, Texas 78212

210 227 3242

For CDM Smith, Inc.

A handwritten signature in black ink, appearing to read "Roland Garcia". The signature is fluid and cursive, with the first name "Roland" being more prominent than the last name "Garcia".

Roland Garcia

State Bar Number 07645250

Greenberg Traurig, LLP

1000 Louisiana, Suite 1700

Houston, Texas 77002

713 374 3500