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Fresno, CA 93721-3603

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City of
FRESNO

DEPARTMENT OF PUBLIC UTILITIES
2600 Fresno Street
Fresno, California 93721-3616
(559) 621-8600

D.P.U. File No. _____

COPPER RIVER RANCH WATER SUPPLY

IMPLEMENTATION AGREEMENT

COPPER RIVER RANCH WATER SUPPLY IMPLEMENTATION AGREEMENT

This AGREEMENT is made and entered into by and between the CITY OF FRESNO, a municipal corporation (City) on the one hand, and COPPER RIVER RANCH, LLC., a California limited liability company; COPPER RIVER DEVELOPMENT COMPANY, INC., a California corporation; COPPER RIVER CUSTOM LOTS, INC., a California corporation; COPPER RIVER RANCH VILLAGES, LLC., a California limited liability company; HIGHLAND E, LLC., a California limited liability company; COPPER RIVER SOUTHWEST, INC., a California corporation; COPPER RIVER 74, INC., a California corporation; and COPPER RIDGE ESTATES, LLC., a California limited liability company (individually and collectively, Developer) on the other hand (collectively, the Parties).

RECITALS

A. Developer is the developer of the Copper River Ranch Project (the Project), a 762-acre master planned community located north of East Copper Avenue between North Friant Road and North Willow Avenue. At full build out the Project is to include an 18-hole golf course, clubhouse, commercial area, up to 2,837 residential units, and approximately 190 acres of open space, for a total of 3,682 equivalent dwelling units (EDUs).

B. Pursuant to Final Environmental Impact Report No. 10126 (State Clearing House No. 2000021003) approved by the Council of the City of Fresno on June 3, 2003, (the FEIR), the Project requires 4,900 gallons per minute (GPM) of water to ensure appropriate levels of water reliability and redundancy during peak usage.

C. The water supply required for the Project is to be delivered via an interconnected network of groundwater wells. Developer is obligated to construct the wells necessary, together with required wellhead treatment facilities, in accord with conditions of approval imposed upon Developer's current final tract maps for the Project (collectively, DPU Conditions).

D. In September 2007 in fulfilling its water supply obligation, Developer finished the first water supply well for the Project, Pump Station (PS) 330, and transferred it to the City. Upon testing PS 330 the City recorded elevated levels of manganese from the well. Because of the urgency of the Project's water supply need, the City completed a wellhead treatment system for manganese removal at PS 330 in July 2014 at a cost of $450,000.

E. In addition to the above-noted water supply obligations, Developer is responsible for performing the mitigation measures provided in Section 2.9.1.-a of the Mitigation Monitoring Checklist, which is attached as Exhibit D to the FEIR and attached hereto as **Exhibit A,** and incorporated herein by reference.

F. Among the obligations in the Mitigation Monitoring Checklist is Developer's obligation to pay the Project's fair share of the City's Northeast Surface Water Treatment Plant (NESWTP) construction and expansion via the establishment of a development fee.

G. The FEIR contemplates that at full development the Project will use approximately 8.5 percent of the capacity of the NESWTP.

H. In the absence of adequate groundwater wells in the area to date, over 99 percent of the water supply utilized by the Project has been provided by the City's water supply infrastructure outside of the Project boundaries, and the City's NESWTP. Developer has not paid development or capacity fees for use of said water supply.

I. As of the Effective Date of this Agreement, the Developer has not met the water supply development and development fee obligations for the Project as defined in the FEIR and DPU Conditions.

J. The Parties now wish to restate and affirm Developer's water supply obligations and specifically: (1) set the terms for the expansion of PS 330; (2) set a schedule for the construction of additional water supply wells and mitigation facilities to supply the 4,900 GPM necessary to service the Project; and (3) designate compensation and reimbursement obligations related to the development fee and mitigation measures required by the FEIR.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Recitals. Each and all of the foregoing recitals of background facts are incorporated herein by this reference as though set forth herein verbatim.

2. Scope. This Agreement governs and satisfies Developer's water supply capacity and development fee obligations for providing a clean, safe, and reliable source of water for the Project's 3,682 EDUs associated with the map attached hereto as **Exhibit B**.

3. Effective Date. This Agreement shall become effective on November 3, 2017 (Effective Date), the date of its approval by the Council of the City of Fresno.

4. Developer's Water Supply Obligation. Developer shall construct water supply wells on sites dedicated to the City, with a minimum collective firm capacity of 4,900 GPM (Firm Capacity), with wellhead treatment facilities as required by the City to ensure Project water supply complies with federal and state Safe Drinking Water Act standards at all times (the Water Supply Obligation). Developer's obligation to provide Firm Capacity means the system constructed by Developer shall have the ability to produce 4,900 GPM at all times, including when the system's largest producing well is offline for any reason.

    a. Funding. Developer shall fully fund the construction of the Water Supply Obligation without reimbursement or credit from the City.

    b. Schedule and Conditions. Developer shall fulfill its Water Supply Obligation pursuant to the Water Supply Obligation Schedule set forth in **Exhibit C** hereto.

5. Construction of Disposal Bypass Line. The Parties agree the Copper River Recycled Water Treatment Facility (RWTF) cannot be operated when groundwater wells north of

Copper Avenue are operating, as the filter backwash associated with the manganese treatment systems installed on groundwater wells disrupts the biological treatment process at the RWTF. Accordingly, Developer Agrees to construct and implement a manganese disposal system to bypass RWTF as part of its Water Supply Obligations pursuant to the Water Supply Obligation Schedule set forth in **Exhibit C**.

6. Developer's Wellhead Treatment Reimbursement Obligation. Developer acknowledges it was obligated to construct wellhead treatment facilities for PS 330, which facilities were ultimately constructed by City at a total cost of $475,000. Within 30 days of the Effective Date of this Agreement Developer shall pay City $450,000 as reimbursement for the PS 330 wellhead treatment facilities.

7. Developer's Development Fee Obligation. Developer shall pay City 8.5 percent of the total cost of construction and expansion of the NESWTP (Development Fee) as contemplated in the FEIR as follows:

   a. Current Obligation. Developer shall pay the City $3,841,283.50 (Current Development Fee Obligation) within 12 months of the Effective Date in three payments as follows:

      i. First Payment: Developer shall pay City a lump sum of $1,306,036.50 (34 percent of Current Development Fee Obligation) within 30 days of the Effective Date.

      ii. Second Payment: Developer shall pay City a lump sum of $1,267,623.50 (33 percent of Current Development Fee Obligation) by June 30, 2017.

      iii. Third Payment: Developer shall pay City a lump sum of $1,267,623.50 (33 percent of Current Development Fee Obligation) by November 1, 2017.

   b. Prospective Obligation. Developer shall be responsible for 8.5 percent of the cost of any expansion to the NESWPT (Expansion Development Fee Obligation). City's Director of Public Utilities shall notify Developer in writing of such fee obligation after the City has completed an expansion. Developer shall pay City the Expansion Development Fee Obligation within 60 days of notice by City's Director of Public Utilities.

8. City Use of Development Fee. The Parties agree that City shall use the Development Fee collected from Developer to provide and secure capacity and redundancy within the Project and the area serviced by the City's NESWTP.

9. Certificates of Occupancy Withheld. The Parties agree Developer's obligations set forth herein are of the utmost importance and failure of Developer to timely meet such obligations has the potential to create critical public health and safety concerns. As such, City's continued issuance of building permits to Developer for additional EDUs within the Project is based upon Developer's timely fulfillment of its obligations in this Agreement. The Parties agree that should Developer fail to timely fulfill any obligations set forth herein, City shall immediately cease to issue certificates of occupancy for units built within the Project.

a. Developer's Obligation to Disclose. Developer shall disclose to all prospective buyers of any unit in the Project that Developer's failure to meet the terms of this Agreement may result in City withholding Certificate of Occupancy.

10. Project Entitlements. **Developer hereby waives any and all vesting rights which conflict with the terms of this Agreement.** Developer agrees to take all steps necessary to accomplish the following:

a. All entitlement documents related to the Project (including tentative and final maps and related conditions of approval, subdivision agreements, and Department of Public Utilities Water Conditions) approved or executed after the execution of this Agreement, shall reflect the obligations set forth herein.

b. All entitlement documents executed prior to the execution of this Agreement shall be modified and amended to reflect the obligations set forth herein.

11. Remedies and Force Majeure.

a. Upon breach of this Agreement by Developer, City may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic and incidental damages for the breach of the Agreement. If it is determined that City improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

b. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

c. Developer shall provide City with adequate written assurances of future performance, upon City's request, in the event Developer fails to comply with any terms or conditions of this Agreement.

d. Developer shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of Developer and without its fault or negligence such as, acts of God or the public enemy, acts of City in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. Developer shall notify the City in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the City of the cessation of such occurrence.

12. Indemnification.

a. To the furthest extent allowed by law, Developer shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs

and damages whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Developer or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees, litigation and legal expenses incurred by City or held to be the liability of City, including plaintiff's or petitioner's attorney's fees if awarded, in connection with City's defense of its actions in any proceeding), arising or alleged to have arisen directly or indirectly out of performance or in any way connected with: (i) the making of this Agreement; (ii) the performance of this Agreement; (iii) the performance or installation of the work or improvements by Developer and Developer's employees, officers, agents, contractors or subcontractors; (iv) the design, installation, operation, removal or maintenance of the work and improvements; or (v) City's granting, issuing or approving use of this Agreement.

b. Developer's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees or agents are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of City or any of its officers, officials, employees, agents or authorized volunteers.

c. If Developer should subcontract all or any portion of the work to be performed under this Agreement, Developer shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of paragraphs "a" and "b" of this Section. Notwithstanding the preceding sentence, any subcontractor who is a "design professional" as defined in Section 2782.8 of the California Civil Code shall, in lieu of indemnity requirements set forth in paragraphs "a" and "b" of this Section, be required to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers to the furthest extent allowed by law, from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

d. This Section shall survive termination or expiration of this Agreement.

13. Insurance.

a. Throughout the life of this Agreement, Developer shall pay for and maintain in full force and effect all insurance as required herein and set forth in **Exhibit D** - Minimum Insurance Requirements, with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide,

or (ii) as may be authorized in writing by City's Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to City, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

b. If at any time during the life of the Agreement or any extension, Developer or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to Developer shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this Section shall in any way relieve Developer of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

c. The fact that insurance is obtained by Developer shall not be deemed to release or diminish the liability of Developer, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Developer. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Developer, vendors, suppliers, invitees, contractors, sub-contractors, subcontractors, or anyone employed directly or indirectly by any of them.

d. Coverage shall be at least as broad as:

   i. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."

   ii. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The

Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the City, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.

iii. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

14. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

15. Binding. Subject to Section 18, below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

16. Joint and Several Liability. Each party comprising Developer is jointly and severally liable for all Agreement obligations of Developer to City. If any Developer violates the Agreement, all parties comprising Developer are considered to have violated the Agreement. City's requests and notices to any one Developer constitute notice to all parties comprising Developer. Notices and requests from any one Developer constitute notice from all Developers. Each party comprising Developer is considered an agent of all other parties comprising Developer. Should any of the entities which comprise Developer file for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against any entity comprising Developer, the other entities shall remain liable jointly and severally for any obligations, responsibilities, and remedies provided herein.

17. Representation on Authority of Parties/Signatories. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

18. Assignment. This Agreement is personal to the Developer and there shall be no assignment by Developer of its rights or obligations under this Agreement without the prior written approval of the City Manager or his/her designee. Any attempted

assignment by Developer, its successors or assigns, shall be null and void unless approved in writing by the City Manager or his/her designee.

19. Compliance With Law. In providing the services required under this Agreement, Developer shall at all times comply with all applicable laws of the United States, the State of California and the City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

20. Time of Essence. Time is of the essence in the performance of Developer's obligations under this Agreement.

21. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

22. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

23. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

24. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

25. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning. Accordingly, the Parties hereby waive the benefit of California Civil Code §1654 and any successor or amended statute, providing that in cases of uncertainty, language of a contract should be interpreted most strongly against the Party who caused the uncertainty to exist.

26. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses. For the purposes of this Agreement, “attorney’s fees and legal expense” includes, without limitation, paralegals’ fees and expenses, attorneys, consultants fees and expenses, expert witness fees and expenses, and all other expenses incurred by the prevailing party’s attorneys in the course of litigation, whether or not otherwise recoverable as “attorneys’ fees” or as

"costs" under California law, and the same may be sought and awarded in accordance with California procedure as pertaining to an award of contractual attorneys' fees.

27. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

28. Precedence of Documents. In the event of any conflict between the body of this Agreement and any exhibit hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the exhibit or Attachment. Furthermore, any terms or conditions contained within any exhibit hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

29. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

30. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both the City and the Developer.

[SIGNATURES FOLLOW ON NEXT PAGE.]

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

CITY

CITY OF FRESNO,
a California municipal corporation

By: _____
Bruce Rudd, City Manager

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By:_____
Deputy

APPROVED AS TO FORM:
DOUG T. SLOAN
City Attorney

By:_____
Raj Singh Badhesha Date
Deputy City Attorney

DEVELOPER

Developer name,
[Legal Identity]

By: _____

Name: _____

Title: _____
(If corporation or LLC, Board Chair, Pres. or Vice Pres.)

By: _____

Name: _____

Title: _____
(If corporation or LLC, CFO, Treasurer, Secretary or Assistant Secretary)

Addresses:

CITY:
City of Fresno
Attention: Bruce Rudd,
City Manager
2600 Fresno Street
Fresno, CA 93721
Phone: (559) 621-7776

DEVELOPER:
Name
Attention: [Name],
[Title]
[Street Address]
[City, State Zip]
Phone: [area code and #]
FAX: [area code and #]

Attachments:

Exhibit A – Mitigation Monitoring Checklist
Exhibit B – Copper River Ranch Project Map
Exhibit C – Water Supply Development Schedule and Requirements
Exhibit D – Minimum Limits of Insurance

EXHIBIT A

MITIGATION MONITORING CHECKLIST

EXHIBIT B

COPPER RIVER RANCH PROJECT MAP

EXHIBIT C

WATER SUPPLY OBLIGATION SCHEDULE

1. Pump Station 330. Developer shall modify PS 330 as follows:
    a. Developer shall increase the rated capacity of PS 330 from 1,200 GPM to 1,800 GPM.
    b. PS 330 shall be equipped with a variable frequency drive.
    c. Developer shall be responsible for all costs associated with increasing capacity including, but not limited to costs associated with electrical service, instrumentation and control, motor, pump, wellhead treatment, site improvements, and related appurtenances.
    d. The drawdown on PS 330, as modified, shall not exceed 40 feet with the well in operation.
    e. The completion date for PS 330 shall be no later than March 1, 2017.
2. Pump Station 369. Developer shall complete the construction of PS 369, as follows:
    a. Developer shall complete the construction and site development activities for PS 369 to make it ready for full-scale operation and service at a minimum rated capacity of 1,000 GPM.
    b. PS 369 shall be equipped with a variable frequency drive.
    c. Wellhead treatment technology and sizing shall be approved by the City prior to purchase and installation by Developer.
    d. The drawdown on PS 369 shall not exceed 40 feet with the well in operation.
    e. The completion date for PS 369 shall be no later than March 1, 2017.
3. Pump Station 370. Developer shall complete the construction of a new well, designated as PS 370, as follows.
    a. Developer shall obtain City concurrence on the site location for PS 370 prior to construction.
    b. Developer shall confirm that the location of PS 370 conforms to FEIR requirements as provided in the Mitigation Monitoring Checklist.
    c. The minimum acceptable capacity for PS 370 shall be rated 500 GPM.
    d. Wellhead treatment technology and sizing shall be approved by the City prior to purchase and installation by Developer.
    e. Depending upon the final rated capacity of PS 370, the City may require a variable frequency drive.
    f. The drawdown on PS 370 shall not exceed 40 feet with the well in operation.
    g. The completion date for PS 370 shall be no later than June 30, 2017.

4. Pump Station 371. Developer shall complete the construction of a new well, designated as PS 371, as follows.

    a. Developer shall obtain City concurrence on the site location for PS 371 prior to construction.

    b. Developer shall confirm that the location of PS 371 conforms to FEIR requirements as provided in the Mitigation Monitoring Checklist.

    c. The minimum acceptable capacity for PS 371 shall be rated 500 GPM.

    d. Wellhead treatment technology and sizing shall be approved by the City prior to purchase and installation by Developer.

    e. Depending upon the final rated capacity of PS 371, the City may require a variable frequency drive.

    f. The drawdown on PS 371 shall not exceed 40 feet with the well in operation.

    g. The completion date for PS 371 shall be no later than May 1, 2018.

5. Disposal Bypass Line. Developer shall install a manganese disposal system bypass line to bypass the RWTF, and convey the manganese-rich filter backwash from each well equipped with a manganese treatment system to the City's main sewer system, which will transport the manganese to the City's regional water reclamation facility located at 1660 East Copper Avenue in Fresno, California.

    a. The bypass line shall be connected to all wells constructed by Developer pursuant to this Agreement, including PS 330, PS 369, PS 470, PS 371, and any wells constructed to mitigate lack of capacity of the foregoing.

    b. Developer shall obtain City concurrence on the location of the Disposal Bypass Line prior to construction.

    c. Developer shall bear all costs associated with planning, permitting, designing, constructing, and placing into operation the manganese disposal system.

    d. Developer shall pay a surcharge to recover the costs associated with treating and disposing additional manganese loading received at the City's regional water reclamation facility if the volume and concentration of manganese discharged from the Developer's groundwater wells.

    e. The completion date for the Disposal Bypass Line shall be no later than March 1, 2017.

    f. The bypass line shall be extended to each well constructed after March 1, 2017, and such extensions shall be completed concurrently with subsequent well construction.

6. Developer to Obtain Approvals. Developer shall be responsible for obtaining all necessary approvals for fulfilling the Water Supply Obligations, including but not limited to building permits and environmental clearance as necessary.

7. Funding. Developer is solely responsible for 100 percent of the cost of fulfilling its Water Supply Obligations, as set forth in the Agreement.

8. No Reimbursement. Developer shall not be reimbursed or credited by City for any costs incurred to plan, permit, design, construct, and place into service sufficient groundwater well capacity to meet the Project's Firm Capacity requirement of 4,900 GPM.

9. Construction Standards: Facilities built in fulfillment of Developer's Water Supply Obligation (including groundwater wells, well sites, and treatment systems) shall be planned, designed, and constructed to the City's standards, and the City may adjust the design standards based on site specific conditions encountered at each well location.

10. City Acceptance of Facilities: The City shall not assume ownership and operational responsibility of water supply facilities (including groundwater wells, well sites, and treatment systems) constructed by the Developer until the City performs final inspections and operational testing and commissioning to confirm and validate that the wells meet the City's production and treatment requirements as defined by the City.

11. Developer to Warranty Facilities. Developer shall warrant all facilities constructed in fulfilling its Water Supply Obligation as follows:

    a. All groundwater well facilities and mitigation facilities conveyed to the City pursuant to this Agreement shall have a two-year warranty for all parts, labor, equipment, materials and supplies associated with defects in workmanship, materials, and equipment provided by Developer. The two-year warranty shall commence from the date of City's acceptance of said facility.

    b. If additional groundwater contaminants are identified during the two-year warranty period, and the contaminant concentrations are within 90 percent of the primary or secondary drinking water standards, then Developer shall be required to install additional wellhead treatment for the additional contaminants. Any additional wellhead treatment shall be subject to the warranty provided in Section 10.a. above.

12. Ongoing Obligation. The Parties agree that Developer's Water Supply Obligations are ongoing and perpetual in nature.

    a. Depending upon the water supply capacity resulting from the development of PS 330, 369, 370, and 371, Developer shall be required to continue to develop groundwater wells, with City approval, until the Firm Capacity of 4,900 GPM is achieved in accordance with this Agreement.

    b. If any of the wells constructed by Developer have adverse impacts on surrounding private wells or the City's public water supply wells, the City may discontinue operation of the well, and Developer shall be required to identify and implement at their cost, a suitable mitigation for the adverse impacts.

    c. Should a well constructed by Developer pursuant to this Agreement degrade aesthetic water quality conditions (milky, cloudy water, entrained air, etc.), or creates well performance issues (loss of pump suction, etc.), the well capacity shall be de-rated to a capacity abating the poor aesthetic conditions and poor performance conditions. If the capacity of any well is de-rated, Developer shall develop additional water supply to compensate for the lost capacity. Until such capacity is developed, the City shall withhold COOs for all EDUs in the Project.

d. This Section shall survive expiration or termination of this Agreement and shall apply in perpetuity.

13. General Requirements.

a. All groundwater wells developed for the Project must comply with the requirements of the FEIR, including locating wells no closer than a 500-foot distance from the boundaries of the Project (*see* FEIR, citing Draft Environmental Impact Report page 2.9.22).

b. All groundwater wells and well sites shall be planned, designed, and constructed to the City's standards and subject to City approval. The City may adjust the design standards based on site specific conditions encountered at each well location.

c. Prior to City's acceptance of groundwater wells, each well shall be tested and certified

EXHIBIT D

MINIMUM LIMITS OF INSURANCE

Developer shall procure and maintain for the duration of the contract, and for 5 years thereafter, insurance with limits of liability not less than those set forth below. However, insurance limits available to City, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY**

   (i) $5,000,000 per occurrence for bodily injury and property damage;

   (ii) $5,000,000 per occurrence for personal and advertising injury;

   (iii) $10,000,000 aggregate for products and completed operations; and,

   (iv) $10,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY**

   $1,000,000 per accident for bodily injury and property damage.

3. **Workers' Compensation Insurance as required by the State of California with statutory limits and EMPLOYER'S LIABILITY with limits of liability not less than:**

   (i) $1,000,000 each accident for bodily injury;

   (ii) $1,000,000 disease each employee; and,

   (iii) $1,000,000 disease policy limit.

UMBRELLA OR EXCESS INSURANCE

In the event Developer purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the City, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

Developer shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and Developer shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared on the Certificate of Insurance, and approved by, the City's Risk Manager or his/her designee. At the option of the City's Risk Manager or his/her designee, either:

(i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or

(ii) Developer shall provide a financial guarantee, satisfactory to City's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

(i) *All policies of insurance* required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to City, except ten (10) days for nonpayment of premium. Developer is also responsible for providing written notice to the City under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Developer shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Developer shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

(ii) The Commercial General and Automobile Liability insurance policies shall be written on an occurrence form.

(iii) The Commercial General and Automobile Liability insurance policies shall be endorsed to name City, its officers, officials, agents, employees and volunteers as an additional insured. Developer shall establish additional insured status for the City and for all ongoing and completed operations under Commercial General Liability policy by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.

(iv) All such policies of insurance shall be endorsed so Developer's insurance shall be primary and no contribution shall be required of City. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers. If Developer maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by Developer.

(v) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these polices will be twice the above stated limits.

(vi) For any claims related to this Agreement, Developer's insurance coverage shall be primary insurance with respect to the City, its officers, officials,

agents, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, agents, employees and volunteers shall be excess of the Developer's insurance and shall not contribute with it.

(vii) *The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to City, its officers, officials, agents, employees and* volunteers.

PROVIDING OF DOCUMENTS - Developer shall furnish City with all certificate(s) and applicable endorsements effecting coverage required herein **All certificates and applicable endorsements are to be received and approved by the City's Risk Manager or his/her designee prior to City's execution of the Agreement and before work commences.** All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of City, Developer shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of Developer shall also be required to provide all documents noted herein.

CLAIMS-MADE POLICIES - If any coverage required is written on a claims-made coverage form:

(viii) The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by Developer.

(ix) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the work or termination of the Agreement, whichever first occurs.

(x) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement, or work commencement date, Developer must purchase "extended reporting" period coverage for a minimum of five (5) years after completion of the work or termination of the Agreement, whichever first occurs.

(xi) A copy of the claims reporting requirements must be submitted to City for review.

(xii) *These requireme*nts shall survive expiration or termination of the Agreement.

MAINTENANCE OF COVERAGE - If at any time during the life of the Agreement or any extension, Developer or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Agreement shall be discontinued immediately until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City hereunder shall in any way relieve

Developer of its responsibilities under this Agreement. The phrase “fail to maintain any required insurance” shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

The fact that insurance is obtained by Developer shall not be deemed to release or diminish the liability of Developer, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Developer. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Developer, its principals, officers, agents, employees, persons under the supervision of Developer, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

SUBCONTRACTORS - If Developer should subcontract all or any portion of the services to be performed under this Agreement, Developer shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein and Developer shall ensure that City, its officers, officials, employees, agents and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with Developer and City prior to the commencement of any work by the subcontractor.