

**FIFTH AMENDMENT TO THE
COPPER RIVER RANCH WATER SUPPLY IMPLEMENTATION AGREEMENT**

This FIFTH AMENDMENT ("Fifth Amendment"), effective as of December 13, 2018, (the "Effective Date"), is between the CITY OF FRESNO, a municipal corporation ("City"), and CRD East, Inc., a California corporation ("Developer"), individually, a "Party", and jointly, the "Parties", to further amend the Copper River Ranch Water Supply Implementation Agreement, dated November 17, 2016, as previously amended (the "Agreement").

RECITALS

- A. Developer, as the anticipated primary developer of the Copper River Ranch Project (the "Project"), entered into the Agreement to memorialize its obligations to provide adequate water supply for the Project, including: (1) expansion of PS 330; (2) construction of the required additional water supply wells (including PS 369, 370, and 371) and related facilities (including the Disposal Bypass Line); and (3) addressing the fair share development fee for the NESWTP contemplated by the FEIR Mitigation Measures for the Project.
- B. As part of the Agreement, the Parties agreed to certain milestone dates on which the above obligations were to be completed. As of March 1, 2017, Developer could not fulfill certain obligations under the Agreement. At Developer's request, City and Developer entered into a First Amendment to the Agreement dated March 28, 2017, (the "First Amendment"), to provide Developer additional time to fulfill its obligations. As of July 31, 2017, Developer again failed to fulfill certain obligations under the Agreement. At Developer's request, City and Developer entered into a Second Amendment to the Agreement dated August 1, 2017, (the "Second Amendment"), to provide Developer additional time to fulfill its obligations. As of December 1, 2017, Developer failed to expand PS 330, construct PS 370, and construct the Disposal Bypass Line and Lift Station in accordance with deadlines provided in the Agreement. At Developer's request, City and Developer entered into a Third Amendment to the Agreement dated April 25, 2018, (the "Third Amendment"), to provide Developer additional time to fulfill its obligations. As of September 1, 2018, Developer failed to expand PS 330, construct PS 370, and construct the Disposal Bypass Line and Lift Station in accordance with deadlines provided in the Agreement. At Developer's request, City and Developer entered into a Fourth Amendment to the Agreement dated September 1, 2018, (the "Fourth Amendment"), to provide Developer additional time to fulfill its obligations.
- C. As of December 1, 2018, Developer again failed to fulfill certain obligations under the Agreement.
- D. Following good faith discussions, the Parties have agreed to certain additional amendments to Agreement.

AGREEMENT

NOW, THEREFORE, the Parties agree:

1. Recitals. The foregoing Recitals are incorporated by reference into this Fifth Amendment.
2. Water Supply Obligation. Developer's deadline to expand PS 330 and to construct PS 370 and the Disposal Bypass Line are extended to March 1, 2019. Developer's deadline to place PS 371 into service remains December 1, 2019.
3. Reduction in EDU Allowance. As consideration for the City further extending the deadlines set forth in Section 2, the parties affirm that Developer's EDU Allowance is limited as follows:
 - a. Current Available EDUs. Developer's EDU Allowance is hereby limited to 2,209 EDUs and City shall not issue Certificates of Occupancy within the Project Area beyond 2,209 EDUs, which represent 60 percent of the total EDUs authorized for the Project Area.
 - b. Upon Completion of PS 330, PS 370, Disposal Bypass Line. Upon expanding PS 330 and constructing PS 370 and the Disposal Bypass Line, Developer's EDU Allowance shall be increased to 2,577 EDUs, and City may issue Certificates of Occupancy within the Project Area up to a maximum of 2,577 EDUs, which represent 70 percent of the total EDUs authorized for the Project Area.
 - c. Upon Completion of PS 371. Upon construction of PS 371, Developer may utilize, and City may issue Certificates of Occupancy for, up to 3,682 EDUs, which represent 100 percent of the total EDUs authorized for the Project Area.
4. Development Fee. The City acknowledges that Developer has paid the Development Fee in full.
5. Submission of Maps and Entitlements. Any application submitted to the City after the date of default noted in Recital C (i.e. December 1, 2018), which cannot establish the existence of sufficient water supply to service such project will not be complete for the purposes of the Permit Streamlining Act. Developer agrees that it and any of its affiliates (including, but not limited to, the entities identified in Section 14(c) of the Agreement), shall refrain from submitting any applications related to the Project Area until the obligations of this Agreement have been satisfied. However, prior to Developer's timely fulfillment of its obligations, Developer may submit, and City may accept, any application which is otherwise complete under the Permit Streamlining Act if the City Manager (pursuant to Fresno Municipal Code Section 2-402), makes a formal written determination waiving the aforementioned requirement and stating that: (a) the submission may be accepted and (b) the application would not create a public health and safety risk relating to sufficiency of water supply. There are no limitations on the right to process lot line adjustments.
6. Certificates of Occupancy Withheld. Notwithstanding Section 9 of the Agreement, Developer's failure to meet any of the deadlines set forth herein or in any other active provision of the Agreement entitles City to immediately cease to issue Certificates of Occupancy for units built within the Project. Unless

otherwise agreed to in writing by the Parties, Developer shall not be entitled to any further opportunity to cure defaults related to deadlines hereby amended.

- 7. Acknowledgment. Except as expressly changed by this Fifth Amendment, the Agreement as previously amended remains in full force and effect and is ratified and affirmed by the Parties.
- 8. Counterparts. This Fifth Amendment may be executed in several counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, even though all Parties are not signatories to the original or the same counterpart.
- 9. Exhibits. There are no Exhibits to this ~~Fourth~~ ^{FIFTH} Amendment.

IN WITNESS WHEREOF, the Parties have executed this Fifth Amendment at Fresno, California, the day and year first above written.

CITY

DEVELOPER

CITY OF FRESNO,
a California municipal corporation

CRD East, Inc.,
a California corporation

By: _____
Wilma Quan-Schechter, City Manager

By: _____
Darius Assemi, President

By: _____
Gary McDonald, Vice President

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____ **11-29-16**
Raj Singh Badhesha Date
Senior Deputy City Attorney

ATTEST:
YVONNE SPENCE, MMC
City Clerk

By: _____
Deputy