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Agenda Item: ID16-1329 (2-G)
Date: 11/17/16

FRESNO CITY COUNCIL

City of FRESNO

Supplemental Information Packet

Agenda Related Item(s) – ID16-1329 (2-G)

Contents of Supplement: Copper River Ranch Water Supply Implementation Agreement

Item(s)

Actions related to Copper River Ranch Water Supply Implementation Agreement

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

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 CRD East, Inc., a California corporation (Developer), on the other hand (each individually, a Party, and jointly, the Parties).

RECITALS

A. Developer is the anticipated primary developer of the remainder of the Copper River Ranch Project (the Project). At full build-out the Project will utilize a maximum of 3,682 Water Equivalent Dwelling Units (EDUs). The current configuration of the Project is set forth on **Exhibit A**, which also shows portions of the area that are specifically identified as not being a part of the Project).

B. The Final Environmental Impact Report No. 10126 (State Clearing House No. 2000021003) approved by the City Council on June 3, 2003, (the FEIR), describes the water requirements for the original Project. The Parties agree that well capacity of 4,900 gallons per minute (GPM) is needed to meet water requirements for the Project, including the estimated peak daily demand of the Project for potable water and fire flow. Developer agrees that it is obligated to construct the required wells.

C. The water supply required for the Project is to be provided by the wells described in Recital B and augmented by the City's the Northeast Surface Water Treatment Plant (NESWTP).

D. In September 2007, fulfilling a portion of the 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 performed by the City, it was discovered the water produced by PS 330 contains elevated levels of manganese. The City completed a wellhead treatment system for manganese removal at PS 330 in July 2014 at a cost of $450,000. Developer agrees that it is obligated to reimburse the City for construction of the treatment system.

E. Developer is also responsible for performing the mitigation measures provided in the Mitigation Monitoring Checklist for the FEIR, including item 2.9.1-a which provides for the establishment of "...a development fee for the Project's fair share of the City's surface water treatment plant [i.e. the Northeast Surface Water Treatment Plant (NESWTP)]."

F. The FEIR contemplated that NESWTP, when constructed and combined with the capacity of the required wells described above, would have the capacity to serve the Project and, if so served, at full build out, the Project would use 8.5 percent of NESWTP's then-planned daily output of 20 MGD (i.e. 1.7 MGD).

G. The Parties believe it would be in their mutual best interest to affirm and set forth details regarding Developer's the water supply obligations for the Project, including, but not limited to: (1) expansion of PS 330; (2) construction of the required additional water supply wells and related facilities; and (3) addressing the fair share development fee for the NESWTP contemplated by the FEIR Mitigation Measures.

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 fully satisfies any and all water supply capacity and development fee obligations to providing a clean, safe and reliable source of water for a maximum of 3,682 EDUs within the Project.

3. Effective Date. This Agreement shall become effective on November 17, 2016 (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 capacity of 4,900 GPM, with wellhead treatment facilities, and manganese disposal system, as required by the City to ensure the Project water supply complies with federal and state Safe Drinking Water Act standards at all times (the Water Supply Obligation).

   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 B** hereto.

5. Construction of Disposal Bypass Line. The Parties agree the City's 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 B**.

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. Within thirty 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. In lieu and in full satisfaction of the Project's obligation to pay the development fee for the NESWTP as required by item 2.9.1-a of the Mitigation Monitoring Checklist, Developer shall pay City a one-time Development Fee of $3,841,283.50, which represents 8.5 percent of the total cost of constructing the original NESWTP (agreed to be $45,191,570.59). The Development Fee is payable as follows:

a. 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.

b. 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.

c. Third Payment: Developer shall pay City a lump sum of $1,267,623.50 (33 percent of Current Development Fee Obligation) by December 1, 2018.

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. Developer's failure to timely meet its obligations under this Agreement 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 dependant upon Developer's timely fulfillment of its obligations in this Agreement. Should Developer fail to timely fulfill any obligations set forth herein, City may cease to issue Certificates of Occupancy for units built within the Project provided that Developer shall receive written notice of any alleged default and a reasonable opportunity to cure such default.

10. EDU Allowance. Subject to Developer's performance of its obligations under this Agreement, City agrees to provide the Project with 3,682 water EDUs (individually Project Water EDU and collectively the EDU Allowance) at no additional cost. Water EDUs for the Project in excess of 3,682 will be subject to payment of the City's then-current per EDU water capacity charge or fee. If at any time in the future the City changes its water demand standard (currently 2.12 GPM), the table in Section 10.b. below shall be amended accordingly and the number of outstanding Water Project EDUs shall be modified to account for the increase or decrease in the demand standard.

a. Scope of EDU Allowance. Per the FEIR, the Project shall include residential units, and mixed-use commercial and open space. Accordingly, the EDU Allowance shall include all classes and types of metered connections made to the public water supply system in the Project, including anticipated residential, commercial, irrigation, industrial, and institutional water connections. The entitlement to the EDU Allowance is the right and property of Developer and it is agreed that the EDU Allowance may be used to supply City water anywhere in the Project area.

b. EDU Calculation. All connections to the public water supply system shall be metered, and each metered connection shall be converted to an Equivalent Dwelling Unit (EDU) as described below:

Water Meter Connection Size	Equivalent Project Water EDU

Up to 1 inch	1 EDU
1.5 inch	2 EDUs
2 inch	3.2 EDUs
3 inch	6 EDUs
4 inch	10 EDUs
6 inch	20 EDUs
8 inch	32 EDUs
Greater than 8 inches	As determined by the Director of Public Utilities

11. Accounting of EDU Allowance.

a. Current Allocation of Project Water EDUs. All current water connections within the Project shall be subject to this Agreement. Developer's EDU Allowance shall be reduced by the number of Project Water EDUs allocated to said connections as of the Effective Date.

i. Within thirty days of the Effective Date, Developer shall provide City an accounting of its current EDU Allowance allocation related to existing final tract maps and development within the Project. Within thirty days of receipt of said accounting, City shall audit Developer's accounting and provide written notice to Developer of concurrence, discrepancies found, or of the need for additional information, if any. The Director of Public Utilities (Director) will promptly issue a letter to Developer confirming the reduction and the remaining EDU Allowance once discrepancies, if any, have been resolved to City's satisfaction. As of the Effective Date the following final tract maps have been approved and all water connections related to said maps shall be converted to Project Water EDUs and be charged against the EDU Allowance: 5205, 5270, 5271, 5272, 5268, 5273, 5838, 5903, 5973, 5963, 5892, 6045, 6065, and 6087.

b. Future Allocation of Project Water EDUs. All development within the Project area, including, but not limited to final tract maps and parcel maps, shall continue to be conditioned upon either (i) the payment of the City's then-current water capacity charge or fee or (ii) water well requirements as determined by the City (collectively, the Water Conditions). The Water Conditions for future development shall also provide that the Developer or any developer may present Project Water EDUs in lieu of fee payment or well construction requirements prior to the issuance of Certificates of Occupancy.

i. Presentation of Project Water EDUs. The burden of presenting Project Water EDUs in lieu of fulfilling Water Conditions shall be on developer.

Developer shall present Project Water EDUs for use in connection with development via a notarized letter addressed to the Director of Public Utilities, with a copy to the Director of the Department of Development and Resource Management. In case Project Water EDUs are being used by a party other than Developer, the developer presenting the Project Water EDUs must present the above-referenced letter, along with a duly notarized Copper River Ranch Project Water EDU Transfer Certificate executed by Developer (EDU Transfer Certificate) in favor of the presenting party. The City shall not allocate Project Water EDUs to development without the above documentation, as applicable.

c. Developer's Right to Assign Project Water EDUs. Subject to its performance of this Agreement, Developer shall be the owner and holder of the water service and capacity rights represented by the EDU Allowance. Developer may freely transfer and assign its available Project Water EDUs to other owners or developers in the Project, including, but not limited to, the additional persons and entities identified in Subsection 14.c. Project Water EDUs may not be transferred to development outside of the Project. In connection with allowed transfers or assignments, Developer shall issue an EDU Transfer Certificate.

12. Bond Required. Within sixty days of the Effective Date, Developer shall furnish to the City the following improvement securities in the amounts agreed upon by the Parties as provided herein. Bonds shall be by one or more duly authorized corporate sureties licensed to do business in California subject to the approval of the City and on forms furnished or approved by the City, or by certificates of deposit that is made payable only to the City of Fresno in a form acceptable to the City Attorney's office.

a. Performance Security. The total amount shall equal 100 percent of the final Cost Estimate, as calculated by Developer's engineer and approved by the City Engineer, within thirty days of the Effective Date, to be conditioned upon the faithful performance of this Agreement.

i. 95 percent of the final Cost Estimate shall be in the form of a bond or certificate of deposit that is made payable only to the City of Fresno ; and

ii. 5 percent of the final Cost Estimate shall be in cash or a certificate of deposit that is made payable only to the City of Fresno.

b. Payment Security. The total amount shall equal fifty percent of the final Cost Estimate, as calculated in accordance with Section 12.a. above, to secure payment to all contractors and subcontractors performing work on said improvements and all persons furnishing labor, materials or equipment to them for said improvements. Payment Security shall be in the form of a bond or certificate of deposit that is made payable only to the City of Fresno.

c. Warranty Security. Upon performance of the act or final completion and acceptance of the required work, the following amount, in the form of cash or a certificate of deposit, shall be retained by or furnished to the City as security for guarantee and warranty of the work for a period of two (2) years following the

completion and acceptance thereof against any defective work or labor done, or defective materials furnished:

i. Five percent of the first $50,000 of the total estimated cost of the improvement or act to be performed; plus,

ii. Three percent of the next $50,000; plus,

iii. One percent of the next $400,000; plus,

iv. Half of one percent of the total estimated cost of the improvement or act to be performed exceeding $500,000.

d. Release of Securities Following Performance. As Developer performs on its Water Supply Well Obligations, bonding amounts shall be reduced proportionally, taking into account the ongoing obligation to maintain the Warranty Security.

13. Developer's Obligation to Disclose. Developer's failure to meet the terms of this Agreement may result in City withholding Certificate of Occupancy. Developer may disclose such possibility to third parties at its discretion; City shall have no obligation to disclose to any third party, unless required by law.

14. Project Entitlements. **The Parties agree that the provisions of this Agreement supersede and preempt all vesting rights related to previously approved entitlements, subdivision or tract maps for portions of the Project which conflict with the terms of this Agreement.** The Parties 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 provisions of this Agreement as requested from time to time by the City.

c. Developer agrees to procure the cooperation of all he following additional persons and entities in the execution of such amendments: 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; NORMAN KIZARIAN and PAMELA S. KIZARIAN, husband and wife; LENNAR HOMES, INC., a California corporations; COPPER RIVER 74, INC., a California corporation; COPPER RIDGE ESTATES, LLC., a California limited liability company; DA REAL ESTATE HOLDINGS, LLC., a California limited liability company; GRANTLAND HOLDINGS NO. 1, LLC., a California limited liability company; GRANTLAND HOLDINGS NO. 2, LLC., a California limited liability company; COPPER FRIANT PARTNERS, LLC., a

California limited liability company; GYDA LAND COMPANY, INC., a California corporation; WILLOW AVENUE INVESTMENTS, LLC., a California limited liability company; OMEGA INVESTMENTS, LLC., a California limited liability company; LAS BRISAS BUILDERS, INC., a California corporation; ACAP HOLDINGS, LLC., a California limited liability company; and VALLEY RIVER DEVELOPERS, LLC, California limited liability company.

15. Remedies and Force Majeure.

a. Upon breach of this Agreement by any Party, the other Party 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.

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 written request, in the event Developer fails to comply with any terms or conditions of this Agreement.

d. Each of the Parties will be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Party 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. Under no circumstances shall this provision relieve Developer of timely fulfilling its Water Supply Obligations as set forth in the **Exhibit B**. Each Party shall notify the other Party 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 other Party of the cessation of such occurrence.

16. 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 by the Water Supply Obligations prior to acceptance by the City (but not thereafter); or (v) City's granting, issuing or approving use of this Agreement.

b. Developer's obligations under item (a) above 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.

17. Insurance. Throughout the life of this Agreement (i.e. until all Water Supply Obligations required by this Agreement have been constructed by Developer and accepted by the City and the applicable warranty periods (as provided in **Exhibit B**) have expired), Developer shall pay for and maintain in full force and effect all policies of insurance described in this Section with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (ii) authorized by City's Risk Manager. The following policies of insurance are required:

a. Commercial General Liability Insurance. Commercial general liability insurance, which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and shall include insurance 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, contractual liability (including indemnity obligations under this Agreement), with

limits of liability of not less than $5,000,000 per occurrence for bodily injury and property damage, $1,000,000 per occurrence for personal and advertising injury and $5,000,000 aggregate for products and completed operations, and $10,000,000 general aggregate.

b. Commercial Automobile Liability Insurance. Commercial automobile liability insurance, which shall be at least as broad as the most current version of Insurance Services Office (ISO) Business Auto Coverage Form CA 00 01 and shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1-Any Auto), with combined single limits of liability of not less than $1,000,000 per accident for bodily injury and property damage.

c. Workers' Compensation Insurance. Workers' compensation insurance as required under the California Labor Code.

d. Employers' Liability. Employers' liability with minimum limits of liability of not less than $1,000,000 each accident, $1,000,000 disease policy limit and $1,000,000 disease each employee.

Developer shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Developer shall also be responsible for payment of any self-insured retentions.

The above described policies of insurance shall be endorsed to provide an unrestricted 30 calendar day written notice in favor of City of policy cancellation of coverage, except for the Workers' Compensation policy which shall provide a 10 calendar day written notice of such cancellation of coverage.

In the event any policies are due to expire during the term of this Agreement, Developer shall provide a new certificate evidencing renewal of such policy(ies) not less than 15 calendar days prior to the expiration date of the expiring policy(ies). In the event any extension of time is granted, the Developer shall provide proof that policies of insurance remain current and meet all stated requirements. Upon issuance by the insurer, broker, or agent of a notice of cancellation in coverage, Developer shall file with City a new certificate and all applicable endorsements for such policy(ies).

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name City, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Developer's insurance shall be primary and no contribution shall be required of City. In the event claims-made forms are used for any Professional Liability coverage, either (i) the policy(ies) shall be endorsed to provide not less than a five (5) year discovery period, or (ii) the coverage shall be maintained for a minimum of five (5) years following the termination of this Agreement and the requirements of this Section relating to such coverage shall survive termination or expiration of this Agreement. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers.

Developer shall have furnished City with the certificate(s) and applicable endorsements for ALL required insurance prior to City's execution of the Agreement. Developer shall furnish City with copies of the actual policies upon the request of City's Risk Manager at any time during the life of the Agreement or any extension, and this requirement shall survive termination or expiration of this Agreement.

The fact that insurance is obtained by Developer or his/her/its subcontractors shall not be deemed to release or diminish the liability of Developer or his/her/its subcontractors including without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City, its officers, officials, agents, employees and volunteers, 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 or his/her/its subcontractors. 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, subcontractors, consultants or anyone employed directly or indirectly by any of them.

If at any time during the life of the Agreement or any extension, Developer fails to maintain the required insurance in full force and effect, the Director of Public Works for the City, or his/her designee, may order that the Developer, or its contractors or subcontractors, immediately discontinue any further work under this Agreement and take all necessary actions to secure the work site to insure that public health and safety is protected. 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.

If Developer should subcontract all or any portion of the services to be performed under this Agreement, Developer shall require each subcontractor to provide insurance protection in favor of City, its officers, officials, employees, volunteers and agents in accordance with the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with Developer and City prior to the commencement of any work by the subcontractor.

18. 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.

19. 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.

20. 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.

21. 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.

22. Assignment. This Agreement is personal to the Developer and, unless otherwise noted herein, 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. This Section is subject to the potential transfer of interests contemplated in Section 11 above.

23. 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.

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

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

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

32. 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.

33. No Third Party Beneficiaries. This Section is subject to the potential transfer of interests contemplated in Section 11 above. 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.

34. 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: _____ 11.16.16
Raj Singh Badhesha Date
Deputy City Attorney

DEVELOPER

CRD East, Inc., a California corporation

By: _____
Darius Assemi, President and CFO

By: _____
Gary McDonald, VP and Secretary

Attachments:

Exhibit A – Current Copper River Ranch Project Map
Exhibit B – Water Supply Development Schedule and Requirements

EXHIBIT A

CURRENT COPPER RIVER RANCH PROJECT MAP

EXHIBIT B

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 December 1, 2018.

5. Disposal Bypass Line. Developer shall install a manganese disposal 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 collection system, which will transport the manganese to the City's regional water reclamation facility located at Jensen 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. Developer shall not be reimbursed for any costs associated with the manganese disposal bypass line.

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

    e. 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 the Water Supply

Obligations, including the manganese disposal system, and sufficient groundwater well capacity to meet the Project's 4,900 GPM capacity requirement.

9. Construction Standards: Facilities built in fulfillment of Developer's Water Supply Obligation (including groundwater wells, well sites, wellhead treatment systems, and manganese disposal system) shall be planned, designed, and constructed to the City's standards, and the FEIR. 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 11.a. above.

12. Ongoing Obligations. The Parties agree that Developer shall be obligated as follows for each facility accepted by the City for a period of 2 years following City's acceptance of said facility:

    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 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.

13. General Requirements.

a. 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.

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