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Agenda Item: ID17-397 (3-A)

Date: 3/23/17

2017 MAR 20 AM 11:11 FRESNO CITY COUNCIL

CITY CLERK, FRESNO CA



## Supplemental Information Packet

Agenda Related Item(s) – ID17-397 (3-A)

**Contents of Supplement: Signed Amendment**  
**Item(s)**

Approve Amendment No. 1 to the Copper River Ranch Water Supply Implementation Agreement approved by Fresno City Council November 17, 2016

### **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.

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**FIRST AMENDMENT TO THE  
COPPER RIVER RANCH WATER SUPPLY IMPLEMENTATION AGREEMENT  
DATED NOVEMBER 17, 2016**

2017 MAR 20 AM 11 03

This FIRST AMENDMENT is effective as of March \_\_\_\_, 2017 (the Effective Date), and 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) and amends the Copper River Ranch Water Supply Implementation Agreement, dated November 17, 2016 (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 and 370) 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 of March 1, 2017, Developer failed to meet its obligations under the Agreement to expand PS 330, construct PS 369, and construct the Disposal Bypass Line.
- C. In accordance with Section 9 of the Agreement, City provided Developer written notice of default on March 13, 2017, in a personal meeting.
- D. Following multiple good faith discussions, the Parties have agreed that: (1) Developer shall cure its defaults as identified in the written notice provided on March 13, 2017, by July 31, 2017; (2) Developer shall pay its second fair share development fee payment to City by April 3, 2017; and (3) Developer's deadline to construct PS 370 shall be extended to July 31, 2017.
- E. The Parties now desire to amend the terms of the Agreement to reflect their understanding.

**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. Developer's Water Supply Obligation. Developer's deadlines for construction of the Water Supply Obligation, as set forth in Exhibit B to the Agreement, are hereby amended such that the completion date for improvements to PS 330, and the construction of PS 369, 370, and the Disposal Bypass Line shall be no later than July 31, 2017.
- 3. Developer's Development Fee Obligation. The Development Fee payment schedule, as set forth in Section 7 of the Agreement, is hereby amended such that Developer shall pay City its second payment (a lump sum of \$1,267,623.50) by April 3, 2017.

4. Certificates of Occupancy Withheld. The Parties agree that, notwithstanding Section 9 of the Agreement, Developer's failure to meet any of the new deadlines set forth herein 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.
5. Acknowledgment. Except as modified herein, the Agreement and all provisions contained therein remain in full force and effect and are hereby ratified and affirmed.
6. Counterparts. This First 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.
7. Exhibits. This First Amendment contains zero (0) exhibits:

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

[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

DEVELOPER

CITY OF FRESNO,  
a California municipal corporation

CRD East, Inc., a California corporation

By: \_\_\_\_\_  
Bruce Rudd, City Manager

By: \_\_\_\_\_  
Darius Assemi, President and CFO

By: \_\_\_\_\_  
Gary McDonald, VP and Secretary

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
DOUG T. SLOAN  
City Attorney

By: \_\_\_\_\_ Date  
Raj Singh Badhesha  
Deputy City Attorney