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Title: Approve Amendment No. 3 to the Copper River Ranch Water Supply Implementation Agreement approved by Fresno City Council on November 17, 2016 (Council District 6)

Sponsors: Department of Public Utilities

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Attachments: 1. THIRD AMENDMENT.pdf

Date	Ver.	Action By	Action	Result
5/17/2018	1	City Council	approved	

REPORT TO THE CITY COUNCIL

May 17, 2018

FROM: MICHAEL CARBAJAL, Interim Assistant Director
Department of Public Utilities

SUBJECT

Approve Amendment No. 3 to the Copper River Ranch Water Supply Implementation Agreement approved by Fresno City Council on November 17, 2016 (Council District 6)

RECOMMENDATION

The Administration recommends the City Council approve Amendment No. 3 to the Copper River Ranch Water Supply Implementation Agreement (Agreement) for the Developers of the Copper River Ranch Development (Copper River or the Project Area). Amendment No. 3 is provided for the convenience of the Developers to address default conditions caused by the Developers' failure to timely fulfill the obligations required by the Agreement. In exchange for an extension to complete the construction of certain water supply facilities, the Developer has paid \$567,623.50, which is the remaining balance due on the Developer's Development Fee obligation. The final payment and funds have been deposited into a trust fund pending approval of Amendment No. 3.

EXECUTIVE SUMMARY

On November 17, 2016, the Fresno City Council approved the Agreement with the Developers of the Copper River Ranch Development (Developer) to provide 4,900 GPM of firm water supply capacity

within the Project Area in accordance with a mutually-agreed upon project completion schedule. The Agreement also included a payment schedule whereby Developer is to pay City a total of approximately \$3.8 million for Developer's proportionate share of the cost of connecting the Project Area to the City's existing water system, including the Northeast Surface Water Treatment Facility (NESWTF). The signatory parties for the Developer are Mr. Darius Assemi and Mr. Gary McDonald.

On March 1, 2017, Developer defaulted on certain water supply construction obligations under the Agreement. In response to a notice of default, Developer requested an amendment to the Agreement for a one time extension to fulfill project conditions. In exchange, Developer has agreed to accelerate payment of a portion of the \$3.8 million proportionate share reimbursement due to City.

On August 1, 2017, Developer defaulted again on certain water supply construction obligations under the Agreement. In response to the default condition, Developer requested a second amendment to the Agreement for a second time extension to fulfill project conditions. In exchange, Developer has agreed to pay \$700,000.00 of its remaining \$1,267,623.50 Development Fee obligation, and Developer was to pay the final remaining balance of \$567,623.50 by December 1, 2018.

On December 1, 2017, Developer defaulted again on certain water supply construction obligations under the Agreement. In response to the default condition, Developer requested a third amendment to the Agreement for a third time extension to fulfill project conditions. In exchange for an extension to complete the construction of certain water supply facilities, the Developer has paid \$567,623.50, which is the remaining balance due on the Developer's Development Fee obligation. The final payment and funds have been deposited into a trust fund pending approval of Amendment No. 3.

The Administration recommends City Council approve Amendment No. 3 to the Agreement, which extends timelines to complete agreed upon water supply improvements and completes payment of Developer's Development Fee obligation.

BACKGROUND

On November 16, 2017, City staff met with the Developers to discuss the completion status for water supply projects required as a condition of the Agreement, the City's right to cease issuance of certificates of occupancy within the Project Area due to a default condition, and the path forward options in the event a third default condition occurred.

On December 1, 2017, Developer defaulted on its obligations under the Agreement by failing to timely construct and to complete the required work for Pump Station (PS) 330, PS 370, and the Manganese Disposal Line. Upon entering into a 3rd default condition, the Developer has requested that the City provide a third extension of time to allow Developer to complete the required water supply projects. After consulting with the Developer about the third default condition, the City has agreed to provide the Developer with a reasonable opportunity to cure the default by modifying the completion schedule for projects and payments required by the Agreement. For the convenience of the Developer, the City agrees to modify the implementation schedule with Amendment No. 3 to the Water Supply Implementation Agreement as follows:

Milestone Requirement	Originally Agreed Upon Completion Date	New Required Completion Date
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Increase Capacity of PS 330 from 1,200 gpm to 1,800 gpm	March 1, 2017	September 1, 2018
New PS 369 (minimum capacity 1,000 gpm)	March 1, 2017	Complete
New PS 370 (minimum capacity 500 gpm)	June 30, 2017	September 1, 2018
New PS 371 (minimum capacity 500 gpm)	December 1, 2018	December 1, 2019
Mn Discharge Pipeline for PS 330, 369, 370, and 371	March 1, 2017	September 1, 2018
1 st Payment Developer Fee Obligation	December 17, 2017	Paid
2 nd Payment Developer Fee Obligation	June 30, 2017	Paid
3 rd Payment (1 st Installment) Developer Fee Obligation	December 1, 2018	Paid
3 rd Payment (2 nd Installment) Developer Fee Obligation	December 1, 2018	Paid

The City’s Administration has authorized the continued issuance of certificates of occupancy for lots within the Project Area until such time that the Fresno City Council considers Amendment No. 3. Should the Fresno City Council not approve Amendment No. 3 to the Agreement, the Administration will discontinue issuing certificates of occupancy in the Project Area effective 8:00 am on Friday, May 18, 2018.

All other terms and conditions of the Agreement shall remain in effect. However, by entering into Amendment No. 3, the Developer acknowledges and agrees to limit the Equivalent Dwelling Units (EDUs) Allowance and the City shall not issue Certificates of Occupancy within the Project Area beyond 2,209 EDUs, which is 60 percent of the 3,682 EDUs authorized within the Project Area. Upon expanding PS 330 and constructing PS 370 and the Disposal Bypass Line, the 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. 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. Further, the City shall at all times retain the right to cease issuing building permits and certificates of occupancy for any lots within the Project Area if a 4th default condition occurs. The City’s obligation for a 4rd default condition caused by the Developer will be to notify the Developer in writing that the City will cease issuing building permits and certificates of occupancy on the first working day after an obligation has not been fulfilled.

Amendment No. 3 to the Agreement has been approved as to form by the City Attorney.

ENVIRONMENTAL FINDINGS

Pursuant to CEQA Guidelines section 15378(b)(5), this is not a project for the purpose of CEQA, as this is an organizational or administrative action of the government to enforce an existing obligation, and will not result in a direct or indirect physical change in the environment.

LOCAL PREFERENCE

Local preference was not considered because this Agreement regarding water supply infrastructure

development does not include a bid or award of a construction or services contract.

FISCAL IMPACT

There is no financial obligation for the General Fund for this Agreement. The payment of \$4,291,300 made by the Developers will be received into the Water Division Enterprise Fund to benefit the expansion and upgrade of the City's NESWTF, and to secure adequate water supply capacity, reliability, and redundancy for area served by the NESWTF.

Attachment:

Third Amendment to the Copper River Ranch Water Supply Implementation Agreement