

AGENDA ITEM NO. 9:15am #2 C

COUNCIL MEETING 11/18/08

APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

November 18, 2008

FROM:

RENE A. RAMIREZ, Director <sup>L.M.</sup>  
Department of Public Utilities <sub>for</sub>

BY:

STEPHEN A. HOGG, Assistant Director  
Department of Public Utilities, Wastewater Management Division

SUBJECT:

AGREEMENTS FOR THE TRANSFER OF RECLAMATION FACILITY AND DISPOSAL OF EFFLUENT AND ADOPTION OF AMENDMENT TO THE ANNUAL APPROPRIATION RESOLUTION (COUNCIL DISTRICT NO.6)

1. AUTHORIZE DIRECTOR OF DEPARTMENT OF PUBLIC UTILITIES TO NEGOTIATE AND ENTER INTO AGREEMENT WITH COPPER RIVER DEVELOPMENT COMPANY, INC. ("DEVELOPER") FOR THE TRANSFER TO THE CITY OF FRESNO ("CITY") OF THE NORTH FRESNO WASTEWATER RECLAMATION FACILITY ("NFWRF"), INCLUDING REIMBURSEMENT OF DEVELOPER IN THE AMOUNT OF \$3,628,221.00 FOR PAYMENT OF EXCESS IMPACT FEES AND FOR THE CONSTRUCTION OF EXPANSION CAPACITY IN THE NFWRF
2. AUTHORIZE DIRECTOR OF DEPARTMENT OF PUBLIC UTILITIES TO NEGOTIATE AND ENTER INTO AGREEMENT WITH CONSOLIDATED LAND COMPANY AND CONSOLIDATED INDUSTRIES, INC. FOR THE DISPOSAL OF TREATED WASTEWATER EFFLUENT ON THE COPPER RIVER COUNTRY CLUB GOLF COURSE ("GOLF COURSE"), INCLUDING REIMBURSEMENT IN THE AMOUNT OF \$252,000.00 FOR PREVIOUSLY INCURRED OPERATING EXPENSES IN PREPARATION FOR RECEIVING DISPOSAL OF EFFLUENT
3. ADOPT THE 48TH AMENDMENT TO THE ANNUAL APPROPRIATION RESOLUTION (AAR) NO. 2008-162 APPROPRIATING \$3,880,200.00 FOR REIMBURSEMENT OF CONSTRUCTION COSTS OF THE NORTH FRESNO WASTEWATER RECLAMATION FACILITY AND OPERATING COSTS OF DISPOSAL OF TREATED WASTEWATER EFFLUENT

**KEY RESULT AREA**

One Fresno

Presented to City Council

Date 11/18/08

Disposition Approved

Res 2008-316

**RECOMMENDATIONS**

Staff recommends the City Council:

1. Approve an agreement with Copper River Development Company, Inc. for the transfer to the City of the NFWRF including reimbursement to the developer in the amount of \$3,628,221.00 for payment of

**SUBJECT TO MAYOR'S VETO**

## FISCAL IMPACT STATEMENT

PROGRAM:

<u>RECOMMENDATION</u>	<u>TOTAL OR CURRENT</u>	<u>ANNUALIZED COST</u>
Direct Cost	<u>\$ 3,880,200.00</u>	
Indirect Cost	<u>\$ 0.00</u>	
TOTAL COST	<u>\$ 3,880,200.00</u>	
Additional Revenue or Savings Generated	<u>\$ 0.00</u>	
Net City Cost	<u>\$ 3,880,200.00</u>	
Amount Budgeted (If none budgeted, identify source)	<u>\$ 3,880,200.00*</u>	

\*Fund 40502 Wastewater Connection Fee Fund \$2,900,900.00

\*Fund 40593 Copper Avenue Sewer Lift Station Fund \$76,600.00

\*Fund 40515 Herndon Sewer Trunk Fund \$650,700.00

\*Fund 40512 Sewer Enterprise Operating Rate Stabilization \$252,000.00

## EFFLUENT DISPOSAL AND DELIVERY AGREEMENT

This Effluent Disposal and Delivery Agreement (the "Agreement") is entered into as of November 20, 2008 by and between CONSOLIDATED LAND COMPANY, a California limited partnership ("CLC"), CONSOLIDATED INDUSTRIES, INC., a California corporation ("CII"), and Copper River Country Club, a California corporation ("Club") (CLC, CII, and Club sometimes collectively referred to as "Club"), and the City of Fresno, a municipal corporation (the "City") sometimes collectively referred to in this Agreement as the "Parties".

### RECITALS

- A. The Copper River Project is a master planned residential and commercial project located in northeast Fresno, north of Copper Avenue between Friant Avenue and Willow Avenue.
- B. Copper River Country Club ("Club") is located within the Copper River Project and contains an 18-hole golf course ("Golf Course") more particularly described in Exhibit A to this Agreement.
- C. In connection with development of Copper River Ranch project, COPPER RIVER DEVELOPMENT COMPANY, INC., a California corporation ("CRD"), has constructed a Wastewater Treatment Facility ("Facility"), more particularly described in Exhibit B to this Agreement, which is to be dedicated to the City and thereafter operated by the City's Department of Public Utilities, and which will, as a by-product of its operation, produce "Disinfected Tertiary Recycled Wastewater" as defined in Title 22, Division 4, Chapter 3, California Code of Regulations (hereinafter referred to as "DTE"). The terms and conditions of such dedication are memorialized in a separate agreement (the "Transfer Agreement") to be executed by the City and CRD, but not until such time as this Agreement has been fully executed and the Transfer Agreement has been reviewed and approved as to form and content by Club. The Effective Date of this Agreement shall be the date upon which the approved Transfer Agreement is fully executed by CRD and City. The Transfer Agreement shall not be construed to amend, supersede, or otherwise affect the rights of Club as set forth in this Agreement.

E. To facilitate approval of the Copper River Ranch project entitlements, Club has previously agreed to accept and apply DTE to the Golf Course, as means of disposing of DTE as a supplemental source of irrigation water for the Golf Course.

F. Club and CRD have previously entered into various agreements establishing their respective rights and obligations related to Club's acceptance and application of DTE on the Golf Course, including the following documents (collectively referred to as the "DTE Agreements"):

1. the "Easement Agreement for Copper River Ranch" dated December 23, 2004, and recorded on December 30, 2004, as Document No. 2004-0291147, in the Official Records of Fresno County, California (the "Easement Agreement"), including the "Golf Course Maintenance Standards" which are attached to the Easement Agreement for Copper River Ranch as Exhibit D;

2. the "DTE Easement Agreement" dated February 4, 2005, and recorded on February 8, 2007, as Document No. 2005-0029764, in the Official Records of Fresno County, California (the "Disposal Easement"),

3. the "DTE License Agreement" of even date herewith, and recorded on November \_\_, 2008, as Document No., in the Official Records of Fresno County, California (the "DTE License Agreement"),

4. the "Development Agreement" dated December 23, 2004, and recorded on December 30, 2004, as Document No. 2008-0291148, in the Official Records of Fresno County, California (the "Development Agreement"), including the "DTE Delivery Criteria," the "Spray Use Management Plan" and "Golf Course Interface Criteria" which are attached to the Development Agreement as Exhibits H, I, and R.

5. "Cost Sharing Agreement Criteria – Effluent Disposal Contract – Copper River Country Club – North Fresno Reclamation Plant" which was Exhibit H to the Memorandum of Understanding #2, among CLC, CII and CRD dated December 23, 2004. A true and correct copy of which is attached to this Agreement as Exhibit C (the "MOU2").

6. California Regional Water Quality Control Board, Central Valley Region, Order No. R5-2006-0090 NPDES No. CA0085189, dated September 21, 2006, authorizing the discharge of DTE from the Facility (the "NPDES Permit").

G. City expressly does not assume any obligations under the DTE Documents. This Agreement is intended to establish the relationship between the City and the Club in relation to application of DTE on the Golf Course.

H. CRD is obligated to complete, at CRD's sole cost and expense, a retrofit of the existing Golf Course irrigation system as necessary to accommodate .71 MGD of DTE from the Facility ("Golf Course Retrofit") in conformance with NPDES Permit and the DTE Documents. The scope, terms, and conditions of the Golf Course Retrofit is more fully set forth in a separate written agreement between the Club and CRD. Upon installation of the Golf Course Retrofit, or segments thereof, title to all irrigation system infrastructure together with any additions or replacements thereto shall pass to and be vested in the Club.

IN WITNESS THEREOF, AND IN RECOGNITION OF THE FOREGOING RECITALS WHICH ARE INCORPORATED BY REFERENCE, THE PARTIES AGREE AS FOLLOWS:

### AGREEMENT

#### 1. DTE Disposal by City

1.1 Mandatory Nature of DTE Disposal. Club maintains an affirmative obligation to accept and apply, at agronomic rates, a maximum of .71 MGD (710,000 gallons per day) of DTE pursuant to the NPDES Permit (the "Mandatory DTE Deliveries").

1.2 Metering and Character. Metering of all DTE delivered to the Club shall be the responsibility of the City using professionally calibrated and certified flow meters.

1.3 DTE Disposal Fee. The City is obligated to reimburse to the Club the actual costs incurred or associated with the Club's acceptance and discharge of DTE on the Golf Course from Mandatory DTE Deliveries (the "Disposal Fee"). The Club and the City acknowledge that a determination of actual costs may be difficult and agree to following:

1.3.1 Within fifteen (15) days of the Effective Date of this Agreement, City shall reimburse to Club the accrued but unpaid 2008 DTE Disposal Fee, computed at a monthly fee of \$10,500 (the "Estimated Cost"), and advance the 2009 DTE Disposal Fee in consideration of the Club's willingness to accept the Estimated Cost through December 31, 2009. The total Disposal Fee to be paid by City for the period beginning January 1, 2008, and ending December 31, 2009, is \$252,000.

1.3.2 The Club shall maintain an accounting of all golf course maintenance costs consistent with its current accounting practices, and shall provide quarterly reports to the City for the periods ending March 31, 2009, June 30, 2009, and September 30, 2009, as soon thereafter as the statements are typically completed. The Club shall also endeavor to identify those costs or incremental cost increases the Club believes to be associated with its use of DTE for irrigation purposes. Subject to the Mandatory DTE Delivery termination provisions, the Club shall continue to provide this cost data to the City on the same dates of each successive calendar year.

1.3.3 The Club and the City shall meet and confer in good faith, beginning no later than October 1, 2009, and continue meeting thereafter as necessary to establish the Disposal Fee for the period beginning January 1, 2010. The Disposal Fee shall be set at a per gallon basis which the parties agree reflects the actual costs to the Club to take Mandatory DTE. Unless otherwise agreed, and subject to the Mandatory DTE Delivery termination provisions, the City and the Club shall meet and confer on or about October 1 of each successive year for the purpose of reviewing and adjusting, if necessary, the Disposal Fee to an amount which reflects the actual costs to the Club associated with the Mandatory DTE Deliveries. Unless otherwise agreed, the prior year's actual costs will serve as the following year's estimate.

1.3.4 Beginning on February 1, 2010 and continuing monthly thereafter, the City will pay a Disposal Fee to the Club based upon the metered amount of Mandatory DTE sent to the Club in the prior month. The Mandatory DTE will equal an amount of the total DTE sent to the Club minus the amount of DTE Option, if any, sent to the Club. The City is responsible to pay a monthly fee pursuant to this paragraph until changed by the mutual assent of the parties, or the City's exercise of the termination of Mandatory DTE pursuant to Section 1.7. For purposes of this Agreement, all deliveries of DTE received by CLUB which are not made pursuant to a Notice of Exercise by Club, pursuant to Section 3.2, shall be considered Mandatory DTE subject to the Disposal Fee.

1.3.5 If, after meeting and conferring in good faith, the parties do not reach agreement on the appropriate amount to be charged as the Disposal Fee on or before the following January 1 of any given year (90 days, unless the time is mutually extended) either party may refer the matter to (i) a three party panel comprised of a representative selected by the City, a representative selected by the Club and a third representative selected by the other two representatives or (ii) to arbitration pursuant to Section 5.8. In the event only one party seeks to use Arbitration pursuant to Section 5.8, the costs to use Arbitration shall be borne by the requesting party. The decision of the three party panel or arbitrator(s) shall be final. Subject to retroactive adjustments upon final determination of the DTE Disposal Fee to the applicable adjustment date according to the procedures set forth above, City shall continue to pay the applicable monthly DTE Disposal Fee during the adjustment process.

1.3.6 During the annual review of the Disposal Fee, it may be determined by the parties (either on their own or through a decision of the three party panel or arbitrators) that the City has either overpaid or underpaid the actual costs to the Club to take Mandatory DTE. In the event of overpayment by the City, the amount overpaid shall be refunded back to the City in the form of prorated credits against future Disposal Fees. In the event of underpayment by the City, the amount underpaid shall be reimbursed to the Club within 30 days of the panel or arbitrator's decision.

1.3.6 Notwithstanding any provision herein to the contrary, the parties may adjust the DTE Disposal Fee at any time by mutual written agreement.

1.4. Omitted.

1.5 Covenants, Conditions and Warranties.

1.5.1 City warrants and guarantees that only DTE of a quality and quantity conforming to the NPDES Permit shall be delivered to the Club from the Facility. City warrants that it shall at all times comply with the NPDES Permit and City shall be responsible for any consequences of the failure to do so.

1.5.2 Club warrants that it shall at all times comply with the NPDES Permit and Club shall be responsible for any consequences of the failure to do so.

1.6. Coordination. The Parties agree at all times to maintain routine and effective communication and coordination. Each Party shall identify and provide contact information, including emergency contact information, for at least one senior operator and one manager/executive who shall act as primary contacts for operational and administrative coordination.

1.7. Termination of DTE Disposal by City. The City may terminate the Mandatory DTE Deliveries, thereby relieving the City from its obligations in this Section 1, and specifically, the obligation to pay the Disposal Fee, on not less than ninety (90) days prior written notice to the Club, subject to the following conditions:

1.7.1 All Disposal Fees due to the Club have been or will be paid through the date of termination.

1.7.2 City has secured an amendment to the NPDES Permit that allows the City the ability to discharge the Mandatory DTE Deliveries at a location other than the Golf Course while still allowing the Club the ability to discharge the DTE Option on the golf course. No amendment to the NPDES Permit

may be made or agreed to without the prior written consent of Club, which shall not be unreasonably withheld, delayed, or conditioned.

- 1.7.3 City records a quitclaim deed terminating all interests otherwise granted under the Disposal Easement.
- 1.7.4 Under no circumstances will the City affect, limit, prejudice, or terminate the Club's right to exercise its rights described in Section 3 below or release CRD from any obligations set forth in Section 2 below, without the prior written consent of the Club.

## 2. Golf Course Irrigation System

2.1 Maintenance and Repair of Golf Course Irrigation System. Until such time as the City terminates the Mandatory DTE Deliveries, Club, at its sole cost and expense, will undertake all normal and routine maintenance, repair and upkeep, and perform all capital replacements resulting from normal golf course wear and tear, as necessary for the irrigation system to comply at all times with the NPDES Permit. All such work will be performed in a good and workmanlike manner so as not to impede the operation of the Facility or the continuous use of the Golf Course for DTE disposal at agronomic rates. Club shall not be responsible for the repair and or replacement of any portion of the Golf Course Retrofit arising from a design or installation defect, heightened regulations, or catastrophic damage.

2.2. Post-Termination Maintenance. Notwithstanding any provision herein to the contrary, at such time as the City has terminated the Mandatory DTE deliveries as set forth in Section 1.7 above, the Club shall be responsible for any subsequent maintenance and/or retrofitting or other repairs required as a condition to the Club's right and ability to continue receiving and disbursing Club DTE pursuant to the DTE Option.

2.3 No Warranty. The Facility and Golf Course Retrofit were designed and constructed by CRD and or their employees or agents. City and Club each acknowledge, as to the other, that no warranties are being made, either express or implied, regarding the Golf Course Retrofit.

2.4 DTE License Agreement. Club agrees to the assignment by CRD, as "Licensee," of all of Licensee's rights and obligations under the DTE License Agreement, to City, and City as the successor Licensor, assumes and agrees to be bound by all of the terms and conditions of the DTE License Agreement.

### 3. DTE Delivery Option of CLUB

3.1 Club Priority Right to Call Upon .71 MGD DTE from the WWTF. For good and valuable consideration, the receipt and sufficiency of which is acknowledged by the City, the Club shall at all times retain the option to demand and receive up to .71 MGD (710,000 gallons per day) of DTE generated by the Facility, at no cost or expense to Club (the "DTE Option"). Club's DTE Option is independent from Club's obligation to accept Mandatory DTE Deliveries as set forth in Section 1.1 above, and the DTE Option shall survive the City's right of termination described in Section 1.7 above.

3.2 Notice of Exercise. The DTE Options shall be regarded as a series of independent successive daily options with a maximum delivery of .71 MGD of DTE from the Facility. The failure of Club to exercise any DTE Option, either in whole or in part, shall have no prejudicial effect or be construed as a waiver of Club's right to exercise subsequent DTE Options. Club shall endeavor in good faith to provide City with as much advance notice of CLUB's intention to call for all or a part of Club's daily DTE Option, as is practically possible. Club may elect, in its discretion, to give a standing notice from time to time, requiring City to deliver up to .71 MGD per day, or a lesser amount as may be specified in such standing notice, which will remain in effect until revoked by Club. In the event of an unanticipated emergency need, Club shall provide not less than seventy-two (72) hours prior notice of its intent to exercise one or more of its successive DTE Options. Regardless of the timing of the notice, the City agrees to use its best efforts to make DTE available to the Club without undue delay.

3.3 Priority Use. Club's DTE Options affect the first .71 MGD of DTE produced by the Facility on a daily basis. In the event the City contracts for the sale or other delivery of DTE from the Facility to third parties, or other local governmental agencies and

departments, including other departments within the City of Fresno, all such agreements and resulting obligations to deliver DTE shall be made specifically subject to the Club's first priority DTE Option as set forth in this Section 3, so as to perfect the Club's rights under the DTE Option and avoid bona fide purchaser claims by third parties.

3.4 Allowed Use. Club shall disburse all DTE Option on or about the golf course in conformance with the NPDES Permit, as may be amended.

#### 4. Intentionally Omitted

#### 5. General Provisions

5.1 Terms. The City acknowledges that terms and conditions of this Agreement are fair and reasonable to the City, and further, the uses of the DTE contemplated herein represent are efficient, reasonable, and beneficial and in the best interests of the City.

5.2 Notices. All notices under this Agreement will be in writing and will be given by personal delivery; or by registered or certified U.S. mail, postage prepaid, return receipt requested; or by facsimile if transmitted by a machine that produces a transmission report verifying the date and time of transmission and the telephone number to which transmitted, and a confirming hard copy is mailed to the recipient; or by overnight delivery service that issues a receipt; and addressed to the appropriate party at the address set forth below. Notice given (a) by personal delivery will be effective upon delivery; (b) by mail will be effective upon receipt or three calendar days after the postmark date, whichever is earlier; (c) by facsimile will be effective on the date shown on the transmission receipt; and (d) by overnight delivery service will be effective on the date of receipt.

For City:

City of Fresno  
2600 Fresno St  
Room 3065  
Fresno, CA 93721-3601  
Attn: Public Utilities Director  
Fax: (559) 498-1304

For Club:

Consolidated Industries, Inc.  
7550 N. Palm  
Suite 105  
Fresno, CA 93711  
Attn: William R. Tatham, Sr.  
Fax: (559) 434-9680

With copies to:

City Attorney  
2600 Fresno St  
Room 2031  
Fresno, CA 93721-3602  
Fax: (559) 488-1084

Michael F. Tatham, Esq.  
7550 N. Palm  
Suite 105  
Fresno, CA 93711  
Fax: (559) 354-0149  
Email: mftatham@ciifresno.com

Any party may change its notice address by giving notice to the other party pursuant to this section.

5.3 Successors and Assigns. Club may assign all or any portion of the rights established by this Agreement, to any successor owner or operator of the Golf Course and/or Club, who shall also be obligated to perform each and every obligation of Club as otherwise set forth herein including the Recycled Water Criteria. Club's right to the DTE Disposal Fee and Club's DTE Options are not transferable except in conjunction with a conveyance or transfer of the Golf Course or Golf Course operations.

5.4 Further Assurances. As of the Effective Date, the Parties represent and affirm that each has negotiated in good faith and has not withheld any information, data, or other detail which might have a material impact on the other's ability or willingness to enter into this Agreement. The City affirms its commitment to allow Club to fully recognize the benefit of the Development Documents with CRD, as City's predecessor and assignor, and to do so free of unreasonable interference by the City, and agree to fully cooperate in good faith with Club to that end. Club affirms its commitment to allow City to own, maintain, and operate the Facility free of unreasonable interference by Club, and agrees to fully cooperate in good faith with the City to that end. Consistent with the foregoing provisions, in the event it is subsequently determined that additional documentation and/or cooperation is or may be required to either secure or protect the rights and obligations of the Parties hereunder, the Parties agree to work in good faith and cooperate fully with one another to ensure that each realizes the full benefit of this Agreement.

5.5 Merger. This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter hereof. In the event of a dispute between the terms of the Recycled Water Criteria and this Agreement, the specific language of the Recycled Water Criteria shall control.

5.6 Attorneys Fees. If either party initiates or defends any legal act proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party its reasonable costs and attorneys fees.

5.7 Governing Law. This Agreement shall be construed in accordance with the laws of the State of California.

5.8 Arbitration. In the event of a disagreement as to the amount of the Disposal Fee , such dispute may be submitted to binding arbitration, pursuant to Section 1.3.5, conducted in the City of Fresno before a panel of three arbitrators pursuant to the *Commercial Rules of the American Arbitration Association* and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Depositions may be taken and discovery obtained in such arbitration proceeding as provided in *California Code of Civil Procedure* Section 1283.05, which is incorporated herein by reference, each Party will designate one arbitrator and the two selected arbitrators will select the third arbitrator. The arbitrators must be attorneys at law with not less than ten (10) years experience in real property development matters in California, or be a former or retired judge. All proceedings will be reported by a certified shorthand court reporter and written transcripts of the proceeding will be prepared and made available to the parties. The panel will prepare in writing and provide to the parties their decision with the reasons upon which the decision of the arbitrators is based. The arbitrators will have no power to award punitive or exemplary damages. The agreement of the Parties to this arbitration provision is voluntary. The right to arbitration for either party is limited to a dispute regarding the amount of the Disposal Fee pursuant to Section 1.3.5. For any other controversy or claim arising out of the Agreement, arbitration will only be allowed at the mutual consent of all parties to the Agreement.

5.9 Discretionary Governmental Actions. Nothing in this Agreement shall be construed to prevent the City from exercising its police powers to approve or deny any land use entitlement or enforce the conditions and requirements of any land use entitlements or impose additional requirements pursuant to future City ordinances or regulations adopted in compliance with all applicable laws and regulations in order to protect the public's health, safety, and welfare, or to enforce state and/or federal law, regulations and/or administrative or legal orders. Nothing in this Agreement shall be construed to require the City to take any legislative action.

5.10 No Third Party Beneficiary. There shall be no third party beneficiaries to this Agreement.

5.11 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.

5.12 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.

5.13 Counterparts. This Agreement may be signed in one or more counterparts, each of which when signed, irrespective of the date signed and delivered, will be deemed to constitute one instrument.

5.14 Exhibits. Each of the exhibits referenced as attached to this Agreement is by the reference incorporated into and made a part of this Agreement for all purposes.

5.15 Relationship of Parties. Nothing in this Agreement or any document signed in connection with this Agreement will be construed as creating a partnership, joint venture, agency relationship or employment relationship between the parties or their contractors, subcontractors, employees, agents or representatives.

5.16 Further Assurances. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. The parties each agree to perform and sign all further acts and documents and assurances as are reasonably required to carry out this Agreement.

5.17 Amendment, Modification and Cancellation. This Agreement may be amended,

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modified or cancelled by mutual consent of the parties in writing. All amendments and modifications, when properly approved and executed, will be recorded in the same manner as this Agreement.

CITY OF FRESNO,  
a Municipal Corporation.

By:   
Rene A. Ramirez, Director  
Public Utilities Department

CLUB:

CONSOLIDATED LAND COMPANY, a  
California limited partnership

By:   
William R. Tatham, Sr.  
General Partner

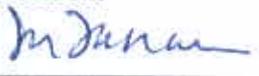
By:   
Michael F. Tatham  
General Counsel

ATTEST:  
REBECCA E. KLISCH  
City Clerk

By:   
Deputy 11/25/08

CONSOLIDATED INDUSTRIES, INC., a  
California corporation

By:   
William R. Tatham, Sr.  
President

By:   
Michael F. Tatham  
VP and Secretary

Approved As to Form and Content:

James C. Sanchez  
City Attorney

By:   
Kathryn Phelan  
Deputy City Attorney

COPPER RIVER COUNTRY CLUB, a  
California corporation

By:   
William R. Tatham, Sr.  
President

By:   
Michael F. Tatham  
VP and Secretary

EXHIBIT A

LEGAL DESCRIPTION OF CRCC GOLF COURSE

All that land situated In Section 11 and 12, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, in the County of Fresno, State of California, more particularly described as follows:

Parcel 1

Parcel A of Parcel Line Adjustment 04-06, as described in Certificate of Compliance No. PLA 04-06(a) recorded December 17, 2004, as Document No. 20040282714, Official Records, Fresno County;

Together with Parcel B of Parcel Line Adjustment 04-03, as described in Certificate of Compliance No. PLA 04-03(b) recorded December 16, 2004, as Document No. 20040281279, Official Records, Fresno County;

Together with Parcel D of Parcel Line Adjustment 04-03, as described in Certificate of Compliance No. PLA 04-03(d) recorded December 16, 2004, as Document No. 20040281281, Official Records, Fresno County;

Together with Parcel B of Parcel Line Adjustment 02-13, as described in Certificate of Compliance No. PLA 02-13(b) recorded January 12, 2004, as Document No. 2004-0008181, Official Records, Fresno County;

Together with Parcel A of Parcel Line Adjustment 02-10, as described in Certificate of Compliance No. PLA 02-10(a) recorded January 5, 2004, as Document No. 2004-0001906, Official Records, Fresno County;

Excepting therefrom that portion of said Parcel A of PLA 02-10 more particularly described as follows:

BEGINNING at the Northeast corner of Parcel 1, as shown on Parcel Map 6208, filed in Book 40 of Parcel Maps at Page 6, Fresno County Records, said point also being the Northwest corner of Parcel 7, as shown on Parcel Map 3989, filed in Book 27 of Parcel Maps at Pages 95 and 96, Fresno County Records, said point also the Northeast corner of Parcel A of said PLA 02-10;

Thence South  $01^{\circ} 53' 03''$  West, along the East line of said Parcel A of PLA 02-10, a distance of 134.24 feet;

Thence leaving said East line and proceeding into said Parcel A of PLA 02-10, North  $42^{\circ} 12' 52''$  West a distance of 27.93 feet;

Thence North 50° 20' 10" West a distance of 172.56 feet to a point on the North line of said Parcel A of PLA 02-10;

Thence along said North line, North 88° 46' 19" East, a distance of 156.05 feet to the POINT OF BEGINNING;

Together with Parcel B of Parcel Line Adjustment 02-11, as described in Certificate of Compliance No. PLA 02-11(b) recorded January 5, 2004, as Document No. 2004-0001910, Official Records, Fresno County;

Excepting therefrom that portion of said Parcel B of PLA 02-11 more particularly described as follows:

BEGINNING at the Northwest corner of Parcel 7, as shown on Parcel Map 3989, filed in Book 27 of Parcel Maps at Pages 95 and 96, Fresno County Records, said point also being the Northwest corner of "Existing Parcel 3" as shown on said PLA 02-11, said point also being on the West line of said Parcel B of PLA 02-11;

Thence North 01° 49' 36" East, along the west line of said Parcel 2, a distance of 434.86 feet to a point;

Thence leaving said west line and proceeding South 42°40' 51" East a distance of 48.24 feet;

Thence South 37° 22' 11 " East a distance of 563.24 feet; Thence South 03° 34' 30" East a distance of 258.70 feet; Thence South 20° 37' 17" East a distance of 47.72 feet; Thence South 10° 08' 55" West a distance of 192.38 feet; Thence North 62° 46' 43" West a distance of 48.69 feet;

Thence North 42° 12' 52" West a distance of 518.80 feet to a point on the West line of said Parcel 2;

Thence along said West line, North 01° 53' 03" East, a distance of 134.24 feet to the POINT OF BEGINNING;

Together with Parcel A of Parcel Map No. 6349, recorded in Book 42 of Parcel Maps at Page 50, Fresno County Records;

Together with that portion of Parcel B of Parcel Line Adjustment 04-06, as described in Certificate of Compliance No. PLA 04-06(b) recorded December 17, 2004, as Document No. 20040282715, Official Records, Fresno County, more particularly described as follows:

COMMENCING at the southeast corner of that parcel of land described in Certificate of Compliance No. PLA 02-14(c), recorded as Document No. 2004-0008188, of Official Records, Fresno County, said point being also the center quarter corner of said Section 12;

Thence North  $01^{\circ} 52' 22''$  East, along the east line of said parcel, a distance of 1323.41 feet,

Thence North  $88^{\circ} 32' 44''$  East, along the south line of said parcel, a distance of 567.67 feet to the POINT OF BEGINNING,

Thence leaving said South line and proceeding North  $58^{\circ} 08' 51''$  East a distance of 12.48 feet;

Thence North  $13^{\circ} 26' 33''$  East a distance of 205.12 feet;

Thence North  $24^{\circ} 57' 06''$  East a distance of 101.85 feet, to a point on the East line of said Krum easement;

Thence along said East line, South  $01^{\circ} 52' 40''$  West, a distance of 296.27 feet to a point on the south line of said Krum easement;

Thence South  $88^{\circ} 32' 44''$  West, along the south line of said Krum easement, a distance of 91.57 feet; to the POINT OF BEGINNING.

#### Parcel 2

Together with all that real property described as "Easement(s) for Golf Course Property" in Exhibit "D" of that Grant of Easement recorded on April 18, 1996 by and between Dr. Leroy H. Krum (Grantor) and Consolidated Land Company (Grantee) as Document No. 9609452, Official Records of Fresno County, and hereinafter known as the "Krum Easement"

#### Parcel 3

All that real property described as "Easement for Golf Course Purposes" in Exhibit "A" of that Grant of Easement recorded on November 17, 1993 by and between Brent Joseph Lanier and Andrea Byrum Lanier (Grantors) and Consolidated Land Company (Grantee) as Document No. 93178288, Official Records of Fresno County, and hereinafter known as the "Lanier Easement".

EXHIBIT B

WASTE WATER TREATMENT PLANT LEGAL DESCRIPTION

That real property situated in the Southeast Quarter of Section 11, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, according to the Official United States Government Township Plat thereof, said real property being described as "Corrected Legal Description — Parcel 1" in a Grant Deed recorded April 13, 2005 as Document No. 2005-0081069, Official Records of Fresno County, said real property being more particularly described as follows:

COMMENCING at the southwest corner of said Southeast Quarter; thence South 89° 25' 01" East, along the south line of said Southeast Quarter, a distance of 987.71 feet to the southerly prolongation of the west line of said Parcel 1 as described in said Document No. 2005-0081069; thence North 1° 05' 32" East, along said southerly prolongation, a distance of 20.00 feet to the southwest corner of said Parcel 1 and the TRUE, POINT OF BEGINNING of this description; thence continuing North 1° 05' 32" East, along the west line of said Parcel 1, a distance of 380.00 feet; thence North 45° 50' 15" East, along the northwesterly line of said Parcel 1, a distance of 28.41 feet; thence South 89° 25' 01" East, parallel with said south line of said Southeast Quarter and along the north line of said Parcel 1, a distance of 345.00 feet to the northeast corner of said Parcel 1, said northeast corner also being the northwest corner of that parcel of land described in a Grant Deed recorded February 7, 1989 as Document No. 89013894, Official Records of Fresno County; thence South 1° 05' 32" West, along the east line of said Parcel 1 and along the west line of said parcel described in Document No. 89013894, a distance of 400.00 feet to the southeast corner of said Parcel 1; thence North 89° 25' 01" West, parallel with and 20.00 feet north of the south line of said Southeast Quarter and along the south line of said Parcel 1, a distance of 365.00 feet to the TRUE POINT OF BEGINNING.

TOGETHER WITH the underlying fee interest, if any, contiguous to the above described real property in and to East Copper Avenue.

Contains a gross area of 3.52 acres and a net area of 3.35 acres.

(gross area includes the 20.00 foot wide strip of land north of the south line of the Southeast Quarter of said Section 11 contiguous to the above described parcel as described in the document recorded December 28, 1901, in Book 219 at Page 239, Official Records Fresno County).

November 19, 2008

Council Adoption: 11/18/08

TO: MAYOR ALAN AUTRY

RECEIVED

Mayor Approval:

FROM: REBECCA E. KLISCH, CMC  
City Clerk

REK 2008 NOV 25 PM 1:55

Mayor Veto:

Override Request:

CITY CLERK, FRESNO CA

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 11/18/08, Council took legislative action entitled **Auth agrmnt w/Consolidated Land Company, etc, disposal of treated wastewater effluent @ Copper River Country Club Golf Course, \$252,000, Item No. 9:15 #2 C-2**, by the following vote:

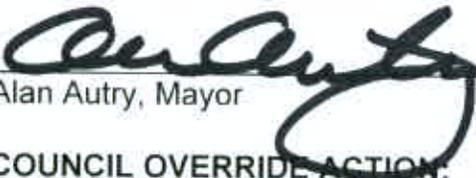
Ayes	:	Calhoun, Caprioglio, Dages, Duncan, Perea, Sterling
Noes	:	None
Absent	:	Xiong
Abstain	:	None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before December 1, 2008. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10<sup>th</sup> day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

\*\*\*\*\*  
APPROVED:

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)

  
Alan Autry, Mayor

Date: 11/25/08

COUNCIL OVERRIDE ACTION:

Date: \_\_\_\_\_

Ayes	:
Noes	:
Absent	:
Abstain	: