

AGENDA ITEM NO. <i>9:15am #2 C</i>
COUNCIL MEETING <i>11/18/08</i>
APPROVED BY
DEPARTMENT DIRECTOR <i>Carl M. Wata</i>
CITY MANAGER <i>Bruce Rindell</i>

November 18, 2008

**FROM:** RENE A. RAMIREZ, Director *L.M.*  
Department of Public Utilities *FOR*

**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**

## REPORT TO THE CITY COUNCIL

Approve Agreements with Copper River; Adopt 48<sup>th</sup> Amendment to AAR

November 18, 2008

Page 2

excess impact fees and construction of capacity expansion improvements in the NFWRF and authorizing the City Manager, or designee, to execute the same.

2. Approve an agreement with Consolidated Land Company and Consolidated Industries, Inc. for the disposal of treated wastewater effluent (to be used as landscape irrigation) on the Copper River Country Club golf course including reimbursement in the amount of \$252,000.00 for two years of operations and maintenance (O&M) expenses in preparation for receiving DTE.
3. Adopt the 48th amendment to the Annual Appropriation Resolution (AAR) No. 2008-162 to appropriate funds for reimbursements to the Developer and the Golf Course.

### EXECUTIVE SUMMARY

The Copper River Development Company Inc. has commenced the development of approximately 760 acres generally known as Copper River Ranch. At full build-out, the Project is expected to generate up to 0.71 million gallons per day ("MGD") of wastewater, which will be treated, disinfected and reused. Pursuant to the Conditions of Approval and the terms of the Master Conditional Use Permit, the Developer constructed the NFWRF with a treatment capacity of 0.71 MGD. The 0.71 MGD of treatment and disposal capacity is sufficient to treat wastewater flows from the Project. The Developer also constructed the NFWRF to serve approximately 500 additional EDUs for properties and potential developments that could be integrated into/with the Project or a total of 0.83 MGD. At the City's request, the Developer designed and constructed the NFWRF to readily accommodate expansion from the 0.83 MGD treatment capacity to a planned build out treatment capacity of 1.25 MGD. The additional 0.42 MGD treatment capacity is intended to serve existing development South of Copper Avenue already connected to the lift station and the remaining development in the area North of Copper Avenue, not included in the Project.

The Project surrounds the existing Copper River Country Club that includes an 18-hole championship golf course. The Developer will complete disposal facilities on the Golf Course and they will be made available to the City for its use in connection with the operation of the NFWRF. Up to 0.71 MGD of treated effluent from the NFWRF will be delivered to the Golf Course. The Waste Discharge Requirements issued by the State of California for the operation of the facility identifies irrigation of the Golf Course as the primary means of disposal for the DTE and staff negotiated an agreement with Consolidated Land Company And Consolidated Industries, Inc. to accommodate the use of the Golf Course for effluent reuse, including reimbursement in the amount of \$252,000.00 for two years operating and maintenance expenses in preparation for receiving DTE based on a mutually agreed rate of \$10,500 per month.

The Developer will transfer the NFWRF to the City and the City agrees to assure Developer's Reserved Capacity of up to 0.83 MGD of treatment and disposal capacity, in the form of a "Will Serve" letter which shall be useable anywhere within the Project Area. The City will provide a reimbursement to the Developer for a portion of the previously paid sewer connection and wastewater facility related fees and costs incurred for provisions for expansion capacity beyond 0.83 MGD. The City will make a one-time payment to the Developer in the amount of \$3,628,221.00 as reimbursement for the construction of improvements allowing capacity expansion of the facility and excess impact fees paid by the Developer. Funds for the reimbursement are available in the Copper Avenue Sewer Lift Station, Wastewater Connection Fee and Herndon Sewer Trunk funds. These funds consist of impact fees collected for the construction of infrastructure to collect and treat wastewater generated by new development in this area. Adoption by Council of the 48th amendment to the Annual Appropriation Resolution (AAR) No. 2008-162 is necessary to appropriate funds for the Developer reimbursement and reimbursement to the Golf Course.

## REPORT TO THE CITY COUNCIL

Approve Agreements with Copper River; Adopt 48<sup>th</sup> Amendment to AAR

November 18, 2008

Page 3

### KEY OBJECTIVE BALANCE

These Agreements balances the three Key Objectives of Customer Satisfaction, Employee Satisfaction and Financial Management. Customer Satisfaction will be enhanced by the Department's ability to provide the infrastructure necessary for the treatment of wastewater generated in the Northeast portion of the community and disposal of the treated effluent in a sustainable and environmentally appropriate manner. Employee Satisfaction is derived through supplying staff with the unit processes they need to provide the core service with which they are tasked. Financial Management is met by providing a cost effective means of securing the necessary wastewater treatment capacity for an area that previously had no wastewater collection or treatment infrastructure.

### BACKGROUND

The Copper River Development Company Inc. has commenced the development of approximately 760 acres generally known as Copper River Ranch, located between Friant Road, Willow Avenue, Copper Avenue, and the alignment of Silaxo Avenue ("Project"). The Project is presently approved to include 2,837 houses and multi-family residences and approximately 60 acres of mixed-use commercial development at full build out. At full build-out, the Project is expected to generate up to 0.71 MGD of wastewater, which will be treated, disinfected and reused. A sanitary sewer lift station located on the north side of Copper Avenue, east of North Cedar Avenue, was also built primarily to serve development activity south of Copper Avenue in accordance with previously approved subdivision maps and the City's General Plan land uses. Included in the lift stations design was interim capacity for an initial 500 equivalent dwelling units (EDUs) within the Project. The following conditions are required of the Developer in order to provide sewer service to the Project:

- The developer may utilize the City's lift station and force sewer main for sewage discharge from the first 500 constructed EDUs.
- The developer is required to design and construct an on-site tertiary wastewater treatment facility acceptable to the City of Fresno, for which construction shall be completed prior to construction of the 501 EDU. Once constructed, all flow from the Project shall be directed to the tertiary wastewater treatment facility.
- The City will accommodate permanent sludge discharged from the planned treatment facility to the City Sewer System. The developer shall construct and/or pay for all facilities necessary to accommodate the impact of connection to the City sewer system and associated wastewater treatment.

Pursuant to these Conditions of Approval and the terms of the Master Conditional Use Permit, the Developer constructed the NFWRF. The Developer secured through on-site and off-site facilities and legal rights a disposal capacity of 0.71 MGD. Although the 0.71 MGD of treatment and disposal capacity is sufficient to treat wastewater flows from the Project, the Developer also constructed the NFWRF to be able to serve approximately 500 additional EDUs for properties and potential developments that could be integrated into/with the Project. These additional 500 EDUs require the NFWRF to be able to treat and dispose of 0.83 MGD. At the City's request, the Developer designed and constructed the NFWRF to readily accommodate expansion from the 0.83 MGD treatment capacity to a planned build out treatment capacity of 1.25 MGD. The additional 0.42 MGD treatment capacity is intended to serve existing development South of Copper Avenue already connected to the lift station and the remaining development in the area North of Copper Avenue, not included in the Project. The Developer, with the City's cooperation, obtained all necessary regulatory, as well as, land use, permits to construct and operate the NFWRF for up to 0.71 MGD of wastewater.

REPORT TO THE CITY COUNCIL

Approve Agreements with Copper River; Adopt 48<sup>th</sup> Amendment to AAR

November 18, 2008

Page 4

The Project surrounds the existing Copper River Country Club that includes an 18-hole championship golf course, clubhouse, tennis complex and other amenities. Facilities for the disposal of 0.71 MGD of disinfected treated effluent (DTE) from the NFWRF have been partially installed on the Golf Course at the expense of the Developer. The Developer will complete these disposal facilities and they will be made available to the City for its use in connection with the operation of the NFWRF. Up to 0.71 MGD of treated effluent from the NFWRF will be delivered to the Golf Course.

The NFWRF will discharge treated solids to the City sewer collection system, which will be conveyed to the City's Regional Wastewater Reclamation Facility for further treatment and disposal. The City will recover the reasonable cost associated with treatment and disposal of the treated solids.

Developer has previously paid sewer connection and various wastewater facility fees (i.e., development impact fees) that were principally based upon adopted City fees and on expected volume and nature of wastewater generated by the Project. Wastewater from the Project will be treated by the NFWRF and disposed of on the Golf Course, with only the treated solids being conveyed to the City's collection system and City's Regional Wastewater Reclamation Facility. Wastewater from the developments in the Project will have a significantly decreased volume when compared to the average wastewater delivered from similar development in the City outside of the Project. Therefore, the City will provide a reimbursement to the Developer for a portion of the previously paid sewer connection and wastewater facility related fees. Additionally, it is necessary for the City to calculate a development impact fee for development in the Project for City wastewater facilities (including the collection system and the City's Regional Wastewater Reclamation Facility) that takes into account the reduced volumes from the Project. This fee is different from the current adopted City development impact fees for the City's wastewater treatment facilities. The agreement with the Developer establishes the appropriate reimbursement to be provided to the Developer and the appropriate development impact fee to be paid by the Developer to the City for the remaining undeveloped portions of the Project. In the future staff will return before Council with a recommendation for a new wastewater facility fee specific to the Project Area.

The City and the Developer desire that the City acquire ownership of, operate, and manage the NFWRF. As such the agreement with the Developer provides for the following:

1. Transfers the NFWRF to the City, including but not limited to, the Subject Property, all wastewater treatment equipment, all improvements and facilities located on the Subject Property, all appurtenant easements and rights, free of all liens and encumbrances.
2. Compensates the Developer for costs incurred for provisions for expansion capacity beyond 0.83 MGD.
3. Provide assurances to the Developer that Developer's Reserved Capacity will be available when needed as necessary to provide wastewater service to the Project.
4. Provides assurances to the Developer that development in the Project Area will not be subject to additional fees for providing up to 0.83 MGD of treatment and disposal capacity to serve Full Build Out of the Project. The City agrees to assure Developer's Reserved Capacity of up to 0.83 MGD of treatment and disposal capacity, in the form of a "Will Serve" letter which shall be useable anywhere within the Project Area.
5. Provides reimbursement to the Developer for a portion of the previously paid sewer connection and wastewater facility related fees.
6. Establishes the wastewater facility fee obligations for the Project as a result of the reduced discharge to the City sewer system and Regional Wastewater Reclamation Facility.
7. Except for approved developments for which the Developer has previously paid sewer connection and various wastewater facility fees, the Developer shall be responsible at time of pulling building permits to pay a modified City wastewater facility fee of \$657.50 per EDU for any new development within the Project Area.

REPORT TO THE CITY COUNCIL

Approve Agreements with Copper River; Adopt 48<sup>th</sup> Amendment to AAR

November 18, 2008

Page 5

City will make a one-time payment to the Developer in the amount of \$3,628,221.00 as reimbursement for: (a) construction of improvements allowing Expansion Capacity in the amount of \$2,743,971.00 and (b) excess impact fees paid by the Developer in the amount of \$884,250.00. Funds for the reimbursement are available in the Copper Avenue Sewer Lift Station, Wastewater Connection Fee and Herndon Sewer Trunk funds. These funds consist of impact fees collected for the construction of infrastructure to collect and treat wastewater generated by new development in this area. Adoption by Council of the 48th amendment to the Annual Appropriation Resolution (AAR) No. 2008-162 is necessary to appropriate funds for the Developer and Golf Course reimbursements.

DTE from the NFWRF must be disposed of in an environmentally responsible manner. The Waste Discharge Requirements issued by the state of California for the operation of the facility identifies irrigation of the Golf Course as the primary means of disposal for the DTE. This disposal method provides practical means of recycling wastewater generated by the Project and assist in maintaining the balance of water resources in the area. Staff negotiated an agreement with Consolidated Land Company And Consolidated Industries, Inc. to accommodate the use of the Golf Course for effluent reuse. The terms of the agreement include:

1. The right of the City to require the Golf Course to reuse DTE from the treatment facility up to the agronomic rate of the turf and landscaping, but not in excess of 0.71 MGD.
2. The Golf Course has the right to call for DTE at no cost up to 0.71 MGD.
3. The City will reimburse the Golf Course for expenses incurred in the amount of \$252,000.00 for two years (2008-2009) of operating and maintenance expenses in preparation for receiving disposal of effluent.
4. The City will reimburse the Golf Course for years 2010 and beyond the actual cost associated with the Club's acceptance and use of DTE for irrigation purposes, pursuant to the NPDES Permit.

**FISCAL IMPACT**

See attached Fiscal Impact Statement.

Additional fiscal impacts of these agreements will equate to the operation and maintenance costs of the treatment facility and the cost of effluent disposal consistent with the terms of the disposal agreement. The actual costs will be determined through actual operating experience and will be funded through Sewer User Fees.

## 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>	
<b>TOTAL COST</b>	<u><b>\$ 3,880,200.00</b></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

**TRANSFER AGREEMENT**

**By and between**

**THE CITY OF FRESNO,  
a municipal corporation**

**and**

**COPPER RIVER DEVELOPMENT COMPANY, INC.,  
a California Corporation.**

This Transfer Agreement ("Agreement") is entered into as of the Effective Date (defined in Section 1 below), between the City of Fresno, a municipal corporation (the "City") and Copper River Development Company, Inc., a California corporation ("Developer"), for the transfer and acquisition of the North Fresno Reclamation Plant ("WWTF") from Developer to the City.

### RECITALS

A. City is a municipal corporation with land use authority and responsibility for providing public utilities, including wastewater service, to the citizens of the City of Fresno.

B. Pursuant to City approvals, including, but not limited to, Master Conditional Use Permit No. C-04-153 (the "Master CUP"), Vesting Tract Map No. 5205 ("Tract Map") and Conditional Use Permit No. C-05-247 ("CUP"), the Developer has commenced development of a community development of approximately 760 acres more particularly described in **Exhibit A**, generally known as Copper River Ranch, located between Friant Road, Willow Avenue, Copper Avenue, and the alignment of Silaxo Avenue (the "Project"). Pursuant to the terms of the Master CUP, the Project is presently approved to include 2,837 houses and multi-family residences and approximately 60 acres of mixed-use commercial development at full build out. At full build-out, the Project is expected to generate up to 0.71 million gallons per day ("MGD") of wastewater, which will be treated, disinfected and reused.

C. The conditions of approval for the Tract Map and the CUP ("Conditions of Approval") include the following conditions relevant to wastewater service:

66. A recently constructed sanitary sewer lift station is located on the north side of Copper Avenue east of North Cedar Avenue built primarily to serve development activity south of Copper Avenue in accordance with previously approved subdivision maps and the City's General Plan land uses. Included in the lift stations design is capacity for an initial 500 Equivalent Dwelling Units (EDU) within the Copper River Ranch (CRR) project based upon the assumptions and conditions as outlined in a letter from the City of Fresno dated November 14, 2001, attached.

67. The following conditions shall be required to provide sewer service to the project.

68. The developer may utilize the City's lift station and force sewer main for sewage discharge from the first 500 constructed EDU.

69. The developer is required to design and construct an on-site tertiary wastewater treatment facility acceptable to the City of Fresno, for which construction shall be completed prior to construction of the 501 [equivalent dwelling unit]. Once constructed, all flow from CRR shall be directed to the tertiary wastewater treatment facility. The City will accommodate permanent sludge discharged from the planned CRR treatment facility to the City Sewer System.

70. The developer shall construct and/or pay for all facilities necessary to accommodate the impact of connection to the City sewer system and associated wastewater treatment.

71. Proposed methods and points of connection to the City Sewer System shall be submitted for review and subject to Department of Public Utilities approval.

72. Sanitary sewer facilities to be constructed shall conform to City of Fresno Standards.

73. A Preliminary sewer design layout shall be submitted including sewer flow contribution calculations for the entire project site for review and subject to Department of Public Utilities approval prior to submitting engineered improvement plans for City approval.

74. Both parties shall approve equitable impact fees and monthly user charges prior to connecting to the City Sewer system. Effluent discharge from CRR wastewater treatment plant into the City system shall be metered.

**D.** Pursuant to item No. 69 of the Conditions of Approval and the terms of the Master CUP, the Developer constructed a wastewater treatment facility (the "WWTF") as a design/build project according to conceptual plans and specifications reviewed by the City. The WWTF was built sufficient to provide 0.83 MGD of wastewater treatment capacity. The Developer secured through on-site and off-site facilities and legal rights a disposal capacity of 0.71 MGD. Although the 0.71 MGD of treatment and disposal capacity is sufficient to treat the Project at full build out of 3,182 equivalent dwelling units ("EDUs"), the Developer also desired the WWTF to be able to serve an additional approximate 500 EDUs for properties and potential developments that could be integrated into/with the Project. This additional 500 EDUs along with the Project's 3,182 EDUs requires the WWTF to be able to treat and dispose of 0.83 MGD. **For purposes of this Agreement, "Full Build Out of the Project" shall mean a development that equates to 3,682 EDUs as determined by the Director of the Public Utilities Department. For purposes of this Agreement, "Project Area" shall mean that area designated by the Developer on the Map in Exhibit B where the development of the Project and property that will accommodate the additional 500 EDUs intended to be built. For purposes of this Agreement, "Developer's Reserved Capacity" shall mean a capacity to treat and dispose of 0.83 MGD of wastewater.**

**E.** At City's request, Developer designed and constructed the WWTF to readily accommodate expansion from the 0.83 MGD treatment capacity to a planned build out treatment capacity of 1.25 MGD, that is an additional .42 MGD treatment capacity ("Expansion Capacity") from the Developer's Reserved Capacity of 0.83 MGD.

**F.** Subject to the limitations set forth in this Agreement, the Expansion Capacity will be used by the City to service other development in the area, including, (1) future planned development lying north of Copper; and (2) 764 existing residences south of Copper Avenue.

**G.** The Project surrounds the existing Copper River Country Club (the "Country Club") that includes an 18-hole championship golf course ("Golf Course"), clubhouse, tennis complex and other amenities. Facilities for the disposal of 0.71 MGD of disinfected treated effluent ("DTE" or "Treated Effluent") from the WWTF have been partially installed on the Golf Course by and at the expense of the Developer. The Developer intends to cause the completion of those facilities pursuant to this Agreement. Those disposal facilities will be constructed and made available by the Developer to the City for its use in connection with the operation of the WWTF pursuant to the terms in this Agreement.

**H.** The WWTF is located on approximately 3.32 acres of real property ("Subject Property") on the north side of Copper Avenue just west of Maple Avenue as more particularly described in **Exhibit C**. The Developer is the owner of the Subject Property, together with all rights, privileges, easements and appurtenances; and all equipment and fixtures related to the WWTF located on the Subject Property. The Subject Property also includes the DTE Pipeline Easement, the DTE License Agreement described below and 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 "DTE Disposal Easement").

**I.** Developer, with the City's cooperation, has obtained all necessary regulatory, as well as, land use, permits to construct and operate the WWTF (collectively the "WWTF Permits") to treat and reuse 0.71 MGD of wastewater. The WWTF Permits include, but are not limited to, a Wastewater Reclamation Permit from the California Department of Health Services ("DHS") and the Waste Discharge Requirements (the "WDR") from the California Regional Water Quality Control Board ("Regional Board"). Additional permits and/or amendments to the existing WWTF Permits are necessary to treat and dispose of wastewater at the WWTF in excess of 0.71 MGD.

**J.** Treated Effluent in an amount of up to 0.71 MGD from the WWTF shall be delivered to the custody of the Country Club at the boundary of the Golf Course through a pipeline installed in (1) the public right of way for East Copper Avenue, (2) the pipeline easement described in the Deed of Easement dated April 12, 2007, recorded on May 8, 2007, as Document No. 2007-0091885, in the Official Records and (3) the pipeline easement described in the Deed of Easement dated October 30, 2007, recorded on January 30, 2008, as Document No. 2008-0013703, in the Official Records (collectively the "Pipeline Easement").

**K.** From the boundary of the Golf Course, such portion of the DTE will continue to flow through a pipeline and be discharged into the custody and control of Country Club at an irrigation station inlet box or "manifold" located on the Golf Course for application and disposal via the golf course irrigation system (collectively "On Course DTE Delivery Facilities"). The On Course DTE Delivery Facilities are owned by the Country Club and located on the Golf Course. The Country Club has granted Developer an exclusive, assignable, perpetual license to use the portion On Course DTE Delivery Facilities necessary to transport the Treated Effluent from the boundary of the Golf Course to the custody of the Country Club at the station inlet box as set forth in the DTE License Agreement dated November 20, 2008, and recorded on November 24, 2008, as Document No. 2008-0162923, in the Official Records ("DTE Delivery License").

**L.** Distribution and application of DTE from the point of discharge (i.e., the irrigation station inlet box referenced above) will be via the Golf Course irrigation systems for application to the

Golf Course and areas adjacent to the Golf Course pursuant to the terms of a separate agreement entered into between the City and the Country Club in the form of **Exhibit F** ( the "Effluent Disposal and Delivery Agreement").

**M.** The WWTF will discharge treated sludge ("Treated Sludge") to the City sewer collection system, which will be conveyed to the City's Regional Wastewater Reclamation Facility for further treatment and disposal. The City wishes to recover the reasonable cost associated with treatment and disposal of the Treated Sludge.

**N.** Developer and/or legal entities established by or affiliated with Developer in whole or in part, have previously paid sewer connection and various wastewater facility fees (i.e., development impact fees) as described in **Exhibit G** that were principally based upon adopted City fees and on expected volume and nature of wastewater generated by the Project. Said wastewater will be treated by the WWTF and partially disposed of on the Golf Course before being conveyed to the City's collection system and City's Regional Wastewater Reclamation Facility. Therefore, wastewater from the developments in the Project is expected to have a significantly decreased volume when compared to the average wastewater delivered from similar development in the City outside of the Project. The Treated Sludge to be discharged into the City's collection system and ultimately conveyed to the City's Regional Wastewater Reclamation Facility is expected to be greatly reduced in volume from that typically released by the average dwelling unit in the City outside of the Project. Therefore, the City will provide a reimbursement to the Developer for a portion of the previously paid sewer connection and wastewater facility related fees. Additionally, it is necessary for the City to calculate a development impact fee for development in the Project for City wastewater facilities (including the collection system and the City's Regional Wastewater Reclamation Facility) that takes into account the reduced volumes from the Project and is different from the current adopted City development impact fees for the City's wastewater treatment facilities. The City and the Developer intend for this Agreement to establish the appropriate reimbursement to be provided to the Developer and the appropriate development impact fee to be paid by the Developer to the City to develop the remaining undeveloped portions of the Project which may or may not be adopted by the City into the Master Fee Schedule.

**Q.** The City and the Developer desire that the City acquire ownership of, operate and manage, the WWTF. This Agreement is entered into for the purpose of: (1) transferring the WWTF to the City, including but not limited to, the Subject Property, all wastewater treatment equipment, all improvements and facilities located on the Subject Property, all appurtenant easements and rights, free of all liens and encumbrances, (2) compensating the Developer for costs incurred by it allocable to the Expansion Capacity, (3) providing enforceable assurances to the Developer that Developer's Reserved Capacity will, at all times be available, as necessary to provide wastewater service to the Project, (4) providing assurances to the Developer that Developer and the developments in the Project Area will not be subject to additional exactions for providing up to .83 MGD of treatment and disposal capacity to serve Full Build Out of the Project, (5) providing reimbursement to the Developer for a portion of the previously paid sewer connection and wastewater facility related fees, and (6) establishing the wastewater facility fee obligations for the Project.

## AGREEMENT

Recitals A through Q are incorporated herein and made a part of this Agreement. In consideration of the Recitals above and the obligations undertaken by the parties as hereinafter set forth, the parties agree as follows:

1. **Term of Agreement.** This Agreement becomes effective on the date of execution by all parties to the Agreement ("Effective Date") and will remain in effect until Full Build Out of the Project in the Project Area or twenty-five (25) years, whichever is sooner.

### 2. **Transfers**

2.1 **Transfer of WWTF; Software; Title to Documents and License of Software.** Subject to the terms and conditions of this Agreement, Developer and City agree to transfer ownership of the WWTF, including the Subject Property and all other fixtures, improvements, equipment, rights and easements (including, but not limited to, the Pipeline Easement) from the Developer to the City. All documents (including, but not limited to, computer or electronic data), diagrams, surveys, photographs, plans, drawings and specifications for the WWTF are and shall hereafter be the property of the City. Developer shall cause these documents to be delivered to the City upon the Closing (defined below). Developer shall also provide, upon Closing, all software necessary to operate and manage the WWTF, and provide perpetual licenses for use of that software and at least one year license for support and maintenance and any source codes the Developer may have.

2.2 **Transfer of Disposal Capacity.** Upon the Closing, Developer shall also assign to City its interest in the WWTF Permits and related documents, including the DTE License, and take all other necessary actions within its control to ensure that the City may legally dispose of, or caused to be disposed, up to 0.71 MGD of Treated Effluent on the Golf Course in a manner consistent with the terms of the DTE Easement Agreement, the DTE License and the WWTF Permits. Developer shall cause the necessary documents to be deposited to assign these interests to City into Escrow within 15 days after the Effective Date.

2.3 **Delivery of Clean Facility in Operable Condition.** Developer shall cause the WWTF and Subject Property to be in a good, clean, orderly and fully operable condition at the time the WWTF and Subject Property are transferred to the City.

### 3. **WWTF Construction (Developer's Warranties)**

3.1 **WWTF Construction.** Developer has, at its sole cost and expense, constructed the WWTF and the related transmission and disposal facilities (except for the portion of the disposal facilities still to be completed as described in this Agreement) in accordance with plans and specs approved by the City and the WWTF Permits. Without limitation, Developer has procured all entitlements and permits necessary for the construction of the WWTF and related facilities and has paid all costs and fees that were necessary for the construction of the WWTF and the related facilities.

**3.2 Compliance with the Law.** In constructing the WWTF, Developer has complied with all applicable laws and regulations of the United States, the State of California and City, and the terms and conditions of the WWTF Permits.

**3.3 Warranty of WWTF.** Developer shall provide a warranty for one year from the Effective Date against any defects in materials, design and work of the WWTF and all other equipment, facilities on the Subject Property.

**3.4 Warranty of DTE Disposal Facilities.**

**3.4.1 Completed DTE Modifications.** Subject to the Country Club's observation of good DTE management practices in accordance with the WWTF Permits, the DTE Disposal Agreement and the Effluent and Disposal Delivery Agreements, Developer shall provide a warranty to the City for one year from the Effective Date against any defects in materials, design and work of the completed On Course DTE Delivery Facilities (subject to the DTE Delivery License) and the completed DTE disposal modifications to the Golf Course.

**3.4.2 Remaining DTE Modifications.** Developer has agreed to perform all work necessary to complete the remaining irrigation system modifications to the Golf Course as described in Section 9.3 below. Such work shall be undertaken by the Developer in full cooperation with the City and the Country Club at Developer's sole cost and expense. The parties agree to work together in good faith and cooperate in developing a commercially reasonable schedule of the work necessary to implement these remaining modifications, which shall coordinate with the progress of corresponding and related Project development work being performed. These remaining modifications may be performed by Developer in multiple stages or phases (each a "Phase") depending on the rate at which the Project develops. On the completion of each Phase of the remaining modifications, Developer shall convey that Phase to Country Club and shall notify the City of such conveyance. Subject to the Country Club's observation of good DTE management practices in accordance with the WWTF Permits, the DTE Disposal Agreement and the Effluent and Disposal Delivery Agreements, Developer shall provide a warranty to the City for one year from the conveyance of each Phase of the irrigation modifications to the Country Club against any defects in materials, design and work of each such Phase.

**3.5 Performance of Warranty Work.** Developer agrees to correct any defective work covered by any of the one-year warranties described in Sections 3.3 or 3.4 above within thirty (30) business days after being notified in writing by City of the defective work. The time to repair may only be extended in writing by the Director of the Public Utilities Department which consent shall not be unreasonably withheld or denied in the event that with the exercise of due diligence, such repairs require more than thirty (30) business days to complete. Should the exigencies of the case require repairs or replacements to be made before Developer can be notified or respond to the notification, Developer authorizes City to proceed to have the defective work corrected and made good at Developer's expense, and Developer will pay within 30 days, upon City's demand, the cost therefore, including related applicable costs and expenses incurred by City. However, the making of such repairs shall be subject to the property rights of the Country Club.

**4. Real Property Warranties.** Developer represents and warrants that: (a) Developer owns the Subject Property, free and clear of all liens, licenses, claims, encumbrances, easements,

encroachments from the Subject Property onto adjacent properties, and any rights of way, other than those matters disclosed by the public record; (b) Developer has no knowledge of any pending litigation involving the Subject Property; (c) Developer has no knowledge of any violations of, or notices concerning defects or noncompliance with, any code, statute, regulation, ordinance, judicial order, or judicial holding concerning the Subject Property; (d) Developer has no knowledge of any hazardous materials or substances stored, discharged, or otherwise present in, on, or affecting the Subject Property, (e) Developer has no knowledge of any material defects in the Subject Property, and (f) the Subject Property is free of occupancies by third parties. These warranties shall survive the Closing and the recording of the Grant Deed (defined below).

**5. City Payment.** City will make a one time payment to the Developer in the amount of \$3,628,220.00 as reimbursement for: (a) construction of improvements allowing Expansion Capacity in the amount of \$2,743,971.00 and (b) excessive impact fees to the Developer in the amount of \$884,249.00 as provided in **Exhibit G**. Such sum shall be deposited into the Escrow contemplated by Section 6 within fifteen days after the Effective Date. Unless otherwise expressly provided in this Agreement, this payment shall satisfy all financial obligations the City has to the Developer for the transfer of the Subject Property and the WWTF to City and the reconciliation of fee credits and additional fees contemplated in Section 10.1 of this Agreement. This Section is subject to the Developer providing the assignment and waivers identified in Section 10.1.1.

**6. Escrow Instructions.**

**6.1. Opening Escrow.** Upon execution of this Agreement, the parties shall establish an escrow for the conveyance of the WWTF to the City with First American Title Company, 7625 N. Palm Ave., Suite 101, Fresno, CA 93711 ("Title Company"), Attention: Donna Brown.

**6.2 Agreement as Joint Escrow Instructions.** This Agreement, when signed by the Developer and City and deposited into escrow with the Title Company, will be the parties' joint escrow instructions for the escrow. Developer and City will sign and deliver any other form instructions the Title Company may require that are consistent with this Agreement.

**6.3 Deposits into Escrow.** Developer and City will deposit all instruments, documents, money, and other items into escrow with the Title Company that (i) this Agreement identifies or (ii) the Title Company may require that are consistent with the terms and purposes of this Agreement, and necessary to Closing (defined below). Within fifteen days after escrow opens, Developer will deposit a recordable grant deed, substantially in the form attached as **Exhibit H** (the "Grant Deed"), into the escrow with Title Company.

**6.4 Title.** Developer will convey title to the Subject Property to City free and clear of all title defects, liens, encumbrances, conditions, covenants, restrictions, leases or agreements, and other adverse interests of record or known to Seller, subject only to title exceptions numbered 3, 4, 5, 6, 7, 8, 11, and 13, 14, 15, 16, 17, 18 and 19, in the preliminary title report, Order No. 1004-3153936, issued by Title Company, effective as of October 7, 2008.

**6.5 Title and Closing Costs.** Developer will pay any costs of clearing and conveying title in the condition described in Section 6.4 above, for the costs of a CLTA owner's title policy

insuring City's title in the amount of \$3,628,220.00 (equal to the one time payment described in Section 5 above) in the condition described in Section 6.4, escrow fees, costs to record the Grant Deed and any other costs necessary to convey title to the WWTF to the City.

**6.6 Closing.** The escrow will be considered closed ("Closing Date," "Closing," or "Close") on the date that the Title Company records the Grant Deed. The escrow will be in condition to Close when all conditions to Close are satisfied or waived, the Title Company is prepared to issue the title policy described in Section 6.5, and the Title Company is otherwise able to record the Grant Deed. The parties agree that subject to the satisfaction of the foregoing matters, the Closing Date will be November 26, 2008, or such earlier date as the parties may agree.

**6.7 Disbursements.** At Closing, Title Company shall disburse to the Developer the payment deposited into escrow by the City as described in Section 5, less Developer's cost to clear title, pro-rations, and other costs, if any, to Developer.

**6.8 Pro-rations.** At Closing, the Title Company will prorate the following, between Developer and City, based on a 30-day month: real property taxes and special assessments.

**6.9 Risk of Loss.** Any loss or damage to the Subject Property or any improvements, equipment or fixtures, including the WWTF, before Closing is at the Developer's risk.

**6.10 Broker.** Each party represents and warrants that it has not engaged a broker or real estate agent for this transaction, and no commissions are payable concerning this purchase and sale.

**6.11 Inspection.** Close of escrow is contingent upon the Director of the Department of Public Utilities ("Director") and/or his or her designee finding after inspection of the WWTF (including start-up of the facility) and the Subject Property that the WWTF is clean, in good condition and order and fully operational pursuant to Section 2.3. Nothing provided herein, shall limit the City's ability to seek repair and/or correction of any defect in condition of the WWTF pursuant to any warranty or any other provision in this Agreement.

**6.12 Assignment of Rights of Licensor under DTE Delivery License.** Concurrently with the Closing, Developer shall assign its rights as the "Licensor" under the DTE Delivery License to City by execution and recordation of a mutually acceptable assignment.

**7. Delivery of Possession.** At Closing, Developer shall (i) deliver possession of the WWTF, including the Subject Property, (ii) deliver all documents, (including, but not limited to, computer or electronic data), diagrams, surveys, photographs, plans, drawings and specifications for the WWTF described in Section 2.1 and (iii) deliver possession of all software and software licenses described in Section 2.1.

**8. Commencement of WWTF Operations.** Commencement of the actual operation of the WWTF shall be in the sole discretion of the City; provided, however, that such operations shall commence prior to the time when the 500 EDU's of temporary wastewater service being provided by the City to development within the Project from existing facilities are exhausted.

## **9. Further Developer Commitments.**

**9.1 Landscaping.** Developer shall complete all required landscaping required under City development entitlements for the WWTF either upon the earlier of (i) completion of the Copper River Trail which is a condition of one or more development entitlements for the Project or (ii) within six (6) months of being noticed in writing by the Director to complete such landscaping improvements. Until the landscaping requirements are met under this Section, the Developer shall ensure the landscape easement on the Subject Property is kept free and clear of all weeds and debris and other public nuisances. If the Developer fails to construct the landscaping as provided in this Agreement, the City may withhold building permits for any development in the Project Area until the landscaping improvements are completed to the City's reasonable satisfaction.

**9.2 Phase III Reclaimed Water Pipeline.** Developer shall be responsible for constructing the Phase III Reclaimed Water Pipeline on the north side of Copper Avenue pursuant to City approved Plan # J-5220 approved on August 7, 2008, on or before completion of the Copper Avenue Trail. Upon City acceptance of the Phase III Reclaimed Water Pipeline, the Developer shall provide a one-year warranty to the same extent and in the same manner as provided in Section 3.3. Developer shall not be entitled to any right of reimbursement for the Phase III Reclaimed Water Pipeline. If the Developer fails to construct the pipeline as provided in this Agreement, the City may withhold building permits for any development in the Project Area until the pipeline is completed and accepted by the City Engineer.

**9.3 Golf Course Facilities.** At the time of execution of this Agreement, irrigation facilities are still required to be installed to allow the discharge of 0.71 MGD of DTE in a manner consistent with the WWTF Permits. It is not expected by the parties that the WWTF will be discharging 0.71 MGD DTE in the first year of its operation. Within one year of the City's approval of all street locations and grading plans for the easterly portion of the Project (including property sharing a common boundary with the Golf Course which is not owned by Developer), Developer shall cause all irrigation facilities on the Golf Course to be completed such that 0.71 MGD of DTE may be discharged in a manner consistent with the WWTF Permits. Notwithstanding any of the above, until the modifications of the Golf Course irrigation facilities are complete, Developer shall provide that the Golf Course irrigation facilities are installed adequate to discharge any amount the WWTF is actually discharging up to 0.71 MGD. If the Developer fails to construct the Golf Course facilities as provided in this Agreement, the City may withhold building permits for any development in the Project Area until the DTE disposal facilities are completed and able to handle the required discharge of DTE pursuant to WWTF Permits as set forth above.

## **10. Wastewater Facilities Fees.**

### **10.1 City Regional Wastewater Treatment Facility and other City Wastewater Facility Fees.**

**10.1.1 Reimbursement.** As provided in Section 5, the City shall reimburse Developer for previously paid wastewater facility fees as provided in **Exhibit G**. Such

reimbursement will be subject to the Developer providing the assignments and waivers required under Sections 2.2 and 31.

**10.1.2 Payment of Modified Wastewater Facility Fees.** Except for approved developments for which Developer and its affiliates have previously paid sewer connection and various wastewater facility fees, Developer shall be responsible at time of pulling building permits to pay a modified City wastewater facility fee of \$657.50 per EDU as provided in **Exhibit I** for any new development within the Project Area. Developer will be responsible for this fee regardless whether Council adopts it into the Master Fee Schedule or otherwise complies with the Mitigation Fee Act (Gov't Code §§ 66000, et seq.). Developer agrees to cooperate in and waive any right to object to or legally challenge any action by the City to impose and/or collect the modified City wastewater facility fee contemplated in **Exhibit I** (including a formal action to adopt the fee in **Exhibit I** for the Project Area).

**10.1.3 Developer Not Responsible for City Wastewater Facility Fees in Project Area.** If Developer has paid the fee identified in Section 10.1.2 and **Exhibit I**, Developer shall not be responsible for payment of any impact fees for the City's Regional Wastewater Treatment and/or Disposal Facility and other City Wastewater Facility Fees for any development in the Project Area up to Full Build Out of the Project (total of 3,682 EDUs). After Full Build Out of the Project (3,682 EDUs), the Agreement shall terminate and Developer shall be responsible for paying any wastewater facility fees required under then current City ordinances and policies.

**10.2 WWTF Impact Fees.** Upon execution of this Agreement, for development in the Project Area, up to Full Build Out of the Project (3,682 EDU's), Developer shall not be responsible for any fees to pay for any cost of the WWTF, the Subject Property, any disposal facilities (except for completion of the Golf Course irrigation system and Phase III Pipeline as described above) and any associated equipment or facilities, including the proposed expansion thereof. Developer agrees to cooperate in and waive any right to object to the adoption of any fee the City adopts to recover costs to pay for the WWTF on properties outside of the Project Area in the Map on **Exhibit B** regardless whether the Developer owns or acquires property in the proposed fee service area.

**10.3 Disposal Fees.** Notwithstanding anything to the contrary in this Agreement, development within the Project Area will be responsible for payment of supplemental sewer service fees to fund payment of the "DTE Disposal Fee" contemplated by the Disposal and Delivery Agreement as provided in the City's Master Fee Schedule to reimburse the City for its costs to pay the Disposal Fee to the Golf Course in connection with the operation of the WWTF.

## **11. Will Serve.**

**11.1 Priority Capacity Reservation.** The City agrees to assure Developer's Reserved Capacity of up to 0.83 MGD of treatment and disposal capacity, in the form of a "Will Serve" letter which shall be useable anywhere within the Project Area. Within ten days of the Effective Date, City will issue an unconditional "Will Serve" letter to Developer for 0.83 MGD of treatment and disposal capacity, assuring Developer wastewater service for up to Full Build Out of the Project (3,682 EDUs) in the Project Area. Developer's rights under the "Will Serve" letter are fully transferable and assignable within the Project Area and any consideration received for the

transfer of Developer's Reserved Capacity is the sole property of Developer provided all of the following conditions are met:

- (i) the City has consented in writing to the assignment;
- (ii) the assignment is in the form of **Exhibit J** to this Agreement; and
- (iv) the Developer has completed its obligations under Section 9 of the Agreement to the extent required as of the date of the assignment.

**11.2 Timely Future Expansion.** City shall use good faith efforts to secure permits necessary for expansion of the WWTF treatment and disposal capacity to 1.25 MGD and provide additional capacity before the volume of wastewater being treated at the WWTF exceeds 0.62 MGD. City shall not deny building permits to Developer for projects in the Project Area during the term of this Agreement due to the lack of sewer capacity.

## **12. Indemnity.**

**12.1** To the furthest extent allowed by law, including California Civil Code Section 2782, 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 and litigation expenses), arising or alleged to have arisen directly or indirectly out of Developer's acquisition, construction and transfer of the WWTF to City. Developer's obligations under the preceding sentence shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages, caused by the negligence of the City or any of its officers, officials, employees, volunteers or agents.

**12.2** This Section 12 shall survive termination or expiration of this Agreement.

## **13. Default, Termination.**

**13.1 Default.** Any failure or delay by either party in performing its obligations under this Agreement constitutes a default if, within 30 calendar days after receipt of notice of default from the other party, (i) the defaulting party does not remedy the failure or delay or (ii) if the delay or failure cannot be remedied within the 30-day period, the defaulting party does not within the 30-day period begin substantial efforts to remedy the delay or failure, and does not diligently pursue the efforts to completion within a reasonable time. However, the foregoing item (ii) shall not apply to any failure by City to comply with the provisions of Section 11 above. The notice of default will provide reasonable detail of the delay or failure claimed as a default, and the manner, if any, in which the defaulting party may remedy the delay or failure. During the periods specified in (i) or (ii) of this subsection, except as expressly provided above, the defaulting party will not be considered in default for purposes of terminating this Agreement or for invoking any other remedy for default.

**13.2 Termination.** Upon either party's default as described subsection 13.1, the non-defaulting party has the right to terminate this Agreement immediately by giving notice to the

defaulting party. However, after the Closing, no such termination, regardless of the circumstances, shall (i) deprive Developer of the Developers' Reserved Capacity or the rights of Developer under Sections 10 and 11 for twenty-five years or (ii) deprive the City of its rights to impose and collect fees under Section 10 or its right to indemnity under Section 12..

**13.3 Remedies Cumulative.** All remedies of the parties are cumulative. Termination of this Agreement by either party under this Section is an additional remedy, and except as otherwise expressly provided in this Agreement, does not limit any other rights or remedies available to that party, whether granted by this Agreement or available at law or in equity including, but not limited to, the right to bring an action for specific performance, injunction, mandamus, or damages. The exercise by a party of any remedy is not an election of remedies and is not a waiver of any other remedies. Notwithstanding any provision in this Agreement to the contrary, the only remedy available to the Developer for a default by the City under Section 11 is specific performance.

**13.4 Waiver.** A party's failure to insist on strict performance of any provision of this Agreement or failure to exercise any remedy available to that party is not a waiver of the performance or remedy. A party's waiver of any provision of this Agreement, or waiver of any default by the other party, or waiver of any remedy is not effective unless it is in writing and signed by an authorized representative of the waiving party. A party's waiver of a particular provision or default does not apply to any other provision or default.

**13.5 Specific Performance.** Unless amended, terminated or cancelled under applicable law or the terms of this Agreement, the terms of this Agreement are specifically enforceable by either party.

**14. 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 held by the Developer 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.

**15. Assignment.** This Agreement may be assigned upon the written consent of the non-assigning party.

**16. Amendment, Modification and Cancellation.** This Agreement may be amended, 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.

**17. Further Assurances.** Upon request of the other party, each party will execute any additional documents and take any additional steps reasonably necessary to carry out the purposes of this Agreement.

**18. 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.

**To the City:**

City of Fresno  
2600 Fresno Street, Room 3065  
Fresno, California 93721-3601  
Attention: Public Utilities Director  
Fax No.: (559) 498-1304

**With Copy to:**

City Attorney  
2600 Fresno Street, Room 2031  
Fresno, California 93721-3602  
Fax No.: (559) 488-1084

**To Developer:**

Darius Assemi, President  
Copper River Development Company, Inc.  
1396 West Herndon, Suite 101  
Fresno, CA 93711  
Phone: (559) 436-0900  
Fax: (559) 436-1659

**With a Copy to:**

Steven G. Rau Esq., General Counsel  
Granville Homes, Inc.  
1396 West Herndon, Suite 101  
Fresno, CA 93711  
Phone: (559) 436-4228  
Fax: (559) 436-6247

Either party may change its address or the addressee for notice by giving notice in accordance with this Section.

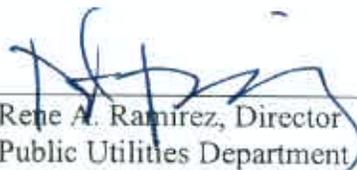
19. **Relationship of Parties.** Nothing in this Agreement or any document signed in connection with this Agreement will be construed as creating a partnership, joint venture, agency relationship or employment relationship between the parties or their contractors, subcontractors, employees, agents or representatives.
20. **Attorneys' Fees and Litigation Expenses.** If any party is required to bring a lawsuit, arbitration, or other proceeding with respect to breach, interpretation, or enforcement of this Agreement, the losing party shall reimburse the prevailing party reasonable attorneys' fees and expenses incurred in connection with the lawsuit or proceeding and any appeal, in such amount as may be determined by the court or other tribunal having jurisdiction.
21. **Governing Law.** This Agreement will be interpreted and construed, and the rights and duties of the parties (both procedural and substantive) will be determined according to California law.
22. **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.
23. **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.
24. **Entire Agreement.** This Agreement, including all attached Exhibits, contains the entire understanding and agreement between the parties concerning the matters described in this Agreement. This Agreement merges with and supersedes all prior understandings, negotiations, agreements, representations, correspondence and documents relating to the matters contained in this Agreement.
25. **Venue.** Venue for any action arising out of this Agreement and brought by any of the parties will be the Fresno County Superior Court or the United States District Court for the Eastern District in Fresno County.
26. **Consent, Reasonableness.** Except when this Agreement specifically authorizes a party to withhold its approval, consent, or satisfaction in its sole discretion, any consent, or approval, or satisfaction required of a party under this Agreement, will not be unreasonably withheld, conditioned, or delayed by the party.
27. **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.
28. **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.

29. **Precedence of Documents.** In the event of any conflict between the body of this Agreement and any Exhibit or Attachment 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 or Attachment 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.

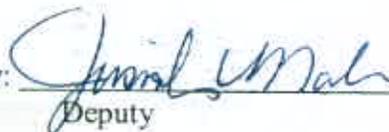
30. **No Third Party Beneficiary.** There shall be no third party beneficiaries to this Agreement.

31. **Assignment of Interests to Fees.** At time of execution of this Agreement, Developer shall provide executed assignments of reimbursement rights from all entities (other than Developer) that have paid any fees identified in **Exhibit J** that acknowledge reimbursement under this Agreement and release all interest in any reimbursements for any fees identified in **Exhibit J** and waive any future right to bring any legal or administrative challenge against the City related to wastewater impact fees.

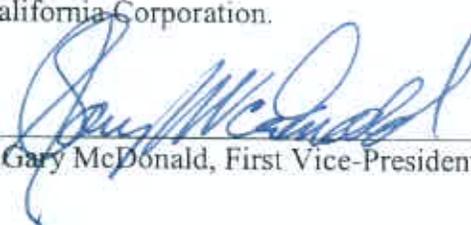
CITY OF FRESNO,  
a Municipal Corporation.

By:   
Rene A. Ramirez, Director  
Public Utilities Department

ATTEST:  
REBECCA E. KLISCH  
City Clerk

By:   
Deputy 11/25/08

COPPER RIVER DEVELOPMENT  
COMPANY, INC.,  
a California Corporation.

By:   
Gary McDonald, First Vice-President

APPROVED AS TO FORM:  
JAMES C. SANCHEZ  
City Attorney

By:   
Deputy

## EXHIBIT LIST

---

Exhibit A	Legal Description of the CRR Project
Exhibit B	Description of "Project Area" where Developer's Reserved Capacity may be used
Exhibit C	Legal Description of WWTF Plant Site
Exhibit D	Intentionally Omitted
Exhibit E	Intentionally Omitted
Exhibit F	Effluent Disposal and Delivery Agreement between CRCC and City
Exhibit G	Fees Previously Paid by Developer and Affiliates and Fee Reimbursements
Exhibit H	Form of Grant Deed
Exhibit I	Recalculated Regional Wastewater Facilities Impact Fee payable by Developer
Exhibit J	Approved Form of Assignment of Developer's Reserved Capacity within Project Area

# **Exhibit A**

# EXHIBIT A

## DESCRIPTION OF COPPER RIVER RANCH PROJECT

### LEGEND

- PARCELS WITHIN THE COPPER RIVER RANCH PROJECT BOUNDARY
- TRACT 5205 OUTLOT DESIGNATIONS (VOL. 75 PLATS, PAGES 31-55, F.C.R.)
- 5205 TRACT DESIGNATIONS



**PROVOST & PRITCHARD**  
 ENGINEERS ARCHITECTS  
 1000 10th Street, NW  
 Seattle, WA 98108  
 Phone: (206) 461-1100  
 Fax: (206) 461-1101  
 www.provostpritchard.com  
 Date: 08/15/2001

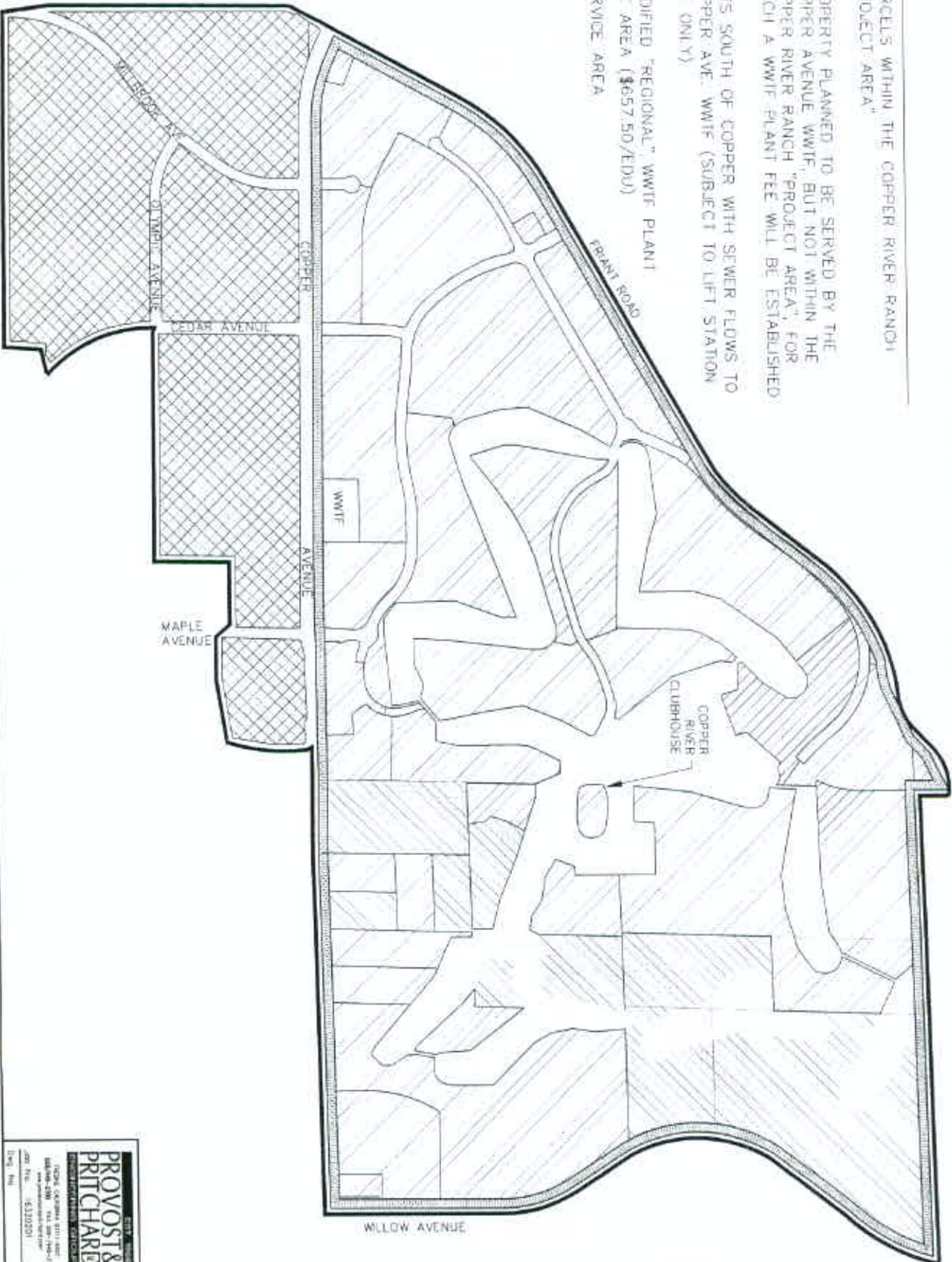
# **Exhibit B**

# EXHIBIT B

## WWTF SERVICE AREA INCLUDING "PROJECT AREA"

### LEGEND

-  PARCELS WITHIN THE COPPER RIVER RANCH "PROJECT AREA"
-  PROPERTY PLANNED TO BE SERVED BY THE COPPER AVENUE WWTF, BUT NOT WITHIN THE COPPER RIVER RANCH "PROJECT AREA", FOR WHICH A WWTF PLANT FEE WILL BE ESTABLISHED.
-  LOTS SOUTH OF COPPER WITH SEWER FLOWS TO COPPER AVE. WWTF (SUBJECT TO LIFT STATION FEE ONLY)
-  MODIFIED "REGIONAL" WWTF PLANT FEE AREA (\$657.50/EDU)
-  SERVICE AREA



**PROVOST & PRITCHARD**  
 CIVIL ENGINEERS  
 10000 100TH AVE. S.E.  
 SUITE 100  
 BELLEVUE, WA 98004  
 TEL: 425.453.1000  
 FAX: 425.453.1001

# **Exhibit C**

## EXHIBIT C

### 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)

**Exhibit D**  
**(Intentionally Omitted)**

**Exhibit E**  
**(Intentionally Omitted)**

# **Exhibit F**

# **Exhibit G**

**EXHIBIT G**

**RECALCULATION OF SEWER CONNECTION & WASTEWATER FACILITY FEES PREVIOUSLY PAID OR DEFERRED BY DEVELOPER**

	# lots	Amt. Paid	Revised Fee Oblig	Amt. To Refund	Excess Fees Paid
<b>Tract No. 5205 - Copper River Development Co. Inc.</b>	<b>134</b>				
Trunk Sewer Charge (Herndon)		\$ 66,484.00	\$ 923.26	\$ 65,540.74	
Herndon Capacity Enhancement		\$ 116,982.00	\$ 1,622.74	\$ 115,359.26	
Wastewater Facility Charge	125	\$ 264,875.00	\$ 70,850.00	\$ 194,025.00	
Copper Lift Station S.A. Fee	41	\$ 26,650.00	\$ 2,939.70	\$ 23,710.30	
Copper Lift Station S.A. Fee (Deferred)	55	\$ 35,750.00	\$ 3,943.50	\$ 31,806.50	
<b>Total</b>		<b>\$ 510,721.00</b>	<b>\$ 80,279.20</b>	<b>\$ 430,441.80</b>	<b>\$ 430,441.80</b>
<b>Tract No. 5270 - Copper River Ranch Villages, LLC</b>	<b>54</b>				
Trunk Sewer Charge (Herndon)		\$ 26,784.00	\$ 372.06	\$ 26,411.94	
Herndon Capacity Enhancement		\$ 47,142.00	\$ 653.94	\$ 46,488.06	
Wastewater Facility Charge	19	\$ 40,261.00	\$ 10,769.20	\$ 29,491.80	
Copper Lift Station S.A. Fee	12	\$ 7,600.00	\$ 860.40	\$ 6,739.60	
Copper Lift Station S.A. Fee (Deferred)	4	\$ 2,800.00	\$ 286.80	\$ 2,313.20	
<b>Total</b>		<b>\$ 124,587.00</b>	<b>\$ 12,942.40</b>	<b>\$ 111,644.60</b>	<b>\$ 111,644.60</b>
<b>Tract No. 5271 - Copper River Custom Lots, Inc</b>	<b>39</b>				
Trunk Sewer Charge (Herndon)		\$ 19,344.00	\$ 288.71	\$ 19,075.29	
Herndon Capacity Enhancement		\$ 34,047.00	\$ 472.29	\$ 33,574.71	
Wastewater Facility Charge	6	\$ 12,714.00	\$ 3,400.80	\$ 9,313.20	
Copper Lift Station S.A. Fee		\$ -	\$ -	\$ -	
Copper Lift Station S.A. Fee (Deferred)	12	\$ 7,600.00	\$ 880.40	\$ 6,739.60	
<b>Total</b>		<b>\$ 73,905.00</b>	<b>\$ 5,002.20</b>	<b>\$ 68,902.80</b>	<b>\$ 68,902.80</b>
<b>Tract No. 5272 - Copper River Ranch Villages, LLC</b>	<b>25</b>				
Trunk Sewer Charge (Herndon)		\$ 12,400.00	\$ 172.25	\$ 12,227.75	
Herndon Capacity Enhancement		\$ 21,825.00	\$ 302.75	\$ 21,522.25	
Wastewater Facility Charge	5	\$ 10,595.00	\$ 2,834.00	\$ 7,761.00	
Copper Lift Station S.A. Fee		\$ -	\$ -	\$ -	
Copper Lift Station S.A. Fee (Deferred)	1	\$ 850.00	\$ 71.70	\$ 578.30	
<b>Total</b>		<b>\$ 45,470.00</b>	<b>\$ 3,380.70</b>	<b>\$ 42,089.30</b>	<b>\$ 42,089.30</b>
<b>Tract No. 5268 - Copper River Southwest, Inc.</b>	<b>230</b>				
Trunk Sewer Charge (Herndon)		\$ 114,080.00	\$ 1,584.70	\$ 112,495.30	
Herndon Capacity Enhancement		\$ 200,790.00	\$ 2,785.30	\$ 198,004.70	
Wastewater Facility Charge	48	\$ 101,712.00	\$ 27,208.40	\$ 74,503.60	
Copper Lift Station S.A. Fee	31	\$ 20,150.00	\$ 2,222.70	\$ 17,927.30	
Copper Lift Station S.A. Fee (Deferred)	15	\$ 9,750.00	\$ 1,075.50	\$ 8,674.50	
<b>Total</b>		<b>\$ 446,482.00</b>	<b>\$ 34,874.60</b>	<b>\$ 411,607.40</b>	<b>\$ 411,607.40</b>
<b>Total All</b>	<b>482</b>	<b>\$ 1,201,165.00</b>	<b>\$ 136,479.10</b>	<b>\$ 1,064,685.90</b>	<b>\$ 1,064,685.90</b>

**REMAINING FEE OBLIGATIONS by TRACT**

	# lots Remaining	Adjusted Fee Rate	Revised Fee Oblig
<b>Wastewater Facility Charge</b>			
Tract No. 5205 - Copper River Development Co. Inc.	9	\$ 566.80	\$ 5,101.20
Tract No. 5270 - Copper River Ranch Villages, LLC	35	\$ 566.80	\$ 19,838.00
Tract No. 5271 - Copper River Custom Lots, Inc.	33	\$ 566.80	\$ 18,704.40
Tract No. 5272 - Copper River Ranch Villages, LLC	20	\$ 566.80	\$ 11,336.00
Tract No. 5268 - Copper River Southwest, Inc.	182	\$ 566.80	\$ 103,157.60
<b>Wastewater Facility Charges Due</b>			<b>\$ 158,137.20</b>
<b>Copper Lift Station S.A. Fee (Deferred)</b>			
Tract No. 5205 - Copper River Development Co. Inc.	38	\$ 71.70	\$ 2,724.60
Tract No. 5270 - Copper River Ranch Villages, LLC	38	\$ 71.70	\$ 2,724.60
Tract No. 5271 - Copper River Custom Lots, Inc.	27	\$ 71.70	\$ 1,935.90
Tract No. 5272 - Copper River Ranch Villages, LLC	24	\$ 71.70	\$ 1,720.80
Tract No. 5268 - Copper River Southwest, Inc.	184	\$ 71.70	\$ 13,192.80
<b>Copper Lift Station S.A. Fee (Deferred) Due</b>			<b>\$ 22,298.70</b>

**Net Amount of Refund** **\$ 884,250.00**

**FUTURE FEE OBLIGATION FOR REMAINDER OF COPPER RIVER RANCH**

	Est. EDU's		
Trunk Sewer Charge (Herndon)	2,700	\$ 8.89	\$ 18,803.00
Herndon Capacity Enhancement	2,700	\$ 12.11	\$ 32,697.00
Wastewater Facility Charge	2,700	\$ 566.80	\$ 1,530,360.00
Copper Lift Station S.A. Fee	2,700	\$ 71.70	\$ 193,590.00
<b>Total</b>		<b>\$ 657.50</b>	<b>\$ 1,775,250.00</b>

# **Exhibit H**

WNTF - DEDICATI

**Recording Requested By:**  
Public Works Department  
City of Fresno  
No Fee-Gov't Code Sections  
6103 and 27383

**When Recorded, Mail To:**  
Public Works Department  
City of Fresno  
2600 Fresno Street  
Fresno, CA 93721-3623  
ATTN: Bruce Abbott

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 579-073-6S

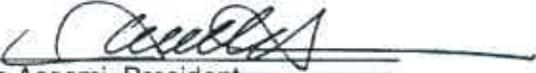
GRANT DEED

For a valuable consideration, receipt of which is hereby acknowledged, COPPER RIVER DEVELOPMENT COMPANY, INC., A CALIFORNIA CORPORATION, GRANTOR, hereby GRANTS to the City of Fresno, a municipal corporation, GRANTEE, all that certain real property situated in the City of Fresno, County of Fresno, State of California, more particularly described and shown as follows:

See Exhibits "A" and "B", which are attached and incorporated herein

DATE OCT. 23, 2007

Copper River Development Company, Inc.  
A California Corporation

By:   
Darius Assemi, President

T-5205  
2007-121  
Plat 460  
15-A-8356

State of California )  
County of Fresno )

On OCT. 23, 2007 before me, TIFFANIE A. MARSHALL, <sup>NOTARY</sup><sub>PUBLIC</sub>

Notary Public, personally appeared, DARIUS ASSEMI  
NAME(S) OF SIGNER(S)

OPTIONAL SECTION

TOP OF THUMB

- INDIVIDUAL(S)
- CORPORATE OFFICER(S)

TITLE(S)

- PARTNERS  LIMITED  GENERAL
  - ATTORNEY-IN-FACT
  - TRUSTEE(S)
  - GUARDIANSHIP/CONSERVATOR
- SIGNER IS REPRESENTING  
NAME OF PERSON(S) OR ENTITY(IES)

TOP OF THUMB

personally known to me - OR -  proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

**COPY**



WITNESS my hand and official seal

Tiffanie A. Marshall  
SIGNATURE OF NOTARY

FOR CITY OF FRESNO USE ONLY

CERTIFICATE OF ACCEPTANCE (Officer)

In accordance with Section 27281 of the Government Code, this is to certify that the interest in real property conveyed hereby is accepted by the undersigned officers on behalf of the Council of the City of Fresno pursuant to authority conferred by Resolution No. 92-219A of said Council, adopted June 9, 1992 and the grantee consents to the recordation thereof by its duly authorized officer.

Public Works Director  
ACCEPTED:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
DEPUTY

FEE TITLE ACCEPTANCE (Officer)  
City Manager

By: \_\_\_\_\_ Date: \_\_\_\_\_  
DEPUTY

CERTIFICATE OF ACCEPTANCE (Council)

In accordance with Section 27281 of the Government Code, this is to certify that the interest in real property conveyed by this instrument to the City of Fresno, a municipal corporation, is hereby accepted by order of the Council of the City of Fresno made on the date hereafter set forth and the grantee consents to the recordation thereof by its duly authorized officer.

Item No./Reso. No. \_\_\_\_\_

Date of Council Order: \_\_\_\_\_

City Clerk

By: \_\_\_\_\_ Date: \_\_\_\_\_  
DEPUTY

APPROVED AS TO FORM:  
City Attorney

By: \_\_\_\_\_ Date: \_\_\_\_\_  
DEPUTY

RECOMMENDED FOR ACCEPTANCE:

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

CHECKED:

By: Bruce Abbott  
Title: Sr. Eng. Tec.  
Date: 10/16/07

Log No. 2007-121 Drawing No. 15-A-8356

T-5205

APN 579-073-6S

Waste Water Treatment Plant – Grant Deed

EXHIBIT "A"  
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)

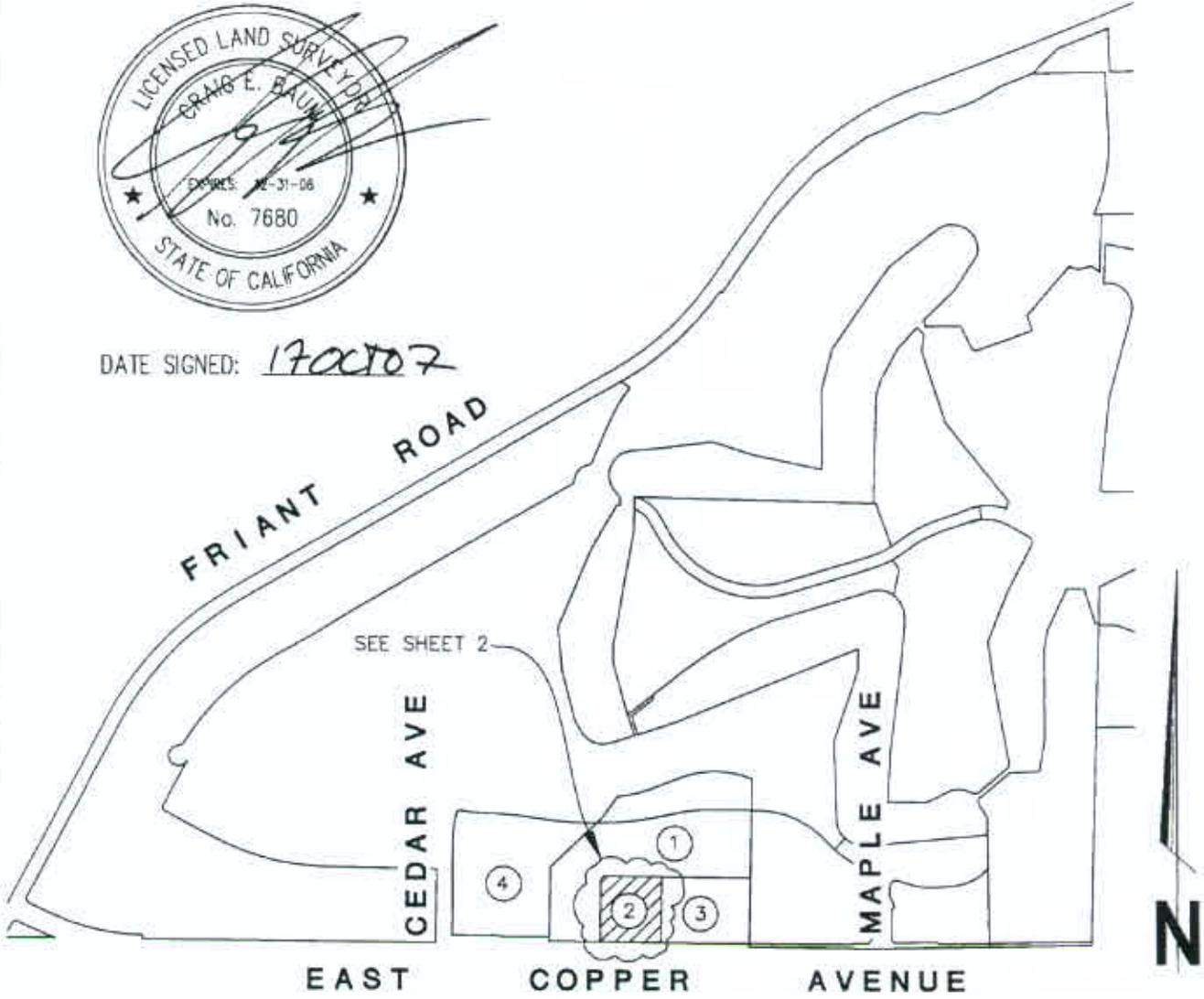
T-5205  
2007-121  
PLAT 460  
15-A-8356



# EXHIBIT "B"

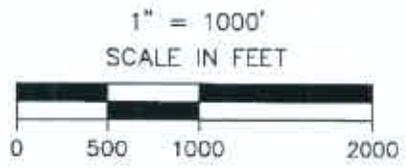


DATE SIGNED: 17 OCT 07



## LEGEND

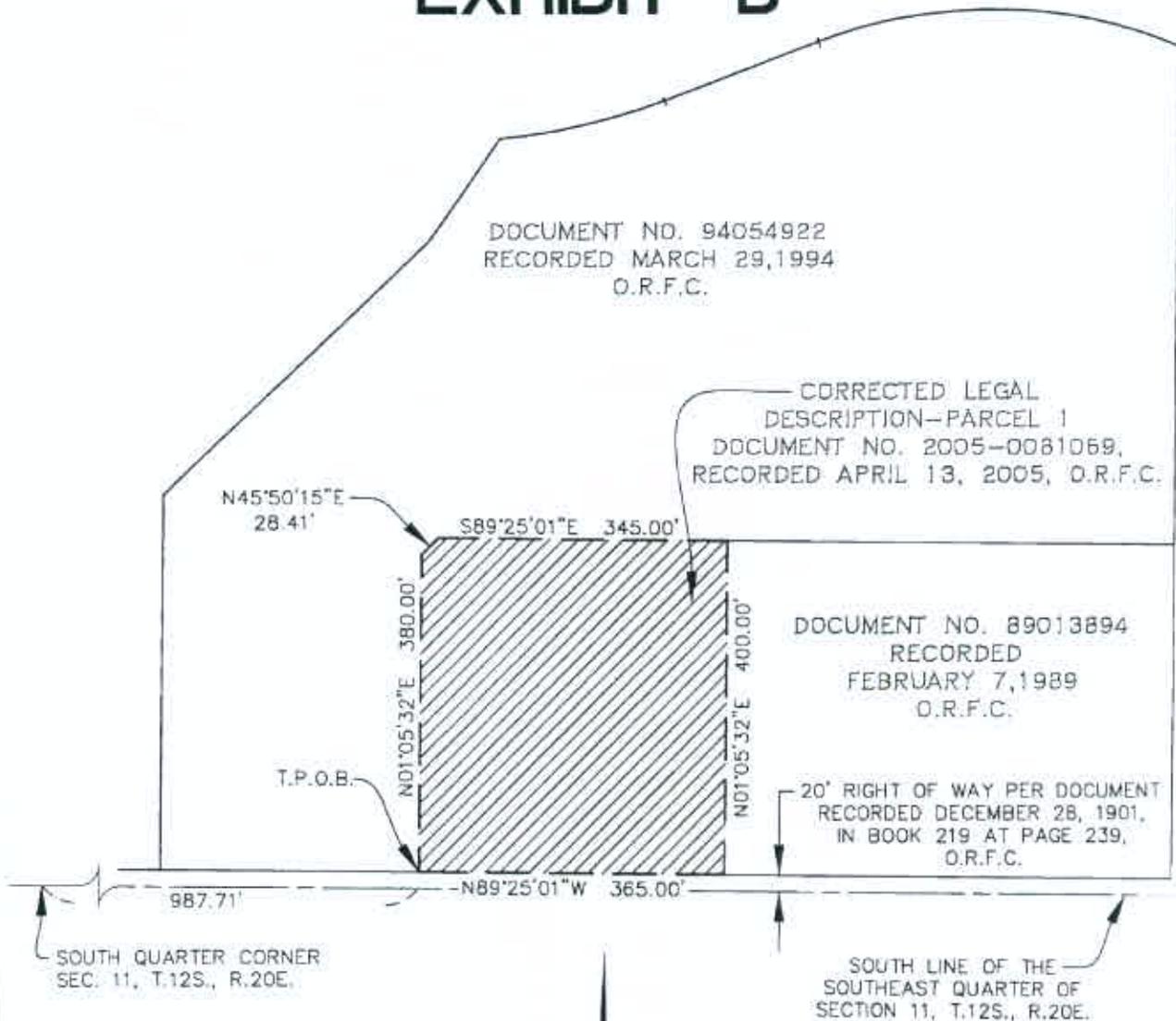
-  AREA TO BE DEEDED TO THE CITY OF FRESNO
-  REC. DOC. No. 94054922 O.R.F.C.
-  REC. DOC. No. 20050081069 O.R.F.C.
-  REC. DOC. No. 89013894 O.R.F.C.
-  REC. DOC. No. 20040291145 O.R.F.C.



DATE: 09/05/07  
JOB NO: 8000  
DWG. NO: 3000  
SEE NEXT DRAWING FOR  
FRESNO, CALIFORNIA, 93711-5100  
916/438-2700 FAX 916/438-8700  
www.provostpritchard.com

REF. & REV. PW FILE NO. 10782 PLAT NO. 0460 2007-121 T-5205 C-07-126	<b>CITY OF FRESNO</b> DEPARTMENT OF PUBLIC WORKS	PROJ. ID. _____ FUND NO. _____ ORG. NO. _____
	PORTION OF SOUTHEAST ONE QUARTER OF SECTION 11, T.12S., R.20E., M.D.B.&M. TO BE DEEDED TO THE CITY OF FRESNO	DR. BY <u>SJD</u> CH. BY _____ DATE <u>10/16/07</u> SCALE <u>1"=1000'</u>
		SHEET NO. <u>1</u> OF <u>2</u> SHEETS  15-A-8356

# EXHIBIT "B"



## LEGEND



AREA TO BE DEEDED TO THE CITY OF  
FRESNO

O.R.F.C. OFFICIAL RECORDS FRESNO COUNTY

T.P.O.B. TRUE POINT OF BEGINNING



1" = 200'  
SCALE IN FEET



DATE: 06/26/07  
JOB NO. 0000  
DWG. NO. 0000

REF. & REV.  PW FILE NO. 10782 PLAT NO. 6460 2007-121 T-5205 C-07-126	<b>CITY OF FRESNO</b> DEPARTMENT OF PUBLIC WORKS	PROJ. ID. _____ FUND NO. _____ ORG. NO. _____	SHEET NO. <u>2</u> OF <u>2</u> SHEETS
	PORTION OF SOUTHEAST ONE QUARTER OF SECTION 11, T.12S., R.20E., M.D.B.&M. TO BE DEEDED TO THE CITY OF FRESNO	DR. BY <u>SJD</u> CH. BY _____ DATE <u>10/16/07</u> SCALE <u>1"=200'</u>	15-A-8356

# **Exhibit I**

**EXHIBIT I**

**RECALCULATION OF REGIONAL CITY OF FRESNO SEWER CHARGES FOR  
THE COPPER RIVER WWTF SERVICE AREA**

	<b>Adopted Fee</b>			<b>Adjusted Fee</b>				
	<b>Rate per EDU</b>			<b>Rate per EDU</b>				
<b>Trunk Sewer Charge (Herndon)</b>	\$	496.00	\$	\$	36,470.59	\$	6.89	
Formula: Adopted Rate / 340 x Total Estimated Discharge (2% of Capacity) / Total Estimated EDU (5,297)								
<b>Herndon Capacity Enhancement</b>	\$	873.00	\$	\$	64,191.18	\$	12.11	
Formula: Adopted Rate / 340 x Total Estimated Discharge (2% of Capacity) / Total Estimated EDU (5,297)								
<b>Regional "Wastewater Facility Charge"</b>								
<b>(WWFC) Impact Fee Calculation</b>	\$	2,119.00						
Estimated Flow 2% 25,000 Gallons per Day	\$	3.40	\$	\$	85,000.00	2.83%	\$	16.05
Estimated BOD (8,500 mg/l) 1,773 lbs. Per Day	\$	760.88	\$	\$	1,349,278.02	44.94%	\$	254.72
Estimated TSS (12,000 mg/l) 2,504 lbs. Per Day	\$	626.35	\$	\$	1,568,067.23	52.23%	\$	296.03
<b>Total WWFC Disposal Fee</b>				\$	\$	\$	\$	3,002,345.24
<b>Copper Lift Station S.A. Fee</b>	\$	650.00	\$	\$	325,000.00		\$	71.70
Formula: Adopted Rate * 500 / Total Estimated EDU north of Copper (4533)								
<b>Adjusted Fee per EDU</b>						<b>\$ 657.50</b>		

**WWFC Formulas**

Flow Charge = (sewer flow(gal)) x (MFR fee rate)

BOD Charge = (sewer flow(mgd)) x 8.345 x BOD(mg/L/day) x (MFR fee rate)

TSS Charge = (sewer flow(mgd)) x 8.345 x TSS(mg/L/day) x (MFR fee rate)

# **Exhibit J**

## Exhibit J

### Assignment of Reserved Sewer Capacity

For value received, Copper River Development Company, Inc., a California corporation ("Assignor"), hereby assigns Assignor's right, title, and interest in and to \_\_\_\_\_ EDUs of sewer treatment and disposal capacity as described in the Transfer Agreement between Assignor (as "Developer") and the City of Fresno ("City") dated November \_\_, 2008 (the "Transfer Agreement") and the "Will Serve" letter attached to this Assignment to: \_\_\_\_\_ ("Assignee"). This assignment is subject to the following provisions of the Transfer Agreement:

#### 10. Wastewater Facilities Fees.

##### 10.1 City Regional Wastewater Treatment Facility and other City Wastewater Facility Fees.

###### 10.1.1 ...

**10.1.2 Payment of Modified Wastewater Facility Fees.** Except for approved developments for which Developer and its affiliates have previously paid sewer connection and various wastewater facility fees, Developer shall be responsible at time of pulling building permits to pay a modified City wastewater facility fee of \$657.50 per EDU ... for any new development within the Project Area. Developer will be responsible for this fee regardless whether Council adopts it into the Master Fee Schedule or otherwise complies with the Mitigation Fee Act (Gov't Code §§ 66000, et seq.). Developer agrees to cooperate in and waive any right to object to or legally challenge any action by the City to impose and/or collect the modified City wastewater facility fee ...

**10.1.3 Developer Not Responsible for City Wastewater Facility Fees in Project Area.** If Developer has paid the fee identified in Section 10.1.2 ..., Developer shall not be responsible for payment of any impact fees for the City's Regional Wastewater Treatment and/or Disposal Facility and other City Wastewater Facility Fees for any development in the Project Area up to Full Build Out of the Project (total of 3,682 EDUs). After Full Build Out of the Project (3,682 EDUs), the Agreement shall terminate and Developer shall be responsible for paying any wastewater facility fees required under then current City ordinances and policies.

**10.2 WWTF Impact Fees.** Upon execution of this Agreement, for development in the Project Area, up to Full Build Out of the Project (3,682 EDU's), Developer shall not be responsible for any fees to pay for any cost of the WWTF, the Subject Property, any disposal facilities (except for completion of the Golf Course irrigation system and Phase III Pipeline as described above) and any associated equipment or facilities, including the proposed expansion thereof. Developer agrees to cooperate in and waive any right to object to the adoption of any fee the City adopts to recover costs to pay for the WWTF on properties outside of the Project Area ... regardless whether the Developer owns or acquires property in the proposed fee service area.

**10.3 Disposal Fees.** Notwithstanding anything to the contrary in this Agreement, development within the Project Area will be responsible for payment of supplemental sewer service fees to fund payment of the "DTE Disposal Fee" contemplated by the Disposal and Delivery Agreement as provided in the City's Master Fee Schedule to reimburse the City for its costs to pay the Disposal Fee to the Golf Course in connection with the operation of the WWTF.

Assignor assign and delegates to Assignee all of Assignor's right and obligations related to the foregoing provisions of the Transfer Agreement as they relate to any property in the Project owned by Assignee purchased or otherwise acquired from Assignor. By accepting this Assignment, Assignee agrees to assume and perform all duties and obligations that Assignor has under the Transfer Agreement as they relate to any property in the Project owned by Assignee purchased or otherwise acquired from Assignor, as if Assignee had been an original party to the Transfer Agreement.

This Assignment shall be binding on and shall inure to the benefit of the respective heirs, devisees, legatees, executors, administrators, trustees, successors, and assigns of the parties to this Assignment.

This Assignment shall be governed by and construed in accordance with California law.

Dated: \_\_\_\_\_

**ASSIGNOR:**

**ASSIGNEE:**

Assignment approved.

**CITY OF FRESNO**, a Municipal Corporation

By: \_\_\_\_\_  
Rene A. Ramirez, Director  
Public Utilities Department

November 19, 2008

Council Adoption: 11/18/08

Mayor Approval:

Mayor Veto:

Override Request:

TO: MAYOR ALAN AUTRY

RECEIVED

FROM: REBECCA E. KLISCH, CMC  
City Clerk

REK

2008 NOV 25 PM 1:55

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/Copper River Dev. Company, Inc, \$3,628,221, re: N. Fresno WW Reclamation Facility, Item No. 9:15 #2 C-1**, 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	:	