

FIRST AMENDMENT TO DEPOSIT AND REIMBURSEMENT AGREEMENT

THIS FIRST AMENDMENT TO DEPOSIT AND REIMBURSEMENT AGREEMENT ("Amendment") is made this ____ day of _____ 2025, by and between the City of Merced, a California Charter Municipal Corporation ("City") and MCYL1, LLC, a Delaware limited liability company having an address of 10561 W Highway 140 Atwater, California 95301 ("Developer").

RECITALS

A. WHEREAS, in April 2024, the Parties entered into a Deposit and Reimbursement ("Agreement") whereby Developer agreed to reimburse City on a payment schedule for \$348,610.00 in cost and expenses City incurred in connection with Developer's project.

B. WHEREAS, the payment schedule for the reimbursement has changed and the Parties wish to amend the Agreement to reflect the updated schedule.

C. WHEREAS, except as modified herein, the terms of the Agreement shall remain the same.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, pursuant to paragraph 10 of the Agreement, the Parties agree to modify the Agreement and the Agreement is hereby modified as follows:

1. Paragraph 1.A. Paragraph 1.A is stricken in its entirety and replaced with the following:

A. With regard to the aforementioned contract with Consultant, Developer shall deposit with the City the total estimated cost of Consultant's services, which equals the sum of Three Hundred Forty-Eight Thousand Six Hundred Ten Dollars (\$348,610.00). Within ten (10) days of the mutual execution of this Amendment, the Developer shall deposit with the City the first of four equal installments of Eighty-Seven Thousand One Hundred Fifty-Two Dollars and 50 Cents (\$87,152.50) with the second, third, and fourth installments of Eighty-Seven Thousand One Hundred Fifty-Two Dollars and 50 Cents (\$87,152.50) due within ninety (90) days, one hundred twenty (120) days, and one hundred eighty (180) days of execution of this Amendment, respectively. City shall apply this deposit to fees, costs, and expenses under its contract with Consultant and shall refund to Developer any unspent funds upon termination of the Agreement. In the event the aforementioned amount (\$348,610.00) is amended or otherwise adjusted in the contract with the Consultant, Developer agrees to similarly amend its reimbursement obligation hereunder with the intent that the City will at all times be reimbursed for all actual fees, costs, and expenses under said contract with the Consultant, subject to the condition that Developer must have reviewed and approved any modifications to Consultant's proposal to be liable for resultant fees, costs, and expenses under the contract with Consultant. In the event the contract with the Consultant terminates, the Developer will only be responsible for its pro-rata share of the Consultant's cost to the date of termination.

2. Paragraph 1.B. Paragraph 1.B is stricken in its entirety and replaced with the following:

In addition to the Consultant time spent on preparing the environmental impact report, City staff will spend considerable time administering the Consultant contract. Under City Council Resolution #98-31, also known as the "Planning and Development Fee Schedule," the management fee for environmental review reports is ten percent (10%) of the total environmental impact review cost. Pursuant to said Schedule, Developer hereby agrees to deposit within thirty (30) days of the mutual execution of this Amendment, the additional sum of Thirty-Four Thousand Eight Hundred Sixty-One Dollars (\$34,861.00) to be applied toward the management fee for City staff time administering the preparation of an environmental document by the Consultant.

3. Limited Scope of Amendment. Except as specifically modified herein, the terms of the Agreement shall remain the same.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
D. Scott McBride,
City Manager

ATTEST:

D. SCOTT MCBRIDE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

CRAIG J. CORNWELL, CITY ATTORNEY

BY: Craig Cornwell 7/8/2025
City Attorney Date

ACCOUNT DATA:

M. VENUS RODRIGUEZ, FINANCE OFFICER

BY: _____
Verified by Finance Officer

DEVELOPER

MCYL1, LLC, A Delaware Limited Liability Company

Michael D. Gallo on behalf of and as
Member Manager of Western Assets, LLC



CITY OF MERCED

Merced Civic Center
678 W. 18th Street
Merced, CA 95340

FYI

Legislation Details (With Text)

File #: 24-478 **Version:** 1 **Name:**
Type: Consent Item **Status:** Passed
File created: 5/9/2024 **In control:** City Council/Public Finance and Economic Development Authority/Parking Authority
On agenda: 6/3/2024 **Final action:** 6/3/2024
Title: SUBJECT: Approval of an Agreement for Professional Services with De Novo Planning Group for Environmental Services in the Amount of \$348,610 and a Deposit and Reimbursement Agreement with MCYL1, LLC, Relating to the Annexation of the Yosemite Lake Village Project to the City of Merced in the Amount of \$383,471

REPORT IN BRIEF

Considers approving a Professional Services Agreement with De Novo Planning Group in the amount of \$348,610 to perform environmental services for the annexation to the City of Merced of the Yosemite Lake Village project (734 acres generally located at the northeast corner of G Street and Old Lake Road) as well as additional properties for a total of 1,171 acres, and entering into a Deposit and Reimbursement Agreement with MCYL1, LLC., in the amount of \$383,471 to fund the De Novo contract and to reimburse for City staff time to manage the contract.

RECOMMENDATION

City Council - Adopt a motion:

- A. Waiving a competitive bid for a professional service.
- B. Approving an Agreement for Services with De Novo Planning Group in the amount of \$348,610 to perform environmental services for the annexation of the Yosemite Lake Village project to the City of Merced; and,
- C. Approving a Deposit and Reimbursement Agreement with MCYL1, LLC, in the amount of \$383,471 to cover the cost of the consultant contract (\$348,610) and staff time (\$34,861) for the administration of the environmental review process and contract; and,
- D. Approving an increase of revenue in the amount of \$348,610 to Fund 3000-Development Services -Other Revenue Developers account line and \$34,861 to the Fund 3000-Development Services-EIR Management Fee account line; and appropriating \$348,610 to the Professional Services account line for payment to De Novo Planning Group; and,
- E. Authorizing the City Manager to execute the necessary documents; and,
- F. Authorizing the Finance Officer to make the necessary budget adjustments.

Sponsors:

Indexes:

Code sections:

Attachments: 1. Yosemite Lake Village Project, 2. Professional Services Agreement with De Novo Planning Group, 3. Deposit and Reimbursement Agreement with MCYL1, LLC

Date	Ver.	Action By	Action	Result
6/3/2024	1	City Council/Public Finance and Economic Development Authority/Parking Authority	approved	Pass

AUTHORITY

The Cortese-Knox-Hertzberg Act of 2000 establishes procedures for city annexations and other local government changes in organization. Merced Municipal Code Title 19 Environmental Protection. Merced Municipal Code 3.04.210 Exemptions from Competitive Bidding, Professional Services.

CITY COUNCIL PRIORITIES

On April 4, 2022, the City Council indicated general support for moving forward with an application for the annexation of the Yosemite Lake Village project to the City of Merced.

DISCUSSION

Background

On April 4, 2022, the City Council reviewed Preliminary Annexation Application #21-06 for Yosemite Lake Village, a 734-acre mixed use development at the northeast corner of Old Lake and Golf Roads, along with adjoining properties to be included in the annexation area (Attachment 1). The project would include an estimated 2,708 dwelling units along with 8 acres of neighborhood commercial development and 564 acres of parks and open space. After reviewing the information in the application and hearing from the applicants, the City Council voted unanimously to offer general support for the project moving forward with an official annexation application.

Recommended Consultant Selection

Although the applicants have yet to submit for an official annexation application, the applicants are anxious to get started with the environmental process since it is the longest part of the process. The official application will follow in the coming months.

The applicants have worked with De Novo Planning Group in the past and indicated that they had the skills and experience to handle such a complex project. City staff reviewed De Novo's qualifications (Attachment 2) and concur with that opinion. De Novo is also working on another City annexation project, Branford Point. After discussing the project with the applicants and City staff, De Novo prepared a scope of work for the preparation of an Environmental Impact Report (EIR) for the Yosemite Lake Village Project.

The scope of work (Exhibit A of Attachment 2) includes project management, preparation of project description, the preparation of the Notice of Preparation (NOP), the preparation of technical studies (air quality, greenhouse gas emissions, energy, biological resources, cultural resources, noise, traffic, and water supply), the preparation of the Draft EIR for circulation for public review, the preparation of the Final EIR and Responses to Comments on the Draft EIR, and participation in public hearings on the project. The project team includes De Novo as well as LSA for biological resources, Peak and Associates for cultural resources, Saxelby Acoustics for noise, TJKM for traffic, and West Yost for water supply. The budget for the scope of services is \$348,610 and the work is expected to take approximately 11 months to complete.

The City Attorney's office has prepared an Agreement for Professional Services with De Novo, (Attachment 2) for \$348,610 and a Deposit and Reimbursement Agreement with MCYL1, LLC, (Attachment 3) for a total of \$383,471. The amount of \$348,610 is needed to cover the cost of the consultant contract and \$34,861 for to cover City staff time for the administration of the environmental review process and contract. The \$348,610 for the consultant contract will be paid in four (4) equal

DEPOSIT AND REIMBURSEMENT AGREEMENT

THIS DEPOSIT AND REIMBURSEMENT AGREEMENT is made and entered into this _____ day of _____, 2024, by and between the City of Merced, a California Charter Municipal Corporation ("City") and MCYL1, LLC, a Delaware Limited Liability Company, whose address of record is 10561 W Highway 140, Atwater, CA 95301 ("Developer").

WHEREAS, Developer desires to develop a mixed use project on approximately 734 acres and to annex approximately 1,171 acres, generally located at the northwest and northeast corners of G Street and Old Lake Road (hereinafter referred to as the "Project"); and

WHEREAS, Developer desires to reimburse City for all of the costs and expenses associated with assessing the environmental impacts of said Project under the California Environmental Quality Act ("CEQA").

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. REIMBURSEMENT. Without regard to the outcome or adequacy thereof, and without offset for any reason, Developer agrees to reimburse City for all actual fees, costs, and expenses of a certain contract entered into or to be entered into between City and De Novo Planning Group (the "Consultant") relating to the environmental review of the proposed Project under CEQA, subject to the condition that Developer must have reviewed and approved Consultant's proposal and any modifications to that proposal to be liable for fees, costs and expenses under such contract with Consultant. City will require Consultant to prepare a proposal that includes a detailed scope of work and estimate of fees, costs, and expenses. City shall submit Consultant's proposal to Developer for review and approval, and such approval by Developer shall not be unreasonably withheld, conditioned, or delayed. It is understood that City would not have engaged Consultant had Developer not made an express promise and guarantee to pay the fees, costs, and expenses related thereto. If Consultant later seeks modifications to its proposal, including, but not limited to, an increased budget authorization, City shall submit any such requested modification to Developer for review and approval, and such approval by Developer shall not be unreasonably withheld, conditioned, or delayed.

and agrees that failure of the Developer to make payments when due shall be grounds for City to suspend work and/or cancel said contract.

3. The Developer reserves the right to provide a performance bond on behalf of Consultant, subject to Consultant's consent, and at the Developer's sole expense.

4. The Developer shall have the right to utilize the reports and work product of Consultant in connection with the proposed Project.

5. No application for any project from the Developer shall be considered for approval until the above-referenced contract with Consultant is completed. Nothing herein is intended to suggest any result upon the hearing of any such application thereon. The City retains its authority to grant, deny, or condition any and all projects and applications.

6. This Agreement shall terminate once Developer has reimbursed the City for all actual fees, costs, and expenses under the City's contract with Consultant, as specified in this Agreement.

7. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Merced.

8. In the event that either City or the Developer shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

9. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.


10. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

11. If any portion of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

ACCOUNT DATA:
M. VENUS RODRIGUEZ, FINANCE OFFICER

BY: _____
Verified by Finance Officer

MCYL1, LLC, A Delaware Limited
Liability Company

BY:  _____
Michael D. Gallo on behalf of and
as Member Manager of Western Assets,
LLC (Manager of MCYL1, LLC)

ITS: Member Manager of Western
Assets, LLC (Manager of MCYL1, LLC)

Taxpayer I.D. No. 99-2344260

ADDRESS: 10561 W. Highway 140
Atwater, CA 95301

TELEPHONE: 209-394-7984, ext 1251

EMAIL: micahgallo@josephfarms.com