

### **THIRD AMENDMENT TO REIMBURSEMENT AGREEMENT**

THIS THIRD AMENDMENT TO REIMBURSEMENT AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the City of Merced, a California Charter Municipal Corporation (“City”) and Gateway Park Development Partners, LLC, a California Limited Liability Company, whose address of record is 2326 Clubhouse Drive, Rocklin, California 95765 (“Developer”).

WHEREAS, City and Developer have previously entered into a Reimbursement Agreement (“Agreement”) dated August 17, 2015, a First Amendment to Agreement dated January 19, 2016, and a Second Amendment to Agreement dated July 5, 2016; and

WHEREAS, City and Developer desire to amend said Agreement to provide for additional reimbursement in connection with said project.

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

1. Section 1, “REIMBURSEMENT” of the Agreement is hereby amended to read 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 of the fees, costs, and expenses of a certain contract entered into or to be entered into between City and FCS International, Inc. (the “Consultant”) relating to the environmental review of the proposed Project. 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.

A. With regard to the aforementioned contract with Consultant, Developer shall reimburse the City the sum of Two Hundred Thirteen Thousand Three Hundred Dollars (\$213,300.00) as follows: (a) the sum of One

Hundred Ninety-Seven Thousand Five Hundred Dollars (\$197,500.00) has already been reimbursed; and (b) the sum of Fifteen Thousand Eight Hundred Dollars (\$15,800.00) shall be paid upon execution of this Third Amendment to Reimbursement Agreement. In the event the aforementioned amount (\$213,300.00) 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 of the fees, costs, and expenses under said contract with the 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.

B. In addition to the Consultant time spent on preparing the environmental impact report (EIR), 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 EIR cost. Additionally, pursuant to said Schedule, the Development hereby agrees to pay upon the mutual execution of this Agreement, the additional sum of One Thousand Five Hundred Eighty Dollars (\$1,580.00) to be applied toward the management fee for City staff time administering the preparation of an environmental document by the Consultant. The Developer can request periodic statements from the City's Finance Department itemizing costs applicable toward this fee. All costs over and above the initial fee are due and payable prior to the final Planning Commission/City Council action on the Project."

2. Except as herein amended, the Agreement dated August 17, 2015, First Amendment dated January 19, 2016, and Second Amendment dated July 5, 2016, shall remain in full force and effect.

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

CITY OF MERCED  
A California Charter Municipal  
Corporation

BY: \_\_\_\_\_  
City Manager

ATTEST:  
STEVE CARRIGAN, CITY CLERK

BY: \_\_\_\_\_  
Deputy City Clerk

APPROVED AS TO FORM:

BY: Kelly Timmer 4/4/17  
City Attorney Date

ACCOUNT DATA:

BY: \_\_\_\_\_  
Verified by Finance Officer

*{Signatures continued on next page.}*

GATEWAY PARK DEVELOPMENT  
PARTNERS, LLC  
A California Limited Liability Company

BY:   
RON WOODALL

ITS: PARTNER

Taxpayer I.D. No. 27-0462071

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Sonora, CA 95370

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