



Agenda Item

Orange City Council

Item #: 3.7.

7/28/2026

File #: 26-0442

TO: Honorable Mayor and Members of the City Council

THRU: Jarad Hildenbrand, City Manager

FROM: Nathalie Adourian, City Attorney

1. SUBJECT

Second Amendment to Memorandum of Understanding with Milan REI X, LLC.

2. SUMMARY

On July 22, 2025, the City Council approved a Memorandum of Understanding (MOU) with Milan REI X, LLC establishing a framework for the City to expeditiously process certain development applications while Milan agreed to toll and ultimately withdraw its pending Senate Bill 330 (Builder's Remedy) applications upon satisfaction of the MOU's terms. The First Amendment extended the processing deadlines and related Builder's Remedy Tolling Agreements. The proposed Second Amendment provides Milan the option to extend the applicable tolling agreement if litigation is filed challenging the City's approval of the Residential Project and/or the Open Space Project, thereby preserving the parties' negotiated framework while the litigation is resolved.

3. RECOMMENDED ACTION

Approve the second amendment to the Memorandum of Understanding with Milan REI X, LLC; and authorize the Mayor and City Clerk to execute on behalf of the City.

4. FISCAL IMPACT

None.

5. STRATEGIC PLAN GOALS

Goal 2: Enhance Economic Development and Achieve Fiscal Sustainability.

6. DISCUSSION AND BACKGROUND

On July 22, 2025, the Orange City Council approved a Memorandum of Understanding (MOU) with Milan REI X, LLC (Milan). The MOU established a cooperative framework under which the City agreed to use its best efforts to expeditiously process Milan's development applications while Milan agreed to toll and ultimately withdraw its pending Senate Bill 330 (Builder's Remedy) applications, subject to the terms of the agreement.

The MOU contemplated the processing of the following projects:

- Mabury-22 (22 single-family homes north of Santiago Creek);
- Arena Residential Project (30 residential units at 6146 E. Santiago Canyon Road); and
- Sully-Miller Open Space Project.

The MOU did not approve any development project or guarantee approval of any application. Rather, it established a process for the City to review each project in accordance with applicable law while preserving the parties' negotiated rights and obligations.

Prior to execution of the MOU, Milan submitted preliminary Builder's Remedy applications in November 2023, resulting in the execution of Builder's Remedy Tolling Agreements while the parties pursued the negotiated framework.

First Amendment

On May 26, 2026, the City Council approved the First Amendment to the MOU. The amendment:

- Extended the Builder's Remedy Tolling Agreements through August 21, 2026;
- Extended the City's target approval deadline to August 21, 2026;
- Authorized the City Manager to approve additional 30-day extensions, not to exceed six months in total, upon determining that each extension is in the City's best interest;
- Required Milan to provide written progress updates regarding the Mabury-22 Project, Arena Residential Project, and Sully-Miller Open Space Project; and
- Required that any administrative extension not materially impair the City's ability to enforce the MOU.

Second Amendment

The proposed Second Amendment addresses a circumstance not expressly addressed in the original MOU or the First Amendment.

If the City approves the Arena Residential Project and/or the Sully-Miller Open Space Project, those approvals could become the subject of litigation under CEQA or other applicable law. Such litigation could extend well beyond the term of the existing Builder's Remedy Tolling Agreements.

To address this possibility, the proposed Second Amendment allows Milan, at its option, to extend the applicable Builder's Remedy Tolling Agreement for the duration of any litigation challenging either project, including any appeals and the period during which an appeal may be filed.

The amendment is procedural in nature. It does not approve any development project, grant any development entitlement, modify the City's land use authority, or alter the City's obligations under CEQA, the Housing Accountability Act, the Density Bonus Law, or any other applicable law.

Public Benefit

The original MOU was negotiated as a comprehensive resolution intended to advance multiple public objectives, including:

- Processing a revised residential project in lieu of continued Builder's Remedy litigation;
- Preservation and future public ownership of the Sully-Miller property as open space;
- Completion of the Mabury-22 subdivision; and
- Resolution of multiple development matters through a coordinated agreement.

The proposed Second Amendment preserves this negotiated framework if litigation delays implementation of either the Residential Project or the Open Space Project.

Consequences of Not Approving the Amendment

If litigation extends beyond the existing term of the Builder's Remedy Tolling Agreements, those agreements could expire before the litigation is resolved.

Expiration of the tolling agreements could substantially undermine the negotiated framework established by the MOU. In that circumstance, Milan could elect to discontinue participation in the negotiated process and instead pursue its previously submitted Builder's Remedy applications, consistent with its legal rights and the terms of the parties' agreement.

Should that occur, the City could lose the opportunity to realize the comprehensive public benefits contemplated by the MOU, including the coordinated path toward restoration and public ownership of the Sully-Miller property, while increasing uncertainty regarding future development of the site.

Approval of the proposed Second Amendment reduces this risk by preserving the parties' negotiated framework until any litigation has been finally resolved.

7. ATTACHMENTS

- Memorandum of Understanding Second Amendment