

DEPOSIT/REIMBURSEMENT AGREEMENT

by and between City of Murrieta and Murrieta Hot Springs Resort LP
On-Call Historic Preservation Consulting Services

THIS DEPOSIT/REIMBURSEMENT AGREEMENT ("Agreement") is entered into by and between the CITY OF MURRIETA, a California municipal corporation ("City"), and MURRIETA HOT SPRINGS RESORT LP, a Delaware limited partnership ("Payor"). City and Payor may be referred to, sometimes individually or collectively, as "Party" or "Parties."

RECITALS

WHEREAS, at Payor's request the City is entering into agreements with qualified consultants ("Consultants") for services to assist City with Historic Preservation Planning ("Services") for the benefit of Payor; and

WHEREAS, Payor acknowledges and agrees that City's approval of the proposed agreements with Consultants and any amendments thereto ("Consultant Agreements") and the initiation of Services on behalf of Payor are contingent on Payor's agreement to pay all costs incurred by City in connection with Services to benefit Payor and that Payor will tender adequate deposits to ensure that Payor fully covers the costs of the Services performed necessary for Payor's request for historic preservation services in pursuit of a Mills Act contract with the City; and

WHEREAS, City and Payor now desire to specify the terms of such deposit and replenishments.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants set forth herein, and for other consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. Deposit; Additional Advances.

(a) Upon execution of this Agreement, Payor shall pay City a lump sum deposit in the amount of Fifteen Thousand Dollars (\$15,000) ("Initial Deposit"). The Initial Deposit represents the City's best estimate of Payor's obligation hereunder for the cost of the Services. The Initial Deposit and any Supplemental Deposit (defined below) are collectively referred to herein as "Deposit". The Deposit may be commingled with other funds of the City for purposes of investment and safekeeping.

(b) If City subsequently determines that the Deposit is insufficient, which determination shall be based on the actual costs and expenses generated in connection with the Services, Payor shall pay City a lump sum deposit in the amount estimated by City to be sufficient to cover the excess ("Supplemental Deposit"). Services shall be suspended until the Supplemental Deposit is made to City.

(c) Notwithstanding any provision herein to the contrary, the Parties agree that City's obligations to make payments to the Consultants pursuant to the Consultant Agreements shall be independent of and governed solely by the provisions of the Consultant Agreements, but that such payments shall come from the Deposit paid by Payor.

(d) City shall at all times maintain records as to the expenditure of the Deposit. City shall promptly provide Payor with copies of each statement of invoice received from the Consultants and shall give Payor at least ten (10) days within which to provide City with any comments or objections thereto prior to making payment to the Consultants. City shall also give Payor at least ten (10) days notice along with copies of any proposed change orders or contract amendments and related documents to Services so that Payor shall have the opportunity to provide comments or objections thereto prior to the City finalizing, filing, or otherwise releasing any of the foregoing.

(e) Subject to the provisions of this Agreement, Payor hereby agrees to advance those additional amounts necessary to pay City Costs, as described in Section 2(a), in excess of the amount of the Initial Deposit, promptly upon written demand therefore from the Executive Director of City.

Section 2. Use of Funds.

The Deposits shall be administered as follows:

(a) The Director of Finance of the City may draw upon the Deposits from time to time to pay the "City Costs" equal to: (i) the fees and expenses of the Consultant Agreements as may be amended which are reasonable and necessary to: (i) provide the Services and which Payor has been given a ten (10) day period within which to review and comment as provided in Section 1; and (ii) any amounts necessary to pay for all required permits and applicable City fees and costs and all other fees required by other public agencies in connection with the Services. In the event the Services are subject to legal or other challenge, Payor shall make Supplemental Deposits to pay for all of the City's reasonable and necessary legal fees and costs related to the defense of such challenge and shall indemnify and hold harmless the City; provided that if such challenge is filed, Payor may choose not to defend the matter and terminate this Agreement.

(b) Upon the completion of Services and payment of all applicable costs, the City's Director of Finance shall return any then-unexpended Deposits to Payor, without interest, less an amount equal to any unpaid costs theretofore incurred by City.

Section 3. If, prior to the completion of Services, either (i) City takes official action stating the intent of City to terminate Consultant Agreements, or (ii) Payor delivers to City a written request that City terminate Consultant Agreements, then, within thirty (30) business days after payment of all costs relating to the Services, City shall return any then-unexpended Deposits to Payor, without interest, less an amount equal to any unpaid costs incurred by City.

Section 4. Conflicts of Interest.

(a) During the existence of City's contract with the Consultants, and for a period of one (1) year after completion of Services, neither Payor, nor any of its representatives, agents or other persons acting in concert with Payor, shall enter into any financial relationship with the Consultants, its agents or employees, or with any City official, agent or employee. Nor, during such period, shall Payor propose to enter into any future relationship with the Consultants, its agents or employees, or with any City official, agent or employee.

(b) Payor makes the following warranties for the 12-month period preceding the completion of Services. Payor warrants that it has not entered into any arrangement to pay financial consideration to, and has not made any payment to, the Consultants or any of the Consultants' agents or employees. Payor further warrants that it has not entered into any arrangement to pay financial consideration to, and has not made any payment to, any City official, agent or employee that would create a legally cognizable conflict of interest as defined in the Political Reform Act (California Government Code Sections 87100 et seq.).

Section 5. Agreement Not Debt or Liability of City. It is hereby acknowledged and agreed that this Agreement is not a debt or liability of the City. City shall not in any event be liable hereunder other than to return the unexpended and uncommitted portions of the Deposits as provided in Section 2, above. City shall not be obligated to advance any of its own funds with respect to the Consultant Agreements or for any of the other purposes listed in Section 2(a) hereof. No official, officer, employee, or agent of the City shall, to any extent, be personally liable hereunder.

Section 6. Notices. Any notices, requests, demands, documents, approvals or disapprovals given or sent under this Agreement from one party to another (collectively, "Notices") may be personally delivered, transmitted by facsimile ("fax") transmission, email,, overnight courier, or deposit with the United States Postal Service for mailing, postage prepaid, to the address of the other party as stated in this Section. Notices shall be sent as follows:

If to City: City of Murrieta
Attn: Scott Agajanian, Economic Development Director
1 Town Square
Murrieta, CA 92562
Telephone: (951) 461-6021

With a copy to: Aleshire & Wynder, LLP
Attn: Tiffany J. Israel, City Attorney
1 Park Plaza, Suite 1000
Irvine, California 92614
Telephone: (949) 223-1170

If to Payor: Murrieta Hot Springs Resort LP
Attn: Rob Saunders, CFA Managing Partner
39405 Murrieta Hot Springs Rd
Murrieta, CA 92563
Telephone: (951) 290-0887

Each such Notice shall be deemed delivered to the Party to whom it is addressed (i) if personally served or delivered, upon delivery, (ii) if given by email, upon the sender's receipt of an appropriate answerback or other written acknowledgement (iii) if given by fax, upon the sender's receipt of an appropriate answerback or other written acknowledgement, (iv) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail, (v) if given by overnight courier, with courier charges prepaid, 24 hours after delivery to said overnight courier, or (vi) if given by any other means, upon delivery at the address specified in this Section.

Section 7. Independent Judgment. City shall have control over the manner, mode, and means by which Consultants, its agents, or employees, perform the Services required. City shall have no liability to Payor in any manner whatsoever therefor other than providing the accounting of expenses as provided herein.

Section 8. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

Section 9. Assignment. Payor shall not assign or transfer any interest in this Agreement, nor the performance of its obligations hereunder, without the prior written consent of City. Any attempt of such prohibited assignment or transfer shall be void.

Section 10. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

Section 11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 12. Integration; Amendment. This Agreement is the entire, complete, and exclusive expression of the understanding of the Parties. It is understood that there are no oral agreements between the Parties hereto affecting this Agreement. This Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings, if any, between the Parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Parties. The Parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

Section 13. Corporate Authority. The persons executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of the Parties.

Section 14. Electronic Signatures. This Agreement may be transmitted and signed by electronic or digital means by either party that such signatures shall have the same force and effect as original signatures in accordance with Government Code section 16.5 and Civil Code section 1633.7.

IN WITNESS THEREOF, the Parties hereto have executed this Agreement as of the day and year written alongside their signature line below.

PAYOR: MURRIETA HOT SPRINGS RESORT LP, a Delaware limited partnership

By: _____
Name:
Title:

By: _____
Name:
Title:
Address: 39405 Murrieta Hot
Springs Rd
Murrieta, CA 92563

CITY: CITY OF MURRIETA, a California municipal corporation

By: _____
Cindy Warren, Mayor

ATTEST:

Cristal McDonald, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

Tiffany J. Israel, City Attorney

[END OF SIGNATURES]