

**AGREEMENT BETWEEN THE CITY OF MURRIETA
AND
KOSMONT REAL ESTATE SERVICES DBA KOSMONT REALTY**

This Agreement ("Agreement"), made this fifth day of September, 2023, by and between the CITY OF MURRIETA, a Municipal Corporation, duly organized and existing under and by virtue of the laws of the State of California ("CITY"), and Kosmont Real Estate Services dba Kosmont Realty, a California corporation ("CONSULTANT") with reference to the following facts which are acknowledged by each party as true and correct:

RECITALS

- A. CITY is a general law city, formed and existing pursuant to the provisions of the California Government Code.
- B. CITY is authorized to enter into consultant agreements under the provisions of California Government Code section 53060.
- C. CITY desires or is in need of professional real estate consulting services.
- D. CONSULTANT has special knowledge, experience and facilities for accomplishing the above services.
- E. CITY now desires to retain CONSULTANT to accomplish the above services, and CONSULTANT is willing to be so retained pursuant to the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, it is agreed by and between the parties as follows:

OPERATIVE PROVISIONS

1. RESPONSIBILITIES OF CONSULTANT

1.1 CONSULTANT shall undertake to carry on the scope of services as listed in the attached Scope of Services (refer to Exhibit "A"), which is attached to and made a part of this Agreement. To the extent the provisions of Exhibit "A" are ambiguous in relation to the provisions of this Agreement, inconsistent with the provisions of this Agreement, or expand upon the provisions of this Agreement, the provisions of this Agreement shall take precedence and the provisions of Exhibit "A" shall not apply. These duties may be adjusted from time to time as agreed upon in writing by CONSULTANT and CITY. Any additional services authorized by CITY shall be subject to all terms and conditions of this Agreement, except as modified in writing in accordance with Section 24.

1.2 Representations. CONSULTANT will perform the services set out in this Agreement, as contemplated herein, in an efficient, timely, and professional manner, and in accordance with generally accepted standards for performing similar services. It is understood that CITY, in entering into this Agreement, is relying on CONSULTANT's representations for quality and professional work performed in a timely manner, and CONSULTANT shall perform in accordance with those representations and standards.

1.3 Monthly Written Reports. The Project Manager of CONSULTANT shall prepare and submit to the designated CITY representative a monthly written report specifying the activities of CONSULTANT pursuant to this Agreement. CONSULTANT shall prepare the monthly written report in a format acceptable to the CITY. CONSULTANT shall submit the monthly written report to the CITY by the second Friday of each month.

2. ADMINISTRATION OF AGREEMENT

2.1 CITY appoints its City Manager, or his designee, to administer CITY's rights under this Agreement, and to review the work performed by CONSULTANT pursuant to the scope of services.

2.2 CONSULTANT shall keep the City Manager, CITY's representative, or his designee or designees, fully informed as to the progress of the work and shall submit to CITY such oral and written reports as CITY may specify.

2.3 This Agreement shall be administered on behalf of the parties hereto, and any notice desired or required to be sent to a party hereunder shall be addressed, as follows:

For CITY: Economic Development Director
Address: City of Murrieta
One Town Square
24601 Jefferson Avenue
Murrieta, CA 92562
Phone: (951) 461-6010
Facsimile: (951) 461-6430

For CONSULTANT: Brian Moncrief, Project Manager
Kosmont Realty
CONSULTANT: 1601 N. Sepulveda Blvd., #382
Address: Manhattan Beach, CA 90266
Phone: (424) 297-1076
Facsimile: (424) 286-4632
E-mail: bmoncrief@kosmontrealty.com

3. TERM

3.1 The term of this Agreement shall be from September 5, 2023 until September 30, 2025, with the option to extend annually, upon written agreement by both parties, for up to three (3) additional one-year terms.

3.2 Time is of the essence for this Agreement and each provision of this Agreement, unless otherwise specified in this Agreement.

4. PAYMENT TO CONSULTANT

4.1 Consideration. In consideration of the services to be performed by CONSULTANT for the CITY as set forth in Section 1, the CITY agrees to pay CONSULTANT on a time and materials basis for services provided with a not to exceed Contract Sum of One Hundred Fifty Thousand Dollars (\$150,000) billed as services are rendered based on rates set forth on Exhibit

A – Scope of Services. City and Consultant further agree that services are for on-call as needed services and no promise or guarantee of work or payment of the full amount of this agreement is assured as part of execution of this agreement.

4.2 Additional Services. If CITY desires any additional services (“Additional Services”), CONSULTANT may, upon written request by the CITY, furnish a proposal including an itemized statement of the estimated cost of the Additional Services thereof, and the CITY may modify or alter the proposal, or may reject the proposal in its entirety, at its sole discretion, or may direct the submission of a new proposal which may be accepted, altered or rejected. Upon the written approval of any Additional Services including costs by CONSULTANT and CITY, CONSULTANT shall perform the Additional Services and CITY will pay to CONSULTANT the cost of the Additional Services as agreed in writing. All money due for Additional Services shall be supported by a detailed statement of CONSULTANT showing the basis of said claims, and certified by proper officers of CONSULTANT.

4.3 Payments. Payment of CONSULTANT’s fee shall be made in accordance with CITY’s normal schedule for issuance of checks. CONSULTANT agrees and acknowledges that it is CONSULTANT’s sole responsibility to report as income all compensation received from CITY, and to make the requisite tax filings and payments to the appropriate federal, state and local tax authorities.

5. STATUS OF CONSULTANT

5.1 Independent Contractor. It is understood and agreed that CITY is interested only in the results obtained from service hereunder and that CONSULTANT shall perform as an independent contractor with sole control of the manner and means of performing the services required under this Agreement. CONSULTANT shall complete this Agreement according to its own methods of work which shall be in the exclusive charge and control of CONSULTANT and which shall not be subject to control or supervision by the CITY, except as to the results of the work. CONSULTANT is, for all purposes arising out of this Agreement, an independent contractor, and neither CONSULTANT, nor its employees, agents and representatives shall be deemed an employee of the CITY for any purpose.

5.2 Employee Benefits. CONSULTANT shall be responsible for all salaries, payments, insurance and benefits for all of its officers, agents, representatives and employees in performing services pursuant to this Agreement. It is expressly understood and agreed that CONSULTANT and its employees, agents, and representatives shall in no event be entitled to any CITY benefits to which CITY employees are entitled, including, but not limited to, overtime, retirement benefits, insurance, vacation, worker's compensation, sick or injury leave or other benefits.

5.3 Workers' Compensation Insurance. Consultant shall procure and maintain Worker’s Compensation insurance as required by the State of California and Employer's Liability Insurance. If the Consultant has no employees while performing under this Agreement, worker's compensation insurance is not required, but Consultant shall execute a declaration that it has no employees.

5.4 Prevailing Wages. Pursuant to the provisions of section 1773 of the Labor Code

of the State of California, the City Council has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this Agreement, from the Director of the Department of Industrial Relations. These rates are on file with the City Clerk. Copies may be obtained at cost at the City Clerk's office. CONSULTANT shall post a copy of such rates at their office and shall pay the adopted prevailing wage rates as a minimum. If applicable, CONSULTANT shall comply with the provisions of sections 1773.8, 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code and any other applicable laws.

Pursuant to the provisions of section 1775 of the Labor Code, CONSULTANT shall forfeit to CITY, as a penalty, the sum of fifty dollars (\$50.00) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this Agreement, by him or by any sub-consultant under him, in violation of the provisions of this Agreement.

6. INSURANCE

CONSULTANT shall not begin the services under this Agreement until it has: (a) obtained, and upon the CITY's request, provided to the CITY, insurance certificates reflecting evidence of all insurance, including a copy of the Declarations and Endorsement Page as required in this Section 6; however, CITY reserves the right to request, and CONSULTANT shall submit, complete copies of any policy upon reasonable request by CITY; (b) obtained CITY approval of each company or companies as required by Section 6; and (c) confirmed that all policies contain the specific provisions required in Section 6.

6.1 Types of Insurance. At all times during the term of this Agreement, CONSULTANT shall maintain insurance coverage as follows:

6.1.1 Commercial General Liability. Commercial General Liability (CGL) Insurance written on an occurrence basis to protect CONSULTANT and CITY against liability or claims of liability which may arise out of this Agreement in the amount of Two Million Dollars (\$2,000,000) per occurrence and subject to an annual aggregate of Four Million Dollars (\$4,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37).

6.1.2 Workers' Compensation. For all of CONSULTANT's employees who are subject to this Agreement and to the extent required by applicable state or federal law, CONSULTANT shall keep in full force and effect a Workers' Compensation policy. That policy shall provide employers' liability coverage as required by applicable state and/or federal Workers' Compensation laws, and CONSULTANT shall provide an endorsement that the insurer waives the right of subrogation against the CITY and its respective elected officials, officers, employees, agents and representatives. In the event a claim under the provisions of the California Workers' Compensation Act is filed against CITY by a bona fide employee of CONSULTANT participating under this Agreement, CONSULTANT agrees to defend and indemnify the CITY from such claim.

6.1.3 Professional Liability. For all of CONSULTANT's employees who are subject to this Agreement, CONSULTANT shall keep in full force and effect Professional

Liability coverage for professional liability with a limit of Two Million Dollars (\$2,000,000) per claim and Two Million Dollars (\$2,000,000) annual aggregate. CONSULTANT shall ensure both that: (1) the policy retroactive date is on or before the date of commencement of services under this Agreement; and (2) the policy will be maintained in force for a period of four years after termination of this Agreement or substantial completion of services under this Agreement, whichever occurs last. CONSULTANT agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the CITY's exposure to loss.

6.1.4 Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

6.2 Insurer Requirements. All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that are rated "A-" and "V" or better by the A.M. Best Key Rating Guide, and are licensed to do business in the State of California. CITY will accept insurance provided by non-admitted "surplus lines" carriers only if the carrier is authorized to do business in the State of California.

6.3 Deductibles. All deductibles on any policy shall be the responsibility of CONSULTANT and shall be disclosed to CITY at the time the evidence of insurance is provided.

6.4 Specific Provisions Required. Each policy required under this Section 6 shall expressly provide, and an endorsement shall be submitted to CITY, that: (a) the policies are primary and non-contributory to any insurance that may be carried by CITY; and (b) CITY is entitled to thirty (30) days' prior written notice (10 days for cancellation due to non-payment of premium) of cancellation, material reduction, or non-renewal of the policy or policies. Additionally, the CGL policy shall expressly provide, and an endorsement shall be submitted to CITY, that the City of Murrieta and its respective officers and employees are additional insureds under the policy.

6.6 Special Risks or Circumstances: CITY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

7. AUDIT AND INSPECTION OF RECORDS

At any time during CONSULTANT's normal business hours and as often as CITY may deem necessary, and upon reasonable notice, CONSULTANT shall make available to CITY, or any of its duly authorized representatives, for examination, audit, excerpt, copying or transcribing, all data, records, investigation reports and all other materials respecting matters covered by this Agreement. CONSULTANT will permit CITY to audit and to make audits of all invoices, materials, payrolls, records of personnel and other data related to all matters covered by this Agreement. All material referenced in this Section, including all pertinent cost accounting, financial records, and proprietary data, must be kept and maintained by CONSULTANT for a period of at least four (4) years, or for the period required by law, whichever is greater, after completion of CONSULTANT's performance hereunder, unless CITY's written permission is given to dispose of

same prior to that time.

8. CONFIDENTIALITY AND USE OF INFORMATION

8.1 Except as otherwise provided by law, all reports, communications, documents and information obtained or prepared by CONSULTANT respecting matters covered by this Agreement shall not be published without prior written consent of City Manager or his designees, nor shall CONSULTANT issue any news releases or publish information relating to its services hereunder without the prior written consent of the City Manager. CONSULTANT shall hold in trust for the CITY, and shall not disclose to any person, any confidential information. Confidential information is information which is related to the CITY's research, development, trade secrets and business affairs, but does not include information which is generally known or easily ascertainable by nonparties through available public documentation.

8.2 CONSULTANT shall advise CITY of any and all materials used, or recommended for use, by CONSULTANT to achieve the project goals that are subject to any copyright restrictions or requirements. In the event CONSULTANT shall fail to so advise CITY and, as a result of the use of any programs or materials developed by CONSULTANT under this Agreement, CITY should be found in violation of any copyright restrictions or requirements, CONSULTANT agrees to indemnify and hold harmless CITY against any action or claim brought by the copyright holder.

8.3 Ownership of Records. All records created by the CONSULTANT shall become the property of the CITY and shall be subject to state law and CITY policies governing privacy and access to files. The CITY shall have access to and the right to examine all books, documents, papers and records of the CONSULTANT involving transactions and work related to this Agreement. The CONSULTANT shall retain all copies of records for a period of four (4) years from the date of final payment.

9. NOTICE

All notices or demands to be given under this Agreement by either party to the other shall be in writing and given either by: (a) personal service, (b) by U.S. Mail, mailed either by certified mail, return receipt requested, with postage prepaid and addressed to the party to whom the notice is directed, or (c) via facsimile transmission (with proof of confirmation by sender). Service shall be considered given when received if personally served or, if mailed, two days after deposit in the United States Mail by certified mail, return receipt requested. The address to which notices or demands may be given by either party may be changed by written notice given in accordance with the notice provisions of this section. At the date of this Agreement, the addresses of the parties are as set forth in Section 2 above.

10. TERMINATION FOR CAUSE

10.1 CITY may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include: (a) a material violation of any of the covenants, agreements, or stipulations of this Agreement by CONSULTANT, (b) CONSULTANT, through any cause, failing to fulfill in a timely and proper manner its obligations under this Agreement, (c) any act by CONSULTANT exposing CITY to liability to others for personal injury or property damage, or (d) if CONSULTANT is adjudged bankrupt, CONSULTANT makes a general assignment for the benefit of creditors, or a receiver is appointed on account of CONSULTANT's insolvency. Written notice by CITY of termination for cause shall contain the reasons for such intention to

terminate and shall specify the effective date thereof. Unless prior to the effective date of the termination for cause the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall cease and terminate on the effective date specified in the written notice by CITY.

10.2 In the event of such termination, CONSULTANT shall be paid the reasonable value of satisfactory services rendered up to the date of receipt of the notice of termination in accordance with this Agreement, less any payments theretofore made, as determined by CITY, not to exceed the amount payable herein, and CONSULTANT expressly waives any and all claims for damages or compensation arising under this Agreement in the event of such termination, except as set forth herein.

11. TERMINATION FOR CONVENIENCE OF CITY

11.1 CITY may terminate this Agreement at any time and for any reason by giving written notice to CONSULTANT of such termination, and specifying the effective date thereof, at least fifteen (15) days prior to the effective date.

11.2 If the Agreement is terminated as provided in this Section, CONSULTANT shall be entitled to receive compensation for any satisfactory work completed up to the receipt by CONSULTANT of notice of termination, less any payments theretofore made and not to exceed the amount payable herein, and for satisfactory work completed between the receipt of notice of termination and the effective date of termination pursuant to a specific request by CITY for the performance of such work.

12. PERFORMANCE AFTER TERMINATION

Upon termination of this Agreement as provided herein, CONSULTANT shall, within such reasonable time period as may be directed by City Manager, complete those items of work which are in various stages of completion and which City Manager determines are necessary to be completed by CONSULTANT to allow the project to be completed in a timely, logical, and orderly manner. Upon termination, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, and other materials prepared by CONSULTANT shall be delivered to the City Manager, upon his request, as property of CITY.

13. DEFENSE AND INDEMNIFICATION

13.1 Indemnity for Professional Liability. Except for the sole negligence or willful misconduct of CITY, CONSULTANT shall, to the fullest extent permitted by law, hold harmless, protect, defend (with attorneys approved by CITY) and indemnify the CITY, its Council and each member thereof, its officers, employees, representatives and their successors and assigns from and against all losses, liabilities, claims, suit, damage, expenses, cost, including reasonable attorney's fees and costs, and expert costs and investigation expenses, caused in whole or in part by the negligent, reckless or wrongful acts, errors or omissions of CONSULTANT in the performance of the professional services under this Agreement and those of CONSULTANT's sub-consultants or anyone for whom CONSULTANT is liable regardless of whether or not such claim, loss or liability is caused in part by a party indemnified hereunder. Notwithstanding the foregoing, CONSULTANT's defense obligations shall not exceed its proportionate percentage of fault, except as set forth in section 2782.8 of the Civil Code, as amended by Senate Bill 496.

13.2 Indemnity for Other than Professional Liability. With respect to operations other than the performance of the professional services under this Agreement, CONSULTANT shall, to the fullest extent permitted by law, hold harmless, protect, defend (with attorneys approved by CITY) and indemnify the CITY, its Council, and each member thereof, its officers, agents, employees, representatives, and their successors and assigns, from and against any and all losses, liabilities, claims, suit damage, expenses and costs including reasonable attorney's fees and costs, and expert costs and investigation expenses ("Claims"), which arise out of or are in any way connected to the performance of CONSULTANT, its officers, employees, representatives, subcontractors, or agents under this Agreement regardless of whether or not such claim, loss or liability is caused, in part by a party indemnified hereunder. CONSULTANT shall have no obligation, however, to defend or indemnify CITY if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of CITY.

13.3 General Indemnity Provisions. This indemnity is in addition to any other rights or remedies which CITY may have under the law or this Agreement. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, CITY may, at its sole discretion, reserve, retain or apply any monies due to CONSULTANT under this Agreement for the purpose of resolving such claims; provided however, that CITY may release such funds if CONSULTANT provides CITY with reasonable assurances of protection of the CITY's interest. The CITY shall, in its sole discretion determine whether such assurances are reasonable.

CONSULTANT agrees that its duty to defend the indemnities arises upon an allegation of liability based upon the performance of services under this Agreement by CONSULTANT, its officers, agents, representatives, employees, sub-consultants, or anyone for whom CONSULTANT is liable and that an adjudication of CONSULTANT's liability is not a condition precedent to CONSULTANT's duty to defend.

14. CONFLICT OF INTEREST

14.1 CONSULTANT shall be bound by the requirements of the FPPC (Fair Political Practice Commission) and state law with regard to disclosure of financial interests and prohibited conflicts of interest.

14.2 Prior to execution of this Agreement, CONSULTANT shall disclose in writing to CITY any and all compensation, actual or potential, which CONSULTANT may receive in any form from a party other than CITY as a result of performance of this Agreement by CONSULTANT. If CONSULTANT becomes aware of the potential for such compensation subsequent to the execution of this Agreement, CONSULTANT shall disclose such compensation within three (3) working days of becoming aware of the potential for such compensation.

14.3 Prior to or concurrent with making any recommendation of any products or service for purchase by the CITY, CONSULTANT shall disclose any financial interest that CONSULTANT may have in any manufacturer or provider of the recommended products or services. The term "financial interest" includes, but is not limited to, employment (current or prospective) or ownership interest of any kind and degree.

14.4 CONSULTANT shall not conduct business for third parties which may be in conflict with CONSULTANT's responsibilities under this Agreement. CONSULTANT may not solicit any business during the term of this Agreement which conflicts with its responsibilities under this Agreement. CONSULTANT shall provide no services for any private client within the corporate

boundaries or sphere of influence of CITY during the period of this Agreement which may constitute a conflict of interest.

15. ASSIGNMENT

No portion of this Agreement or any of the work to be performed hereunder may be assigned or delegated (including hiring and retaining use of any other person or entity for any purpose, except for those certain subconsultants specifically included in the attached "Scope of Services") by CONSULTANT without the express written consent of CITY, nor may any interest in this Agreement be transferred (whether by assignment or novation) by CONSULTANT without the express written consent of CITY, and without such consent all services hereunder are to be performed by CONSULTANT, its officers, agents and employees. However, claims for money due or to become due to CONSULTANT from CITY under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished promptly to CITY. Any assignment requiring approval may not be further assigned without CITY approval.

16. SURVIVAL

CONSULTANT's representations, insurance and indemnity obligations, and performance obligations post-termination shall survive termination of this Agreement for a period not to exceed four (4) years.

17. COMPLIANCE WITH APPLICABLE LAWS

CONSULTANT agrees to comply with all federal, state and local laws, rules, regulations and ordinances that are now or may in the future become applicable to CONSULTANT, CONSULTANT's business, equipment and personnel engaged in activities covered by this Agreement or arising out of the performance of such activities.

18. PERMITS/LICENSES

CONSULTANT and all of CONSULTANT's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Agreement.

19. NONDISCRIMINATION IN EMPLOYMENT

CONSULTANT agrees that it will not engage in unlawful discrimination in employment and shall comply with all applicable laws and regulations of CITY and/or all other relevant government agencies, including, but not limited to, the California Department of Fair Employment and Housing and the Federal Equal Employment Opportunity Commission. Also, CONSULTANT certifies and agrees that all persons employed by CONSULTANT, its affiliates, subsidiaries and related entities, if any, will be treated equally by CONSULTANT, without unlawful discrimination based upon creed, sex, race, national origin, or any other classification prohibited by state or federal law. If CITY finds that any of the provisions of this Section have been violated, such violation shall constitute a material breach of this Agreement, upon which CITY may determine to cancel, terminate, or suspend this Agreement. While CITY reserves the right to determine independently that the anti-discrimination provisions of the Agreement have been violated, in addition, a determination by the California Fair Employment Practices Commission or California Department of Fair Employment and Housing, or successor agency, or the Federal Equal Employment

Opportunity Commission, or successor agency, that CONSULTANT has violated state or federal anti-discrimination laws relative to this Agreement shall constitute a finding by CITY that CONSULTANT has violated the anti-discrimination provisions of this Agreement.

20. NON-WAIVER

The failure of CITY or CONSULTANT to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Agreement shall not be deemed a waiver by that party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition. Payment to CONSULTANT of compensation under this Agreement shall not be deemed to waive CITY's rights or CONSULTANT's rights contained in this Agreement.

21. SEVERABILITY

If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, invalid, or void, the remaining provisions will nevertheless continue in full force and effect and shall not be affected, impaired or invalidated in any way.

22. DISPUTES

In the event that any action is brought by either party to construe this Agreement or enforce any of its terms, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred, whether or not the matter proceeds to judgment.

23. REMEDIES

The rights and remedies of the CITY provided in this Agreement are not intended to be exclusive, and are in addition to any other rights and remedies permitted by law.

24. ENTIRE AGREEMENT/AMENDMENT

This Agreement and any exhibits attached hereto constitute the entire agreement between the parties and supersede any prior or contemporaneous understanding or agreement with respect to the services contemplated, and may be amended only by a written amendment executed by both parties to the Agreement.

25. GOVERNING LAW/VENUE

The terms and conditions of this Agreement shall be governed by the laws of the State of California. Any action or proceeding brought by any party against any other party arising out of or related to this Agreement shall be brought exclusively in Riverside County.

26. BINDING AGREEMENT

This Agreement is intended to be binding on the parties and their respective successors and assigns.

27. NUMBER

The plural shall include the singular, and the singular shall include the plural and neuter

wherever the context so indicates or requires.

28. WARRANTY OF AUTHORITY

Each of the parties signing this Agreement warrants to the other that it has the full authority of the entity on behalf of which its signature is made.

29. COUNTERPARTS

This Agreement may be executed in counterparts, all of which taken together will be considered one original document.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY: CITY OF MURRIETA

CONSULTANT: Kosmont Real Estate Services Kosmont Realty, a California corporation

By: _____
Kim Summers, City Manager

By: *Larry Kosmont*

Larry J. Kosmont, CRE, President and COO

Attest:

Cristal McDonald, MMC, City Clerk

Approved as to Form:

Tiffany Israel, City Attorney

EXHIBIT A

Scope of Services

CONSULTANT will conduct pre-disposition research/due diligence/analysis, as necessary, and initial review of statutory requirements of the sale (e.g., Surplus Land Act) to effectively evaluate the re-use potential and marketability of properties and identify and execute on a preferred approach/strategy for their marketing and ultimate disposition (sale, auction, other).

CONSULTANT will prepare a marketing package for each asset and respond to all inquiries in a timely and effective manner and provide additional information requested by qualified buyers/investors. CONSULTANT will arrange tours and in-person meetings (as may be appropriate) and will manage the sales process with regular reporting to the CITY. With the full and combined resources of CONSULTANT, the CITY will be able to identify a short-list of buyers who are specifically qualified to purchase the property(ies). All offers will be carefully analyzed and presented to the CITY for consideration at which point a best and final offer can be utilized to assure that the CITY receives the maximum value for the property(ies).

Once a selection is made, CONSULTANT will work closely with the CITY to negotiate a fair and reasonable purchase agreement that will be presented to the CITY for final approval. CONSULTANT will manage the sales process through escrow, providing support and additional information that may be required.

As it pertains to the CITY's purchase of property, CONSULTANT will work closely with the CITY to identify a desired property program/profile to successfully target properties for acquisition, which will include understanding CITY acquisition priorities/needs, preferred geographic location/area, size of property, and other property specific conditions/details. CONSULTANT will also assist with developing and implementing a desired strategy/approach for a targeted outreach campaign with direct marketing solicitations and materials to area brokers, property owners, and developers/investors to appropriately screen and identify active and off-market listings suitable to the CITY.

RATES

For the CITY's sale of property, CONSULTANT would require CITY approval and execution of an Exclusive Authorization to Sell Brokerage Agreement by and between CONSULTANT and the CITY.

Vacant Real Property: 6% of the gross sales price or independently appraised value of the parcel or a minimum commission amount as mutually agreed upon between CITY and CONSULTANT, whichever is greater.

For a ground lease, 4% of the total base rent for the first thirty (30) years of the term of the lease; or a minimum commission amount as mutually agreed upon between CITY and CONSULTANT, whichever is greater.

Additional Costs: The additional costs needed for these transactions will include escrow fees, title insurance, appraisal, documentary transfer fees, and other typical closing costs. Activities related to subdivision map matters (such as lot line adjustments and Phase I or II environmental reports) are an additional cost not borne by CONSULTANT.

Property sales may also require specific services that are not provided by CONSULTANT, and which are contracted for and compensated separately. These potential services include but are not limited to engineering, environmental assessment and remediation, geological, and legal or entitlement services.

For the CITY’s acquisition of property, CONSULTANT would require CITY approval and execution of an Exclusive Authorization to Represent Buyer Agreement by and between CONSULTANT and the CITY.

The general commission structure is as follows (selling broker [representing buyer]/CONSULTANT only):
Real Property*:

2.50% of the gross sales price for transactions less than \$5,000,000;

2.00% of the gross sales price for transactions equal to or greater than \$5,000,000, and less than \$10,000,000;

1.50% of the gross sales price for transactions equal to or greater than \$10,000,000, and less than \$25,000,000;

1.25% of the gross sales price for transactions equal to or greater than \$25,000,000, and less than \$35,000,000;

1.00% of the gross sales price for transactions equal to or greater than \$35,000,000.

*The commission structure above would serve as a minimum commission amount as mutually agreed upon between CITY and CONSULTANT.

Compensation for any pre-sale/disposition real estate advisory/technical services including but not limited to broker opinion of value, real estate transaction structuring, public-private negotiations (e.g., ENA, DDA, DA), preparation of Government Code 52201, 53083, and 33433 reports, Surplus Land Act compliance, and/or project implementation services would be paid in accordance with professional services (hourly) fees at CONSULTANT’s billing rates as shown below.

REAL ESTATE TECHNICAL/ADVISORY SERVICES

Professional Hourly Services Rates

Chairman & CEO / President	\$445.00/hour
Senior Managing Director/Senior Advisor/Project Manager	\$350.00/hour
Managing Director	\$225.00/hour
Senior Director / Senior Project Analyst	\$195.00/hour
Director / Project Analyst / Project Manager	\$165.00/hour
Project Promotion/Graphics/GIS Mapping Services/Research	\$95.00/hour
Clerical Support	\$70.00/hour

Additional Expenses

In addition to professional services (labor fees):

1) An administrative fee for in-house copy, fax, phone, postage costs, digital/technological support and related administrative expenses will be charged, which will be computed at four percent (4.0 %) of monthly CONSULTANT’s professional service fees incurred; plus

2) Out-of-pocket expenditures, such as professional printing, and delivery charges for messenger and overnight packages will be charged at cost.

3) Project/Market data sources for support of evaluation and analysis e.g., ESRI, Placer.ai, CoStar/STR, IMPLAN, ParcelQuest and other based on quoted project cost.

4) For Third Party Vendor(s) retained on behalf of CITY (with CITY’s advance approval), fees and costs will be billed to CITY at 1.1X (times) fees and costs.

5) CONSULTANT’s attendance or participation at any public meeting, whether such participation is in person, digital, video and/or telephonic (e.g., City Council, Planning Commission, Public Agency Board, other) requested by CITY and are beyond those specifically identified in the Scope of Work will be billed at the professional services (hourly) fees as shown on herein.

Charges for Court/Deposition/Expert Witness-Related Appearances

Court-related (non-preparation) activities, such as court appearances, depositions, mediation, arbitration, dispute resolution and other expert witness activities, will be charged at a court rate of 1.5 times scheduled rates, with a 4-hour minimum.

GENERAL HOURLY RATES

Professional Services

President	\$385.00 / hour
Senior Vice President/Senior Advisor	\$350.00 / hour
Vice President	\$225.00 / hour
Senior Project Analyst	\$195.00 / hour
Project Analyst/Project Research Assistant	\$165.00 / hour
Project Analyst/Assistant Project Manager	\$125.00 / hour
Project Promotion/Graphics/GIS Mapping Services	\$95.00 / hour
Clerical Support	\$70.00 / hour

Additional Expenses

In addition to professional services (labor fees):

1) An **administrative fee** for in-house copy, fax, phone, postage costs, digital/technological support and related administrative expenses will be charged, which will be computed at four percent (4.0 %) of monthly CONSULTANT professional service fees incurred; **plus**

2) **Out-of-pocket expenditures**, such as professional printing, and delivery charges for messenger and overnight packages will be charged at cost.

3) Project/Market data sources for support of evaluation and analysis e.g., ESRI, Placer.ai, CoStar/STR, IMPLAN, ParcelQuest and other based on quoted project cost.

4) If CONSULTANT retains **Third Party Vendor(s)** for CITY (with CITY's advance approval), fees and cost will be billed to CITY at 1.1X (times) fees and costs.

5) CONSULTANT's **attendance or participation at any public meeting**, whether such participation is in person, digital, video and/or telephonic (*e.g., City Council, Planning Commission, Public Agency Board, other*) requested by CITY and are beyond those specifically identified in the Scope of Work will be billed at the professional services (hourly) fees as shown on this rate sheet.

Charges for Court/Deposition/Expert Witness-Related Appearances

Court-related (non-preparation) activities, such as court appearances, depositions, mediation, arbitration, dispute resolution and other expert witness activities, will be charged at a court rate of 1.5 times scheduled rates, with a 4-hour minimum.