

REPORT TO CITY COUNCIL

DATE: FEBRUARY 24, 2016

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER *hjt For C.R.*

BY: NATHAN HAMBURGER, ASSISTANT CITY MANAGER *hjt*
DOUG HOOPER, PLANNING DIRECTOR *DH*

SUBJECT: AGREEMENT BETWEEN THE CITY AND AGOURA HILLS HUNTINGTON HOTEL GROUP, L.P. FOR THE PAYMENT OF COSTS ASSOCIATED WITH THE PREPARATION OF ENVIRONMENTAL DOCUMENTATION RELATED TO THE MARRIOTT COURTYARD/TOWNPLACE SUITES HOTEL PROJECT

The purpose of this item is to seek approval of an Agreement between the City and Agoura Hills Huntington Hotel Group, L.P. to receive payment from Agoura Hills Huntington Hotel Group, L.P. for the costs associated with the preparation of an Initial Study/Mitigated Negative Declaration (IS/MND), pursuant to the California Environmental Quality Act (CEQA), by Rincon Consultants, Inc. The agreement amount totals \$40,087.20, which includes the consultant's cost of preparing the IS/MND in the amount of \$33,406.00, with an additional \$6,681.20 to cover City costs to manage the preparation of the IS/MND, including preparing legal notices, and mailings, and consultant coordination. A separate and related Agreement for Consultant Services between the City and Rincon Consultants, Inc. for \$33,406.00 to prepare the IS/MND is also to be considered by the City Council at the February 24, 2016 meeting.

Agoura Hills Huntington Hotel Group, L.P. has submitted an application for the Marriott Courtyard/Townplace Suites, for a 225-room hotel with restaurant, on two parcels north of Agoura Road and west of Roadside Road. City staff has determined that an IS/MND is necessary for this project. Rincon Consultants, Inc. has submitted to the City a proposed scope of work to prepare the IS/MND, and staff finds the proposal acceptable. Rincon Consultants, Inc. has provided CEQA document preparation services for the City several times in the past, and staff has been pleased with the firm's quality of work and timely product deliveries.

The proposed agreement has been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff respectfully requests the City Council approve the Agreement with Agoura Hills Huntington Hotel Group, L.P. in the amount of \$40,087.00.

Attachment: Agreement for Payment of Costs for the Preparation of Environmental Documentation
(with Attachment A)

**AGREEMENT FOR PAYMENT OF COSTS
IN CONNECTION WITH THE PREPARATION OF
ENVIRONMENTAL DOCUMENTATION**

THIS AGREEMENT is made this sixth day of February 25, 2016, by and between the City of Agoura Hills (hereinafter "City") and Agoura Hills HHG Development, L.P. (hereinafter "Applicant").

1. Applicant requests that California Environmental Quality Act documentation, Initial Study/Mitigated Negative Declaration ("environmental documentation") be prepared for, and under the direction of, City, but at Applicant's expense, for consideration in connection with processing of the proposed Conditional Use Permit application for the construction of a 225-room dual-brand hotel (the "Project") at 29505 and 29515 Agoura Road, Assessor's Parcel Number 2061-004-030, Case Nos. CUP-01150-2015, VAR-01151-2015, SIGN-01152-2015, OAK-01153-2015, and with a lot merger.

2. Costs for preparation of the environmental documentation will be as follows:

a. Costs incurred pursuant to an agreement between Rincon Consultants, Inc. (hereinafter "Consultant") and City for preparation of the environmental documentation, the scope of work of which is attached hereto as Exhibit A. Consultant's estimate of the maximum cost of Consultant's services in the preparation of the environmental documentation is thirty three thousand four hundred and six dollars and zero cents (\$33,406.00) ("Consultant's Cost").

b. Staff time for research, writing, reviewing and processing, calculated by the number of hours spent times the current hourly rate of the employee or contractor, plus general overhead costs. This amount is estimated to be 20 twenty percent of Consultant's Cost, i.e. six thousand six hundred eighty one and twenty cents (\$6,681.20) ("Administrative Cost").

d. Additional consultant and administrative costs are not included within the estimates in subsections (a) and (b) of this Section. To the extent such additional costs arise out of (1) new information supplied to the City regarding the project or its environmental impacts following circulation of the draft environmental document; (2) incomplete or inaccurate information supplied to the City by Applicant or Applicant's agents; or (3) revisions to the environmental document made necessary, in the City's judgment, by changes to the Applicant's project.

3. Applicant hereby agrees to pay City in full for all costs and expenses incurred by City for preparation of the environmental documentation. Concurrently with execution of this Agreement, Applicant shall pay City the full amount of forty thousand eighty seven dollars and twenty cents (\$40,087.20) (Consultant's Cost plus Administrative Cost) to defray the costs of preparation of the environmental documentation and shall pay City prior to Consultant commencing work within fifteen (15) days from the date of any invoice, or prior to consideration of the Project by the City

Planning Commission or City Council, whichever first occurs.

4. Any excess of the amount deposited over the actual cost incurred in connection with preparation of the environmental documentation shall be refunded by City to Applicant within fifteen (15) days from the date the Notice of Determination for the Project is filed with the County Clerk.

5. In the event Applicant abandons the Project and upon written request from Applicant directed to City's Director of the Planning Department, City will terminate or suspend performance of work by Consultant under the contract between City and Consultant. Applicant shall pay City for all costs incurred by City pursuant to its contract with Consultant and for all administrative and actual costs incurred by City.

6. Applicant shall not communicate with or discuss any matters relating to the preparation of environmental documentation with Consultant without prior approval from City's Director of Planning or his duly authorized representative. Applicant shall address all questions regarding scheduling, content or distribution of the environmental documentation, or any related matters, to City staff, and not to Consultant. The purpose of this provision is to ensure that the environmental documentation is objective and is prepared on behalf of City, and not a document prepared for purposes of advocating approval of the Project.

7. Applicant hereby acknowledges and agrees as follows:

(a) City has sole discretion to select which of its employees are assigned to work on Applicant's applications;

(b) City has sole discretion to determine which persons City will hire as employees, contractors, and Consultant to work on the Applicant's applications.

(c) City has sole discretion to direct the work and evaluate the performance of the employees, contractors, and Consultant whom the City hires to work on Applicant's applications and City retains the right to terminate or replace at any time any employee, contractor, or Consultant who is assigned to work on Applicant's applications.

8. City and Applicant hereby acknowledge and agree that processing of Applicant applications is not contingent on the hiring of any specific contractor or consultant.

9. City and Applicant hereby acknowledge and agree that the Applicant's duty to reimburse the City is not contingent upon the City's approval or disapproval of the Project or upon the result of any action of the City.

10. Entire Agreement. This Agreement constitutes the entire Agreement between the parties thereto with respect to the subject matter of this Agreement. City and Applicant acknowledge that they have neither made nor accepted

any other promise or obligation with respect to the subject matter of this Agreement.

11. **Amendment.** This Agreement may only be amended by a written document signed by the parties thereto.

12. **Interpretation.** This Agreement is deemed to have been prepared by all parties hereto, and any uncertainty or ambiguity herein shall not be interpreted against the drafter, but rather, if such ambiguity or uncertainty exists, shall be interpreted according to the applicable rules of contracts under the laws of the State of California.

13. **Litigation; Recovery of Fees and Costs.** In the event that City is required to initiate litigation to enforce this agreement or collect any sum due hereunder, the City shall be entitled to recover its reasonable attorneys fees and costs of suit should the City prevail.

14. **Assignment.** This Agreement shall be binding on and inure to the benefit of the parties and their heirs, successors, and assigns of the parties. Notwithstanding the foregoing, any reimbursement rights hereunder shall remain with Applicant unless Applicant specifically assigns those rights to a successor by a written assignment delivered to City. Applicant may assign its rights and transfer its obligations under this Agreement only with City's prior written consent, which shall not be unreasonably withheld or delayed. Immediately upon the granting of such consent and City's receipt of a duly executed assignment and assumption agreement by Applicant and Assignee in accordance with the requirements of this Agreement, Applicant shall be released from all liability and obligations hereunder.

15. **Authority to Execute Agreement.** The person or persons executing this Agreement on behalf of Applicant warrants and represents that he or she has the authority to execute this Agreement on behalf of Applicant and has the authority to bind Applicant to the performance of its obligations hereunder.

CITY OF AGOURA HILLS:

By: _____
Harry Schwarz, Mayor

ATTEST:


Kimberly M. Rodrigues, MMC
City Clerk
APPROVED AS TO FORM:

Candice K. Lee
City Attorney


APPLICANT:

Agoura Hills HHG Hotel Development,
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Irving, TX 75062
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Phone: (972) 510-1202

Kevin Keefer

By: 
Title Manager of General Partner

Patricia Santini

By: 
Title Manager of General Partner