

INDIAN WELLS CITY COUNCIL

November 28, 2022



To: City Council
From: City Attorney
Prepared by: Todd Leishman, City Attorney
Subject: **Termination of Prior Development Agreement
(Miles Lodge)**

RECOMMENDED ACTION:

Council **CONSIDERS** and **APPROVES** the proposed Termination Agreement between the City and Miles Lodge LLC and 3x5 LLC; and

AUTHORIZES the City Manager to execute the agreement on the City's behalf; and

FINDS the action to be exempt from CEQA.

BACKGROUND:

As you know, the City terminated the 2018 Development Agreement (DA) between the City and Miles Lodge, LLC, and 3x5, LLC (Developers). As they were written in the DA some of the terms in the DA survive termination. The City is still seeing the Miles Lodge site developed, and Developers have asked that the City terminate the surviving terms to make it clear that there are no residual obligations.

DISCUSSION:

After reviewing the terms that are designated survival, it appears that none of the surviving terms is applicable now. The potentially surviving terms are in section 5.2 of the DA. The terms subject the Developers to the old entitlements that were secured with the DA throughout their project, but their project was never started, and any future development will be subject to different entitlements. The terms subject the Developers to other covenants for other developments that might be identified in the DA, but there are no other covenants for other developments identified in the DA or otherwise. And the terms leave the Developers responsible for any unpaid assessment, lien, fee, or tax that they still owe to the City, but the City is not aware of any unpaid obligation.

Approving and authorizing the execution of the Termination Agreement is not subject to review under the California Environmental Quality Act (CEQA) because the requested City Council action is not a "Project" as defined by CEQA. Under Section 15378(a), a "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The requested action is to approve a termination agreement acknowledging that no terms of an already-terminated DA apply any longer.

CONCLUSION:

In short, none of the potentially surviving terms in the 2018 DA is relevant now, and the Developers are asking for the City to acknowledge that to help facilitate future development. The draft Termination Agreement does that. Staff recommends approval.

ATTACHMENTS:

1. Termination Agreement