



# CITY OF DEL REY OAKS

## Staff Report

**DATE:** June 25, 2024

**TO:** Honorable Mayor and City Council

**FROM:** John Guertin, City Manager

**SUBJECT:** Resolution Approving an Exclusive Right to Negotiate (ERN) Agreement with City Ventures for Potential Development of the City's Former Fort Ord Parcels

**CEQA:** This action does not constitute a "project" as defined by the California Environmental Quality Act (CEQA) guidelines section 15378 as it is an administrative activity of the City that will not result in direct or indirect physical changes in the environment.

### Recommendation

Adopt a Resolution approving and authorizing the City Manager to sign an Exclusive Right to Negotiate (ERN) agreement between the City and City Ventures for development of the City's parcels on the former Fort Ord (APN 031-191-026-000, 031-191-027-000 and 031-191-028-000)

### Background

In February 2023, the City released a Notice of Availability/Offer to Sell Surplus Property to housing, park and open space developers soliciting letters of interest for development of the City's former Fort Ord parcels. City Ventures was the only housing developer to submit a letter of interest for the parcels. Under the Surplus Land Act regulations, the City is required to negotiate in good faith with City Ventures. The proposed Exclusive Right to Negotiate the terms of those negotiations.

The attached agreement will allow the City to begin negotiations with City Ventures for the development of the City's three parcels on the former Fort Ord. City staff, with the assistance of the City Attorney, and contract staff from Denise Duffy & Associates (DD&A) and Economic & Planning Systems (EPS), drafted the attached ERN (Attachment 2) between the City and City Ventures. The purpose of the ERN is to establish procedures and standards for the negotiation by and between the City and City Ventures for the development of the sites. The ERN requires the parties to agree to negotiate diligently and in good faith to finalize a concept plan, determine each party's responsibilities and potentially enter into a Development Agreement. The ERN does not authorize any development. The project will be subject to public hearings through the Planning Commission and City Council review before development is approved.

The following provides a summary of the notable deal points included in the ERN:

**Term:** The negotiating period is for six (6) months, with an option for two (2) extension periods of three (3) months each. One or both of the Extended Negotiating Periods may be approved by the City's City Manager based upon City Venture's good faith compliance with the Schedule of Deliverables.

**Deliverables:** The ERN is geared toward the production of a Development Agreement that will, in turn, be used as a road map for crafting detailed financial and other deal points including conveyance of the property. The ERN does not obligate the City to grant any approvals or authorizations required for the project.

**Good Faith Deposit:** City Ventures shall submit a deposit of \$75,000 to cover City costs associated with furtherance of the City's obligations under the agreement.

**Non-refundable Negotiation Payment:** In consideration of the work the City has already put into the development of this agreement, City Ventures will pay a non-refundable payment of \$10,000 to the City.

**City Responsibilities:** The ERN requires that the City not engage in negotiations with any other entities regarding the proposed site/development during the term of the agreement and that the City negotiate in good faith with City Ventures. The City shall cooperate fully with City Ventures in providing appropriate information and assistance.

**City Ventures Responsibilities:** Upon approval of the ERN, the City and City Ventures will work together toward a comprehensive development plan. Next steps include using our best efforts to successfully negotiate a Development Agreement that will describe the terms and conditions governing the development of the project and methods of financing.

**ATTACHMENTS:**

- Resolution 2024-14
- Exclusive Right to Negotiate

Respectfully Submitted,

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John Guertin  
City Manager

## RESOLUTION 2024-14

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DEL REY OAKS APPROVING AN EXCLUSIVE RIGHT TO NEGOTIATE (ERN) WITH CITY VENTURES FOR DEVELOPMENT OF THE CITY'S PARCELS ON THE FORMER FORT ORD (APN 031-191-026-000, 031-191-027-000 AND 031-191-028-000) AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT**

#### **RECITALS**

WHEREAS, In February 2023, the City of Del Rey Oaks released a Notice of Availability/Offer to Sell Surplus Property to housing, park and open space developers soliciting letters of interest for development of the City's former Fort Ord parcels; and

WHEREAS, City Ventures was the only housing developer to submit a letter of interest for the parcels; and

WHEREAS, the Surplus Land Act regulations require the City to negotiate in good faith with any housing provider responding to the Notice; and

WHEREAS, City staff have begun preliminary discussion with City Ventures about development of a project on the site including site constraints and opportunities; and

WHEREAS, City staff with the assistance of the City Attorney drafted an Exclusive Right to Negotiate agreement (ERN) attached hereto as Exhibit "A" between the City of Del Rey Oaks and City Ventures; and

WHEREAS, the purpose of the ERN is to establish procedures and standards for the negotiation by and between the City and City Ventures for the development agreement relating to the proposed Project on the Property; and

WHEREAS, the ERN does not authorize any development on the City's properties.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Del Rey Oaks does hereby as follows:

1. Approve an Exclusive Right to Negotiate agreement between the City of Del Rey Oaks and City Ventures for development of the City's parcels on the former Fort Ord; and
2. Authorize the City Manager to execute the agreement.

**PASSED AND ADOPTED** this 25th day of June, 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED:

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Scott Donaldson, Mayor

ATTEST:

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Karen Minami, City Clerk

## EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT

THIS EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT ("Agreement") is made as of this 1<sup>st</sup> day of July, 2024 ("Effective Date"), by and between the CITY OF DEL REY OAKS ("City"), a municipal corporation, and CITY VENTURES HOMEBUILDING, LLC, a Delaware limited liability company ("City Ventures").

### RECITALS

A. City owns approximately 250 acres of property among three parcels on the former Fort Ord military base shown on Exhibit "A" and listed on Exhibit "B" (the "Site"). The Site is located on the former Fort Ord along South Boundary Road, east of General Jim Moore Boulevard. The Site is currently referred to in the City's Housing Inventory as Site 1 (one parcel totaling approximately 232 acres north of South Boundary Road) and Site 1A (two parcels totaling approximately 18 acres south of South Boundary Road).

B. By City Council Resolution No. 2022-28, approved on November 15, 2022, the City declared the Sites as surplus property under California Surplus Lands Act (Government Code Section §§ 54220 *et seq.*).

C. On February 2, 2023, pursuant to the Surplus Land Act, the City issued a Notice of Availability/Offer to Sell Surplus Property ("NOA") to all required entities and invited letters of interest. In response to the NOA, the City received letters of interest for the Site from three entities. Of the three entities, City Ventures was the only entity with suitable qualifications to develop the Site. On June 27, 2023, the City selected City Ventures to develop the Sites.

D. The parties desire to enter into an exclusive right to negotiate to allow City Ventures time to conduct its due diligence to determine the feasibility of developing the Site, and give the parties adequate time to negotiate in good faith toward the execution of a Development and Disposition Agreement ("DDA") under which City Ventures will purchase the Site from the City, and develop the Site.

E. City Ventures will reimburse the City for expenses it incurred in furtherance of its obligations under this Agreement.

**NOW, THEREFORE**, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and City Ventures agree as follows:

1. **Good Faith Negotiation.** City and City Ventures agree that the sole purpose of this Agreement is for the parties to exclusively negotiate in good faith a DDA to be entered into between City and City Ventures for the purchase and sale, and development, of the Site. During the term of this Agreement, or any extension thereof, other than in acting to comply with applicable law, City agrees that it shall not negotiate with any other person or entity for sale or development of the Site. The term "negotiate" as used herein shall be deemed to preclude City from processing development proposals for the Site from other persons or entities, or soliciting development proposals for the Site from other persons or entities.

2. **Term.** The negotiating period shall commence on the Effective Date and shall

continue for six (6) months ("Initial Negotiating Period"), with an option for two (2) extension periods of three (3) months each ("Extended Negotiating Period(s)"). The Initial Negotiating Period and Extended Negotiating Period(s) are referred to herein as the "Negotiation Period." One or both of the Extended Negotiating Periods shall be approved by the City's City Manager if City Ventures makes a good faith effort to comply with the Schedule of Deliverables, as outlined below.

If, at the expiration of the Negotiation Period, City Ventures and City have not agreed on the final terms and language of the DDA, then this Agreement will terminate at the sole discretion of the City.

If, based on the final negotiations with City and an evaluation of proposed terms and conditions City Ventures deems the DDA acceptable, it will sign and submit the DDA to the City. If, on the submittal, less than sixty (60) days remain in the then agreed on Negotiation Period, this Agreement will automatically be extended to a date that is sixty (60) days immediately subsequent to the submittal to enable City and City Ventures (1) to take actions necessary to review and consider the DDA, and (2) if approved, to sign the DDA. If City and City Ventures are not willing to sign the DDA, this Agreement will automatically terminate upon the conclusion of the Negotiation Period.

**3. Good Faith Deposit.** On or before the Effective Date, City Ventures shall submit to the City a good faith deposit ("Initial Deposit") in the amount of Seventy-Five Thousand Dollars (\$75,000) to cover the City's actual and reasonable internal costs (i.e., general costs, employee costs and overhead), as well as out-of-pocket legal and other expenses that are paid to third parties in furtherance of the City's obligations under this Agreement, as well as costs to negotiate and prepare the DDA ("City Expenses"). A list of current costs for the City is attached hereto as Exhibit "C," attached hereto and incorporated herein. The Deposit shall be in the form of cash or in a manner reasonably acceptable to the City. City shall deposit the Initial Deposit in an interest-bearing account and such interest, when received by City, shall become part of the Initial Deposit. The City may thereafter apply each such Deposit against City Expenses as they are incurred. The Deposit amount is separate from and will not be used for the payment of applicable City fees or costs.

If during the Negotiation Period the amount remaining the Initial Deposit reaches \$20,000, then within ten (10) days following written notice from the City, City Ventures shall deposit with the City a lump sum deposit equal to the amount necessary to return the Initial Deposit amount to Seventy-Five Thousand Dollars (\$75,000) (each a "Supplemental Deposit").

If City Ventures defaults on the payment of any Supplemental Deposit to the City, the City may, at its election, suspend its obligations under this Agreement until such time as the applicable Supplemental Deposit is made, or terminate this Agreement.

In no event shall a City Venture's obligation to reimburse City for Expenses incurred under this paragraph exceed a maximum of Three Hundred Thousand Dollars (\$300,000) unless the parties mutually agree otherwise in writing.

At the termination of this Agreement, all unused funds from the Initial Deposit and Supplemental Deposit, including interest thereon, shall be returned to City Ventures along with an accounting of the amounts of funds used by the City. City Ventures acknowledges that any and all expenditures made by it are not recoverable from the City in the event the contemplated DDA, land use entitlements, or other permit applications are not approved.

4. **Non-refundable Negotiation Payment.** In partial consideration of City entering into this Agreement, concurrent with City Ventures signing and delivering this Agreement to the City, City Ventures shall also pay to the City the amount of Ten Thousand Dollars (\$10,000) in the form of cash, a cashier's check, or a certified check ("Negotiation Payment"), naming the City as beneficiary or payee, as applicable. The Negotiation Payment shall be fully earned by the City on the Effective Date and shall be non-refundable to City Ventures. City Ventures waives all claim or right to any refund of the Negotiation Payment or any interest accrued on the Negotiation Payment.

5. **City Ventures' Responsibilities**

5.1. **Comprehensive Development Plans.** City Ventures shall provide comprehensive development plans for Site development. Such development shall represent City Venture's best efforts to comply with all applicable laws, rules and regulations of City and all other government entities having jurisdiction over the Sites. Furthermore, such comprehensive development plans shall include, but not be limited to, the items listed in the Schedule of Deliverables attached hereto as Exhibit "D" and incorporated herein.

5.2. **City Venture's Studies and Reports.** As requested by City, from time to time, City Ventures agrees to make oral progress reports and written reports advising City on all matters related to studies being made in furtherance of its review of the Sites. If the negotiations do not result in a DDA, City may request from City Ventures copies of all non-privileged studies and reports made specifically for its proposed development, subject to City Venture's covenants of confidentiality which may be contained in such studies and reports.

5.3. **Cooperation and Additional Information.** City Ventures shall cooperate with City and shall supply other documents and information as may be reasonably requested in writing by City.

5.4. **Event of Default.** The failure of City Ventures to reasonably and timely comply with the provisions of this Agreement, if not due to circumstances beyond the reasonable control of City Ventures, shall be considered a default hereunder by City Ventures. The failure of City to reasonably comply with its obligations hereunder, if not due to circumstances beyond the reasonable control of City, shall be considered a default by City hereunder. Prior to exercising any remedies hereunder for the default of this Agreement, the party asserting a default shall provide written notice to the other party describing the alleged default, and such party shall have thirty (30) days to cure such default.

5.5. **Disclosures and Approvals.** City Ventures shall make full disclosure to the City of its principals, officers, stockholders, partners, joint venturers, employees and other associates, and all other pertinent information concerning City Ventures and its associates.

5.6. **Method of Financing.** City Ventures shall make available and maintain full disclosure to City of its methods of construction financing proposed to be used on the Project. All requests for financing information shall be submitted to City upon written request. Such financial information shall include, without limitation, the following:

- a) Financial statement prepared for City Ventures and any entities proposed to make an equity contribution to its Project.

- b) Proof of sufficient equity and other funds available to complete construction.
- c) Identification of the sources of construction and permanent financing for the Project, as pertaining to horizontal and/or vertical development, based on Developer-prepared Business Plan.

City agrees to consider all financial information submitted as confidential and further agrees to refrain from releasing information provided by City Ventures pursuant to this Agreement unless: (i) City Attorney determines that the release of the information is required by the California Public Records Act or other applicable statutes, or (ii) a court orders the release of the information.

## **6. City Responsibilities**

**6.1. Development Project Regulations.** This Agreement and other documents to be negotiated are subject to the provisions of the Surplus Land Act, Del Rey Oaks General Plan, the Del Rey Oaks Municipal Code, and other applicable documents. All of the above-listed documents are incorporated herein by this reference.

**6.2. City Assistance and Cooperation.** City shall cooperate fully in providing City Ventures with appropriate information and assistance.

**6.3. City Public Hearing.** If negotiations culminate in a DDA signed by City Ventures and the City, such an agreement becomes effective only after and if the agreement has been considered and approved by City after a duly noticed public hearing.

**6.4. Fees.** City shall not be liable for any real estate commission or brokerage fees which may arise from this transaction. The City warrants they are not represented by any broker.

## **7. Conceptual Terms of DDA**

**7.1. Purpose.** City and City Ventures agree to pursue negotiations of a DDA which result in the establishment of a City Venture's project.

**7.2. Proposed Disposition Price.** The parties will negotiate the land disposition price and financial assistance (if any) package with respect to the project. The negotiated land value will be informed through the use of appropriate techniques, including discounted cash flow analysis, involving analysis of project costs, developer profit, financing costs and project revenue potential. The project land use mix must generate a positive fiscal balance for the City (i.e., taxes generated by the project must offset City service costs). It is anticipated the land disposition price will reflect the use of normal and customary methods of financing infrastructure and services through Mello-Roos Community Facility District Special Taxes or other appropriate methods, as necessary and appropriate.

**7.3. CEQA.** The City and City Ventures acknowledge that all applicable requirements of the California Environmental Quality Act (CEQA) must be met in order for the City to approve the project and/or project entitlements and for the City to enter into a DDA for the project, and that this may require reports and/or analyses for CEQA purposes (collectively, the "CEQA Documents"). City Ventures will, at its sole cost, fully cooperate with the City in the City's preparation of any CEQA Documents for the project.



#### **7.4. Project Agreements Subject to Further Approval**

A. The parties understand and agree that no party is under any obligation whatsoever to approve or enter into the DDA, and that notwithstanding its approval of this Agreement, each party shall have the right to disapprove the proposed DDA to which it is to be a party in its sole and absolute discretion, and in that regard, the City Ventures hereby expressly agrees City shall not be bound by any implied covenant of good faith and fair dealing in connection with such approval or disapproval of any of the proposed DDA.

B. In the event of the expiration or earlier termination of this Agreement with respect to the project, the City shall be free to negotiate with any persons or entities with respect to the sale or lease of a portion of the Sites.

C. No consents, approvals, comments or discussions by staff shall diminish, affect, or waive: (i) rights of the City to later impose conditions and requirements under CEQA; (ii) the right of City not to approve the DDA; or (iii) the City's other governmental rights, powers, and obligations. City Ventures understands and acknowledges the City is not obligated to enter into a DDA or sell the Sites if, in good faith, the City Council determines that such development plan or sale is not in the public interest, not permitted by law, not consistent with the City of Del Rey Oaks General Plan or other land use regulation, or for any other valid reason.

#### **8. City Discretion.**

8.1. Limitation on Effect of Agreement. Nothing in this Agreement shall obligate the City to exercise its discretion regarding a project in any particular manner. City Ventures acknowledges that execution of this Agreement by the City does not constitute approval by the City of any planning approvals or DDA or any required permits, applications, or maps, and in no way limits the discretion of the City in the permit and approval process.

8.2. City Right to Exercise Discretion. City Ventures acknowledges that approval, conditional approval, or disapproval of the planning approvals and DDA following completion of the environmental review process is within the sole and exclusive discretion of the City without limitation by or consideration of the terms of this Agreement; that the City may not make any commitment to any particular development before it completes environmental review; that the City may not commit to planning and zoning approvals by contract; and that the City makes no representation regarding the ability or willingness of the City to approve the planning approvals or DDA, nor any representation regarding the imposition of any mitigation measures or other conditions of approval. In addition, City Ventures acknowledges that other local, state or federal agencies may require additional entitlements, including environmental review, and that any approval by the City does not bind any other local, state or federal agency.

The parties recognize that the City has the sole discretion and right to terminate this Agreement without fault or default if City determines not to approve planning approvals or DDA. Upon termination for this reason, neither party shall have any further rights or obligations under this Agreement, except that any provisions of this Agreement that are specified to survive termination shall remain in effect and binding upon the parties.

#### **9. Actions by City**

9.1. Whenever this Agreement calls for or permits the approval, consent, authorization or waiver of the City, the approval, consent, authorization, or waiver of the City Manager shall constitute the approval, consent, authorization or waiver of the City without further

action of the City Council. However, City Ventures acknowledges that nothing in this Agreement (including any approval by the City Manager in accordance with this Agreement), or a DDA (if approved by the City Council) shall limit, waive, or otherwise impair the authority and discretion of: (1) the City's Planning Department, in connection with the review and approval of the proposed construction plans for the Project, or any use, or proposed use, of the Site; (2) the City's issuance of a building permit; or (3) any other office or department of the City acting in its capacity as a governmental entity, regulatory authority and/or police power.

**9.2.** The City Manager is the City's representative for all purposes under this Agreement. The City Manager or designee is authorized to confer any consents or approvals required by City under this Agreement, except where this Agreement specifies that approval by the City Council is required.

## **10. Right of Entry; Insurance**

**10.1. Right of Entry.** Upon providing to City reasonable evidence of the insurance required below (including the naming of City as additional insureds, and waiver of subrogation), such as a Certificate of Insurance, City Ventures and its consultants that shall have been designated in writing to City ("City Ventures Designees") shall have the right to enter the Sites with respect to its project (subject to additional conditions imposed by City staff) until the date that is 180 days after the execution of this Agreement to inspect the same and any improvements thereon, and to conduct soils tests, Phase I environmental assessments, and if recommended by the applicable Phase I report(s), Phase II tests. City Ventures shall promptly provide City with copies of all of its reports and test results.

### **10.2. Insurance.**

A. City Ventures shall obtain, maintain, and keep in full force and effect all of the following minimum scope of insurance coverages with respect to the project, with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by the City Manager:

1. Broad-form commercial general liability, in a form at least as broad as ISO from #CG 00 01 11 88, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than Two Million Dollars (\$2,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
2. Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.
3. Workers' compensation insurance as required by the State of California and Employers Liability Insurance with a minimum limit of \$1,000,000 per accident. City Ventures agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' insurance policy against the City and their officers, agents, employees, and volunteers for losses arising from work performed by the City Ventures and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance

policies.

- B. Before execution of this Agreement by the City, City Ventures shall file with the City Manager of City the following signed certification:

"I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of Workers' Compensation or to undertake self-insurance before commencing any of the work."

- C. City Ventures shall also comply with Section 3800 of the Labor Code by securing, paying for and maintaining in full force and effect for the duration of this Agreement, complete Workers' Compensation Insurance, and shall furnish a Certificate of Insurance to the City Clerk before execution of this Agreement by the City. City and their officers and employees shall not be responsible for any claims in law or equity occasioned by failure of City Ventures to comply with this section.
- D. Neither City nor any of their elected or appointed officials, officers, agents, employees, or volunteers makes any representation that the types of insurance and the limits specified to be carried by City Ventures under this Agreement are adequate to protect City Ventures. If City Ventures believes that any such insurance coverage is insufficient, City Ventures shall provide, at its own expense, such additional insurance as City Ventures deems adequate.
- E. Each commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:
1. Additional insureds: "The City and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the City Ventures pursuant to its contract with the City; premises owned, occupied or used by City Ventures; automobiles owned, leased, hired, or borrowed by the City Ventures."
  2. Notice: "City Ventures shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, City Ventures shall forthwith obtain and submit proof of substitute insurance. Should City Ventures fail to immediately procure other insurance, as specified, to substitute for any canceled policy, City may procure such insurance at City Venture's sole cost and expense."
  3. Other insurance: City Venture's insurance coverage shall be primary insurance as respects the City and its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City shall be excess and not contributing with the insurance provided by this policy."
  4. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to City or its officers, officials, agents, employees, and volunteers.

- F. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by the City Manager. No policy of insurance issued as to which City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.
- G. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which City Ventures may be held responsible for payments of damages to persons or property.

**11. Indemnification.**

City Ventures will defend, indemnify, and hold harmless City, its directors, officers, employees, and agents, from all claims, liabilities, damages, losses, expenses, injuries, or claims (including reasonable attorneys' fees) arising from or relating to City Venture's activities on the Site or the pursuit of its rights and obligations pursuant to this Agreement, except to the extent they are caused solely by the gross negligence or willful misconduct of City. The obligations of this section shall survive termination of this Agreement.

**12. Miscellaneous**

**12.1. Assignment.** Neither this Agreement nor any interest herein may be assigned or transferred voluntarily or by operation of law to any other party without written approval of the City Manager. An attempt to transfer this Agreement by City Ventures to another party, without first obtaining such written permission of City Manager shall constitute grounds for the immediate termination of this Agreement with respect to City Ventures by the City Manager. City acknowledges that City Ventures may desire to create a limited partnership or limited liability company to be the party to the applicable DDA, and the City shall not unreasonably disapprove the new entity.

**12.2. Notice.** Any notice pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by certified mail, postage prepaid to the following persons:

**To City:**  
City Manager  
City of Del Rey Oaks  
650 Canyon Del Rey Blvd.  
Del Rey Oaks, CA 93940

**To City Ventures:**  
City Ventures Homebuilding  
3121 Michelson Drive, Suite 150  
Irvine, CA 92612

If sent by mail, any notice, delivery, or other communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, certified, with postage prepaid, and addressed as set forth above. For purposes of calculating these time frames, weekends, and Federal, State, County and City holidays shall be excluded.

**12.3. Waiver of Lis Pendens.** It is expressly agreed by the parties that no lis

pendens shall be recorded against any portion of the Property with respect to this Agreement or any dispute or act arising from it.

**12.4. Limitations of this Agreement.** By its execution of this Agreement, the City is not committing itself to or agreeing to the disposition of and transfer of the Site to City Ventures. In addition, the City is not committed to or agreeing to undertake any acts or activities requiring the subsequent independent exercise of discretion by the City or any agency or department thereof, other than as specifically set forth and agreed to by the City under this Agreement. This Agreement does not constitute a disposition of the Site by the City, or confer a right on City Ventures of control over the Site. Execution of this Agreement by the City is merely an agreement to enter into a period of exclusive negotiations with City Ventures according to the terms hereof. Final discretion and approval by the City as to future agreements and proceedings and decisions in connection therewith is reserved.

**12.5. Recitals Incorporated.** The Recitals are hereby incorporated by this reference as though fully set forth herein.

**12.6. Jurisdiction and Venue.** This Agreement and all questions relating to its validity, interpretation, and enforcement shall be governed and construed in accordance with the laws of the State of California. All parties agree that courts in Monterey County, California, shall have jurisdiction and shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

**12.7. Attorneys' Fees.** In the event any judgment is ordered in any action upon this Agreement, the party hereto against whom such judgment is ordered agrees to pay to the opposing party ("prevailing party") hereto, and that there may be added to such judgment, an amount equal to, the attorneys' fees and costs incurred by such prevailing party.

**12.8. Severability.** The provisions of this Agreement are severable, and if any part of it is found to be unenforceable, the other paragraphs shall remain in full force and effect.

**12.9. Time of Essence.** Time is of the essence of every provision herein in which time is a factor.

**12.10. Entire Agreement.** This Agreement reflects the complete and total understanding between the parties hereto and all agreements or understandings between the parties hereto are contained within them. Any changes, modifications, amendments or addenda to this Agreement must be in writing and signed by all parties to be effective. If a DDA for the project is executed by the City and City Ventures, the DDA shall supersede this Agreement with respect to the project and thereafter govern the rights and obligations of the parties with respect to the sale and development of the Sites.

**12.11. Confidentiality.** City Ventures acknowledges and agrees that the City is a public entity with a responsibility and, in many cases, legal obligation to conduct its business in a manner open and available to the public. Accordingly, any information provided by City Ventures to the City with respect to the Site or the DDA may be disclosed to the public either purposely,

inadvertently, or as a result of a public demand or order. With respect to any information provided that City Ventures reasonably deems and identifies in writing as proprietary and confidential in nature, the City agrees to exercise their best efforts to keep such information confidential to the extent allowed by law.

**12.12. Dispute Resolution.** The City and City Ventures agree that any claim or dispute relating to this Agreement, as well as any other matters, disputes, or claims between them, shall first be submitted to non-binding mediation in an attempt to resolve any and all issues.

Signature Page to Follow

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

“CITY”

CITY OF Del Rey Oaks, a municipal corporation

By: \_\_\_\_\_  
John Guertin, City Manager

ATTEST:

By: \_\_\_\_\_  
Karen Minami, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Alex Lorca, City Counsel

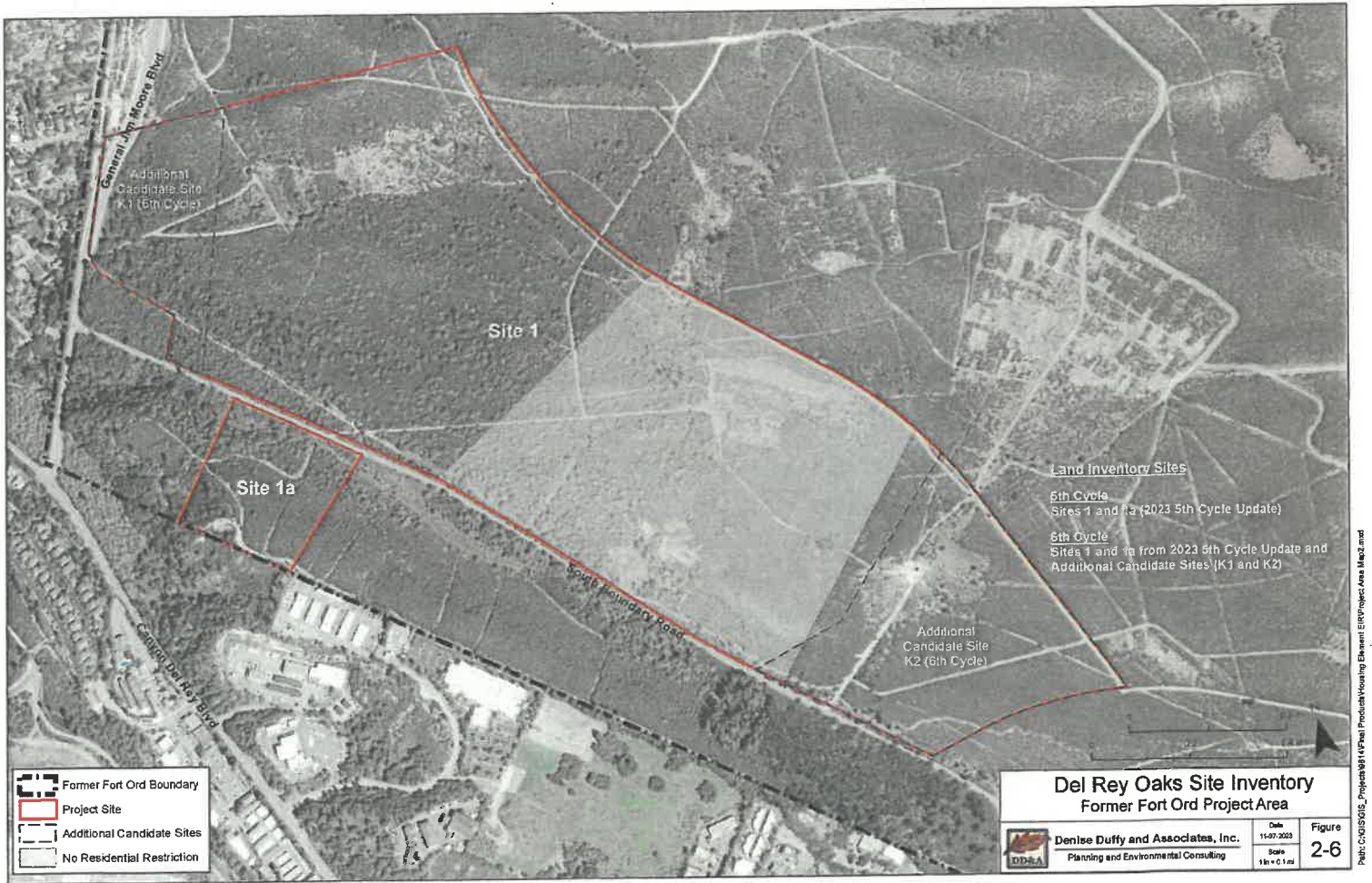
“CITY VENTURES”

CITY VENTURES HOMEBUILDING, LLC, a  
Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



Exhibit A





## EXHIBIT B

## SITE

Former Fort Ord Property		
	Site 1	Site 1A
<b>Property Location</b>	Former Fort Ord North of South Boundary Rd.	Former Fort Ord South of South Boundary Rd.
<b>Assessor Parcel No.</b>	031-191-026-000	031-191-027-000 & 031-191-028-000
<b>Lot Size</b>	232.03 Acres	6.03 Acres 11.84 Acres
<b>Zoning</b>	C1V	C1V
<b>General Plan Designation</b>	Neighborhood Commercial with Visitor Overlay	Neighborhood Commercial with Visitor Overlay

EXHIBIT C  
Schedule of City Costs

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# City of Del Rey Oaks Fee Schedule

## Establishing Certain Fees Effective July 1, 2021

CITY OF DEL REY OAKS FEE SCHEDULE			FEE
Planning			
Architectural Review Committee Review:			
Commercial			
Major	(New commercial)		\$1,990
Minor	(Commercial additions, remodels, exterior tenant improvements,		\$620
Residential			
Major	(New one or two-story buildings, or second-story additions)		\$840
Minor	(One-story additions, exterior alterations to one-story buildings or one-story of a two-story)		\$200
Architectural Review Committee Sign Review:			
Major	(Large monument signs, multiple freestanding signs, pole signs, internally illuminated signs)		\$680
Minor	(All signs not included above)		\$120
Architectural Review/Solar Panels			No Fee
Appeal Fees			
Appeals of Planning Commission Decisions to City Council			\$370
Appeals of Staff Decisions/Home Occupation Permits			\$170
Environmental Review			
Environmental Impact Report			contract price + 17%
Environmental Initial Study Leading to a Negative Declaration (Excludes Fish and Game Fee and technical studies)			\$3,570
Environmental Exemption			\$100
Use Permits			
Master	(Projects requiring environmental review and/or multiple permits)		\$4,000 deposit
Major	(Commercial, industrial, multi-family, cannabis)		\$2,990
Minor	(Single-family residential uses)		\$820
Cannabis			
Annual Cannabis Business Permit			\$5,000
Cannabis Tax			5% of Gross Receipts
Short Term Rental			
New	One-time approval fee Whole Home or Home Share		\$820
Annual	Whole Home		\$500
	Home Share		\$250
Permits			
Home Occupation (Business) Permit due every year			\$150
Home Occupational Use Permit Application Fee			\$10
Permit Extension			\$780
Reopen Permit			\$850
Special Permits (Temporary use)			\$280
Special Sign Permit (Temporary window/banner sign)			\$170
Investigative fee for work without permit(s)			Cost of the permit
Missed Inspections or work not complete			\$95/hour
Electrical/Plumbing/Mechanical Permit			\$125
Grading Permit Fee			\$120
Tree Removal/Significant Alteration Permit			\$50
Residential Property Inspections Reports - Single Family Dwelling			\$250
Duplicate Job Card			\$25
Variance Permit			
Master	(Multiple variances for commercial, multi-family or industrial projects)		\$1,410
Major	(One variance {coverage, height, parking adjustments} for commercial, multi-family or industrial sites)		\$980
Minor	(One variance - residential fences, setbacks, parking, etc.		\$820

CITY OF DEL REY OAKS FEE SCHEDULE			FEE
<b>Engineering</b>			
	Encroachment Permit (Residential)		\$250
	Encroachment Permit (Commercial)	\$300 plus 2% of cost of public improvements requires plan check	
	Street Opening Permit (Residential)		\$250
	Street Opening Permit (Commercial)	\$300 plus 2% of cost of public improvements requires plan check	
	Driveway, Curb, Gutter, Sidewalk Permit		\$150
	Construction Activity Road Impact Fee	1% of the sum of the building permit's project valuation	
	Storm Water Review & Inspection Fee	\$250 plus \$95/hour for plan review & inspection	
<b>Zoning Permits</b>			
	R-1 District		\$100
	D District (Condo.)		\$100
	Hotel/motel/multi-family		\$200
	1-7 units		\$925
	8-36 units		\$125/unit
	>36 units	Negotiated fee for cost of service	
<b>Commercial &amp; Industrial</b>			
	<15,000 sf		\$500+140 K/sf
	>15,000	Negotiated fee for cost of service	
	Additional meetings		\$400
<b>Reclassification or Rezoning</b>			
	Major text	(alterations of existing sections)	\$1,500 Deposit/cost of service
	Minor text	(addition of new section)	\$1,000/1st section charged+\$300 for each additional section
<b>Standard Subdivision Map</b>			
	Tentative		\$1,800 + \$100/lot
	Exceptions		\$700/lot w/exceptions
	Minor		\$1,600
	Exceptions		\$700/lot w/exceptions
	Additional meetings for minor text amendments		\$120
<b>Final Map</b>			
	Processing		\$750 + \$60/lot
	Parcel Map		\$600 per map
	Lot Line Adjustment		\$1,000
<b>General Plan Amendment</b>			
	Minor Text	(alterations of existing sections)	Contract Cost plus 10%
	Major Text	(addition of new sections)	Contract Cost plus 15%
<b>Printed Material</b>			
	Copies		\$0.20 per page
	R-1 Guidelines		\$10
	Commercial Guidelines		\$10
	Council Packet Yearly Subscription		\$180
	Sign Ordinance		\$10
	Subdivision Ordinance		\$10
	Zoning Ordinance Text		\$15
	General Plan Text		\$20
<b>Development Agreement</b>			
<p>Consultant fee, plus 30% of consultant fees to cover normal staff costs, plus 15% of consultant fee as a contingency fund to cover unanticipated costs, plus duplication. These fees shall be considered advances and should the actual cost be less than the fee advanced, the excess shall be returned to the applicant; should the actual cost be more than the fee advanced, the difference shall be paid by the applicant.</p> <p>Applicant shall, in addition to those fees listed in this fee schedule, pay the actual cost of legal advertising.</p> <p>It is the City policy and requirement that processing of development or planning projects be fully cost recoverable. Application fees are intended to reimburse the City for minimal costs incurred for the normal or routine amount of time necessary to process applicant's requests. If additional or other unusual time is required on a particular project, then the developer/applicant will be charged for these additional costs to the City, plus a 30% administrative overhead fee.</p>			

CITY OF DEL REY OAKS FEE SCHEDULE			FEE
SERVICES			
Reports			
	Accident Report		\$25
	Police Report		\$25
Police / Fire Fees			
Hazardous Materials / Fire Response fee/Traffic Accident - (Fire presence required)			\$2,500
False Alarm / Fire Response / Fire Alarm - Sprinkler System (Fire presence required)			\$2,500
Fingerprinting - Hard Card			\$25 per card
Fingerprinting - Livescan			\$70
Special Events			\$125 per hour
Vehicle Repossession			\$25
Vehicle Storage Release			\$250
Citation Sign-Off			\$25
VIN Verification			\$25
Police Shoulder Patch Request			\$20
False Police Alarm Fees			
	1st alarm within 60 days		No Charge
	2nd alarm within 60 days		\$150
	Subsequent Alarms		\$250
Duplication Fees			
Duplication of Audio Tape			\$50 Each
Duplication of DVD (Council Meeting, Etc.)			\$50 Each
Duplication of DVD / Police Photos			\$50 Each
Enlargement of Photographs			City's cost
Returned Check Fee			
	Stop Payment/NSF		\$35
Miscellaneous Fees			
Maps			\$5
Business License Application Fee			\$26
Dog park annual registration fee			Free membership - Replacement key \$10
County of Monterey Animal Services			Actual Cost to City to be paid by owner
Park Barbeque Reservation Fees:			
	Residents:	Groups of 1 to 50	\$50
		Groups of 51 to 100	\$100
		Groups of 101 to 150	\$150
	Non-Residents:	Groups of 1 to 50	\$100
		Groups of 51 to 100	\$150
		Groups of 101 to 150	\$200
	Bounce House Permit		
Temporary Day Use Permit			\$50
Old Town Hall Reservation Fees:			
	Resident :	First 3 hours (per hour)	\$50
		Each additional hour	\$25
		Cleaning Fee	\$10
		Use Permit	\$50
		Refundable Cleaning/Damage Deposit	\$250
	Non-Resident:	First 3 hours (per hour)	\$70
		Each additional hour	\$25
		Cleaning Fee	\$10
		Use Permit	\$50
		Refundable Cleaning/Damage Deposit	\$250
Non-Profit:	First 3 hours (per hour)	\$40	
	Each additional hour	\$15	
	Cleaning Fee	\$10	
	Use Permit	\$50	
	Refundable Cleaning/Damage Deposit	\$250	



## EXHIBIT D

### Schedule of Deliverables

#### Overview.

To facilitate negotiation of the DDA, the parties shall use reasonably good faith efforts to accomplish the tasks set forth in this Exhibit in a timeframe that will support negotiation and execution of a mutually acceptable DDA prior to the expiration of the Negotiating Period.

#### Business Plan and Preliminary Term Sheet.

The overall business plan for City Ventures should be articulated, in terms of its role as a horizontal developer (land entitlements and infrastructure with land sales) and/or vertical developer (vertical development of improved parcels) of the project.

City Ventures shall develop a comprehensive list of all major deal terms with the City arising from its due diligence, inclusive of all deal points to be finalized during the DDA negotiation, including but not limited to land price and/or ground lease rate, phasing and locations of land take-downs and related infrastructure improvements, further actions needed to secure development rights, any required creation of districts (e.g., CFD, EIFD), any further outside agency obligations, habitat-related obligations/costs and actions, and other major terms or conditions critical to the successful negotiation of a DDA.

#### Financing and Costs of Project.

Within the Initial Negotiating Period, City Ventures shall provide the City, for its review and approval, with a preliminary detailed financial analysis for the Site development containing, among other matters, development budgets and operating proforma (the "Financing Proposal"). The Financing Proposal shall identify the sources of funding for each phase, or component, of the Site development, including but not limited to all proposed sources of debt and equity to be utilized for the project. The financial analysis shall be refined by the parties during the Negotiating Period, as appropriate, and will be used to evaluate the financial feasibility of the project and to assist in the negotiations of terms regarding payment of costs of land and development.

#### Planning Approvals.

City Ventures acknowledges the Project requires discretionary approvals and entitlements from the City (the "Planning Approvals"). During the Initial Negotiating Period (excluding extensions thereto), the City and City Ventures will agree on the type of Planning Approvals necessary for development of the Project, which may include a site plan review, zoning amendment, a tentative map, and a final map. City Ventures shall be responsible for the payment of all application fees associated with the Planning Approvals and all application materials.

#### Environmental Review.

It is the intent of the City and City Ventures that any required environmental review for the Planning Approvals and DDA should be prepared in a coordinated manner so that the Planning Approvals and DDA may be reviewed concurrently. During the Negotiating Period, City Ventures shall work with the City, as lead agency, to prepare or cause to be prepared any appropriate environmental documentation required by the California Environmental Quality Act ("CEQA") in connection with the Planning Approvals; provided, that nothing in this Agreement shall be

construed to compel the City to approve or make any particular findings with respect to any CEQA documentation. City Ventures shall provide such information about the Project as may be required to prepare or cause preparation and consideration of any CEQA required document, and shall otherwise generally cooperate to complete this task. Nothing in this Agreement shall be construed to compel the City to approve or make any particular findings with respect to such CEQA documentation. City Ventures shall be responsible for all costs associated with the preparation of the required CEQA documentation for the Project. City Ventures shall be responsible for the payment of all usual City fees and costs associated with the environmental review of the Planning Approvals and DDA.

Schedule of Performance. Within thirty (30) days after the Effective Date, City Ventures shall provide the City, for its review and approval, a proposed detailed schedule of performance for the Project (the "Schedule of Performance") which shall include, but not be limited to the dates for obtaining land use entitlements and financing commitments for the Project, the date for the submittal of construction plans to the City, the date for close of escrow on the Site, and the dates for the commencement and completion of construction of the Project.

Due Diligence. Within one hundred and twenty (120) days after the Effective Date of this Agreement (the "Due Diligence Period") to determine whether the Site is suitable for the Project, taking into account the geotechnical and soils conditions, the presence or absence of toxic or other hazardous materials, the massing of the proposed development improvements, infrastructure, the planning requirements imposed on projects of this type, and the other environmental and regulatory factors that City Ventures deems relevant. Likewise, City Ventures shall have one hundred and twenty (120) days after the Effective Date of this Agreement to determine the feasibility of the project on the Site with respect to planning requirements, financial feasibility, infrastructure, and title adequacy.

If, in City Venture's judgment based on such investigations and analyses, the Site is not suitable for development, City Ventures shall notify the City in writing prior to the expiration of the Initial Negotiating Period of its determination (an "Unsuitability Notice"). Upon delivery of an Unsuitability Notice by City Ventures, this Agreement shall be terminated without further action of any party, and thereafter no party shall have any further duties, obligations, rights, or liabilities under this Agreement, except as explicitly set forth herein.

Utilities. During the Initial Negotiating Period, City Ventures shall consult with all utility companies to determine preliminarily if existing utility facilities require expansion, relocation, or undergrounding in connection with the project.

Preliminary Plan. Within one hundred and twenty (120) days after the Effective Date of this Agreement, City Ventures shall submit to the City a proposed conceptual development program (the "Preliminary Plan") for the Site, that includes: (a) a detailed description of the proposed use of the Site, including the square footage for each type of use; (b) a proposed development phasing schedule; (c) proposed housing affordability and the nature of affordability controls; (d) a preliminary financing plan, containing development and operating pro formas; and (e) a preliminary site plan. The preliminary site plan shall show the general location of the proposed buildings, landscaping and site improvements; the massing of any proposed buildings; roadways,

parking and points of ingress and egress; and any other proposed improvements to be constructed as part of the project.

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