

**MEMORANDUM OF UNDERSTANDING  
FOR THE PROCESSING OF  
ENVIRONMENTAL REVIEW AND ECONOMIC REVIEW FOR  
LAND USE ENTITLEMENTS AND REGULATORY APPROVALS REQUIRED  
FOR THE PROPOSED MONTEREY DOWNS AND HORSE PARK PROJECT**

This MEMORANDUM OF UNDERSTANDING (MOU) is entered into by and among the COUNTY OF MONTEREY, a political subdivision of the state of California (County), and the CITY OF SEASIDE, a municipal corporation, (City), each individually referred to hereinafter as a Party, and collectively referred to hereinafter as the Parties. This MOU is dated for reference as of \_\_\_\_\_, 2011.

**RECITALS**

A. Monterey Downs, LLC, a California limited liability company, (Developer) plans to seek certain land use entitlements and other regulatory approvals for the proposed Monterey Downs and Horse Park project (Project), to be located in the Parker Flats area of the former Fort Ord and generally described in the Monterey Downs and Horse Park Illustrative Site Plan attached hereto as Exhibit "A".

B. A portion of the Project is located within the jurisdiction of the City and the Seaside-Fort Ord Redevelopment Project Area of the City Agency, and a portion of the Project is located within the jurisdiction of the County and the Fort Ord Redevelopment Project Area of the County Agency. As a result, the City, City Agency, County and County Agency have certain regulatory jurisdiction over various aspects of the Project.

C. On May 11, 2010, the County Agency and Developer entered into an Exclusive Negotiating Rights Agreement (ENRA) relating to the initial stages of County's and County Agency's review of the Project.

D. On September 16, 2010, the City, the City Agency and Developer entered into an Exclusive Negotiating Agreement (ENA) relating to the initial stages of City's and City Agency's review of the Project.

E. The purpose of the ENA and ENRA is to undertake certain environmental and other evaluations of the proposed Project, leading to the negotiation and ultimate consideration and approval of one or more Disposition and Development Agreements ("DDA") with the City Agency and County Agency for the disposition of property to Developer for ultimate development of the Project as described in those DDAs and as reviewed under appropriate laws.

F. Because of the scope, size and complexity of the Project, each Party will be asked to exercise its independent regulatory land use authority pursuant to multiple local and state requirements. These legal requirements, include without limitation, each Party's own plans and

COUNTY AGENCY OR THE CITY AGENCY.

codes, rules and regulations, state Planning and Zoning Law (California Government Code sections 65000 et seq.), state Community Redevelopment Law (Health & Safety Code sections 33000 et seq.) (CRL), and the California Environmental Quality Act (Public Resources Code sections 21000 et seq.) (CEQA). Additional state and federal requirements also may apply to the Project.

G. The Parties agree that one or more state statutes require that the Project be considered and analyzed as a whole single project, even though the Project is subject to multiple governmental jurisdictions and will be implemented in multiple phases.

H. To facilitate processing the Project in its entirety, the Parties seek to cooperate and coordinate their respective efforts regarding the entitlement and regulatory processing for the Project as a whole.

I. This MOU establishes a program for the joint and cooperative review and, if the Project is approved, processing of entitlements and regulatory approvals required for the Project. This MOU should be interpreted to carry out that goal.

J. This MOU is also intended to provide for and document the common interest in the protection of certain privileged communications and materials from disclosure when shared between the Parties.

## AGREEMENT

1. The Project. The Parties agree to jointly prepare and process the environmental and economic review documents necessary for the entitlements and regulatory approvals required to implement the Project. As currently contemplated and illustrated on Exhibit A, the Project includes the development of approximately 475 acres of land, including an equestrian training facility; a commercial center; a horse park comprised of a visitors center and office space, veterinary clinic, and horse stables; habitat area; open space and parks; affordable extended stay hotels; residential uses; neighborhood parks; and hotel and office uses. The Project includes the relocation of a proposed City corporate yard. The Project also includes the annexation and conveyance of currently unincorporated County territory ("Annexed Lands" as depicted on Exhibit A) to the City.

The Parties agree to work collaboratively with FORA to request that the U.S. Army and Department of the Defense convey, transfer, or otherwise re-allocate water rights and allocation in an amount determined sufficient by the Marina Coast Water District to develop the Project.

2. Coordination and Cooperation. The Parties shall allocate the roles and responsibilities for reviewing the Project in the manner set forth in this MOU, and shall regularly communicate, cooperate in good faith, and coordinate their respective efforts regarding (a) the preparation, review and consideration of an environmental impact report EIR and other

environmental reports and studies required by California Environmental Quality Act (Public Resources Code sections 21000 et seq.) (Environmental Review), (b) the preparation and review of economic analysis required by Community Redevelopment Law, Health & Safety Code section 33433(a)(2) (Economic Review), (c) the negotiation, review and proposed approval of one or more DDAs for the Project, and (d) the processing of land use entitlements and regulatory approvals for the Project if ultimately approved.

In pursuit of this coordination and cooperation, staff representatives of the Parties and their respective counsel, agree to hold quarterly meetings at a mutually agreed upon time and location in furtherance of this MOU.

The Parties acknowledge the following non-exclusive list of agreements and entitlements that may be required as part of Project approval:

a. City Approvals. General Plan Amendment, Zoning Amendment, Tentative Subdivision Map, Planned Use Development permit, Environmental Impact Report, and Design Review.

b. City Agency Approvals. Disposition and Development Agreement, to the extent permitted under applicable law

c. County Approvals. General Development Plan, Zone Change, Tentative Subdivision Map, Design Review, Use Permits for Tree Removal, and Environmental Impact Report.

d. County Agency Approvals. Disposition and Development Agreement, to the extent permitted under applicable law.

e. Fort Ord Reuse Authority Approval. Determination of Consistency with the Fort Ord Base Reuse Plan.

The Parties shall take all lawful actions and enter into all legal agreements necessary to implement the purpose and intent of this MOU. Unless specifically directed or prohibited to act in a particular manner by this MOU, each Party shall have the discretion to implement this MOU in the manner that, in its best judgment, is in its best interests.

3. Environmental Review. Notwithstanding any provision of the ENA and the ENRA, the Parties agree that the City shall act as the lead agency for CEQA compliance pursuant to State CEQA Guideline Section 15051(d), in accordance with the attached flow chart of consultations, including the general timeframes of performance. The Parties agree that, at a minimum, the following items shall be approved by appropriate representatives of all the Parties, in order to ensure consistency and facilitate successful development: Project Description; proposed Mitigation Measures; proposed Project Alternatives; proposed Responses to Comments; and proposed Findings. The City Agency, County and County Agency shall act as

responsible agencies pursuant to CEQA (Environmental Review) and shall cooperate with the City's efforts to fully comply with CEQA. The Parties acknowledge and agree that the Project as currently proposed is likely to be implemented in phases, some of which will be entirely within the boundaries of one jurisdiction or another, and there may be several approaches for permissible CEQA review, including preparation of a Program EIR, a Staged EIR or a Master EIR. The Parties shall agree upon the proper approach to environmental analysis, prior to the issuance of a Notice of Preparation.

If some or all components of the Project are approved, City shall implement all applicable CEQA requirements for the development of the Project within City jurisdiction and County and County Agency shall implement all applicable CEQA requirements for the development of the Project within County jurisdiction. It is acknowledged that these requirements may include the preparation of subsequent or supplemental environmental review and analysis.

4. Economic Review. The Parties agree that County shall have primary responsibility for performing and preparing the economic analysis required by CRL. The Parties shall cooperate with the County in its role as the Party with primary responsibility for conducting the Economic Review. In this role, County shall review and approve a preliminary financing plan for the proposed Project, including a general estimate of the following: pro forma of backbone infrastructure costs; pro forma of entitlement costs; pro forma of vertical improvement costs for each land use; pro forma phasing schedule; preliminary estimate of valuation for purchase price and/or lease rates; absorption schedule for sale of pads (if applicable) and completed improvements; cash flow projection of development costs and Project revenues; sources and uses of funds table; narrative description of proposed financing plan; narrative description of cash flow projections and possible revenue sharing. The Economic Review shall also contain methods and formulas by which tax and other revenues generated by the Project in the City and County territories are shared in order to balance the benefits and burdens of the Project between the Parties. These methods and formulas will form the basis of terms and conditions of one or more separate agreements between the Parties. The City, City Agency and County Agency will make good faith efforts to comply with any County request for assistance or information or any other documentation that may be necessary or beneficial to the County for its implementation of the Economic Review.

5. Dispute Resolution. The following actions have been identified by the Parties as impeding the ability to perform this MOU.

a. Failure of one Party to respond to responsible requests for information or documents;

b. Failure of one Party to respond to reasonable requests to meet, including failure to attend or agree to a quarterly meeting when requested by one of the Parties;

c. Failure of one Party to respond to telephone calls or emails within two (2) business days;

d. Failure of one Party to provide rationale(s) for positions taken.

It is expressly acknowledged, however, that the failure of the Developer to abide by agreements with one or more individual Parties, including failing to provide sufficient funds or information necessary for a Party to undertake necessary actions or analyses, shall operate as a "force majeure" provision and excuse any lack of performance by the affected Party. Further, an order or other action from any court of law or other entity that precludes, limits or restricts the allocation of water, water use or water rights to new development shall also operate as a "force majeure" provision.

If a Party to this MOU considers another Party as impeding the performance of the MOU, that Party shall provide notice to the other Party of the matter causing such claimed impediment as well as provide the other Party with an opportunity to cure. Such opportunity to cure shall be a maximum of five (5) business days for response or cure. Notice of any claim of impediment shall be provided to all Parties to this MOU, with copies to the administrative heads of such Parties as well as the respective Party's legal counsel and any outside legal counsel.

If, upon notice, the impeding Party has not cured, or commenced to cure the claimed impediment, the non-impeding Party may terminate this MOU and proceed to process such Environmental Review and Economic Review of the Project as appropriate to that Party. The sole remedy for the unresolved disputes between and among the Parties or for a breach of this Agreement is for the Party not in breach to terminate this MOU. Neither Party shall be liable for damages of any kind for a breach or termination of this Agreement.

6. Approval Authority. The Director of the Redevelopment and Housing Office, or his or her designee, is authorized to act on behalf of the County as to matters of administration and interpretation of the County's roles and responsibilities under this MOU, including the discretion to refer decisions to the County Board of Supervisors, if considered appropriate, except for matters expressly required in this MOU to be acted upon by the County's Board of Supervisors. The City Manager of the City, or his or her designee, is authorized to act on behalf of the City as to matters of administration and interpretation of the City's roles and responsibilities under this MOU, including the discretion to refer decisions to the City Council, if considered appropriate, except for matters expressly required in this MOU to be acted upon by the City Council of City.

7. Limitation of Effect of MOU. This MOU shall not obligate any of the Parties hereto to enter into a DDA or any other agreement with Developer regarding the Project. Additionally, the Parties shall not be obligated to perform their respective duties under this MOU if sufficient funds from Developer are not provided to the Parties pursuant to separate agreements. By execution of this MOU, the Parties are not committing to the disposition of the

property upon which the Project is proposed. Execution of this MOU is merely an agreement to conduct a series of environmental analysis and economic review in accordance with the terms hereof, reserving for subsequent City Agency Board and County Agency Board action their respective rights and obligations to exercise final discretion and approval regarding the approval of a DDA and all proceedings and decisions in connection therewith as permitted by applicable law. Until and unless a DDA is executed by the respective parties thereto, no agreement drafts, actions, deliverables or communications arising from the performance of this Agreement shall impose any legally binding obligations on either Party to enter into or support entering into a DDA or be used as evidence of any oral or implied agreement by either Party to enter into any other legally binding document. Further, neither Party is committed to approve any DDA or other discretionary approval until the requirements of CEQA have been satisfied.

8. No Third Party Beneficiaries. The purpose of this MOU is to establish a process by which the Parties may jointly and cooperatively take steps necessary to review and approve development approvals for the Project, in order to facilitate the Parties' respective exercise of their lawful discretion. There are no third party beneficiaries of the MOU.

9. Exchanges of Information and Communication.

a. The Parties deem it necessary that they and their respective counsel (hereinafter, "Common Interest Counsel") communicate with one another. These communications are expected to include, without limitation, joint conferences, joint consultants, and exchanges of documents and information (hereinafter, "Common Interest Materials"). These Common Interest Materials will include, but not be limited to:

(i) Communication regarding strategy with regard to the processing of entitlements and environmental documents under CEQA and the preparation of an economic analysis under the CRL.

(ii) Draft environmental documents, studies, analyses and any other supporting environmental documents as required by CEQA and the CRL.

(iii) The content of any other communication between any of the Parties and their respective counsel that is protected by the attorney-client privilege or attorney work-product doctrine.

b. All such communications and exchanges are protected from disclosure by the attorney-client privilege, the attorney work-product doctrine and other applicable privileges and protections. Such privileges and protections shall not be waived as a result of such communications and exchanges among the Parties and/or their counsel. Nothing in this MOU shall constitute a waiver by any Party of any attorney-client privilege, attorney work-product doctrine, or other applicable privilege regarding information that is either shared or not shared among the Parties.

c. The Common Interest Materials described above shall be subject to the following conditions, which the Parties believe will, and by which they intend to, preserve the confidentiality of such communications and attorney work-product pursuant to the common interest doctrine, and other applicable privileges:

(i) Common Interest Counsel agree that the Common Interest Materials shall remain privileged and confidential and shall not be disclosed by Common Interest Counsel, their respective clients, or any other persons authorized to access the Common Interest Materials to any third party or person except as provided in this MOU. To the extent Common Interest Materials are to be disclosed to any third party or person, other than Common Interest Counsel and the Parties, Common Interest Counsel shall first obtain the written consent of either: (a) all holders of any applicable privilege or other right to preclude disclosure, or (b) the attorney(s) for all holders of any applicable privilege or other right to preclude disclosure.

(ii) Such documents and information shall be maintained in confidence by Common Interest Counsel and used solely by such counsel for the exclusive purposes of rendering legal advice in the processing of entitlements, environmental documents under CEQA, and economic analysis under CRL.

(iii) Subject to subparagraph (iv) below, such documents and information may be disclosed only to outside or in-house counsel representing a Party and to consultants retained by one or more of the Parties with the consent of counsel for the Party or Parties that furnished the documents or information.

(iv) To avoid misunderstandings or inadvertent disclosure, all documents exchanged pursuant to this MOU shall bear a footer that provides that the document is protected by the Common Interest Doctrine. The failure to include a footer such as provided in this subparagraph shall not waive any privilege or protection available under this MOU or otherwise.

(v) The disclosure of a portion of any privileged or protected document does not constitute a complete waiver of any asserted privilege or protection applicable to the remainder of that document or applicable to other communications between the same parties or with other parties regarding the same subject matter.

10. Amendment by Written Instrument. This MOU may be amended or modified in whole or in part, only by a written instrument executed by the Parties.

11. Governing Law. This MOU shall be governed by and interpreted by and in accordance with the laws of the State of California. Venue for any litigation affecting this MOU shall be in the County of Monterey.

12. Additional Governmental Parties. The Parties acknowledge that additional governmental parties may be required to be added to this Agreement upon mutual agreement of

the Parties in order for the Parties to fulfill their roles and responsibilities as outlined in this Agreement. .

13. Entire MOU. This MOU, along with any exhibits and attachments hereto, constitutes the entire MOU between the Parties hereto concerning the subject matter hereof.

14. Interpretation. It is agreed and understood by the Parties that this MOU has been arrived at through negotiation and that no Party is to be deemed the Party which prepared this MOU within the meaning of Civil Code Section 1654.

15. Authority. Each signatory to this MOU certifies that he or she has the lawful authority to execute this MOU for and on behalf of the Party named herein.

16. Counterparts. This MOU may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document.

17. Term. This MOU will expire on its own terms upon the occurrence of the following possible events:

a. Project receiving all required entitlement and regulatory approvals from all Parties;

b. Withdrawal by the Developer of all of the Project from review, or a portion of the Project which is located entirely within the jurisdiction of one of the Parties.

18. Termination. This MOU may be terminated by the City, on the one hand, and/or the County on the other hand, upon thirty (30) days' written notice to the other Parties, provided that notice is issued by the legislative body of the terminating party.

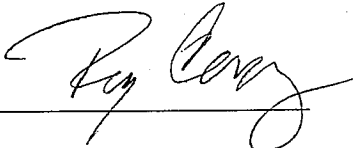
*(Signature page follows)*




IN WITNESS WHEREOF, the Parties have executed this MOU on the day and year set out opposite their respective signatures.

By:

Date:

  
CITY OF SEASIDE,  
a municipal corporation

1-28-12

  
COUNTY OF MONTEREY,  
a political subdivision of the State of California

1-10-12

\_\_\_\_\_  
  
\_\_\_\_\_

\_\_\_\_\_  
  
\_\_\_\_\_

ATTACHMENT "A"

[Insert copy of Monterey Downs Illustrative Site Plan]

