

CITY OF PALM DESERT STAFF REPORT

MEETING DATE: January 11, 2024

PREPARED BY: Eric Ceja, Director of Economic Development

REQUEST: APPROVE THE SECOND AMENDMENT TO THE SECOND REVISED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF PALM DESERT AND DESERT WAVE VENTURES, LLC

RECOMMENDATION:

1. Approve the Second Amendment to the Second Revised and Restated Disposition and Development Agreement (DDA) between the City of Palm Desert and Desert Wave Ventures, LLC.
2. Authorize the Mayor to execute said Agreements.
3. Authorize the City Manager to make non-substantive changes to the Second Amendment to the Second Revised and Restated DDA as needed prior to execution by the Mayor.
4. Authorize the City Manager to draft, negotiate, and execute other supporting agreements that may be required by the DDA.
5. Authorize the City Manager to execute said agreements.

BACKGROUND/ANALYSIS:

DSRT Surf, originally approved in 2019, includes the construction of a 5.5-acre surf lagoon, up to 88-Villa Units, and associated amenities, at the Desert Willow Golf Resort. On May 25, 2023, the City Council approved the First Amendment to the Second Revised and Restated DDA resulting in:

- Removal of a requirement for hotel development,
- Inclusion of annual payment to the City of \$500,000 with annual 3% increase for the life of the project, and
- Removal of all City financial assistance

As with all previous agreements, the developer is subject to certain obligations including construction contract review, project monitoring, and water usage reporting to the City. The DDA also includes a Schedule of Performance (Schedule) which outlines the timing of construction obligations by the developer. The developer has made substantial progress toward mobilizing the construction of the project and has met several of the obligations in the Schedule; however, a requirement in the Schedule for submission of finalized construction contracts with guaranteed maximum pricing (GMP) has resulted in a technical issue for both the City and developer. Essentially, contractors will not sign final contracts based on the penalties for non-performance of the contractors obligations within a 24-month period due to labor and material concerns. To remedy this the developer is requesting an additional 12-months to complete construction.

City staff have reviewed this request with respect to ensuring project completion and protecting the City's interest. Existing protections include the City's ability to issue a "Notice of Default" if

the Schedule isn't adhered to and the proposed amendment provides the developer the opportunity to remedy non-performance within a 30-day period. Should the developer fail to commence a cure of the performance delay, the City retains the right to have the developer quit-claim the property back to the City. Surety Bonds are also collected through the construction permitting process to ensure that the City can remediate the property if this provision is exercised.

Legal Review:

This report has been reviewed by Mr. Robert F. Messinger with Burke, Willams and Sorensen (BWS), special counsel to the City for the DSRT Surf project.

FINANCIAL IMPACT:

There is no fiscal impact to the City with the proposed revisions to the Second Amendment to the Second Revised and Restate DDA.

ATTACHMENTS:

1. Second Amendment to the Second Revised and Restated Disposition and Development Agreement between the City of Palm Desert and Desert Wave Ventures, LLC