

PENINSULA HEALTH CARE DISTRICT AGENDA
A&R ENA: Summary of Key Terms

Key Terms	Summary of Term
Exclusive Right; Good Faith (Section 1)	<ul style="list-style-type: none"> District agrees to negotiate exclusively with Developers for the duration of the Negotiation Period. Parties agree to negotiate in good faith for each Component of the Project.
Negotiation Period (Section 2)	<p>The Negotiation Period consists of the Term Sheet Phase and the DDA Phase.</p> <p><u>Term Sheet Phase</u></p> <ul style="list-style-type: none"> The Term Sheet Phase expires 275 days after the A&R Effective Date. During the Term Sheet Phase, each Developer must reach agreement with the District on a Term Sheet. If even one Developer is unable to reach agreement on their respective Term Sheet, the A&R ENA terminates as to all Developers. The Developers have one Extension Option Period during the Term Sheet Phase. <p><u>DDA Phase</u></p> <ul style="list-style-type: none"> The DDA Phase commences if all Developers reach agreement on their respective Term Sheets. The DDA Phase expires 12 months following the Definitive Agreements Date, which is 60 days following Project Entitlement Approval Date. The District and Developers will negotiate a separate DDA and Ground Lease for each Component. <p><u>Force Majeure; Administrative Delay</u></p> <ul style="list-style-type: none"> A Party's performance of an obligation under the A&R ENA may be extended due to a Force Majeure Delay or an Administrative Delay. The Administrative Delay only applies to City or other approving agency delays (not District delays) and is capped at six (6) months cumulatively.
Terms to be Negotiated During Term Sheet Phase (Section 3)	Section 3 outlines key terms to be negotiated during the Term Sheet Phase, including but not limited to: Ground Lease payments; Master Schedule of Performance for coordination between Components; Project financing; and Community Benefits.
Reimbursement of District Costs (Section 4)	<ul style="list-style-type: none"> Developers reimburse the District for third-party costs only if a DDA is executed. If a Developer elects not to proceed following the Project Entitlement Approval Date, triggering the Replacement Developer and Entitlement Cost Reimbursement requirements, the applicable portion of the District Costs will be deducted when calculating the Entitlement Cost Reimbursement for the applicable Developer (see Section 10.3).
Planning, Entitlements, and CEQA Review; Developer's Consultants (Section 8)	<ul style="list-style-type: none"> District is willing to negotiate a separate Ground Lease and DDA for each Component only if the Project is entitled as a single integrated project. Developers are also required to obtain from the City, as part of the Project Entitlements, a development agreement that secures vested rights for the

	<p>Project for a minimum of 10 years, which can be assigned to the District without City consent.</p> <ul style="list-style-type: none"> • Developers are responsible for CEQA compliance and processing and obtaining Project Entitlements for the Project. Developers must obtain Board approval for Project Entitlement applications before submitting to the City.
<p>Timing and Conditions Precedent to the Parties' Execution of DDAs and Ground Leases (Section 9)</p>	<p>A Developer must satisfy the following conditions prior to execution of its DDA or Ground Lease:</p> <ul style="list-style-type: none"> • Within 270 days after the date of Board approval of the Term Sheets (or Project Entitlements Approval Date if that occurs first), the District and Developers must agree in good faith to a form of DDA and Ground Lease for their respective Component. If this condition is not met, the DDA Phase for all Components will be deemed terminated. • Developer must obtain City approval of all Project Entitlements within 3 years of the A&R Effective Date. The City Approval Date cannot be extended by Force Majeure or Administrative Delay. • No later than 60 days after the Project Entitlement Approval Date, each Developer must finalize the form DDA and Ground Lease by incorporating any items from the Project Entitlements into the final, execution form. • The Board, in its sole discretion, may approve the DDAs and Ground Leases within the 60 day period between the Project Entitlement Approval Date and the Definitive Agreements Date. After that, each Developer has 12 months to sign its respective DDA and Ground Lease. The Board does not re-approve during that timeframe and cannot walk away after an approval prior to the Definitive Agreements Date without defaulting. • The Entitlement Cost Reimbursement shall be reduced each month after the Definitive Agreements Date until the applicable Developer executes the DDA and Ground Lease.
<p>Replacement Developer Obligations After Project Entitlement Date; Entitlement Acquisition (Section 10)</p>	<ul style="list-style-type: none"> • After the Project Entitlement Approval Date, if a Developer elects not to proceed with its Component, that Developer must identify a replacement developer that meets certain defined criteria. • In order to qualify for the Entitlement Cost Reimbursement, the departing Developer must (1) identify a replacement developer that satisfies certain criteria; and (2) assign to the District its Vested Rights.
<p>Section 14. Defaults and Remedies</p>	<ul style="list-style-type: none"> • Developers are joint and severally liable up until the Definitive Agreements Date or until the A&R ENA is terminated as to a particular Developer who has timely executed a DDA. • <u>Developer Default</u>. Events of Developer default include failure by a Developer to (i) negotiate in good faith, (ii) timely complete Developer's Work in accordance with the Schedule of Performance, (iii) timely agree on a Term Sheet, (iv) timely agree on the Form Agreements, (v) timely agree on the final Form, (vi) timely complete entitlement milestones in the Entitlement Schedule, (vii) obtain City approval of the Project Entitlements by the City Approval; or (viii) perform any of Developer's material obligations under the A&R ENA.

	<ul style="list-style-type: none"> • <u>District Remedy.</u> Upon an uncured event of default by any Developer prior to the Definitive Agreements Date the District may terminate the A&R ENA with respect to all Components. If (a) the A&R ENA terminates during the Term Sheet Phase or prior to execution of the applicable DDA for a Component (but in no event later than the DDA Phase Expiration Date) and (b) the District retains the Performance Deposit pursuant to Section 7, the District's sole and exclusive remedy (other than termination of the A&R ENA) is retention of the Performance Deposit. • <u>District Default.</u> Failure by the District to negotiate in good faith with Developer or to timely complete its obligations. For example, if a Developer elects not to proceed following the Project Entitlement Approval Date, the Board has 60 days to determine whether a replacement developer meets the replacement developer criteria, and 10 business days from the date the Board receives Assignable Vested Rights to pay the Entitlement Cost Reimbursement if all preconditions are met. • <u>Developer Remedy.</u> In the event of an uncured default by the District, Developer's sole and exclusive remedies are (i) an action for specific performance, (ii) injunctive relief, or (iii) to termination of the A&R ENA, upon which termination the Performance Deposit shall be returned to Developer, and the District shall pay to the Developers the Entitlement Cost Reimbursement.
Termination (Section 15)	A&R ENA terminates upon the earlier of (i) the expiration of the Term Sheet Phase, (ii) expiration of the DDA Phase without the Parties' execution of the DDA, (iii) written termination by one of the Parties based on an event of default, (iv) a deemed termination for failure to timely agree on Form Agreements, (v) a deemed termination for failure to timely agree to final form DDAs and ground leases by the Definitive Agreements Date, (vi) upon a Developers election not to proceed with its Component following the Project Entitlement Approval Date.
Indemnity (Section 17)	Indemnity provision bolstered to require the Developer to indemnify and defend the District against any litigation, lawsuits, claims, etc. challenging (a) the RFQ/P process or the selection of any Developer, including MidPen, (b) the approval of any Project Entitlements, and (c) any contract or agreement contemplated under the A&R ENA.