



AGENDA

Tuesday, June 21, 2022

5:00 P.M. Closed Session

6:30 P.M. Open Session

REGULAR MEETING

**CITY COUNCIL, AIRPORT COMMISSION,
MARINA ABRAMS B NON-PROFIT CORPORATION, PRESTON PARK SUSTAINABLE
COMMUNITY NON-PROFIT CORPORATION, SUCCESSOR AGENCY OF THE FORMER
MARINA REDEVELOPMENT AGENCY AND MARINA GROUNDWATER
SUSTAINABILITY AGENCY**

Council Chambers
211 Hillcrest Avenue
Marina, California

Zoom Meeting URL: <https://zoom.us/j/730251556>

Zoom Meeting Telephone Only Participation: 1-669-900-9128 - Webinar ID: 730 251 556

In accordance with California Government Code §54953(e)(1)(A) and (C) and the Proclamation of a State of Emergency issued by Governor Newsom on March 4, 2020, under the provisions of Government Code §8625 related to the COVID-19 (coronavirus) pandemic, consistent with recommendations by State and local health officials regarding social distancing and in order to prevent an imminent risk to the health and safety of attendees as determined in Resolution 2022-54, public participation in City of Marina City Council public meetings shall be electronic only and without a physical location for public participation until the earlier of May 31, 2022, or such time as the City Council may adopt a resolution in accordance with Government Code §54953(e)(3). This meeting is being broadcast “live” on Access Media Productions (AMP) Community Television Cable 25 and on the City of Marina Channel and on the internet at <https://accessmediaproductions.org/>

PARTICIPATION

You may participate in the City Council meeting in real-time by calling Zoom Meeting via the weblink and phone number provided at the top of this agenda. Instructions on how to access, view and participate in remote meetings are provided by visiting the City’s home page at <https://cityofmarina.org/>. Attendees can make oral comments during the meeting by using the “Raise Your Hand” feature in the webinar or by pressing *9 on your telephone keypad if joining by phone only. If you are unable to participate in real-time, you may email to marina@cityofmarina.org with the subject line “Public Comment Item#___” (insert the item number relevant to your comment) or “Public Comment – Non Agenda Item.” Comments will be reviewed and distributed before the meeting if received by 5:00 p.m. on the day of the meeting. All comments received will become part of the record. Council will have the option to modify their action on items based on comments received.

AGENDA MATERIALS

Agenda materials, staff reports and background information related to regular agenda items are available on the City of Marina’s website www.cityofmarina.org. Materials related to an item on this agenda submitted to the Council after distribution of the agenda packet will be made available on the City of Marina website www.cityofmarina.org subject to City staff’s ability to post the documents before the meeting

VISION STATEMENT

Marina will grow and mature from a small town bedroom community to a small city which is diversified, vibrant and through positive relationships with regional agencies, self-sufficient. The City will develop in a way that insulates it from the negative impacts of urban sprawl to become a desirable residential and business community in a natural setting. **(Resolution No. 2006-112 - May 2, 2006)**

MISSION STATEMENT

The City Council will provide the leadership in protecting Marina's natural setting while developing the City in a way that provides a balance of housing, jobs and business opportunities that will result in a community characterized by a desirable quality of life, including recreation and cultural opportunities, a safe environment and an economic viability that supports a high level of municipal services and infrastructure. **(Resolution No. 2006-112 - May 2, 2006)**

1. CALL TO ORDER



2. ROLL CALL & ESTABLISHMENT OF QUORUM: (City Council, Airport Commissioners, Marina Abrams B Non-Profit Corporation, Preston Park Sustainable Communities Nonprofit Corporation, Successor Agency of the Former Redevelopment Agency Members and Marina Groundwater Sustainability Agency)

Cristina Medina Dirksen, David Burnett, Lisa Berkley, Mayor Pro-Tem/Vice Chair Kathy Biala, Mayor/Chair Bruce C. Delgado

3. CLOSED SESSION: *As permitted by Government Code Section 54956 et seq., the (City Council, Airport Commissioners, Marina Abrams B Non-Profit Corporation, Preston Park Sustainable Communities Nonprofit Corporation, Successor Agency of the Former Redevelopment Agency Members and Marina Groundwater Sustainability Agency) may adjourn to a Closed or Executive Session to consider specific matters dealing with litigation, certain personnel matters, property negotiations or to confer with the City's Meyers-Milias-Brown Act representative.*

- a. Performance Evaluation of Public Employee, Unrepresented Employee (CA Govt. Code Section 54957(b)(1) – City Manager

6:30 PM - RECONVENE OPEN SESSION AND REPORT ON ANY ACTIONS TAKEN IN CLOSED SESSION

4. MOMENT OF SILENCE & PLEDGE OF ALLEGIANCE (Please stand)

5. SPECIAL PRESENTATIONS:

- a Civil Disobedience Day Proclamation
- b Blue Zone Presentation

6. SPECIAL ANNOUNCEMENTS AND COMMUNICATIONS FROM THE FLOOR: *Any member of the Public or the City Council may make an announcement of special events or meetings of interest as information to Council and Public. Any member of the public may comment on any matter within the City Council's jurisdiction which is not on the agenda. Please state your name for the record. Action will not be taken on an item that is not on the agenda. If it requires action, it will be referred to staff and/or placed on a future agenda. City Council members or City staff may briefly respond to statements made or questions posed as permitted by Government Code Section 54954.2. In order that all interested parties have an opportunity to speak, please limit comments to a maximum of four (4) minutes. Any member of the public may comment on any matter listed on this agenda at the time the matter is being considered by the City Council.*

7. CONSENT AGENDA FOR THE SUCCESSOR AGENCY TO THE FORMER MARINA REDEVELOPMENT AGENCY: *Background information has been provided to the Successor Agency of the former Redevelopment Agency on all matters listed under the Consent Agenda, and these items are considered to be routine. All items under the Consent Agenda are normally approved by one motion. Prior to such a motion being made, any member of the public or the City Council may ask a question or make a comment about an agenda item and staff will provide a response. If discussion or a lengthy explanation is required, that item will be removed from the Consent Agenda for Successor Agency to the former Marina Redevelopment Agency and placed at the end of Other Action Items Successor Agency to the former Marina Redevelopment Agency.*
8. CONSENT AGENDA: *Background information has been provided to the City Council, Airport Commission, Marina Abrams B Non-Profit Corporation, and Redevelopment Agency on all matters listed under the Consent Agenda, and these items are considered to be routine. All items under the Consent Agenda are normally approved by one motion. Prior to such a motion being made, any member of the public or the City Council may ask a question or make a comment about an agenda item and staff will provide a response. If discussion or a lengthy explanation is required, that item will be removed from the Consent Agenda and placed at the end of Other Action Items.*
 - a. ACCOUNTS PAYABLE:
 - (1) Accounts Payable Check Numbers 100086 -100164, totaling \$1,228,737.44
Accounts Payable for Successor Agency Check Numbers 89, totaling \$2,970.00
 - b. MINUTES:
 - (1) May 17, 2022, Regular City Council Meeting
 - (2) June 7, 2022, Regular City Council Meeting
 - c. CLAIMS AGAINST THE CITY: None
 - d. AWARD OF BID: None
 - e. CALL FOR BIDS: None
 - f. ADOPTION OF RESOLUTIONS:
 - (1) City Council consider adopting Resolution No. 2022-, regarding the Ralph M. Brown Act (California Government Code §§54950-54963, making certain findings; and authorizing the city to continue to implement remote teleconferenced public meetings of the City Council and its constituent bodies for the period June 21, 2022, through July 30, 2022.
 - (2) City Council consider adopting Resolution No. 2022-, authorizing release of a Request for Proposals for Consultant Services to prepare a comprehensive General Plan Update and accompanying zoning code and map updates, and appropriate CEQA review; and authorizing the Finance Director to make necessary budget and accounting entries; and authorizing the City Manager to execute agreement on behalf of the City subject to final review and approval by the City Attorney.
 - (3) City Council consider adopting Resolution No. 2022-, approving estimated cost for service for calendar year 2022, Fourth of July activities; and setting cost recovery surcharge at six (6%) percent for calendar year 2022 pursuant to Marina Municipal Code Section 15.32.580.

g. APPROVAL OF AGREEMENTS:

- (1) City Council consider adopting Resolution No. 2022-, approving a Public Improvement Agreement for Sea Haven Phase 4A between the City of Marina and the Contracting Parties of 104 Investments, LLC, Locans Investments, LLC, Wathen Castanos Peterson Homes, Inc., Wathen Castanos Peterson Coastal, LP, and Marina Developers, Inc., and authorizing the City Manager to execute the Public Improvement Agreement on behalf of the City subject to final review and approval by the City Attorney.
- (2) City Council consider adopting Resolution No. 2022-, authorizing the City Manager to enter into a lease agreement with the Transportation Agency for Monterey County for segments of the Monterey Branch Line corridor between Marina and Sand City so long as the final lease does not significantly alter the terms of the attached draft lease; and subject to final review and approval by the City Attorney.
- (3) City Council consider adopting Resolution No. 2022-, approving the revised Memorandum of Understanding (MOU) between the Monterey Regional Waste Management District and the City of Marina regarding, food waste reduction and organics recycling regulations, incorporating costs anticipated for fiscal year 2022-2023, authorizing the City Manager to execute the amendment subject to final review and approval by the City Attorney, and authorizing the Finance Director to make necessary accounting and budgetary entries.

h. ACCEPTANCE OF PUBLIC IMPROVEMENTS: None

i. MAPS:

- (1) City Council Consider adopting Resolution No. 2022-, approving the Phase 4A Final Map for Sea Haven Development Project Subdivision; and consider authorizing the City Clerk to certify the Final Map on behalf of the City subject to final review and approval by the City Attorney.

j. REPORTS: (RECEIVE AND FILE): None

k. FUNDING & BUDGET MATTERS: None

l. APPROVE ORDINANCES (WAIVE SECOND READING): None

m. APPROVE APPOINTMENTS: None

9. PUBLIC HEARINGS:

- a. City Council open a public hearing and consider adopting Resolution No, 2022-, approving the assignment of the Development Agreement related to the Marina Station Project to 3rd Millennium Partners; and read by title only and approve the first reading of Ordinance No. 2022-, approving the first amendment to the development agreement related to the Marina Station Project.

10. OTHER ACTIONS ITEMS OF THE SUCCESSOR AGENCY TO THE FORMER MARINA REDEVELOPMENT AGENCY: *Action listed for each Agenda item is that which is requested by staff. The Successor Agency may, at its discretion, take action on any items. The public is invited to approach the podium to provide up to four (4) minutes of public comment.*

11. **OTHER ACTION ITEMS:** *Action listed for each Agenda item is that which is requested by staff. The City Council may, at its discretion, take action on any items. The public is invited to approach the podium to provide up to four (4) minutes of public comment.*

Note: No additional major projects or programs should be undertaken without review of the impacts on existing priorities (Resolution No. 2006-79 – April 4, 2006).

- a. City Council consider adopting Resolution No. 2022-, approving an agreement with Noland, Hamerly, Etienne & Hoss to provide municipal legal services to the City of Marina; and approve a waiver of conflict of interest and consent to represent the City of Marina; and authorize the City Manager to execute the agreement and waiver.
- b. City Council consider adopting Resolution No. 2022-, adopting the City of Marina Flagpole Policy; and consider adopting Resolution No. 2022-, approving the flying of the Rainbow Pride Flag at City Hall throughout the remainder of the month of June 2022 as further recognition of June 2022 as Lesbian, Gay, Bisexual, Transgender, Queer, Plus (LBGTQ+) Pride Month in the City of Marina.
- c. City Council receive presentation on the long-term vision and fiscal sustainability, hangar and infrastructure needs and solutions, and potential financial support from the Military Assistance Program for the Marina Municipal Airport. ***Continued from June 7, 2022.***

12. **COUNCIL & STAFF INFORMATIONAL REPORTS:**

- a. Monterey County Mayor's Association [Mayor Bruce Delgado]
- b. Council and staff opportunity to ask a question for clarification or make a brief report on his or her own activities as permitted by Government Code Section 54954.2.

13. **ADJOURNMENT:**

CERTIFICATION

I, Anita Sharp, Deputy City Clerk, of the City of Marina, do hereby certify that a copy of the foregoing agenda was posted at City Hall and Council Chambers Bulletin Board at 211 Hillcrest Avenue, Monterey County Library Marina Branch at 190 Seaside Circle, City Bulletin Board at the corner of Reservation Road and Del Monte Boulevard on or before 6:30 p.m., Friday, June 17, 2022.

ANITA SHARP, DEPUTY CITY CLERK

City Council, Airport Commission and Redevelopment Agency meetings are recorded on tape and available for public review and listening at the Office of the City Clerk and kept for a period of 90 days after the formal approval of MINUTES.

City Council meetings may be viewed live on the meeting night and at 12:30 p.m. and 3:00 p.m. on Cable Channel 25 on the Sunday following the Regular City Council meeting date. In addition, Council meetings can be viewed at 6:30 p.m. every Monday, Tuesday and Wednesday. For more information about viewing the Council Meetings on Channel 25, you may contact Access Monterey Peninsula directly at 831-333-1267.

Agenda items and staff reports are public record and are available for public review on the City's website (www.ci.ytofmarina.org), at the Monterey County Marina Library Branch at 190 Seaside Circle and at the Office of the City Clerk at 211 Hillcrest Avenue, Marina between the hours of 10:00 a.m. 5:00 p.m., on the Monday preceding the meeting.

Supplemental materials received after the close of the final agenda and through noon on the day of the scheduled meeting will be available for public review at the City Clerk's Office during regular office hours and in a 'Supplemental Binder' at the meeting.

Members of the public may receive the City Council, Airport Commission and Successor Agency of the Former Redevelopment Agency Agenda at a cost of \$55 per year or by providing a self-addressed, stamped envelope to the City Clerk. The Agenda is also available at no cost via email by notifying the City Clerk at marina@cityofmarina.org

*ALL MEETINGS ARE OPEN TO THE PUBLIC. THE CITY OF MARINA DOES NOT DISCRIMINATE AGAINST PERSONS WITH DISABILITIES. Council Chambers are wheelchair accessible. meetings are broadcast on cable channel 25 and recordings of meetings can be provided upon request. to request assistive listening devices, sign language interpreters, readers, large print agendas or other accommodations, please call (831) 884-1278 or e-mail: marina@cityofmarina.org. requests must be made at least **48 hours** in advance of the meeting.*

Upcoming 2022 Meetings of the City Council, Airport
Commission, Marina Abrams B Non-Profit Corporation, Preston
Park Sustainable Community Nonprofit Corporation, Successor
Agency of the Former Redevelopment Agency and Marina
Groundwater Sustainability Agency
Regular Meetings: 5:00 p.m. Closed Session;
6:30 p.m. Regular Open Sessions

***Wednesday, July 6, 2022**

Tuesday, August 2, 2022

Tuesday, August 16, 2022

***Wednesday, September 7, 2022**

****Thursday, October 6, 2022**

Tuesday, October 18, 2022

Tuesday, November 1, 2022

Tuesday, November 15, 2022

Tuesday, December 6, 2022

Tuesday, December 20, 2022

* Regular Meeting rescheduled due to Monday Holiday

** Regular Meeting rescheduled due to Religious Holiday

NOTE: Regular Meeting dates may be rescheduled by City Council only.

C I T Y H A L L 2 0 2 2 H O L I D A Y S
(City Hall Closed)

Independence Day (City Offices Closed) -----Monday, July 4, 2022
Labor Day -----Monday, September 5, 2022
Veterans Day -----Friday, November 11, 2022
Thanksgiving Day -----Thursday, November 24, 2022
Thanksgiving Break -----Friday, November 25, 2022
Winter Break -----Friday, December 23, 2022-Friday, December 30, 2022

2022 COMMISSION DATES

Upcoming 2022 Meetings of Design Review Board
3rd Wednesday of every month. Meetings are held at the Council Chambers at 6:30 P.M.
 ** = Change in location due to conflict with Council meeting

July 20, 2022
 August 17, 2022

September 21, 2022
 October 19, 2022

November 16, 2022
 December 21, 2022

Upcoming 2022 Meetings of Economic Development Commission
3rd Thursday of every month. Meetings are held at the Council Chambers at 4:00 P.M.

July 21, 2022
 August 18, 2022

September 15, 2022
 October 20, 2022

November 17, 2022
 December 15, 2022 (Cancelled)

Upcoming 2022 Meetings of Planning Commission
2nd and 4th Thursday of every month. Meetings are held at the Council Chambers at 6:30 P.M.

June 23, 2022

 July 14, 2022
 July 28, 2022

August 8, 2022
 August 22, 2022
 September 8, 2022
 September 22, 2022

October 13, 2022
 October 27, 2022
 November 10, 2022
 December 18, 2022

Upcoming 2022 Meetings of Public Works Commission
3rd Thursday of every month. Meetings are held at the Council Chambers at 6:30 P.M.

July 21, 2022
 August 18, 2022

September 15, 2022
 October 20, 2022

November 17, 2022
 December 15, 2022

Upcoming 2022 Meetings of Recreation & Cultural Services Commission
1st Wednesday of every quarter month. Meetings are held at the Council Chambers at 6:30 P.M.

September 1, 2022

December 1, 2022

Upcoming 2022 Meetings of Marina Tree Committee
2nd Wednesday of every quarter month as needed. Meetings are held at the Council Chambers at 6:30 P.M.

July 13, 2022

October 12, 2022



Proclamation

ESTABLISHING JUNE 17TH OF 2022 AND OF EACH YEAR THEREAFTER AS CIVIL DISOBEDIENCE DAY IN MARINA, CA

WHEREAS, The First Amendment under the United States Constitution allows for the exercise of peaceful protests by groups and individuals promoting peace and justice, to peacefully assemble, exercise freedom of speech and petition the government for redress of grievances, are rights of all people in the United States of America; and

WHEREAS, throughout the United States people are outraged by racism toward people of color and the resulting violent criminal acts on those who assemble to protest racism; and

WHEREAS, all well-meaning persons abhor the disruption of peaceful protests by violence of any type, including, but not limited to, physical harm, arson, and looting; and

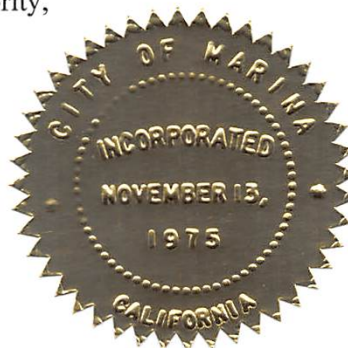
WHEREAS, the citizens of the United States of America will continue to exercise their rights of civil disobedience which promote justice, decency and respect toward all peoples; and

WHEREAS, it is only by continuing to listen to the concerns of community members, leaders and activists that can we move forward and better address the feelings of frustration and the pervasive systemic inequality that have led to the persistence of racism and racial injustice in the United States; and

WHEREAS, it is of vital importance to the City of Marina as well as to our Nation that the essential right to engage in civil disobedience and to petition for the redress of grievances be recognized on June 17, 2022, and on the same date of every year hereafter, as a human right which should be guaranteed to all people.

NOW THEREFORE, BE IT RESOLVED, that I, Mayor Bruce Delgado, and the City Council of the City of Marina, hereby proclaim June 17TH of 2022 and that same date of each year hereafter as Civil Disobedience Day: to reaffirm the right of each and every person in the United States to assemble, and, in a civil manner, protest all acts and behavior of a violent nature toward all persons regardless of color; and call upon all citizens to exercise their constitutional right to assemble, oppose and condemn violence from any person, governmental entity or persons of authority,

Dated this 21st Day of June 2022



Bruce C. Delgado, Mayor

AP Check Register 06-10-22

Bank Account: 905 - Chase - Checking

Batch Date: 06/10/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Bank Account: 905 - Chase - Checking						
Check	06/10/2022	100086	Accounts Payable	Ace Hardware		131.00
	Invoice		Date	Description		Amount
	082124		05/31/2022	Shop Supplies		35.57
	082088		05/24/2022	Annex Wall Repair		28.38
	082139		06/01/2022	Key Kraffers PW		3.05
	082164		06/03/2022	Preston Park Fasteners		55.27
	082182		06/06/2022	Super Clean Degreaser BBQ		8.73
Check	06/10/2022	100087	Accounts Payable	American Supply Co.		2,206.74
	Invoice		Date	Description		Amount
	0168781		05/18/2022	Shop Supplies		2,206.74
Check	06/10/2022	100088	Accounts Payable	ARC Document Solutions		282.96
	Invoice		Date	Description		Amount
	2583304		05/26/2022	ARC 05/26/2022		282.96
Check	06/10/2022	100089	Accounts Payable	AT & T		700.44
	Invoice		Date	Description		Amount
	05-14-22		05/14/2022	Utilities		700.44
Check	06/10/2022	100090	Accounts Payable	AT & T		357.19
	Invoice		Date	Description		Amount
	000018249426		05/27/2022	CALNET3-9391023477 (582-9803)		22.43
	000018249420		05/27/2022	CALNET3-9391023471 (582-0100)		47.52
	000018254200		05/28/2022	CALNET3-9391023466 (384-8477)		43.18
	000018254173		05/28/2022	CALNET3-9391023441 (384-0888)		22.43
	000018254197		05/28/2022	CALNET3-9391023463 (384-7854)		22.43
	000018254169		05/28/2022	CALNET3-9391023437 (384-0425)		43.44
	000018254202		05/28/2022	CALNET3-9391023468 (384-9148)		22.43
	000018254172		05/28/2022	CALNET3-9391023468 (384-9148)		22.43
	000018254181		05/28/2022	CALNET3-9391023440 (384-0860)		22.43
	000018254175		05/28/2022	AWOS		24.54
	000018254175		05/28/2022	Fire Alarm Hgr 524/533		43.18
	000018254176		05/28/2022	Fire Alarm Hgr 524/533		43.18
Check	06/10/2022	100091	Accounts Payable	Cardlock Vending, Inc.		235.00

AP Check Register 06-10-22

Bank Account: 905 - Chase - Checking

Batch Date: 06/10/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Check	Invoice			Description		Amount
	14929		05/31/2022	Gas Card		235.00
	06/10/2022	100092	Accounts Payable	Cheryl Kent		1,020.00
Check	Invoice			Description		Amount
	2022-70		06/03/2022	Code Force Investigations		1,020.00
	06/10/2022	100093	Accounts Payable	Coast Counties Peterbilt		10,281.23
Check	Invoice			Description		Amount
	0250847S.02		04/05/2022	Air System Leaks Ferrara 2007 5411		908.11
	0250313S		03/28/2022	Annual Inspection Ferrara 2007 5411		9,373.12
Check	Invoice			Description		Amount
	06/10/2022	100094	Accounts Payable	Code Publishing Inc.		106.50
	GC0007560		05/31/2022	MMC Web Update		106.50
Check	Invoice			Description		Amount
	06/10/2022	100095	Accounts Payable	Color New Co.		111,957.50
	2		05/31/2022	B533 Exterior Improvements Project Pmt. 1		111,957.50
Check	Invoice			Description		Amount
	06/10/2022	100096	Accounts Payable	Denise Duffy & Associates		3,264.50
	7982		05/20/2022	Imjin Parkway Improvement Project		3,264.50
Check	Invoice			Description		Amount
	06/10/2022	100097	Accounts Payable	Fastenal Company		5,619.62
	CASAL151699		04/18/2022	Air Purifier		5,324.82
Check	Invoice			Description		Amount
	06/10/2022	100098	Accounts Payable	Gavilan Pest Control		3,485.00
	0143048		12/03/2021	Preston Board		2,000.00
Check	Invoice			Description		Amount
	06/10/2022	100099	Accounts Payable	Shop Supplies		294.80
	0145948		05/31/2022	Perk Pond		80.00
Check	Invoice			Description		Amount
	06/10/2022	100099	Accounts Payable	Preston Park/Squirrels		180.00
	0146017		05/31/2022	Airport Rodent Abatement		75.00
Check	Invoice			Description		Amount
	06/10/2022	100099	Accounts Payable	Squirrel Abatement		1,150.00
	0145685		05/31/2022			
Check	Invoice			Description		Amount
	06/10/2022	100099	Accounts Payable	Squirrel Abatement		1,150.00
	0145684		05/31/2022			

Marina, CA LIVE

AP Check Register 06-10-22

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Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Check	06/10/2022	100099	Accounts Payable	Green Line		1,890.00
	Invoice		Date	Description		Amount
	69010		05/05/2022	Neeson Road Airport		1,890.00
Check	06/10/2022	100100	Accounts Payable	Harris & Associates		24,240.17
	Invoice		Date	Description		Amount
	52234		04/14/2022	Harris & Associates April 2022		14,300.00
	52665		05/12/2022	Harris & Associates May 2022		8,515.00
	52913		06/03/2022	Imjin Parkway Improvement Project		1,425.17
Check	06/10/2022	100101	Accounts Payable	Home Depot Credit Service		117.99
	Invoice		Date	Description		Amount
	05-26-22		05/26/2022	PD Light		117.99
Check	06/10/2022	100102	Accounts Payable	Hydro Turf		120.99
	Invoice		Date	Description		Amount
	I763505		05/24/2022	Tool Repair		120.99
Check	06/10/2022	100103	Accounts Payable	LC Action		2,699.87
	Invoice		Date	Description		Amount
	438856		05/17/2022	Safety Equipment		2,699.87
Check	06/10/2022	100104	Accounts Payable	Marina Coast Water District		1,684.85
	Invoice		Date	Description		Amount
	000056090 052022		05/20/2022	Locke Paddon Park		60.52
	000056061 052022		05/20/2022	Reservation/Locke Paddon Park		78.77
	000056028 052022		05/20/2022	California at Jerry Court		36.77
	000056040 052022		05/20/2022	Hilo Ave		27.26
	000056006 052022		05/20/2022	188 Seaside Circle		65.97
	000056042 052022		05/20/2022	3040 Lake Drive		89.02
	000056100 053122		05/31/2022	9th Street Irrigation Parcels L&M		512.30
	000056036 053122		05/31/2022	2nd Ave/Divarty & Intergarrison		171.02
	000056037 053122		05/31/2022	2nd Ave		171.02
	000056095 053122		05/31/2022	2nd Ave		291.74
	000056099 053122		05/31/2022	9th Street West of 2nd Ave		180.46
Check	06/10/2022	100105	Accounts Payable	Maynard Group Inc.		459.72

Marina, CA LIVE

AP Check Register 06-10-22

Bank Account: 905 - Chase - Checking
Batch Date: 06/10/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Invoice						
	300030			Monthly Service		Amount
Check	06/10/2022	100106	Accounts Payable	Monterey County Petroleum-Sturdy Oil Co.		459.72
Invoice						
	24823A-IN			Gasoline/Diesel		Amount
Check	06/10/2022	100107	Accounts Payable	Monterey One Water		5,739.71
Invoice						
	13-000183	053122		4th Ave Dy Dr		Amount
	13-000325	053122		2800 2nd Ave		241.80
	13-000159	053122		761 Neeson Rd Bldg 524		40.30
	13-002930	053122		3200 Imjin Rd		185.40
	13-000152	053122		741 Neeson Rd 527		806.00
	13-000143	053122		3220 Imjin Rd		24.20
	13-000148	053122		781 Neeson Rd 520		24.20
	13-000149	053122		791 Neeson Rd		40.30
	13-000145	053122		3260 Imjin Rd 514		24.20
	13-000144	053122		3200 Imjin Rd 507		40.30
	13-000153	053122		771 Neeson Rd 529		24.20
	13-000334	053122		721 Neeson Rd 533		24.20
	13-000158	053122		711 Neeson Rd 535		161.20
Check	06/10/2022	100108	Accounts Payable	Monterey Tire Service		40.30
Invoice						
	1-106343			Parts Boot, Flat Repair		Amount
Check	06/10/2022	100109	Accounts Payable	My Chevrolet		49.46
Invoice						
	CVCS248418			14 Chevy Caprice Police		392.52
Check	06/10/2022	100110	Accounts Payable	MyFleetCenter - Wisconsin Quick Lube		Amount
Invoice						
	36761356			2017 Ford Taurus		392.52
	36761229			20 Dodge Durango 819		Amount
	36761152			20 Dodge Durango 819		434.59
						86.85
						32.98
						96.27

AP Check Register 06-10-22

Bank Account: 905 - Chase - Checking

Batch Date: 06/10/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Check	36761157	05/30/2022		20 Dodge Durango 818		122.22
	36761153	05/30/2022		20 Dodge Durango 817		96.27
	06/10/2022	100111	Accounts Payable	New Image Landscape Co.		363.00
	Invoice		Date	Description		Amount
Check	416837	05/23/2022		Marina Branch Library		363.00
	06/10/2022	100112	Accounts Payable	Newton Bros. Tire & Auto		90.00
	Invoice		Date	Description		Amount
Check	433139	05/26/2022		2014 Chevy Caprice Repairs		90.00
	06/10/2022	100113	Accounts Payable	Office Depot		320.18
	Invoice		Date	Description		Amount
Check	246405164001	05/24/2022		Office Depot Planning Supplies		15.08
	24561609800-1	05/25/2022		Office Supplies - Replacement Ink Cartridges		305.10
	06/10/2022	100114	Accounts Payable	Peninsula Septic Tank Service		4,395.00
	Invoice		Date	Description		Amount
Check	17711	04/05/2022		781 Neeson Rd/Airport		4,395.00
	06/10/2022	100115	Accounts Payable	Quill Corporation		64.21
	Invoice		Date	Description		Amount
Check	25119079	05/12/2022		Records		9.60
	25116779	05/12/2022		Records		54.61
	06/10/2022	100116	Accounts Payable	Robert R. Wellington		2,235.00
	Invoice		Date	Description		Amount
Check	25582	12/18/2020		Wellington Law Offices-November 2020-Dunes		729.00
	25884	08/24/2021		Wellington Law Offices - July 2021 - Dunes		1,317.00
	25984	11/19/2021		Wellington Law Offices - October 2021 - Dunes		189.00
Check	06/10/2022	100117	Accounts Payable	Ryan Ranch Printers		207.58
	Invoice		Date	Description		Amount
Check	23061	05/31/2022		Business cards-Planning		207.58
	06/10/2022	100118	Accounts Payable	Stephen Brown Associates, Inc		3,500.00
	Invoice		Date	Description		Amount

Marina, CA LIVE
AP Check Register 06-10-22
 Bank Account: 905 - Chase - Checking
 Batch Date: 06/10/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Check	1548.1					
	06/10/2022	100119	Accounts Payable	Marina Airport Rental Survey for 3200-C Imjin Road		3,500.00
	Invoice			Suburban Propane		842.82
Check	1602-105488					
	06/10/2022	100120	Accounts Payable	Yard Propane		842.82
	Invoice			Taygeta Scientific, Inc.		2,475.80
Check	000423-R-0042					
	06/01/2022			Network Defense/Jun22		2,000.00
	000708-R-0015			Barracuda Spam Firewall - June 2022		475.80
Check	06/10/2022	100121	Accounts Payable	TechRx Technology Services		15,636.56
	Invoice					
	10124			CDD Move Materials		40.00
	10054			CDD Planning computer setup/Installation C.Hopper		716.25
	10170			CDD Planning computer installation and setup		759.95
	10168			IT Support - May 2022		10,200.00
	10048			Cellular Camera Fuel Yard PW		1,556.25
	10147			Veeam Virtual Backup Monthly Subscription - June 2022		380.00
	10060			Webcam Logitech Michaele		54.63
	10141			Ninite Monthly Subscription - June 2022		112.50
	9938			Amazon Glacier Terabyte Storage - March-May 2022		1,109.25
	10126			Monitor and Keyboard/Mouse		240.35
	10062			Printer/Juan		467.38
	06/10/2022	100122	Accounts Payable	TK Elevator		1,390.19
	Invoice					
	3006646214			Public Works Elevator		1,390.19
	06/10/2022	100123	Accounts Payable	United Parcel Service		1.25
	Invoice					
Check	00008Y4481212					
	05/21/2022			Shipping charges late fees		1.25
	06/10/2022	100124	Accounts Payable	Verizon Wireless		1,545.83
Check	Invoice					
	9906760666			Verizon		1,545.83

Marina, CA LIVE
AP Check Register 06-10-22
 Bank Account: 905 - Chase - Checking
 Batch Date: 06/10/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Check	06/10/2022	100125	Accounts Payable	Wallace Group, Inc.		18,339.48
	Invoice		Date	Description		Amount
	56258		05/28/2022	MLK Sculpture CDs		8,493.85
	56243		05/28/2022	Glorya Jean Tate Park Pump, Track & Restroom Improvements		1,254.00
	56383		06/02/2022	Annual Resurfacing		1,095.75
	56387		06/02/2022	Sea Haven City Park		3,704.88
	56368		06/02/2022	Airport Project Management		3,791.00
Check	06/10/2022	100126	Accounts Payable	Xerox Financial Services		239.26
	Invoice		Date	Description		Amount
	3276478		05/28/2022	FD Monthly Copier Charges - 05/17/22 - 06/16/22		239.26
Check	06/10/2022	100127	Accounts Payable	HdL Coren & Cone		1,350.00
	Invoice		Date	Description		Amount
	SIN017921		05/26/2022	Property Tax May-June 22		1,350.00
EFT	06/10/2022	2323	Accounts Payable	Richard B. Standridge	121042882 / 8312012522	2,850.00
	Invoice		Date	Description		Amount
	22-11		06/03/2022	Services 05-23/06-02-22		2,850.00
905 Chase - Checking Totals:						\$235,000.31

Transactions: 43

Checks: 42 \$232,150.31
 EFTs: 1 \$2,850.00

Marina, CA LIVE

AP Check Register 06.17.2022

Bank Account: 905 - Chase - Checking
Batch Date: 06/17/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Bank Account: 905 - Chase - Checking						
Check	06/17/2022	100128	Accounts Payable	Advantage Gear		516.59
	Invoice		Date	Description		Amount
	53635-1		05/11/2022	Pants & Long sleeve shirt for SUICH		352.37
	54235-1		06/02/2022	Uniform pants for McCoy		164.22
Check	06/17/2022	100129	Accounts Payable	Amanda Reyes		250.00
	Invoice		Date	Description		Amount
	06-12-22 vd		06/12/2022	Rental Refund - Vince DiMaggio		250.00
Check	06/17/2022	100130	Accounts Payable	Carmel Fire Protection Associates		800.00
	Invoice		Date	Description		Amount
	122230		06/09/2022	Plan review and inspections at Joby Paint Booth, 72 TI		200.00
	122224		06/02/2022	Plan review and inspection at 160 Beach Rd - Quick Quack		200.00
	122225		06/02/2022	Plan review only and final inspection		200.00
	122218		05/28/2022	Plan review and fire final inspection		200.00
Check	06/17/2022	100131	Accounts Payable	Carmel Roasters, Inc.		327.75
	Invoice		Date	Description		Amount
	64019		05/25/2022	FD Coffee - 4 boxes		327.75
Check	06/17/2022	100132	Accounts Payable	Certified Folder Display Service, Inc.		331.07
	Invoice		Date	Description		Amount
	594457		06/01/2022	Marina Restaurant Guide Distribution		331.07
Check	06/17/2022	100133	Accounts Payable	Anita Coley Heath		1,450.00
	Invoice		Date	Description		Amount
	1071		09/27/2021	E. Fernando Background Investigation		1,450.00
Check	06/17/2022	100134	Accounts Payable	Don Chapin Company, Inc.		38,521.42
	Invoice		Date	Description		Amount
	66674		02/20/2022	Curb & Gutter Michael & Zanetta Dr		38,521.42
Check	06/17/2022	100135	Accounts Payable	Fox Welding Metal Fabricators		935.00
	Invoice		Date	Description		Amount
	2309		10/28/2021	Shop Repairs		715.00

Marina, CA LIVE

AP Check Register 06.17.2022

Bank Account: 905 - Chase - Checking

Batch Date: 06/17/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Check	2369			Park Grill		220.00
	06/17/2022	100136	Accounts Payable	Harris & Associates		6,435.00
	Invoice		Date	Description		Amount
Check	52980			Harris & Associates May 2022		6,435.00
	06/17/2022	100137	Accounts Payable	Hinderliter, de Llamas & Associates		1,964.44
	Invoice		Date	Description		Amount
Check	SIN017785			Sales Tax (April - June) 2022		1,664.44
	SIN018224			Transaction Tax (April - June 2022)		300.00
	06/17/2022	100138	Accounts Payable	Jennifer Berberian		120.00
Check	Invoice		Date	Description		Amount
	052651			youth center membership fees		120.00
	06/17/2022	100139	Accounts Payable	Kimley-Horn & Associates		4,189.00
Check	Invoice		Date	Description		Amount
	21616251			Kimley Howm May 2022		4,189.00
	06/17/2022	100140	Accounts Payable	L.N. Curtis & Sons		79,889.07
Check	Invoice		Date	Description		Amount
	INV600727			Edraulic cutter tool, battery & charger for engine 5221		13,927.74
	INV600733			Hurst SP555 spreader tool, battery & charger		15,245.29
Check	INV600759			Ram tool, battery & battery charger		21,543.01
	INV600743			Cutter tool, saltwater battery & charger for engine 5222		13,927.74
	INV600746			Spreader tool, battery & battery charger		15,245.29
Check	06/17/2022	100141	Accounts Payable	Liebert Cassidy Whitmore		7,736.00
	Invoice		Date	Description		Amount
	217747			LCW - Professional Services		786.00
Check	217748			LCW - Professional Services		772.00
	217749			LCW - Professional Services		1,008.00
	217750			LCW - Professional Services		464.00
Check	217751			LCW - Professional Services		2,001.00
	217752			LCW - Professional Services		234.00
	217753			LCW - Professional Services		2,471.00

User: Accounts Payable

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Marina, CA LIVE

AP Check Register 06.17.2022

Bank Account: 905 - Chase - Checking
Batch Date: 06/17/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Check	06/17/2022	100142	Accounts Payable	M3 Environmental Consulting, LLC		2,106.00
	Invoice			Description		Amount
	2218201			Counsel Chambers		2,106.00
Check	06/17/2022	100143	Accounts Payable	Microsoft		1,432.73
	Invoice			Description		Amount
	E0700J64S8			Citywide MS Office 365 - June 2022		1,066.53
	E0700J6DI6			Citywide MS Office 365 - June 2022		48.00
	E0700J6DI4			Citywide MS Office 365 - June 2022		9.68
	E0700J6CKI			Citywide MS Office 365 - June 2022		41.04
	E0700J6DI5			Citywide MS Office 365 - June 2022		48.00
	E0700J6E1U			Citywide MS Office 365 - June 2022		219.48
Check	06/17/2022	100144	Accounts Payable	Monterey Bay Office Products		380.20
	Invoice			Description		Amount
	474171410			City Hall Copier Lease - June 2022		380.20
Check	06/17/2022	100145	Accounts Payable	Monterey Bay Systems		175.00
	Invoice			Description		Amount
	423462			HP 3015 Printer Maintenance		175.00
Check	06/17/2022	100146	Accounts Payable	Monterey One Water		403.00
	Invoice			Description		Amount
	12-003949			209 Cypress Ave		80.60
	12-003245 053122			3254 Abdy Way		40.30
	12-003451 053122			0 Seaside Ave & Reservation Rd		40.30
	12-001708 053122			304 Hillcrest Ave		40.30
	12-000192 053122			3200 Del Monte Blvd		40.30
	12-001627 053122			211 Hillcrest Ave		161.20
Check	06/17/2022	100147	Accounts Payable	New Image Landscape Co.		2,140.00
	Invoice			Description		Amount
	138182			Landscape Maintenance for May 2022		2,140.00
Check	06/17/2022	100148	Accounts Payable	Office Depot		50.06
	Invoice			Description		Amount

Marina, CA LIVE
AP Check Register 06.17.2022
 Bank Account: 905 - Chase - Checking
 Batch Date: 06/17/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Check	245778336001		05/27/2022	Office Depot Planning Supplies		29.93
	246931747001		06/01/2022	Office Depot Planning Supplies		20.13
	06/17/2022	100149	Accounts Payable	Pacific Crest Engineering		292.50
	Invoice		Date	Description		Amount
Check	10877		05/31/2022	Glorya Jean Tate Park Site Improvements and Pump Track		292.50
	06/17/2022	100150	Accounts Payable	Pacific Gas & Electric		11,152.10
	Invoice		Date	Description		Amount
	353-7.JUNE22		06/15/2022	PG&E - 9930567353-7		42.06
	148-6.JUNE22		06/15/2022	PG&E - 5593414148-6		211.09
	943-2.JUNE22		06/15/2022	PG&E - 6150212943-2		74.49
	582-7.JUNE22		06/15/2022	PG&E - 8161432582-7		129.46
	313-6.MAY22		05/26/2022	PG&E 6793435313-6		8,544.22
	720-0.JUNE22		06/10/2022	PG&E - 0167505720-0		769.84
	202-3.JUNE22		06/10/2022	PG&E - 6594070202-3		113.07
	562-0.JUNE22		06/10/2022	PG&E - 4758891562-0		1,016.02
	085-2.JUNE22		06/10/2022	PG&E - 5434906085-2		102.20
	210-0.JUNE22		06/11/2022	PG&E - 3242976210-0		149.65
Check	06/17/2022	100151	Accounts Payable	Pinnacle Healthcare		242.00
	Invoice		Date	Description		Amount
	362770		06/02/2022	Pinnacle Healthcare - Pre Emp Px		242.00
Check	06/17/2022	100152	Accounts Payable	Pitney Bowes		1,375.38
	Invoice		Date	Description		Amount
	3105510208		05/27/2022	Postage Meter Quarterly Lease Payment Mar-Jun 2022		1,375.38
Check	06/17/2022	100153	Accounts Payable	Precision Grade Inc.		742,610.29
	Invoice		Date	Description		Amount
	143		05/31/2022	Annual Street Resurfacing 2021		229,203.08
	144		05/31/2022	Annual Street Resurfacing 2021		513,407.21
Check	06/17/2022	100154	Accounts Payable	Rincon Consultants, Inc.		14,069.50
	Invoice		Date	Description		Amount
	39989		06/14/2022	Rincon DVSP May 2022		14,069.50

Marina, CA LIVE

AP Check Register 06.17.2022

Bank Account: 905 - Chase - Checking
Batch Date: 06/17/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Check	06/17/2022	100155	Accounts Payable	Rosa Torres		250.00
	Invoice		Date	Description		Amount
	06-04-22 vd		06/04/2022	Rental Refund - Vince DiMaggio		250.00
Check	06/17/2022	100156	Accounts Payable	Ryan Ranch Printers		103.79
	Invoice		Date	Description		Amount
	23062		05/31/2022	Business Cards - Cristina Medina Dirksen		103.79
Check	06/17/2022	100157	Accounts Payable	Shannon Alston		275.00
	Invoice		Date	Description		Amount
	06-05-22 vd		06/05/2022	Rental Refund - Vince DiMaggio		275.00
Check	06/17/2022	100158	Accounts Payable	U.S. Bank Equipment Finance		216.32
	Invoice		Date	Description		Amount
	473499465		05/27/2022	CDD Copier Lease Payment - June 2022		216.32
Check	06/17/2022	100159	Accounts Payable	Verizon Wireless		372.34
	Invoice		Date	Description		Amount
	9907359382		05/25/2022	FD Mobile Charges - April 26 - May 25, 2022		372.34
Check	06/17/2022	100160	Accounts Payable	Wallace Group, Inc.		38,883.55
	Invoice		Date	Description		Amount
	56367		06/02/2022	Program Management		38,883.55
Check	06/17/2022	100161	Accounts Payable	Yesy Vake		275.00
	Invoice		Date	Description		Amount
	06-03-22 vd		06/03/2022	Rental Refund - Vince DiMaggio		275.00
Check	06/17/2022	100162	Accounts Payable	Marina Employees Association		135.00
	Invoice		Date	Description		Amount
	06-10-22		06/10/2022	24 - MEA Dues		135.00
Check	06/17/2022	100163	Accounts Payable	Marina Professional Fire Fighters Association		300.00
	Invoice		Date	Description		Amount
	06-10-22		06/10/2022	35 - MPFFA Dues		300.00
Check	06/17/2022	100164	Accounts Payable	Mark Tenchavez		340.00
	Invoice		Date	Description		Amount

Marina, CA LIVE

AP Check Register 06.17.2022

Bank Account: 905 - Chase - Checking
Batch Date: 06/17/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
	Invoice		Date	Description		Amount
	05-28-22 vd		05/28/2022	Rental Refund - Vince DiMaggio		340.00
EFT	06/17/2022	2352	Accounts Payable	Enterprise FM Trust	1010000019 / 208022067	31,092.03
	Invoice		Date	Description		Amount
	FBN4485574		06/03/2022	Lease Payment/June22		31,092.03
EFT	06/17/2022	2353	Accounts Payable	Marina Police Association-MPOA	322271627 / 901587928	250.00
	Invoice		Date	Description		Amount
	06-10-22		06/10/2022	23 - MPOA Dues		250.00
EFT	06/17/2022	2354	Accounts Payable	Police Officers Association - POA	322271627 / 901589106	1,350.00
	Invoice		Date	Description		Amount
	06-10-22		06/10/2022	25 - POA Dues		1,350.00
905 Chase - Checking Totals:						\$993,737.13

Checks: 37 \$961,045.10
EFTs: 3 \$32,692.03

Transactions: 40

Marina, CA LIVE

SA Check Register 06.17.2022

Bank Account: 921 - Chase - Successor Agency

Batch Date: 06/17/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Bank Account: 921 - Chase - Successor Agency						
Check	06/17/2022	89	Accounts Payable	Keyser Marston Associates		2,970.00
	Invoice		Date	Description		Amount
	0036904		06/09/2022	FCR T1 Projected, DOF, Finance Team		2,970.00
921 Chase - Successor Agency Totals:						\$2,970.00
Checks:		1			\$2,970.00	
Transactions: 1						



DRAFT

Agenda Item: **8b(1)**
City Council Meeting of
June 21, 2022

MINUTES

Tuesday, May 17, 2022

6:30 P.M. Open Session

REGULAR MEETING

**CITY COUNCIL, AIRPORT COMMISSION,
MARINA ABRAMS B NON-PROFIT CORPORATION, PRESTON PARK SUSTAINABLE
COMMUNITY NON-PROFIT CORPORATION, SUCCESSOR AGENCY OF THE FORMER
MARINA REDEVELOPMENT AGENCY AND MARINA GROUNDWATER
SUSTAINABILITY AGENCY**

Council Chambers
211 Hillcrest Avenue
Marina, California

Zoom Meeting URL: <https://zoom.us/j/730251556>

Zoom Meeting Telephone Only Participation: 1-669-900-9128 - Webinar ID: 730 251 556

In accordance with California Government Code §54953(e)(1)(A) and (C) and the Proclamation of a State of Emergency issued by Governor Newsom on March 4, 2020, under the provisions of Government Code §8625 related to the COVID-19 (coronavirus) pandemic, consistent with recommendations by State and local health officials regarding social distancing and in order to prevent an imminent risk to the health and safety of attendees as determined in Resolution 2022-48, public participation in City of Marina City Council public meetings shall be electronic only and without a physical location for public participation until the earlier of March 31, 2022, or such time as the City Council may adopt a resolution in accordance with Government Code §54953(e)(3). This meeting is being broadcast “live” on Access Media Productions (AMP) Community Television Cable 25 and on the City of Marina Channel and on the internet at <https://accessmediaproductions.org/>

1. CALL TO ORDER
2. ROLL CALL & ESTABLISHMENT OF QUORUM: (City Council, Airport Commissioners, Marina Abrams B Non-Profit Corporation, Preston Park Sustainable Communities Nonprofit Corporation, Successor Agency of the Former Redevelopment Agency Members and Marina Groundwater Sustainability Agency)

MEMBERS PRESENT: Cristina Medina Dirksen, David Burnett, Mayor Pro-Tem/Vice Chair Kathy Biala, Mayor/Chair Bruce C. Delgado

MEMBERS ABSENT: Lisa Berkley (Excused)
3. CLOSED SESSION: *As permitted by Government Code Section 54956 et seq., the (City Council, Airport Commissioners, Marina Abrams B Non-Profit Corporation, Preston Park Sustainable Communities Nonprofit Corporation, Successor Agency of the Former Redevelopment Agency Members and Marina Groundwater Sustainability Agency) may adjourn to a Closed or Executive Session to consider specific matters dealing with litigation, certain personnel matters, property negotiations or to confer with the City’s Meyers-Milias-Brown Act representative. – NONE*

4. MOMENT OF SILENCE & PLEDGE OF ALLEGIANCE (Please stand)

5. SPECIAL PRESENTATIONS:

- a Poppy Month Proclamation
- b Public Works Week Proclamation

6. SPECIAL ANNOUNCEMENTS AND COMMUNICATIONS FROM THE FLOOR: *Any member of the Public or the City Council may make an announcement of special events or meetings of interest as information to Council and Public. Any member of the public may comment on any matter within the City Council's jurisdiction which is not on the agenda. Please state your name for the record. Action will not be taken on an item that is not on the agenda. If it requires action, it will be referred to staff and/or placed on a future agenda. City Council members or City staff may briefly respond to statements made or questions posed as permitted by Government Code Section 54954.2. In order that all interested parties have an opportunity to speak, please limit comments to a maximum of four (4) minutes. Any member of the public may comment on any matter listed on this agenda at the time the matter is being considered by the City Council.*

- Council Member Medina Dirksen – Commented that the Friends of the Marina Library had a fantastic event last weekend upwards of 500 people come out to the library for pony rides.
- Council Member Burnett – Wanted to remind everyone that they should have received their ballots in the mail, and that election season is on us and to please return your ballots before the June deadline.
- Amy Warren – Provided Marina Equestrian Center updates; Commented on working with Terry Siegrist and running the Guitar Not Guns program, which is back up and running at the Teen Center on Saturdays. Also mentioned Rosewood, the band, seniors at Marina High School got their start at the Teen Center.
- Mike Owen – Commented on the Dunes Development and showed a drone video taken by Don Neff a Sea Haven resident to give a perspective, and the reason for it is just to give you a little advance of like when you go out on the site tour to look at the trees.
- Les Martin – Enjoyed the video. Asked what the timeline is for the Dunes Park? When is the city going to start to tear down their buildings? Commented on saving some of the trees that are sustaining themselves without the help of water. Asked about the status of the Sea Haven Park? Asked about the construction behind the Springhill Suites? Commented on the Dunes Phase 2 structures not being taken down. Asked about the Equestrian Center status.
- Karen Andersen – Commented on the video that was played on the Dunes Development area and noted the developer stated this is the future business opportunity, area, a business park which would have business buildings and parking lots, and that they could very well work around the existing healthiest trees over there in the future.
- Liesbeth Visscher – Thinks the trees at the former Fort Ord have not been irrigated for decades and don't need water and have proved they can survive on our coast. Appreciate the developer and the city to look into saving as many healthy trees as possible and to give the public a chance to visit the sites. Agrees that bisecting a park with a road does not make any sense, not sure why it was designed that way.
- Mayor Pro Tem Biala – Commented on the shooting at the supermarket in Buffalo and the racial divide in the country. Believe everyone in Marina, whether we are Black, White, Brown, or Asian, need to reject and denounce this ideology of Replacement Theory and pledge to never tolerate or condone it if it surfaces in our city.

- Mayor Delgado – Spoke about the uptick of graffiti or tagging and asked that if the public see graffiti to report to the city so it can be taken care of immediately. Thanked the 6 volunteers that collected the monthly bounty of litter along Del Moni Boulevard, and Lapis Road and the volunteers that came out to clean up the Salinas Avenue area. Announced every Saturday from 9:00-1:00pm at the Marina Library in the Oak Woodland Community Garden where we are preparing plantings for the future Hilltop Park. Each Wednesday at 5:30pm will be native seed collections, we meet at different locations so please contact me at (831) 277-7690 for updates. This Sunday from 9:00am-Noon will be litter cleanup along the highway under/overpass on Del Monte near Reindollar Ave.
- 7. CONSENT AGENDA FOR THE SUCCESSOR AGENCY TO THE FORMER MARINA REDEVELOPMENT AGENCY: *Background information has been provided to the Successor Agency of the former Redevelopment Agency on all matters listed under the Consent Agenda, and these items are considered to be routine. All items under the Consent Agenda are normally approved by one motion. Prior to such a motion being made, any member of the public or the City Council may ask a question or make a comment about an agenda item and staff will provide a response. If discussion or a lengthy explanation is required, that item will be removed from the Consent Agenda for Successor Agency to the former Marina Redevelopment Agency and placed at the end of Other Action Items Successor Agency to the former Marina Redevelopment Agency.*
- 8. CONSENT AGENDA: *Background information has been provided to the City Council, Airport Commission, Marina Abrams B Non-Profit Corporation, and Redevelopment Agency on all matters listed under the Consent Agenda, and these items are considered to be routine. All items under the Consent Agenda are normally approved by one motion. Prior to such a motion being made, any member of the public or the City Council may ask a question or make a comment about an agenda item and staff will provide a response. If discussion or a lengthy explanation is required, that item will be removed from the Consent Agenda and placed at the end of Other Action Items.*
 - a. ACCOUNTS PAYABLE:
 - (1) Accounts Payable Check Numbers 99875-99972, totaling \$246,145.90
Accounts Payable for Successor Agency Check Numbers 85-87, totaling \$12,423.70
 - b. MINUTES: None
 - c. CLAIMS AGAINST THE CITY: None
 - d. AWARD OF BID: None
 - e. CALL FOR BIDS: None
 - f. ADOPTION OF RESOLUTIONS:
 - (1) City Council consider adopting **Resolution No. 2022-54**, regarding the Ralph M. Brown Act (California Government Code §§54950-54963, making certain findings; and authorizing the city to continue to implement remote teleconferenced public meetings of the City Council and its constituent bodies for the period May 20, 2022, through June 21, 2022.
 - (2) City Council consider adopting **Resolution No. 2022-55**, authorizing release of a Request for Proposals for Consultant Services to prepare objective design standards for single-family, multiple-family, and mixed-use developments; and authorizing the Finance Director to make necessary budget and accounting entries; and, authorizing the City Manager to execute agreement on behalf of the City subject to final review and approval by the City Attorney.

- (3) City Council consider adopting **Resolution No. 2022-56**, accepting the Housing Element Annual Progress Report for calendar year 2021 and authorizing staff to submit the report to the Governor's Office of Planning and Research and the California Department of Housing and Community Development; and, find that the action is exempt from CEQA pursuant to CEQA Guidelines Sections 15061(b)(3) and 15378(b).
- (4) City Council consider adopting **Resolution No. 2022-57**, fixing and levying a special tax for principal and interest payments and administrative costs on the city's 2015 General Obligation Refunding Library Bonds for Fiscal Year 2022-2023; and **Resolution No. 2022-58**, certifying compliance with state law (Proposition 218) with respect to special taxes for the 2015 General Obligation Refunding Library Bonds tax levy for Fiscal Year 2022-2023.

g. APPROVAL OF AGREEMENTS:

- (1) City Council consider adopting **Resolution No. 2022-59**, calling for a general municipal election in the City of Marina on Tuesday, November 8, 2022, for the election of certain city officers; and requesting the Count of Monterey agree to the consolidation of the election with the statewide general election and requesting the County Elections Department to render any and all services required to conduct the election; and authorizing the Finance Director to appropriate funds and the City Manager to execute a service agreement for the provision of election services between the City of Marina and Monterey County Elections Department/Registrar of Voters subject to final review and approval by City Attorney.
- (2) ~~City Council consider adopting Resolution No. 2022, approving consulting services agreement between HF&H Consultants, LLC (HF&H) and the City of Marina to perform an analysis of an equitable method of crediting surplus solid waste collection fees back to rate payers for a fee not to exceed \$29,910, and; authorizing the City Manager to execute the agreement on behalf of the City subject to final review and approval by the City Attorney, and; authorizing the Finance Director to make the necessary budgetary and accounting entries.~~
Pulled by Mayor Pro Tem Biala, become agenda item 11e

h. ACCEPTANCE OF PUBLIC IMPROVEMENTS: None

i. MAPS: None

j. REPORTS: (RECEIVE AND FILE):

k. FUNDING & BUDGET MATTERS: None

l. APPROVE ORDINANCES (WAIVE SECOND READING): None

m. APPROVE APPOINTMENTS: None

Council Member Burnett, question on 8f(2) and 8f(3) – On 8f(2) ... Design standards? On 8f(3), will the report be presented or made available to the public?

Council Member Medina Dirksen, question on 8f(2), does this include commercial?

Mayor Pro Tem Biala, pulled agenda item 8g(2) so it can be discussed along with agenda item 11d.

DELGADO/MEDINA DIRKSEN: TO APPROVE THE CONSENT AGENDA MINUS 8g(2). 4-0-1(Berkley)-0 Motion Passes by Roll Call Vote

9. PUBLIC HEARINGS:
10. OTHER ACTIONS ITEMS OF THE SUCCESSOR AGENCY TO THE FORMER MARINA REDEVELOPMENT AGENCY: *Action listed for each Agenda item is that which is requested by staff. The Successor Agency may, at its discretion, take action on any items. The public is invited to approach the podium to provide up to four (4) minutes of public comment.*
11. OTHER ACTION ITEMS: *Action listed for each Agenda item is that which is requested by staff. The City Council may, at its discretion, take action on any items. The public is invited to approach the podium to provide up to four (4) minutes of public comment.*

Note: No additional major projects or programs should be undertaken without review of the impacts on existing priorities (Resolution No. 2006-79 – April 4, 2006).

- a. City Council consider adopting **Resolution No. 2022-60**, receiving a report on the Hilltop Park recommendations from the ad-hoc committee and City Council appointed liaisons and providing direction for the final design of the Hilltop Park at The Dunes. ***Continued from May 3, 2022***

Council Questions: Central coast was a nexus point for native Americans hundreds of years ago, would this be a good project for not just natives or local natives but maybe restoration of some of these older plants that were here? Has ADA compliance been incorporated in the fauna and flora areas, signs and braille? Who led the effort in obtaining the 1,700 plants? Have we considered the naming of this park? Where exactly in Exhibit B are the non-native plant areas? To keep the maintenance of those non-invasive nonnatives long term does that take a lot of effort? Who will be responsible the maintenance of the park, including the trails? Will the current volunteers, C4SM Will they be allowed to be able to work freely and to maintain this new park?

Public Comments:

- Les Martin – Great plan with a lot of input from many people with plan knowledge. Suggested that whatever get planted there be able to withstand the wind and properly staked. Should keep the healthy existing pines that are currently there on site. Appreciates all the hard work everybody's put into it.
- Tommy Bolea – Commented on the shifting and moving sand due to the lack of rain and hopes the new plants survive, on the gophers in that area. Commented on the different seasons Marina goes through. Commented water needed to keep the plants alive
- Fred Watson – Spoke about the questions/suggestions he proposed. Asked that the Monterey Cypress be removed from the planning list of Area 1. Erigonum Fasciculatum and Horkelia Cuneata Be removed from the planting list in Area 3.
- Karen Andersen – Honor to be part of this committee, and to have been at in the field collecting seeds under the Mayor's direction. ask the City Council to to take in the Q. A. Answers such as Dr. Watson just mentioned, and in have those points incorporated into the into the final product. thank the public works department for moving our soil totters from Monterey Bay Horticulture over to the oak woodland. Asked that the poison oak be taken out professionally. Noted that the ground squirrels got to the acorns so there is no crop of coast live oaks to plant, will need to get those from the nursery tray. Commented on ice-plant and a gopher-snake deficiency.
- Traci – One of the volunteers that have been working Saturday after Saturday on these plants and we're very excited to have them go into this project. Mentioned that contractors who know native plants will be engaged to create the planting plans so that we, as volunteer groups, know what type plans and how many we need to plan to propagate. that we would very much look forward to the

developer contracting with an entity that does the majority of the planting as well as a lot of the watering within that first 2 years. Feels it's fair for us to also ask the developer for some materials that we've been going through.

DELGADO/BIALA: THAT WE ADOPT RESOLUTION NO. 2022-60, RECEIVING A REPORT ON THE HILLTOP PARK RECOMMENDATIONS FROM THE AD-HOC COMMITTEE AND CITY COUNCIL APPOINTED LIAISONS AND DIRECTS THE FOLLOWING DIRECTION ON THE FINAL DESIGN OF THE HILLTOP PARK AT THE DUNES:

- (1) AREA 1, REDUCE 24 LBS OF STICKY MONKEY FLOWER TO 12LBS; ADD 12 LBS OF SEACLIFF BUCKWHEAT (ERIOGONUM PARVIFLORUM); REMOVE CALIF. BUCKWHEAT (ERIGONUM FASCICULATUM); REMOVE MONTEREY CYPRESS.**
- (2) AREA 2, REDUCE IDAHO FESCUE (FESTUCA IDAHOENSIS) FROM 8LBS TO 4LBS; INCREASE WEDGE-LEAF HORKELIA (HORKELIA CUNEATA) FROM 1LB TO 5LBS; REMOVE COAST RANGE MELIC (MELICA IMPERFECTA) AND REPLACE IT WITH JUNEGRASS (KOELERIA MACRANTHA)**
- (3) AREA 3, PROPOSED REVEGETATION - EXISTING NATIVE & WEED-ERADICATED PLANTING AREAS CHANGE "SITE SPECIFIC SEED COLLECTION, LIVE CUTTINGS FROM VOLUNTEERS, COMMERCIALY AVAILABLE SEED FROM LOCAL SOURCES, AND CONTAINERIZED PLANTS FROM LOCAL NURSERY STOCK" TO THE FOLLOWING:**
 - a. "SITE SPECIFIC SEED COLLECTED BY VOLUNTEERS AND/OR CONTRACTORS, LIVE CUTTINGS FROM VOLUNTEERS AND/OR CONTRACTORS, COMMERCIALY AVAILABLE SEED FROM LOCAL (WITHIN 10 MILES OF FORT ORD, NOT SAN DIEGO OR MENDOCINO COUNTIES) SOURCES, AND CONTAINERIZED PLANTS FROM VOLUNTEERS OR, WHERE NECESSARY, FROM LOCAL COMMERCIAL NURSERY STOCK.**
 - b. REPLACE HORKELIA CALIFORNICA WITH HORKELIA CUNEATA.**
- (4) DEVELOPERS AND VOLUNTEERS REMAIN FLEXIBLE TO BILATERALLY APPROVED CHANGES IN PLANT LISTS AS ADDITIONAL SPECIES MAY BE DETERMINED TO BE APPROPRIATE FOR INCLUSION IN PLANTING AREA 3.**
- (5) SUCCESS CRITERIA INCLUDE A MAXIMUM OF BARE GROUND "ALLOWED" BEFORE DETERMINED TO BE SUCCESSFUL.**
- (6) DEVELOPERS AND VOLUNTEERS COLLABORATE ON REIMBURSEMENT PROJECT COSTS ALREADY PAID FOR BY VOLUNTEERS INCLUDING SOIL AND OTHER SUPPLIES APPROX. \$4-7K (RECEIPTS TO BE PROVIDED)**
- (7) DEVELOPER AND VOLUNTEERS COLLABORATE ON FUNDING FOR FUTURE COSTS SUCH AS SOIL AND OTHER MATERIALS (APPROX. \$7K-\$15K)**
- (8) ALL PARTIES ACKNOWLEDGE THAT VOLUNTEERS COULD BE PROVIDING UP TO 20K PLANTS WORTH AS MUCH AS \$80K OR MORE IN ADDITION LABOR OF \$50K OR MORE.**
- (9) DEVELOPER PROVIDE VOLUNTEERS CONSTRUCTION DOCUMENTS SUCH THAT VOLUNTEERS KNOW HOW MANY INDIVIDUALS OF EACH SPECIES TO PROVIDE FOR PLANTING AREA 3.**

4-0-1(Berkley)-0 Motion Passes by Roll Call Vote

- b. City Council consider adopting **Resolution No. 2022-61**, approving agreement between City of Marina and Fairbank, Maslin, Maullin, Metz & Associates (FM3) for public opinion research services, authorize subsequent minor changes if necessary, with City Attorney approval, and; authorize City Manager to execute agreement amendment on behalf of City, and; authorize the Finance Director to make the necessary accounting and budgetary entries.

Council Questions: How are we going to direct the researcher, the consultant regarding what to be included in the survey? We recently did an extensive community survey to find out how people are dissatisfied or satisfied with the way things are in the city, how will that past historical information be included or excluded what we do from today and in the coming months? Would the results of the survey indicate, or could they indicate an acceptance the measure that support I mean, or could we measure support for the measure through this survey or are we strictly looking at what kinds of things if approved, the measure would provide for? What is the timeline when we need to have the actual measure to the county, so it can appear in the voting guide? In the last surveys, do you recall which language was predominant beyond Spanish and English was it Korean or Vietnamese? In doing these surveys really the whole issues that we're asking for money the consultants will have to know our numbers, our budget, our constraints, correct? Is it specifically a closed system a closed demographic of who we're reaching, and thus wouldn't be a good candidate to put on our website? Is this something we can do in-house? Do we have the staff? With the last measures, which is the half cent sales tax the cannabis tax and the hotel tax, was there any statistical analysis that went into that, and can you tell me the precursor to that? Do we have any indications that the landscape has changed in terms of opinion? What priorities does Council have between now and the due date in August? Is this going to run up against anything that we're going to have to be focused on, or is this a good time for this? Is this going to run up against anything that we're going to have to be focused on, or is this a good time for this?

MEDINA DIRKSEN/BIALA: TO ADOPT RESOLUTION NO. 2022-61, APPROVING AGREEMENT BETWEEN CITY OF MARINA AND FAIRBANK, MASLIN, MAULLIN, METZ & ASSOCIATES (FM3) FOR PUBLIC OPINION RESEARCH SERVICES, AUTHORIZE SUBSEQUENT MINOR CHANGES IF NECESSARY, WITH CITY ATTORNEY APPROVAL, AND; AUTHORIZE CITY MANAGER TO EXECUTE AGREEMENT AMENDMENT ON BEHALF OF CITY, AND; AUTHORIZE THE FINANCE DIRECTOR TO MAKE THE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES. 4-0-1(Berkley)-0 Motion Passes by Roll Call Vote

Public Comments:

- Tommy Bolea – Spoke about doing his own survey and talking to people. Sounds like it's kind of biased if you're not going to cover all the nationalities. Commented on city not controlling the spending and people being on fixed incomes and renters. Concerned about city always hiring consultants. Noted that some of the priorities could be passed on to the next sitting council.
- Denise Turley – Council should stick with what worked last time. Need to make sure to provide palatable information so they can make an informed decision. Asked if people want more information on this issue and when the person calls to give the survey, where are they going to be led to?

- c. City Council consider adopting **Resolution No. 2022-62**, approving the form and authorizing the execution of certain lease financing documents in connection with the offering and sale of certificates of participation relating thereto to finance the cost of Measure X infrastructure improvements within the geographic boundaries of the City and authorizing and directing certain actions with respect thereto.

Council Questions: Can you explain to me how the interest rates impact wither the ability to sell or get people to purchase these bonds? Are they locked in? Have we received a bond rating yet? Do we have a forecast for the bond market? Are bonds interest rates like mortgages? inflationary direction, and so assuming that the not the worse, but the moderate projections of inflation come into effect what does that do to the bonds themselves, does that diminish their attractiveness? Is the bond estimate to give us \$11.5 million? Is that enough to fix our streets? Beyond the 25 streets what are the most likely candidates, streets, or other projects that would be funded by this bond? Bond Leasing, can you explain to me why we use this particular instrument and not some other?

BIALA/MEDINA DIRKSEN: TO ADOPT RESOLUTION NO. 2022-62, APPROVING THE FORM AND AUTHORIZING THE EXECUTION OF CERTAIN LEASE FINANCING DOCUMENTS IN CONNECTION WITH THE OFFERING AND SALE OF CERTIFICATES OF PARTICIPATION RELATING THERETO TO FINANCE THE COST OF MEASURE X INFRASTRUCTURE IMPROVEMENTS WITHIN THE GEOGRAPHIC BOUNDARIES OF THE CITY AND AUTHORIZING AND DIRECTING CERTAIN ACTIONS WITH RESPECT THERETO. 4-0-1(Berkley)-0 Motion Passes by Roll Call Vote

Public Comments:

- Tommy Bolea – Who created the street list? Asked Mayor if he took pictures or took notes when he came to view Andrew Circle? Who pays for the bond? Asked about the underground infrastructure of the streets?

- d. City Council consider adopting Resolution No. 2022-, amending the rate adjustment calculation of the franchise agreement with Green Waste Recovery utilizing a sector specific uniform percentage adjustment and approving maximum rates to be charged by Green Waste Recovery effective July 1, 2022, for collection of franchised solid waste, recycling, and organics. *Continued to June 7, 2022*
- e. City Council consider adopting Resolution No. 2022-, approving consulting services agreement between HF&H Consultants, LLC (HF&H) and the City of Marina to perform an analysis of an equitable method of crediting surplus solid waste collection fees back to rate payers for a fee not to exceed \$29,910, and; authorizing the City Manager to execute the agreement on behalf of the City subject to final review and approval by the City Attorney, and; authorizing the Finance Director to make the necessary budgetary and accounting entries. *Pulled by Mayor Pro Tem Biala, was agenda item 8g(2). Continued to June 7, 2022*

12. **COUNCIL & STAFF INFORMATIONAL REPORTS:**

- a. Monterey County Mayor's Association [Mayor Bruce Delgado]
- b. Council and staff opportunity to ask a question for clarification or make a brief report on his or her own activities as permitted by Government Code Section 54954.2.

13. **ADJOURNMENT:** The meeting adjourned at 10:40 PM

Anita Sharp, Deputy City Clerk

ATTEST:

Bruce C. Delgado, Mayor



DRAFT

Agenda Item: **8b(2)**
City Council Meeting of
June 21, 2022

MINUTES

Tuesday, June 7, 2022

5:00 P.M. Closed Session

6:30 P.M. Open Session

REGULAR MEETING

**CITY COUNCIL, AIRPORT COMMISSION,
MARINA ABRAMS B NON-PROFIT CORPORATION, PRESTON PARK SUSTAINABLE
COMMUNITY NON-PROFIT CORPORATION, SUCCESSOR AGENCY OF THE FORMER
MARINA REDEVELOPMENT AGENCY AND MARINA GROUNDWATER
SUSTAINABILITY AGENCY**

Council Chambers
211 Hillcrest Avenue
Marina, California

Zoom Meeting URL: <https://zoom.us/j/730251556>

Zoom Meeting Telephone Only Participation: 1-669-900-9128 - Webinar ID: 730 251 556

In accordance with California Government Code §54953(e)(1)(A) and (C) and the Proclamation of a State of Emergency issued by Governor Newsom on March 4, 2020, under the provisions of Government Code §8625 related to the COVID-19 (coronavirus) pandemic, consistent with recommendations by State and local health officials regarding social distancing and in order to prevent an imminent risk to the health and safety of attendees as determined in Resolution 2022-54, public participation in City of Marina City Council public meetings shall be electronic only and without a physical location for public participation until the earlier of May 31, 2022, or such time as the City Council may adopt a resolution in accordance with Government Code §54953(e)(3). This meeting is being broadcast “live” on Access Media Productions (AMP) Community Television Cable 25 and on the City of Marina Channel and on the internet at <https://accessmediaproductions.org/>

1. CALL TO ORDER
2. ROLL CALL & ESTABLISHMENT OF QUORUM: (City Council, Airport Commissioners, Marina Abrams B Non-Profit Corporation, Preston Park Sustainable Communities Nonprofit Corporation, Successor Agency of the Former Redevelopment Agency Members and Marina Groundwater Sustainability Agency)

MEMBERS PRESENT: David Burnett, Lisa Berkley, Mayor Pro-Tem/Vice Chair Kathy Biala, Mayor/Chair Bruce C. Delgado

MEMBERS ABSENT: Cristina Medina Dirksen (Excused)

3. CLOSED SESSION: *As permitted by Government Code Section 54956 et seq., the (City Council, Airport Commissioners, Marina Abrams B Non-Profit Corporation, Preston Park Sustainable Communities Nonprofit Corporation, Successor Agency of the Former Redevelopment Agency Members and Marina Groundwater Sustainability Agency) may adjourn to a Closed or Executive Session to consider specific matters dealing with litigation, certain personnel matters, property negotiations or to confer with the City’s Meyers-Milias-Brown Act representative.*

- a. Public Employment Appointment (Govt. Code Section 54957(b)(1):
Position: City Attorney

6:30 PM - RECONVENE OPEN SESSION AND REPORT ON ANY ACTIONS TAKEN IN CLOSED SESSION

Robert Rathie, Legal Counsel reported out Closed Session: Council met in Closed Session with regard to the one item listed. Council received information, provided direction and no reportable action was taken.

4. **MOMENT OF SILENCE & PLEDGE OF ALLEGIANCE** (Please stand)

5. **SPECIAL PRESENTATIONS:**

- a Sarah Hudson
- b LGBTQ+ Pride Month Proclamation
- c Monterey Bay Economic Power Video

6. **SPECIAL ANNOUNCEMENTS AND COMMUNICATIONS FROM THE FLOOR:** *Any member of the Public or the City Council may make an announcement of special events or meetings of interest as information to Council and Public. Any member of the public may comment on any matter within the City Council's jurisdiction which is not on the agenda. Please state your name for the record. Action will not be taken on an item that is not on the agenda. If it requires action, it will be referred to staff and/or placed on a future agenda. City Council members or City staff may briefly respond to statements made or questions posed as permitted by Government Code Section 54954.2. In order that all interested parties have an opportunity to speak, please limit comments to a maximum of four (4) minutes. Any member of the public may comment on any matter listed on this agenda at the time the matter is being considered by the City Council.*

- Doug Yount – Announced to the public and City Council of the significant milestone last week in the Dunes Project relating to the next step and affordable housing, 142 units in the 2 complexes or phase 2 and 3 affordable housing at The Dunes. The Dunes closed escrow for the purchase of the property from the city to Marina Community Partners, and then in turn a sale to U.S.A. Property, the developer of that and operator is that affordable housing. This was a significant milestone obviously for providing much needed rental, affordable housing for very low-, low- and moderate-income families and individuals in the region.
- Mike Owen – Asked is there will be a future meeting when the City Manager will allow the Council to vote to continue the suspension of the Tree Committee and Public Works Commission.
- Brian McMinn – Wanted to make sure that, we recognize the efforts of Ocean Rock Church to display the flags on Memorial Day weekend.
- Mayor Pro-Tem Biala – Asked how will the public be notified when the affordable units become available and does Marina residents have any advantage in terms of being able to apply first, or have any preference in in terms of being selected for those units?
- Council Member Berkley – Asked about making sure the Civil Disobedience Day proclamation could be placed on the next meeting agenda?
- Mayor Delgado – Commented on the volunteer cleanups. Asked if the public works could come out and mow the Preston Park fields prior to the baseball tournaments. Commented on the open house Shea Properties held at The Dunes and the tour of the lots to view the tress. Commented on the Hilltop Park seedlings and planting season. Commented on Mayor Pro Tem Biala's matrix of the trees in The Dunes Phase 3 area.

7. CONSENT AGENDA FOR THE SUCCESSOR AGENCY TO THE FORMER MARINA REDEVELOPMENT AGENCY: *Background information has been provided to the Successor Agency of the former Redevelopment Agency on all matters listed under the Consent Agenda, and these items are considered to be routine. All items under the Consent Agenda are normally approved by one motion. Prior to such a motion being made, any member of the public or the City Council may ask a question or make a comment about an agenda item and staff will provide a response. If discussion or a lengthy explanation is required, that item will be removed from the Consent Agenda for Successor Agency to the former Marina Redevelopment Agency and placed at the end of Other Action Items Successor Agency to the former Marina Redevelopment Agency.*
8. CONSENT AGENDA: *Background information has been provided to the City Council, Airport Commission, Marina Abrams B Non-Profit Corporation, and Redevelopment Agency on all matters listed under the Consent Agenda, and these items are considered to be routine. All items under the Consent Agenda are normally approved by one motion. Prior to such a motion being made, any member of the public or the City Council may ask a question or make a comment about an agenda item and staff will provide a response. If discussion or a lengthy explanation is required, that item will be removed from the Consent Agenda and placed at the end of Other Action Items.*
 - a. ACCOUNTS PAYABLE:
 - (1) Accounts Payable Check Numbers 99973-100085, totaling \$886,066.51
Accounts Payable for Successor Agency Check Numbers 88, totaling \$1,675.00
 - b. MINUTES:
 - (1) May 3, 2022, Regular City Council Meeting
 - c. CLAIMS AGAINST THE CITY: None
 - d. AWARD OF BID: None
 - e. CALL FOR BIDS: None
 - f. ADOPTION OF RESOLUTIONS:
 - (1) City Council consider adopting **Resolution No. 2022-63**, certifying City of Marina compliance with State law (Proposition 218) with respect to special assessment for Cypress Cove II Landscape Maintenance Assessment District for FY 2022-2023.
 - (2) City Council consider adopting **Resolution No. 2022-64**, certifying City of Marina compliance with State law (Proposition 218) with respect to special assessment for Seabreeze Landscape Maintenance Assessment District for FY 2022-2023.
 - (3) City Council consider adopting **Resolution No. 2022-65**, certifying City of Marina compliance with State law (Proposition 218) with respect to special assessment for Monterey Bay Estates Landscape Maintenance Assessment District for FY 2022-2023.
 - (4) City Council consider adopting **Resolution No. 2022-66**, confirming levy of a special tax for the City of Marina Community Facilities District No. 2007-2 (Locke Paddon) for Fiscal Year 2022-2023 as authorized by Ordinance No. 2007-09, and; consider adopting **Resolution No. 2022-67**, certifying City of Marina compliance with State law (Proposition 218) with respect to levying of special taxes for the City of Marina Community Facilities District No. 2007-2 for Fiscal Year 2022-2023 as authorized by Ordinance No. 2007-09.

- (5) ~~City Council consider adopting Resolution No. 2022, adopting an updated list of projects for fiscal year 2022-23 funded by SB1: the Road Repair and Accountability Act of 2017. **Pulled by Mayor Delgado, becomes agenda item 11c**~~
- (6) City Council consider adopting **Resolution No. 2022-68**, establishing appropriations limit for FY 2022-23.

g. APPROVAL OF AGREEMENTS:

- (1) City Council consider adopting **Resolution No. 2022-69**, approving the Pavement Management Program Update 2022 Reimbursement Agreement with the Transportation Agency for Monterey County (TAMC) for the City's Pavement Management Program; and authorize the City Manager to execute the Agreement on behalf of the City Council subject to final review and approval by the City Attorney.
- (2) City Council consider adopting **Resolution No. 2022-70**, approving the Wayfinding Regional Funding Agreement with the Transportation Agency for Monterey County (TAMC); and authorize the City Manager to execute the Agreement on behalf of the City Council subject to final review and approval by the City Attorney.
- (3) City Council consider adopting **Resolution No. 2022-71**, approving a Lease Agreement between the City of Marina and Uninsured Skydive Monterey Bay, Inc. dba Skydive Monterey Bay. for a portion of 721 Neeson Road (Building 533) at the Marina Municipal Airport; and authorizing City Manager to execute the Lease Agreement, on behalf of the City, subject to final review and approval by City Attorney.
- (4) City Council consider adopting **Resolution No. 2022-72**, authorizing staff to submit a grant application to the California Coastal Commission and authorize the City Manager to execute the applications, contacts, agreements, and amendments necessary to implement the grant application package.

h. ACCEPTANCE OF PUBLIC IMPROVEMENTS: None

i. MAPS: None

j. REPORTS: (RECEIVE AND FILE):

- (1) City Council consider adopting **Resolution No. 2022-73**, receive and file the City's Annual Audit for the period ending June 30, 2021; and receive and file the City of Marina Auditor Governance Letter (SAS 114) and Management Letter (SAS 115) for the fiscal year ending June 30, 2021.

k. FUNDING & BUDGET MATTERS: None

l. APPROVE ORDINANCES (WAIVE SECOND READING): None

m. APPROVE APPOINTMENTS: None

Mayor Pro Tem Biala had questions for agenda item 8f(6), give the public a little bit of a clarification about why we have this appropriations, why do we have this limit and how did this come about? Also asked the City Manager to briefly tell the public about the good points of 8j(1)

Council Member Burnett requested to pull agenda item 8f(3) for recusal of the vote.

Council Member Berkley had a question for agenda item 8g(2), who chooses the wayfinding sign design/colors?

Mayor Delgado requested to pull agenda item 8f(5) for discussion. Becomes agenda item 11c

BIALA/BERKLEY: TO APPROVE THE CONSENT AGENDA MINUS 8f(3) AND 8f(5). 4-0-0-1(Medina Dirksen). Motion Passes by Roll Call Vote

8f(3)

DELGADO/BIALA: TO APPROVE AGENDA ITEM 8f(3). 3-0-0-1(Medina Dirksen) Motion Passes by Roll Call Vote

9. PUBLIC HEARINGS: None
10. OTHER ACTIONS ITEMS OF THE SUCCESSOR AGENCY TO THE FORMER MARINA REDEVELOPMENT AGENCY: *Action listed for each Agenda item is that which is requested by staff. The Successor Agency may, at its discretion, take action on any items. The public is invited to approach the podium to provide up to four (4) minutes of public comment.*
11. OTHER ACTION ITEMS: *Action listed for each Agenda item is that which is requested by staff. The City Council may, at its discretion, take action on any items. The public is invited to approach the podium to provide up to four (4) minutes of public comment.*

Note: No additional major projects or programs should be undertaken without review of the impacts on existing priorities (Resolution No. 2006-79 – April 4, 2006).

- a. City Council consider adopting **Resolution No. 2022-74**, amending the rate adjustment calculation of the franchise agreement with Green Waste Recovery utilizing a sector specific uniform percentage adjustment and approving maximum rates to be charged by Green Waste Recovery effective July 1, 2022, for collection of franchised solid waste, recycling, and organics. ***Continued from May 17, 2022***

Council Questions: Are we not deciding on senior discount rates tonight?

BURNETT/BERKLEY: TO APPROVE RESOLUTION NO. 2022-74, AMENDING THE RATE ADJUSTMENT CALCULATION OF THE FRANCHISE AGREEMENT WITH GREEN WASTE RECOVERY UTILIZING A SECTOR SPECIFIC UNIFORM PERCENTAGE ADJUSTMENT AND APPROVING MAXIMUM RATES TO BE CHARGED BY GREEN WASTE RECOVERY EFFECTIVE JULY 1, 2022, FOR COLLECTION OF FRANCHISED SOLID WASTE, RECYCLING, AND ORGANICS. 4-0-0-1(Medina Dirksen) Motion Passes by Roll Call Vote

Public Comments:

- Denise Turley – Clarified that the senior discount also applied to disabled persons and noted that not all disable persons were over 60. Agrees with giving the surplus over the 2 periods as noted in the report.
- Karen Andersen – Been in discussion with GreenWaste regarding the fact that it's not possible to reduce my utility usage here any greater. Currently use the smallest can available. Asked why there is not a rate for those of us who don't generate a lot of garbage.
- Tommy Bolea – Asked if there was an exemption for those residents who don't produce refuse and does not have the need for garbage service?

- b. City Council consider adopting **Resolution No. 2022-75**, approving consulting services agreement between HF&H Consultants, LLC (HF&H) and the City of Marina to perform an analysis of an equitable method of crediting surplus solid waste collection fees back to rate payers for a fee not to exceed \$29,910, and; authorizing the City Manager to execute the agreement on behalf of the City subject to final review and approval by the City Attorney, and; authorizing the Finance Director to make the necessary budgetary and accounting entries. ***Pulled by Mayor Pro Tem Biala, was agenda item 8g(2). Continued from May 17, 2022***

Council Questions: Could the analysis consider the possibility of maybe repurposing or redirecting those funds towards green infrastructure like electric vehicles, stations, or bike charging stations or something like that? Is it wise to spend \$30,000 to pay consultant to tell us how to spend the surplus? Do you think that the surplus will continue to get smaller every year? Do you think it's appropriate to spend the 30 K to find that equitable way? Is it estimated that about \$99 will go back to households in discounts in future rates? Does the consultant actually identify, not just the methodology But do they go through the records and tell you, Then these are the people who have moved away, and these are the people who had in some kind of pay or class, so they do all this work?

BIALA/DELGADO: TO APPROVE RESOLUTION NO. 2022-75, APPROVING CONSULTING SERVICES AGREEMENT BETWEEN HF&H CONSULTANTS, LLC (HF&H) AND THE CITY OF MARINA TO PERFORM AN ANALYSIS OF AN EQUITABLE METHOD OF CREDITING SURPLUS SOLID WASTE COLLECTION FEES BACK TO RATE PAYERS FOR A FEE NOT TO EXCEED \$29,910, AND; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY, AND; AUTHORIZING THE FINANCE DIRECTOR TO MAKE THE NECESSARY BUDGETARY AND ACCOUNTING ENTRIES. 4-0-0-1(Medina Dirksen) Motion Passes by Roll Call Vote

Public Comments:

- Tommy Bolea – Opposes the motion. Believe this should be done in-house with city staff.

- c. City Council consider adopting **Resolution No. 2022-76**, adopting an updated list of projects for fiscal year 2022-23 funded by SB1: the Road Repair and Accountability Act of 2017. ***Pulled by Mayor Delgado, was agenda item 8f(5)***

Council Questions: Is true that tonight we're talking about how we expect to spend \$500,000 we get from SB1 ballot measure? Is the true that we're spending about 2.6 million dollars a year within the city of Marina on roads? The rest of the \$2.6 million where will that be coming from? Now does that with that measure X money go away, in a sense, when we start to bond it or we still get to spend \$600,000 a year here plus use it for bond revenue? Exhibit A total sum is \$2.1 million, where's the other 500,000 going to be spent to make the 2.6 million that we spend this year? Is there a posting of the street maintenance program?

DELGADO/BIALA: TO APPROVE ADOPTING RESOLUTION NO. 2022-76, ADOPTING AN UPDATED LIST OF PROJECTS FOR FISCAL YEAR 2022-23 FUNDED BY SB1: THE ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017. 4-0-0-1(Medina Dirksen) Motion Passes by Roll Call Vote.

Public Comments:

- Tommy Bolea – Asked Council and staff when Andrew Circles would be replaced.

- d. City Council consider adopting **Resolution No. 2022-77**, authorizing pursuit of a lease agreement with the Transportation Agency of Monterey County (TAMC) to lease a portion of the Monterey Branch Line to be used for recreational purposes; and selecting an operator for the Monterey Branch Line and determining the term of lease for the operator.

Council Questions: Who has the right of way at on the coastal trail where the bike lane crosses the tracks? Any safety measures in that area? Are we adding any additional rates to the TAMC rate to cover city admin costs? If we are selecting a vendor tonight is there another packet of information that give financials for the proposed vendors? Are they required to obtain a business license? Do we tax, the service itself per car? Is there any kind of other than a monthly rental for the for the track? Can we, extract per car or per passenger tax? Do we know about how much income they were generated last time, or have statistics of customers or incidental increases in our hotels or our restaurants? What kind of charges would it now be compared to last year? What are the benefits for Marina? On Exhibit A, who put down this list of concerns and do we have answers? Did the vendors see this list of concerns and respond to them? Do we expect for the California Coastal Commission to have to be involved in any way? What about the County? Does a CEQA review need to be done? The 2 proposal we've gotten so far, do they propose a year-round lease or limited number of months? Would it be appropriate for the city to recoup its cost that the city charge and application fee to cover the time it takes staff to go through that phase, and then, later on charge a winning vendor fee you know an operating fee, so the vendor that was selected in order to recoup the cost the city has after selection?

Public Comments:

- Denise Turley – Asked what about noise abatement from the potential riders and cars? Asked if it was possible to ride the carts one-way do some shopping and ride the carts back?
- Tuka – Enjoyed helping out last year when this was here. Addressed the concern about cross traffic on the rails. Think it's a great opportunity to be out there again and looks forward to working out there again this summer with the Clark family, and running the handcars and sharing the experience and stories with different people from all walks of life.
- Brian Jacobsen – Extremely grateful council has chosen to embrace this enterprise of managing this piece of track so that this event can happen again. Supports the Clarks family knowing they can turn it into a great historical educational event.
- Scott Shapely – Had the pleasure of riding on the cars a few times last year we brought and brought some friends from out of town, and they had a really great experience. The Clark family help to clean up the tracks of high weeds and fixed part of the tracks. It's a just a really cool endeavor for everyone to enjoy.
- Karen Andersen – Supports the Clark family. Awesome experience to help prep the tracks and save some plants out there last summer before they things started. Enjoyed riding the carts and look forward to the opportunity to do it again. Hopes the Council will support the Clark family
- Laura Hoover – Thanked Council for considering this proposal and supports the Clark family. This is a unique opportunity for Marina

BIALA/BERKLEY: TO APPROVE RESOLUTION NO. 2022-77, AUTHORIZING PURSUIT OF A LEASE AGREEMENT WITH THE TRANSPORTATION AGENCY OF MONTEREY COUNTY (TAMC) TO LEASE A PORTION OF THE MONTEREY BRANCH LINE TO BE USED FOR RECREATIONAL PURPOSES; AND SELECTING MUSEUM OF HANDCAR TECHNOLOGY AS THE OPERATOR FOR THE MONTEREY BRANCH LINE AND DETERMINING THE TERM OF LEASE FOR THE OPERATOR. 3-0-0-2(Medina Dirksen, Burnett) Motion Passes by Roll Call Vote

- e. City Council receive presentation on the long-term vision and fiscal sustainability, hangar and infrastructure needs and solutions, and potential financial support from the Military Assistance Program for the Marina Municipal Airport. ***Continued to June 21, 2022.***

12. **COUNCIL & STAFF INFORMATIONAL REPORTS:**

- a. Monterey County Mayor's Association [Mayor Bruce Delgado]
- b. Council and staff opportunity to ask a question for clarification or make a brief report on his or her own activities as permitted by Government Code Section 54954.2.

13. **ADJOURNMENT:** The meeting adjourned at 10:58 P.M.

Anita Sharp, Deputy City Clerk

ATTEST:

Bruce C. Delgado, Mayor

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of June 21, 2022

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION 2022-,
RECOGNIZING A LOCAL EMERGENCY PERSISTS, RE-RATIFYING THE
PROCLAMATION OF A STATE OF EMERGENCY BY GOVERNOR
NEWSOM ON MARCH 4, 2020, AND RE-AUTHORIZING REMOTE
TELECONFERENCE MEETINGS OF THE CITY COUNCIL OF THE CITY OF
MARINA AND ITS CONSTITUENT BODIES FOR THE PERIOD JUNE 21, 2022,
THROUGH JULY 21, 2022, PURSUANT TO BROWN ACT PROVISIONS.**

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2022-, regarding the Ralph M. Brown Act (California Government Code §§54950-54963, hereinafter the “Brown Act”) making certain findings; and authorizing the City to continue to implement remote teleconferenced public meetings of the City Council and its constituent bodies for the period June 21, 2022, through July 21, 2022.

BACKGROUND:

Government Code §54953(e) allows cities to continue to meet remotely during states of emergency proclaimed by the Governor under modified Brown Act requirements that are similar to but not identical to the rules and procedures established by the prior Executive Orders of Governor Newsom relating to the relaxation of certain Brown Act requirements during the COVID-19 pandemic.

Government Code §54953(e) authorizes local agencies to use teleconferencing without complying with teleconferencing requirement imposed by the Brown Act during a declared state of emergency when state or local health officials have imposed or recommended measures to promote social distancing during the proclaimed state of emergency or when the legislative body had determined by majority vote that meeting in person would present imminent risks to the health or safety of attendees.

At a special meeting held on October 5, 2021, the City Council adopted Resolution 2021-104 regarding the Brown Act making certain findings, and authorizing the City to implement remote teleconferenced public meetings of the City Council and its constituent bodies might be held without compliance with Government Code §54953(b)(3) for the period October 5, 2021 through November 4, 2021; subsequently on November 2, 2021, the Council adopted Resolution 2021-113 extending that period until December 2, 2021; on November 16, 2021, the Council adopted Resolution 2021-118 extending that period until December 16, 2021; on December 14, 2021, the Council adopted Resolution 2021-134 extending that period until January 13, 2022; and on January 11, 2022, the Council adopted Resolution 2022-02 extending that period to February 10, 2022; and on February 1, 2022, the Council adopted Resolution No. 2022-13, extending that period until March 3, 2022; on March 1, 2022 Council adopted Resolution No. 2022-32, extending that period to March 31, 2022, on March 15, 2022 Resolution 2022-34; April 19, 2022 Resolution No. 2022-48, and on May 17, 2022 adopted Resolution No. 2022-54 extending the period during which remote teleconferenced public meetings of the City Council and its constituent bodies might be held without compliance with Government Code §54953(b)(3) to June 21, 2022.

ANALYSIS:

On June 11, 2021, Governor Newsom issued Executive Order N-08-21 which among other things rescinded his prior Executive Order N-29-20 and set the date of October 1, 2021, for public agencies to transition back to public meetings held in full compliance with the Brown Act.

As the Delta variants surged in California, the legislature took action to extend the COVID-19 exemptions to the Brown Act's teleconference requirements, subject to some additional requirements. California and Monterey County are presently continuing to experience cases of the rapidly-spreading Omicron variant. Assembly Bill 361 amended Government Code §54953 and allowed a local agency to use teleconferencing in any of the following circumstances without complying with certain Brown Act provisions:

1. The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.
2. The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
3. The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote taken at a meeting held for the purpose described in 2 above, that as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

A local agency that holds a meeting under any of these circumstances would be required to follow certain requirements listed in the attached Resolution, in addition to giving notice of the meeting and posting agendas as required under the Brown Act. These additional requirements are intended to protect the public's right to participate in the meetings of local agency legislative bodies. The City of Marina adheres to the listed requirements.

Government Code §54953(e)(3) provides that if the state of emergency remains active for more than 30 days, a local agency must make the following findings by majority vote every 30 days to continue using the exemption to the Brown Act teleconferencing requirements:

- The legislative body has reconsidered the circumstances of the emergency; and
- Either of the following circumstances exist: the state of emergency continue to directly impact the ability of members to meet safely in person or State or local officials continue to impose or recommend social distancing measures.

The goal of Government Code §54953 as revised by AB 361 is to improve and enhance public access to local agency meetings during the COVID-19 pandemic and future applicable emergencies by allowing broader access through teleconferencing options. The current version of Government Code §54953 became effective on September 16, 2021, with a sunset of the present version on January 1, 2024.

FISCAL IMPACT:

None identified.

CONCLUSION:

This request is submitted for City Council consideration and possible adoption of a resolution proclaiming a local emergency persists, re-ratifying the proclamation of a state of emergency by Governor Newsom on March 4, 2020, and re-authorizing remote teleconference meetings of the City Council of the City of Marina and its constituent bodies for the period June 21, 2022, through July 21, 2022, pursuant to Brown Act provisions.

Respectfully submitted,

Layne Long
City Manager
City of Marina

RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA RECOGNIZING A LOCAL EMERGENCY PERSISTS, RE-RATIFYING THE PROCLAMATION OF A STATE OF EMERGENCY BY GOVERNOR NEWSOM ON MARCH 4, 2020, AND RE-AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF THE CITY COUNCIL OF THE CITY OF MARINA AND ITS CONSTITUENT BODIES FOR THE PERIOD JUNE 21, 2022, THROUGH JULY 21, 2022, PURSUANT TO BROWN ACT PROVISIONS.

WHEREAS, the City of Marina is committed to preserving and nurturing public access and participation in meetings of the City Council and its constituent bodies; and

WHEREAS, all meetings of City of Marina's legislative bodies are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code 54950 – 54963), so that any member of the public may attend, participate, and watch the City's legislative bodies conduct their business; and

WHEREAS, the Brown Act, Government Code section 54953(e), makes provision for remote teleconferencing participation in meetings by members of a legislative body, without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

WHEREAS, a required condition is that a state of emergency is declared by the Governor pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558; and

WHEREAS, a proclamation is made when there is an actual incident, threat of disaster, or extreme peril to the safety of persons and property within the jurisdictions that are within the City's boundaries, caused by natural, technological or human-caused disasters; and

WHEREAS, it is further required that state or local officials have imposed or recommended measures to promote social distancing, or, the legislative body meeting in person would present imminent risks to the health and safety of attendees; and

WHEREAS, the City Council previously adopted Resolution No. 2021- 104 on October 5, 2021, Resolution 2021-113 on November 2, 2021, Resolution 2021-118 on November 16, 2021, Resolution 2021-134 on December 14, 2021, Resolution 2022-02 on January 11, 2022, Resolution 2022-13 on February 1, 2022, Resolution No. 2022-13 on March 1, 2022, Resolution 2022-32, on March 15, 2022 Resolution 2022-34; April 19, 2022 Resolution No. 2022-48, and on May 17, 2022 Resolution No. 2022-54 extending the period during which remote teleconferenced public meetings of the City Council and its constituent bodies might be held without compliance with Government Code §54953(b)(3) to June 21, 2022; and

WHEREAS, as a condition of extending the use of the provisions found in section 54953(e), the City Council must reconsider the circumstances of the state of emergency that exists in the City, and the City Council has done so; and

WHEREAS, emergency conditions persist in the City, specifically, the March 4, 2020, proclamation by the Governor of a state of emergency in the State of California due to COVID-19 and the March 13, 2020, proclamation of a state of emergency in the City of Marina by the City Manager, as the City's Director of Emergency Services, due to COVID-19 which was subsequently ratified by the City Council on March 17, 2020, and after having been supplemented twice, and both proclamations of states of emergency remain in effect; and

WHEREAS, on September 22, 2021, the County of Monterey Health Department issued a Recommendation Regarding Social Distancing Including Remote Meetings of Legislative Bodies, attached hereto as **Attachment 1**; and

WHEREAS, the City Council does hereby find that California and Monterey County are presently continuing to experience cases of the rapidly-spreading COVID-19 Omicron variant and as of June 13, 2022, the federal Centers for Disease Control and Prevention rated the risk level for community transmission of COVID-19 in Monterey County as medium with a case rate of 29.9 individuals per 100,000 persons, as of June 13, 2022, a total of 750 persons have died of COVID-19 and 367 persons are reported as new cases currently suffering from COVID-19 with 27 persons reported hospitalized in Monterey County by the County Health Department; this situation has and will continue to cause, conditions of peril to the safety of persons within the City that are likely to be beyond the control of services, personnel, equipment, and facilities of the City, and desires to recognize and affirm a local emergency exists and re-ratify the proclamation of state of emergency by the Governor of the State of California and to recognize the County of Monterey Health Department's recommendation regarding social distancing; and

WHEREAS, as a consequence of the local emergency persisting, the City Council does hereby find that the City Council and its constituent bodies shall continue to conduct their meetings without compliance with paragraph (3) of subdivision (b) of Government Code section 54953, as authorized by subdivision (e) of section 54953, and that such legislative bodies shall continue to comply with the requirements to provide the public with access to the meetings as prescribed in paragraph (2) of subdivision (e) of section 54953; and

WHEREAS, the City of Marina will continue to implement the following measures for meetings of its City Council and its constituent bodies:

- Allow the public to access the meeting and require that the agenda provide an opportunity for the public to directly address the legislative body pursuant to the Brown Act's other teleconferencing provisions.
- In each instance when the local agency provides notice of the teleconferenced meeting or posts its agenda, give notice for how the public can access the meeting and provide public comment.
- Identify and include in the agenda an opportunity for all persons to attend via a call-in or an internet-based service option; the legislative body need not provide a physical location for the public to attend or provide comments.
- Conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the public.
- Stop the meeting until public access is restored in the event of a service disruption that either prevents the local agency from broadcasting the meeting to the public using the call-in or internet-based service option or is within the local agency's control and prevents the public from submitting public comments (any action taken during such a service disruption could be challenged under the Brown Act's existing challenger provisions).

- Not require comments be submitted in advance (though the legislative body may provide that as an option) and provide the opportunity to comment in real time.
- Provide adequate time for public comment, either by establishing a timed public comment period or by allowing a reasonable amount of time to comment.
- If the legislative body uses a third-party website or platform to host the teleconference, and the third-party service requires users to register to participate, the legislative body must provide adequate time during the comment period for users to register and may not close the registration comment period until the comment period has elapsed.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MARINA DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. Affirmation that Local Emergency Persists. The City Council hereby reconsiders the conditions of the state of emergency in the City and proclaims that a local emergency persists throughout the City, and:

(a) On September 22, 2021, the County of Monterey Health Department issued a Recommendation Regarding Social Distancing Including Remote Meetings of Legislative Bodies; and

(b) California and Monterey County are presently continuing to experience cases of the rapidly-spreading COVID-19 Omicron variant and as of June 13, 2022, the federal Centers for Disease Control and Prevention rated the risk level for community transmission of COVID-19 in Monterey County as medium with a case rate of 29.9 individuals per 100,000 persons, as of June 13, 2022, a total of 750 persons have died of COVID-19 and 367 persons are reported as new cases currently suffering from COVID-19 with 27 persons reported hospitalized in Monterey County by the County Health Department; and this has caused, and will continue to cause, conditions of peril to the safety of persons within the City that are likely to be beyond the control of services, personnel, equipment, and facilities of the City.

Section 3. Re-ratification of Governor's Proclamation of a State of Emergency. The City Council hereby reconsiders and re-ratifies the Governor of the State of California's Proclamation of State of Emergency, effective as of its issuance date of March 4, 2020.

Section 4. Remote Teleconference Meetings. The City Manager and legislative bodies of the City of Marina, the City Council and its constituent bodies, are hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution including, continuing to conduct open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.

Section 5. Effective Date of Resolution. This Resolution shall take effect on immediately upon its adoption and shall be effective until the earlier of (i) July 21, 2022, or such time the City Council adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the City Council of the City of Marina and its constituent bodies may continue to teleconference without compliance with paragraph (3) of subdivision (b) of section 54953.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting held this 21st day of June 2022, by the following vote:

AYES, COUNCIL MEMBERS:

NOES, COUNCIL MEMBERS:

ABSENT, COUNCIL MEMBERS:

ABSTAIN, COUNCIL MEMBERS:

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk



COUNTY OF MONTEREY HEALTH DEPARTMENT

Elsa Mendoza Jimenez, Director of Health

Administration Animal Services Behavioral Health Clinic Services
Emergency Medical Services Environmental Health Public Administrator/Public Guardian Public Health

Recommendation Regarding Social Distancing Including Remote Meetings of Legislative Bodies

Issued: September 22, 2021

The Monterey County Health Department continues to recommend that physical and social distancing strategies be practiced in Monterey County, which includes remote meetings of legislative bodies of local agencies, to the extent possible.

Monterey County continues to experience transmission of COVID-19 locally. Physical and social distancing is still an effective measure to reduce the spread of COVID-19, especially when combined with use of face coverings, frequent hand washing, staying home when ill, testing, and vaccination with U.S. Food and Drug Administration approved or authorized COVID-19 vaccines.

Remote meetings of legislative bodies allow for the virtual participation of agency staff, presenters, and community members in safer environments, with less risk of exposure to SARS-CoV-2, the virus that causes COVID-19.

The Monterey County Health Officer will continue to monitor local metrics and the necessity of this recommendation.

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of June 21, 2022

CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-AUTHORIZING RELEASE OF A REQUEST FOR PROPOSALS FOR CONSULTANT SERVICES TO PREPARE A COMPREHENSIVE GENERAL PLAN UPDATE AND ACCOMPANYING ZONING ORDINANCE UPDATE, MAPS, AND CEQA REVIEW; AUTHORIZING THE FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES; AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY

REQUEST:

It is requested that City Council consider:

1. Adopting Resolution No. 2022-, authorizing release of a Request for Proposals for Consultant Services to prepare a comprehensive General Plan Update and accompanying zoning code and map updates, and appropriate CEQA review; and authorizing the Finance Director to make necessary budget and accounting entries; and
2. Authorizing the City Manager to execute agreement on behalf of the City subject to final review and approval by the City Attorney.

BACKGROUND:

The City's current General Plan was adopted in 2000 and has been amended through 2010, not including regular updates to the Housing Element which last occurred in 2015. General Plans are intended to accommodate a 20-year planning horizon. The comprehensive update will update and/or create the Elements required to be included in a modern General Plan (GP) as described in the Governor's Office of Planning & Research (OPR) [2017 General Plan Update Guidelines](#). At a minimum, the update will address the following required Elements: Land Use, Conservation, Noise, Circulation, Open Space, Air Quality, Environmental Justice (EJ), and Safety. The Land Use, Safety, and EJ Elements will also consider the long-term environmental effects of changes to the land use designations and zoning code initiated through the Housing Element process. The current GP is formatted in an unconventional way in that the required Elements are not identified and laid out in a way that is user-friendly or easily referenced. The update will endeavor to bring the City's guiding principles into compliance with current land use and zoning statutes and create a document that better addresses the challenges that the City will be encountering in the near- and long-term relating to land use, climate change, transportation, infrastructure, and environmental protections.

The City of Marina is considered a full-service city and provides a wide range of services including police, fire, planning, building and safety, maintenance of roads, engineering, water and sewer, code enforcement, recreation, and parks. The City has grown and changed considerably since 2000 in terms of its land base and the regulatory framework that governs land use. Included in these changes are the acquisition of considerable lands of the former Fort Ord Army Base, the development and adoption of the Marina Station, Marina Municipal Airport Business and Industrial Park/UC MBEST Center, and the Dunes at Monterey Bay Specific Plans, changes to water and wastewater infrastructure, and major new developments at the airport and the CSUMB Campus.

Although the 6th Cycle Housing Element will be completed under a separate contract, the two efforts will be somewhat coordinated to ensure that policies adopted through the Housing Element process are included in the GP Update and associated environmental review under the California Environmental Quality Act (CEQA).

Since 2000/2010, a wide variety of statutes have been enacted by the State legislature relating to disadvantaged communities, complete streets, sustainability, fire hazards and safety, tribal and cultural resources, climate adaptation strategies including greenhouse gas emission reduction requirements, and many others. This GPU will ensure that the City's blueprint for development in the coming years follows State mandates and meets the City's goals of sustainability consisting of a balanced local and global effort to meet basic human needs without destroying or degrading the natural environment.

A major benefit to having a modern General Plan with a legally defensible and robust EIR is that future large development projects may be able to tier off this EIR if the proposal is consistent which results in a streamlined project and significant cost and time savings to both the applicant and the developer.

The GPU and subsequent municipal code amendments needed to implement the adopted policies will require the preparation of an Environmental Impact Report (EIR). The successful candidate will be selected to prepare all aspects of this effort including updating the City's land use and zoning maps.

The Request for Proposals (RFP) will be available for review on the City's Bids and Proposals website: <https://www.cityofmarina.org/bids.aspx> The timeframe for the RFP is:

- Informational announcement to City Council June 21, 2022, Planning Commission July 14, 2022
- Distribution of the RFP June 24, 2022
- Pre-Bid Informational Meeting for Interested Consultants July 22, 2022
- Deadline to Submit Proposals August 17, 2022, 3:00 pm
- Review of Submittals August 17-26, 2022
- Scheduled Interviews September 12-16, 2022
- Contract Review by City Council for Award October 18, 2022, or a scheduled meeting in November 2022

The RFP review and interview team will consist of Community Development Director, Guido Persicone; Sr. Planner, Alyson Hunter; and Assistant City Manager, Matt Mogenson. City Manager, Layne Long, may participate in final candidate selection, if so desired. After the city staff has reviewed and made a recommendation, the final contract award will be done by the City Council in the Fall of 2022.

FISCAL IMPACT:

At its May 3, 2022, meeting, the City Council authorized the use of \$965,000.00 of General Plan Maintenance Fee revenue for the GPU effort. Staff's recent research on the cost of a comprehensive GPU/EIR and zoning code amendments indicates that the actual cost may be more in the range of \$1.5-2M. This would require a budget amendment to transfer the remainder from the General Fund to the General Plan accounting project (EDC 2014). The results of the RFP and the budget proposals included will provide staff with a better understanding of the actual cost and can provide further information to the Council once the submittal period closes.

ENVIRONMENTAL DETERMINATION

The City of Marina determined that the proposed action (Authorize release of a Request for Proposals) is not a project as defined by the California Environmental Quality Act (CEQA) (CCR, Title 14, Chapter 3 (CEQA Guidelines, Article 20, Section 15378). In addition, CEQA Guidelines Section 15061 includes the general rule that CEQA applies only to activities which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

CONCLUSION:

This request is submitted for City Council discussion and action.

Respectfully submitted,

Alyson Hunter, AICP
Senior Planner, Community Development Department
City of Marina

REVIEWED/CONCUR:

Guido F. Persicone, AICP
Director, Community Development Department
City of Marina

Layne P. Long
City Manager
City of Marina

RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA AUTHORIZING RELEASE OF A REQUEST FOR PROPOSALS FOR CONSULTANT SERVICES TO PREPARE A COMPREHENSIVE GENERAL PLAN UPDATE AND ACCOMPANYING ZONING ORDINANCE UPDATE, MAPS, AND CEQA REVIEW; AUTHORIZING THE FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES; AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY

WHEREAS, since the adoption of the City's current General Plan in 2000, the City has changed dramatically through both geographic expansion resulting from the dissolution of the Fort Ord Army Base and through significant residential, commercial, institutional, and industrial development over the past 20 years;

WHEREAS, several Specific Plans have been adopted and implemented that supersede substantial planning areas of the current General Plan;

WHEREAS, the City of Marina is obligated to implement California's Planning Priorities, as described in the 2017 Office of Planning & Research (OPR) General Plan Update Guidelines, which are to:

1. To promote infill development and equity by rehabilitating, maintaining, and improving existing infrastructure that supports infill development and appropriate reuse and redevelopment of previously developed, underutilized land that is presently served by transit, streets, water, sewer, and other essential services, particularly in underserved areas, and to preserving cultural and historic resources.
2. To protect environmental and agricultural resources by protecting, preserving, and enhancing the state's most valuable natural resources, including working landscapes such as farm, range, and forest lands, natural lands such as wetlands, watersheds, wildlife habitats, and other wildlands, recreation lands such as parks, trails, greenbelts, and other open space, and landscapes with locally unique features and areas identified by the state as deserving special protection.
3. To encourage efficient development patterns by ensuring that any infrastructure associated with development, other than infill development, supports new development that does all of the following:
 - a. Uses land efficiently.
 - b. Is built adjacent to existing developed areas to the extent consistent with the priorities specified pursuant to subdivision (b).
 - c. Is located in an area appropriately planned for growth.
 - d. Is served by adequate transportation and other essential utilities and services.
 - e. Minimizes ongoing costs to taxpayers

WHEREAS, recent housing laws that govern the preparation of a City's Housing Element will require that the City of Marina, in addition to its separate Housing Element update, also update its Land Use and Safety Elements and to incorporate Environmental Justice policies throughout the document as appropriate;

WHEREAS, in order to maximize the efficiency of effort, the General Plan Update should closely follow the update of the Housing Element so that the specific Element updates and their required environmental review can be conducted in concert with the Housing Element;

WHEREAS, the City expects this project to provide standards that will be consistent with relevant statutes adopted by the State legislature since 2000 and the GPU Guidelines prepared by the OPR;

WHEREAS, the City will utilize \$965,000.00 generated through the General Plan Update Fee, a fee collected through the issuance of Building Permits, and additional funds allocated from the General Fund;

WHEREAS, in order to complete the project, the City will hire a qualified consultant to prepare the General Plan Update and corresponding zoning code and map(s), as well as an EIR to address the significant environmental impacts that may result from the changes in policies and standards; and,

WHEREAS, the City of Marina determined that the proposed action (adoption of this Resolution) is not a project as defined by the California Environmental Quality Act (CEQA) (CCR, Title 14, Chapter 3 ("CEQA Guidelines), Article 20, Section 15378). In addition, CEQA Guidelines Section 15061 includes the general rule that CEQA applies only to activities which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Marina hereby:

1. Authorizing release of a Request for Proposals for Consultant Services to prepare a comprehensive General Plan Update and accompanying zoning code and map updates, and appropriate CEQA review; and authorizing the Finance Director to make necessary budget and accounting entries; and
2. Authorizing the City Manager to execute agreement on behalf of the City subject to final review and approval by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 21st day of June 2022, by the following vote:

AYES, COUNCIL MEMBERS:

NOES, COUNCIL MEMBERS:

ABSENT, COUNCIL MEMBERS:

ABSTAIN, COUNCIL MEMBERS:

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

June 16, 2022

Item No. **8f(3)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of June 21, 2022

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-,
APPROVING ESTIMATED COST FOR SERVICES FOR CALENDAR YEAR
2022, FOURTH OF JULY ACTIVITIES AND SETTING COST RECOVERY
SURCHARGE AT SIX (6%) PERCENT FOR CALENDAR YEAR 2022
PURSUANT TO MARINA MUNICIPAL CODE SECTION 15.32.580**

REQUEST:

It is requested that the City Council:

1. Consider adopting Resolution No. 2022-, approving estimated cost for service for calendar year 2022, Fourth of July activities; and
2. Setting cost recovery surcharge at six (6%) percent for calendar year 2022 pursuant to Marina Municipal Code Section 15.32.580.

BACKGROUND:

The Marina Police Department, Fire Department, Public Works Division and Recreation are all impacted by the use and sale of fireworks in the City of Marina. Each department expends resources for processing and issuing permits, inspection of stands; public education and awareness; enforcing the provisions of the Marina Municipal Code and the California Health and Safety Code, including extra personnel time, cleanup of the City parking lots from the firework trash and debris left behind each year.

At the regular meeting of the Marina City Council held on November 19, 2019, the Marina City Council approved Ordinance No. 2019-03 amending Chapter 15.32 to add Section 15.32.580 to the Marina Municipal Code to provide for a Firework Cost Recovery Surcharge.

ANALYSIS:

Pursuant to the Ordinance, the amount of the assessment shall be determined each year by Resolution on or about the second regular City Council meeting in May of that year and a notice sent to each of the permittees.

The total City expenditure for police, fire, public works and recreation is estimated to be \$10,592.64 dollars for calendar year 2022. Staff is requesting for consideration, approving estimated cost for service for calendar year 2022 (“**EXHIBIT A**”), Fourth of July activities and setting the cost recovery surcharge for calendar year 2022 at six (6%) percent pursuant to Marina Municipal Code Section 15.32.580.

FISCAL IMPACT:

The Fireworks sales fluctuate every year. Based on the last 3 years of fireworks sales, the cost recovery surcharge should bring an approximate fee revenue of \$10,633.12 The revenue collected is expected to cover approximately 100 percent of the cost for services in 2022 that would otherwise not be collected absent a cost recovery surcharge.

CONCLUSION:

This request is submitted for City Council consideration and possible action.

Respectfully submitted,

Doug McCoun
Fire Chief
City of Marina

REVIEWED/CONCUR:

Tina Nieto
Chief of Police
City of Marina

Brian McMinn
Public Works Director
City of Marina

Layne P. Long
City Manager
City of Marina

RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
APPROVING ESTIMATED COST FOR SERVICES FOR CALENDAR YEAR 2022,
FOURTH OF JULY ACTIVITIES AND SETTING COST RECOVERY SURCHARGE AT
SIX (6 %) PERCENT PURSUANT TO MARINA MUNICIPAL CODE SECTION
15.32.580

WHEREAS, the Marina Police Department, Fire Department, Public Works Division and Recreation are all impacted by the use and sale of fireworks in the City of Marina, and;

WHEREAS, each department expends resources for processing and issuing permits, inspection of stands; public education and awareness; enforcing the provisions of the Marina Municipal Code and the California Health and Safety Code, including extra personnel time, and cleanup of the City parking lots and firework trash and debris left behind each, and;

WHEREAS, at the regular meeting of the Marina City Council held on November 19, 2019, the Marina City Council approved Ordinance No. 2019-03 amending Chapter 15.32 to add Section 15.32.580 to the Marina Municipal Code to provide for a Firework Cost Recovery Surcharge, and;

WHEREAS, the exact amount of the assessment shall be determined each year by Resolution on or about the second regular City Council meeting in May of that year and a notice sent to each of the permittees. and;

WHEREAS, the total City expenditure for police, fire, public works and recreation is estimated to be \$10,592.64 dollars for calendar year 2022; and

WHEREAS, staff is requesting for consideration approving estimated cost for service (“**Exhibit A**”) for calendar year 2022, Fourth of July activities; and

WHEREAS, setting the cost recovery surcharge at six (6%) percent for calendar year 2022 pursuant to Marina Municipal Code Section 15.32.580; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Marina does hereby

1. Approve estimated cost for service for calendar year 2022, Fourth of July activities; and
2. Setting the cost recovery surcharge at six (6%) percent for calendar year 2022 pursuant to Marina Municipal Code Section 15.32.580.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 21st day of June 2022, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ATTEST:

Bruce C. Delgado, Mayor

Anita Sharp, City Clerk

Exhibit A

City Firework Expenditures 2022

Public Works:

Miscellaneous cleanup as needed:

Maintenance Worker II	\$78.20	No OT	4-hours =	\$312.80
Maintenance Worker II	\$78.20	No OT	4-hours =	\$312.80
TOTAL:				\$625.60

Recreation & Cultural Services:

City Park site visit/post & remove signage, lighting @ Los Arboles Sport Complex

Recreation Department	Recreation Personnel =	\$608.08
TOTAL:		\$608.08

Police Department Operations:

CSO	\$80.63	OT Rate + \$20.27 = \$100.90	8-hours =	\$ 807.20
Police Officer x 3	\$106.52	OT Rate + \$20.27 = \$126.79	8-hours =	\$1,014.32
Police Sgt	\$133.41	OT Rate + \$20.27 = \$153.68	8-hours =	\$1,229.44
TOTAL:				\$3,050.96

Fire Department Operations:

Booth walk through & site visits for initial setup.	\$1,350.00
Daily Engine Company Inspections for booths (6 Days)	\$1,620.00
No overtime (on-duty Captain, Engineer & Firefighter)	
Third Person to staff 2 nd Engine Company 24 OT @ \$56.04	\$1,345.00
Fire Department Administrative Permit Processing (Includes Pre Meeting, Safety Bulletins, Staff Report etc.)	\$1,993.00
TOTAL:	\$6,308.00

TOTAL ESTIMATED EXPENDITURES: \$10,592.64

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of June 21, 2022

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-,
APPROVING A PUBLIC IMPROVEMENT AGREEMENT FOR SEA
HAVEN PHASE 4A BETWEEN THE CITY OF MARINA AND THE
CONTRACTING PARTIES OF 104 INVESTMENTS, LLC, LOCANS
INVESTMENTS, LLC, WATHEN CASTANOS PETERSON HOMES,
INC., WATHEN CASTANOS PETERSON COASTAL, LP, AND MARINA
DEVELOPERS, INC., AND; AUTHORIZING CITY MANAGER TO
EXECUTE THE PUBLIC IMPROVEMENT AGREEMENT ON BEHALF
OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE
CITY ATTORNEY**

RECOMMENDATION:

It is recommended that the City Council:

1. Consider adopting Resolution No. 2022-, approving a Public Improvement Agreement for Sea Haven Phase 4A between the City of Marina and the Contracting Parties of 104 Investments, LLC, Locans Investments, LLC, Wathen Castanos Peterson Homes, Inc., Wathen Castanos Peterson Coastal, LP, and Marina Developers, Inc., and;
2. Authorizing the City Manager to execute the Public Improvement Agreement on behalf of the City subject to final review and approval by the City Attorney.

BACKGROUND:

At the regular meeting of March 21, 2006, the City Council adopted Resolution No. 2006-56, approving the Phase 1 Final Map for the Marina Heights Development Project Subdivision and subdivision improvement agreement. The Phase 1 final map and improvement plans were only for the major roadways (Arterials) and utilities for the Marina Heights Project.

At the regular meeting of September 6, 2006, the City Council adopted Resolution 2006-228, approving the Phase 2 Final Map for the Marina Heights Subdivision the Subdivision Improvement Agreement. The Phase 2 final map and improvement plans are for the first 299 residential units in the Marina Heights Project.

At the regular meeting of August 7, 2019, the City Council adopted Resolution 2019-78 and 2019-81, approving the Phase 5A Subdivision Improvement Agreement and the Final Map for the Marina Heights (now Sea Haven) Subdivision.

At the regular meeting of February 19, 2020, the City Council adopted Resolution 2020-20, approving the Phase 3A Subdivision Improvement Agreement for the Marina Heights (now Sea Haven) Subdivision.

At the regular meeting of March 16, 2021, the City Council adopted Resolution 2021-18, approving the Public Improvement Agreement for Sea Haven Phase 3B.

ANALYSIS:

The developer contracting parties have submitted the Phase 4A Final Map and Improvement Plans for approval. The Public Improvement Agreement has also been submitted and will provide labor and materials and faithful performance bonds required for the recordation of the Phase 4A Final Map. It has been determined that the Tentative Map Conditions of Approval will be met with the inclusion of the Public Improvement Agreement. The Agreement has been found consistent with the conditions of the Development Agreement and previous Public Improvement Agreements.

The Phase 4A final map and improvement plans are for 216 residential units in the Marina Heights Project. The Phase 4A final map and improvement plans include the specific neighborhood improvements such as parks and open space that support 216 residential units including five below market rate unit sites. Each site will have six units for a total of thirty below market rate units for this phase.

All required future phased final maps must meet all the appropriate conditions of approval and will be presented to City Council for consideration at a future date.

FISCAL IMPACT:

Should the City Council approve this request, the City requires the Developer to provide satisfactory evidence of their ability to complete the public improvements by the posting of labor and material and faithful performance subdivision improvement bonds in an amount of 100% of the City Engineer's estimate of the cost to perform the work.

For the construction for Phase 4A, the Developer will post a bond in the amount of Three Million Three Hundred Fifty-One Thousand Eight Hundred Sixty-Seven Dollars (\$3,351,867) for completion of the public improvements and a bond in the amount of Three Million Three Hundred Fifty-One Thousand Eight Hundred Sixty-Seven Dollars (\$3,351,867) to secure payment for labor and materials prior to the recording of the Phase 4A Final Map.

CONCLUSION:

This request is submitted for City Council consideration and possible action.

Respectfully submitted,

Edrie Delos Santos, P.E.
Senior Engineer, Engineering Division
City of Marina

REVIEWED/CONCUR:

Brian McMinn, P.E., P.L.S.
Public Works Director/City Engineer
City of Marina

Layne P. Long
City Manager
City of Marina

RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY OF MARINA APPROVING A PUBLIC IMPROVEMENT AGREEMENT FOR SEA HAVEN PHASE 4A BETWEEN THE CITY OF MARINA AND THE CONTRACTING PARTIES OF 104 INVESTMENTS, LLC, LOCANS INVESTMENTS, LLC, WATHEN CASTANOS PETERSON HOMES, INC., WATHEN CASTANOS PETERSON COASTAL, LP, AND MARINA DEVELOPERS, INC.; AND AUTHORIZING CITY MANAGER TO EXECUTE THE PUBLIC IMPROVEMENT AGREEMENT ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY

WHEREAS, at the regular meeting of March 21, 2006, the City Council adopted Resolution No. 2006-56, approving the Phase 1 Final Map for the Marina Heights Development Project Subdivision and subdivision improvement agreement. The Phase 1 final map and improvement plans were only for the major roadways (Arterials) and utilities for the Marina Heights Project, and;

WHEREAS, at the regular meeting of September 6, 2006, the City Council adopted Resolution 2006-228, approving the Phase 2 Final Map for the Marina Heights Subdivision the Subdivision Improvement Agreement. The Phase 2 final map and improvement plans are for the first 299 residential units in the Marina Heights Project, and;

WHEREAS, at the regular meeting of August 7, 2019, the City Council adopted Resolution 2019-78 and 2019-81, approving the Phase 5A Subdivision Improvement Agreement and the Final Map for the Marina Heights (now Sea Haven) Subdivision, and;

WHEREAS, at the regular meeting of February 19, 2020, the City Council adopted Resolution 2020-20, approving the Phase 3A Subdivision Improvement Agreement for the Marina Heights (now Sea Haven) Subdivision, and;

WHEREAS, at the regular meeting of March 16, 2021, the City Council adopted Resolution 2021-18, approving the Public Improvement Agreement for Sea Haven Phase 3B, and;

WHEREAS, the developer contracting parties have submitted the Phase 4A Final Map and Improvement Plans for approval. The Public Improvement Agreement has also been submitted and will provide labor and materials and faithful performance bonds required for the recordation of the Phase 4A Final Map. It has been determined that the Tentative Map Conditions of Approval will be met with the inclusion of the Public Improvement Agreement. The Agreement has been found consistent with the conditions of the Development Agreement and previous Public Improvement Agreements, and;

WHEREAS, the Phase 4A final map and improvement plans are for 216 residential units in the Marina Heights Project. The Phase 4A final map and improvement plans include the specific neighborhood improvements such as parks and open space in the area of the 216 residential units including thirty below market rate units, and;

WHEREAS, all required future phased final maps must meet all the appropriate conditions of approval and will be presented to City Council for consideration at a future date, and;

WHEREAS, should the City Council approve this request, the City requires the Developer to provide satisfactory evidence of their ability to complete the public improvements by the posting of labor and material and faithful performance subdivision improvement bonds in an amount of 100% of the City Engineer's estimate of the cost to perform the work, and;

WHEREAS, for the construction for Phase 4A, the Developer will post a bond in the amount of Three Million Three Hundred Fifty-One Thousand Eight Hundred Sixty-Seven Dollars (\$3,351,867) for completion of the public improvements and a bond in the amount of Three Million Three Hundred Fifty-One Thousand Eight Hundred Sixty-Seven Dollars (\$3,351,867) to secure payment for labor and materials prior to the recording of the Phase 4A Final Map.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Marina that:

1. Approve a Public Improvement Agreement for Sea Haven Phase 4A between the City of Marina and the Contracting Parties of 104 Investments, LLC, Locans Investments, LLC, Wathen Castanos Peterson Homes, Inc., Wathen Castanos Peterson Coastal, LP, and Marina Developers, Inc., and;
2. Authorize the City Manager to execute the Public Improvement Agreement on behalf of the City subject to final review and approval by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 21st day of June 2022, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ATTEST:

Bruce Delgado, Mayor

Anita Sharp, Deputy City Clerk

Exhibit A

PUBLIC IMPROVEMENT AGREEMENT

CITY OF MARINA

**AGREEMENT FOR IMPROVEMENT OF STREETS, INSTALLATION OF STORM
DRAINS AND OTHER PUBLIC WORKS FACILITIES**
“Sea Haven”
– Phase 4A –

This Agreement for Improvement of Streets, Installation of Storm Drains and Other Public Works Facilities (“Agreement”) is made and entered into this ____ day of May 2022, by and between the City of Marina, herein called the “City,” a municipal corporation, and 104 Investments, LLC, a California limited liability company, Locans Investments, LLC, a California limited liability company, Wathen Castanos Peterson Homes, Inc., a Delaware corporation, and Wathen Castanos Peterson Coastal, LP, a California limited partnership (collectively referred to herein as “Co-Owners”) together with Marina Developers, Inc., a California corporation (referred to herein as the “Developer”). Co-Owners and Developer are collectively referred to herein as “Contracting Parties” and in the singular as a “Contracting Party.” The City and the Contracting Parties are referred to herein as the “Parties.”

WHEREAS, pursuant to the grant deed from Cypress Marina Heights LLC (“Cypress Marina Heights”) dated April 13, 2018, as Document No. 2018015912 (the “Deed”), Co-Owners are now the owners of the land known as “Sea Haven Phase 4A” (the “Property”); and

WHEREAS, the Parties acknowledge that in the development of the Property the Parties are subject to requirements for payment of prevailing wage in accordance with the Master Resolution adopted by the former Fort Ord Reuse Authority on March 14, 1997 as recorded in the Official Records of the Monterey County Recorder on April 14, 2020; and pursuant to the holding in Monterey/Santa Cruz County Building and Construction Trades Council v. Cypress Marina Heights, (2011) 191 Cal. App. 4th 1500; and

WHEREAS, Developer is under contract to purchase the Property from Co-Owners and after such purchase will improve the Property according to this Agreement; and

WHEREAS, the City and Cypress Marina Heights previously entered into that certain Final Development Agreement dated as of March 3, 2004 (the “Development Agreement”), pursuant to which the City and Cypress Marina Heights, LLC agreed to certain matters with respect to the development, formerly known as Marina Heights and now known as Sea Haven, of 1,050 homes (the “Project”) on certain real property, consisting of approximately two hundred forty-eight acres located between Imjin Road, Abrams Drive and 12th Street in the City (the “Project Site”); and

WHEREAS, the City and Cypress Marina Heights amended the Development Agreement once previously with that certain Implementation Agreement dated October 11, 2007 (the Development Agreement, as so previously amended by the Implementation Agreement being referred to herein as the “Amended Development Agreement”); and

WHEREAS, Cypress Marina Heights assigned, and Wathen Castanos Peterson Homes, Inc., assumed, portions of the rights and obligations of Cypress Marina Heights under the Amended Development Agreement between the City and Cypress Marina Heights; and

WHEREAS, Cypress Marina Heights remains obligated under the Amended Development Agreement for the balance of the Project not yet conveyed to third parties; and

WHEREAS, prior to its adoption of the Development Agreement, the City approved a Specific Plan for the Project Site, General Plan Amendments, a Specific Plan Zoning Ordinance and Map Amendments, a tentative Map and certified an EIR (collectively the “Project Approvals”)

subject to the Conditions Approval attached to Resolution 2004-44 and compliance with Marina Municipal Code Section 16.16.100 requiring a subdivision improvement agreement and bonding prior to approval of the first Final Map; and

WHEREAS, consistent with the Project Approvals, the Developer, with the consent of the Co-Owners, is in the process of developing the Project on the Project Site; and

WHEREAS, on July 3, 2018, the City and Wathen Castanos Peterson Homes, Inc. entered into the First Amendment to the Development Agreement ("First Amendment") amending the terms of the Amended Development Agreement; and

WHEREAS, improvement plans entitled "Street Improvement Plans for Sea Haven Phase 4A," herein "Improvement Plans," have been submitted to the City for approval and acceptance which improvements are to include new storm drain system, curb, gutter, asphalt concrete pavement, street lights and electrical facilities, sidewalk, striping, traffic signs, and survey monuments, as shown on **Exhibit A**, herein the "Improvements;" and

WHEREAS, the Developer, with the consent of the Co-Owners, will subsequently submit for approval by the City and subsequent recording with the office of the Monterey County Recorder, a final map ("Final Map") for Sea Haven Phase 4A; and

WHEREAS, the City will not accept any of the Sea Haven Phase 4A Improvements to be constructed pursuant to this Agreement until all the conditions of this Agreement are satisfied in full; and

WHEREAS, the Co-Owners or Developer require certain utilities and public works facilities in order to service the Project under the minimum standards established by the City; and

WHEREAS, the City, by and through its City Council, has enacted certain Codes, Ordinances and Resolutions and certain Rules and Regulations have been promulgated concerning the subject matter of this Agreement; and

WHEREAS, the City has certain responsibilities for maintenance and operation of such Improvements, and public service facilities after acceptance by City, and for providing the necessary connecting system, and the City has agreed to discharge those responsibilities following its acceptance of the Improvements.

NOW THEREFORE, in consideration of the foregoing and in order to carry on the intent and purpose of said Codes, Ordinances, Resolutions, Rules and Regulations, it is agreed by and between the City and the Contracting Parties as follows:

SECTION 1

The recitals to this Agreement are hereby incorporated into the terms of this Agreement. All applicable Codes, Ordinances, Resolutions, Rules and Regulations and established policies of the City and the laws of the State of California and the United States of America concerning the subject matter of this Agreement are hereby referred to and incorporated herein to the same effect as if they were set out a length herein. Said Codes, Ordinances, Resolutions, Rules and Regulations include, but are not limited to, the following: The Municipal Code of the City of Marina, including the current Zoning Ordinance, and the currently adopted California Building Code.

SECTION 2

The Contracting Parties agree:

- a. To be jointly and severally liable to perform each and every provision required by the City to be performed by the Contracting Parties in each and every one of the applicable Codes, Ordinances, Resolutions, Rules and other Regulations and to comply with the foregoing and all applicable laws.
- b. To grant to the City or other entities entitled thereto, from property owned by the Co-Owners or subsequently by the Developer, without charge and free and clear of monetary liens and encumbrances, any and all public, private, utility, drainage, construction or access easements and rights of way (herein "easements") in and to the Property necessary for the City, in order that the storm drain and street improvements to said real property may be extended; however, City shall not be obligated to accept any such easement, right-of-way or improvements thereon. At no cost to the City, City and Contracting Parties will work cooperatively with the owners of other real property to acquire all easements necessary to construct the Improvements. At no cost to the City, City agrees to support Contracting Parties in acquisition of easements necessary to construct the Improvements. City also agrees to issue Contracting Parties and/or Contracting Parties' contractors encroachment permits necessary to accomplish said work.

Prior to acceptance of the Improvements by the City, Contracting Parties jointly and severally agree to indemnify, defend with counsel of City's choice and hold the City and any of its officials, boards and commissions and members thereof, agents and employees, free and harmless from all suits, fees, claims, demands, causes of action, costs, losses, damages, liabilities and expenses (including without limitation reasonable attorney's fees) because of, or arising, or resulting directly or indirectly, from: (i) any damage done to any utility, public facility or other material or installation of the City on said real estate as a result of the Contracting Parties or any contractor or subcontractor of the Contracting Parties, or any employee of the foregoing, grading or working upon said real estate; or (ii) any act or omission of Contracting Parties or Contracting Parties' contractors, or subcontractors, or any employee of the foregoing in connection with the design, construction or other work performed by them in connection with this Agreement, including without limitation all claims relating to injury or death of any person or damage to any property, except for such claims, demands, causes of action liability, or loss arising out of the sole active negligence or intentional actions of the City or any of its officials, boards and commissions and members thereof, agents and employees. City shall not be responsible for the design or construction of the Improvements pursuant to the Improvement Plans, regardless of any negligent action or inaction taken by City in approving the Improvement Plans unless the particular improvement design was specifically required by City over written objection by Contracting Parties submitted to the City Engineer before construction and acceptance of the Improvements, which objection indicated that the particular improvement design was dangerous or defective and suggested an alternate safe and feasible design. Prior to acceptance, Contracting Parties shall remain obligated for routine maintenance. After acceptance, Contracting Parties shall remain obligated to eliminate any defect in design or dangerous condition caused by the design or construction defect, however, Contracting Parties shall not be responsible for routine maintenance. Provisions of this Section shall remain in full force and effect in accordance with California Code of Civil Procedure Sections 337.1 and 337.15 following acceptance by City of the Improvements. The Improvement security shall not be required to cover the provisions of this Section. Contracting Parties shall reimburse City for all costs and expenses (including but not limited to fees and charges of architects, engineers, attorneys, and other professionals, and court costs) incurred by City in enforcing the provisions of this Section.

c. To construct and improve all Improvements described on the Engineer's Estimate referenced in Section 3 of this Agreement and the Improvement Plans submitted to the City in furtherance of this Agreement on file with the City. All construction and improvements shall be completed in accordance with all standards established in the applicable Codes, Ordinances, Resolutions, Rules and Regulations, all applicable laws and this Agreement, and in accordance with the grades, plans, and specifications approved by the City Engineer or his or her designee. Contracting Parties shall furnish two good and sufficient bonds, in an amount of 100% of the City Engineer's, or his or her designee's, estimated cost of the Improvements, guaranteeing Contracting Parties' performance of this Agreement: (1) a Payment Bond on a form provided by the City; and (2) a Faithful Performance Bond, both of which must be secured from a surety company admitted to do business in California. Each bond shall set forth a time period for performance by the Contracting Parties of their obligations and the terms and conditions on which the City may obtain the proceeds of the bond. Alternatively, the Contracting Parties may provide a cash deposit in an amount of 100% of the City Engineer's, or his or her designee's, estimated cost of the Improvements to guarantee Contracting Parties' performance of this Agreement.

The Faithful Performance Bond shall be in an amount not less than one hundred percent (100%) of the total estimated amount payable for the Improvements described in this agreement, and shall secure payment to City of any loss due to the default of the Contracting Parties or their contractors or their inability or refusal to perform this Agreement, and to guarantee or warranty the work done pursuant to this Agreement for a period of one year following acceptance thereof by City against any defective work or labor done or defective materials furnished. The performance bond shall by its terms remain in full force and effect for a period of not less than one year after completion of the Improvements and acceptance of the Improvements by the City, provided that after completion of the improvements and acceptance of the Improvements by the City, a separate warranty bond issued by a surety admitted to issue such bonds in California may substitute for the performance bond securing the warranty described above in the amount of ten percent (10%) of the total contract price of the Improvements (provided that amount of said bond shall not be less than One Thousand Dollars (\$1,000)) to cover the one-year warranty period. Government Code §66499.7, and as it may hereafter be amended, extended, or otherwise modified, shall apply to a request for release, in whole or in part, of the Faithful Performance Bond.

The Payment Bond shall be in an amount not less than one hundred percent (100%) of the total estimated amount payable for the Improvements described in this Agreement. The Payment Bond shall secure the payment of those persons or entities to whom the Contracting Parties may become legally indebted for labor, materials, tools, equipment or services of any kind used or employed by the Contracting Parties' contractor(s) or subcontractor(s) in performing the work, or taxes or amounts to be withheld thereon. The Payment Bond shall provide that the surety will pay the following amounts should the Contracting Parties, or Contracting Parties' contractor(s) or subcontractor(s) fail to pay the same, plus reasonable attorneys' fees to be fixed by the court if suit is brought upon the bond: (1) amounts due to any person that has a lien right pursuant to Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the California Civil Code; (2) amounts due under the Unemployment Insurance Code with respect to work or labor performed for the improvements described in this Agreement; and (3) any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Contracting Parties their contractors and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to the work and labor. The Payment Bond shall, by its terms, inure to the benefit of any person that has a lien right pursuant to Title 3 California Civil Code Section Part 6 of Division 4, commencing with Section 9000 so as to give a right of action to those persons or their assigns in any suit brought upon the bond. The Payment Bond may be released thirty-five days after the passage of time within which claims of lien are required to be recorded pursuant to California Civil Code Part 6 of Division 4 commencing with Section 8200,

but in no event shall such security be released prior to one hundred and twenty days after acceptance of the Improvements by the City Council. The amount to be released shall first be reduced by the total of all claims on which an action has been filed and notice thereof given in wiring to the City. City expressly may require the surety not to release the amount of security deemed necessary by City to assure payment of reasonable expenses and fees, including reasonable attorney's fees.

The Contracting Parties shall submit the following for both the surety that furnishes the Payment Bond and the surety that furnishes the Faithful Performance Bond: (1) a current printout from California Department of Insurance website (www.insurance.ca.gov) showing that the surety is admitted to do business in the State; or (2) a certificate from the Clerk of the County of Monterey that the surety's certificate of authority has not been surrendered, revoked, canceled, annulled, or suspended or in the event that it has, that renewed authority has been granted

d. If any on-site or off-site Improvements related to the Project, including, without limitation, the Improvements shown on the Improvement Plans, constructed by or caused to be constructed by the Contracting Parties or any of their affiliates, contractors, sub-contractors, or agents, are considered to be public works for purposes of prevailing wages under State law, then when such improvements are constructed they shall be constructed in compliance with the prevailing wage law pursuant to Labor Code §1720 et seq. and implementing regulations of the Department of Industrial Relations and shall comply with the other applicable provisions of the prevailing wage law, including, without limitation, the payment of prevailing wages in the construction of such improvements, as those wages are determined pursuant to the prevailing wage law. The City makes no representations or warranties as to whether any such improvements are considered to be public works for purposes of prevailing wages under State law. Should Contracting Parties or any of the aforementioned persons or entities fail to pay, fail to cause to be paid, or fail to have paid or caused to have been paid, prevailing wages, or to have failed to comply with the aforementioned prevailing wage laws as to any such improvements, and it is alleged, contended, or determined that Contracting Parties should have paid prevailing wages, or otherwise fail to comply with the prevailing wage law, Contracting Parties shall indemnify, defend, and hold harmless to the fullest extent permitted by law, the City from and against any and all claims, liability, loss, damage, expense, costs (including without limitation costs, attorney's fees and fees of litigation) of every nature arising out of or in connection with the failure to pay prevailing wages or comply with the prevailing wage law. This indemnification obligation shall survive the termination of this Agreement.

e. At all times during the term of this Agreement and until the Improvements constructed by Contracting Parties are accepted by City, Contracting Parties shall, at no cost to City obtain and maintain (a) a policy of general liability and property damage insurance in the minimum amount of Two Million Dollars (\$2,000,000), combined single limit for both bodily injury and property damage; (b) workers' compensation insurance as required by law; and (c) broad form "Builder's Risk" property damage insurance limits of not less than 100% of the estimated value of the Improvements to be constructed by Contracting Parties pursuant to this Agreement (Builders Risk Insurance is not required when only mass grading and roadway-related improvements consisting of no structures are to be constructed).

All such policies shall provide that thirty (30) days written notice must be given in advance to City prior to termination, cancellation or modification. The insurance specified above shall: (a) name City as additional insured; (b) shall name the City as a loss payee; and (c) shall provide that City, although an additional insured or loss payee, may recover for any loss suffered by reason of the

acts or omissions of Contracting Parties or Contracting Parties' contractors or their respective employees. Contracting Parties hereby waive, and Contracting Parties shall cause each of their respective contractors and subcontractors to waive, all rights to recover against City for any loss or damage arising from a cause covered by the insurance required to be carried pursuant to this Agreement, and will cause each insurer to waive all rights of subrogation against City in connection therewith. All policies shall be written on an "occurrence basis" and not on a "claims made" basis and shall be issued by insurance companies authorized to conduct business in California with a current A.M. Best rating of no less than A: VII. Prior to commencing any work pursuant this Agreement, Contracting Parties shall deliver to City the insurance company's certificate evidencing the required coverage, or if required by City a copy of the policies obtained.

f. Contracting Parties' obligations under this Agreement are personal obligations of the Contracting Parties notwithstanding a transfer of all or any part of the Property subject to this Agreement. Contracting Parties shall not be entitled to assign their obligations under this Agreement to any transferee of all or any part of the Property to any third party without the express prior written consent of the City. Notwithstanding the foregoing, specifically excluding single family residential dwelling units sold to third party end-users, Co-Owners may transfer, assign or sell in one transaction or a series of transactions all or a substantial portion or interest of the Co-Owners in the Property or the Project ("Bulk Sale") with prior written notice to the City, to any entity which controls, is controlled by or is under common control with the Co-Owners, without the need for the approval of the City provided that said assignee assumes, in full, the obligations of Co-Owners under this Agreement.

SECTION 3

An estimate of the cost for construction of the Improvements and performing land development work in connection with the Improvements according to the Improvement Plans has been made and has been approved by the City Engineer or his or her designee. That estimated amount is Three Million Three Hundred Fifty-One Thousand Eight Hundred Sixty-Seven Dollars (\$3,351,867). The basis for the estimate is on file in the Office of the City Engineer and is incorporated into this Agreement by reference.

SECTION 4

Contracting Parties will commence construction of the Improvements required by this Agreement within six (6) months of the date of this Agreement, provided City has approved all of Contracting Parties' Public Improvement Plans. Contracting Parties shall complete such construction of the Improvements within two (2) years of the date of this Agreement, unless otherwise extended in writing by the City Engineer. Contracting Parties shall maintain such public works facilities and other improvements described in this Agreement, at Contracting Parties' sole cost and expense, at all times prior to acceptance by City in a manner which will preclude any hazard to life or health or damage to property.

SECTION 5

a) Default of a Contracting Party shall include, but not be limited to: (1) failure to timely complete the Improvements within two (2) years of the date of this Agreement, unless otherwise extended in writing by the City Engineer; (2) failure to timely cure after written notice any defect of the Improvements; (3) failure to perform substantial construction work for a period of sixty calendar days after commencement of the work; (4) insolvency, appointment of a receiver, or the filing of any petition in bankruptcy either voluntary or involuntary which the Contracting Party fails to discharge within thirty (30) days; (5) commencement of a foreclosure action affecting

all or a portion of the Property, or any conveyance of all or a substantial portion of the Property in lieu or in avoidance of foreclosure; or (6) failure to perform any other obligation under this Agreement. Notwithstanding the foregoing, a Contracting Party shall not be in default under this Agreement if it cures any default within thirty (30) days' of City's written notice of such default; or, if the default may not reasonably be cured within such time period, if it commences to cure within thirty (30) days' and thereafter diligently proceeds to complete the cure.

b) City reserves to itself all remedies available to it at law or in equity for breach of a Contracting Party's obligations under this Agreement. City shall have the right, subject to this Section, to draw upon or utilize the appropriate security to mitigate City's damages in the event of default by a Contracting Party. The right of City to draw upon or utilize the security is additional to and not in lieu of any other remedy available to City. It is specifically recognized that the estimated costs and security amounts may not reflect the actual cost of construction or installation of the Improvements and, therefore, City's damages for a Contracting Party' default shall not exceed the cost of completing the Improvements. The sums provided by the security for the Improvements may be used by City for the completion of the Improvements in accordance with the Improvement Plans referenced herein.

c) In the event of a Contracting Party's' default under this Agreement, Contracting Parties authorize City to perform such obligation sixty (60) days after mailing written notice of default to Contracting Parties and to Contracting Parties' surety, and agrees to pay the entire cost of such performance by City. City may take over the work and prosecute the same to completion by contract or by any other method City may deem advisable, for the account and at the expense of Contracting Parties, and Contracting Parties' surety shall be liable to the City for any excess cost or damages occasioned to the City thereby, including but not limited to fees and charges of architects, engineers, attorneys, other professionals and court costs. In such event City, without liability for doing so, may take possession of, and utilize in completing the work, such materials, appliances, plans and other property belonging to Contracting Parties as may be on the site of the work and necessary for performance of the work.

d) Failure of City to take an enforcement action with respect to a default, or to declare a breach, shall not be construed as a waiver of that default or breach or any subsequent default or breach of Contracting Parties.

SECTION 6

In addition to the other obligations of Contracting Parties set forth in this Agreement, Contracting Parties, subject to the approval of the City Engineer, shall:

1. Locate and properly dispose of any wells, septic tanks and underground fuel storage facilities.
2. Schedule the construction of improvements along existing public roads so that the work affecting vehicular traffic is undertaken with minimum interruption of traffic.
3. Obtain the approval of the City Engineer or his or her designee, for all work conducted within the public right-of-way.
4. Coordinate all construction work so that the existing residents and/or businesses have access to their properties.
5. Install all Improvements pursuant to the approved Improvement Plans.

6. Provide the City with electronic copies of the “As Built” Improvement Plans as an AutoCAD drawing file (DWG format, AutoCAD 2002 minimum or latest version).
7. Until the roads on the Property are open to the public, give good and adequate warning to the public of each and every dangerous condition on the existing public roads, and will take all reasonable actions to protect the public from such dangerous condition.
8. Conduct all work in strict accordance with regulations and guidelines adopted by the California Department of Public Health (CDPH) and the California Department of Industrial Relations (DIR), Division of Occupational Safety and Health, Safety for the prevention of COVID-19 in construction; and the regulations and guidelines for the prevention of COVID -19 adopted by the County of Monterey and by the City.

SECTION 7

Contracting Parties shall, at Contracting Parties’ expense, obtain all necessary permits and licenses for the construction and installation of the Improvements, give all necessary notices and pay all fees and taxes required by law including, but not limited to, fees for inspection of all improvements by the City Engineer or his or her designee.

SECTION 8

Neither Contracting Parties nor any of Contracting Parties’ agents, contractors or subcontractors are or shall be considered to be agents of City in connection with the performance of Contracting Parties’ obligations under this Agreement.

SECTION 9

Nothing contained in this Agreement shall preclude City from expending monies pursuant to agreements concurrently or previously executed between the City and Wathen Castanos Peterson Homes, Inc., or from entering into agreements with other developers for the apportionment of costs of water and sewer mains, or other improvements, pursuant to the provisions of the City ordinance providing therefor, nor shall anything in this Agreement commit the City to any such apportionment.

SECTION 10

Any reimbursements due the Contracting Parties, unless specified otherwise in writing in this agreement, will expire ten (10) years after the date of execution of this agreement.

SECTION 11

Acceptance of the work, or any portion of the work on behalf of the City shall be made by the City Council upon recommendation of the City Engineer after final completion and inspection of all Improvements. Such acceptance shall not constitute a waiver of defects by City.

SECTION 12

The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full

force and effect unless amended or modified by written agreement of the City and the Contracting Parties.

SECTION 13

In the event that suit or arbitration is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to litigation costs and reasonable attorney's fees.

SECTION 14

This Agreement shall be interpreted in accordance with the laws of the State of California. Jurisdiction of all disputes of this Agreement shall be in the County of Monterey, State of California.

SECTION 15

Time is of the essence of this Agreement.

SECTION 16

This Agreement, the conditions, and the agreements referenced herein constitute the entire agreement of the parties with respect to the subject matter. All modifications, amendments or waivers of the terms of this Agreement must be in writing and signed by an authorized representative of the City and the Contracting Parties.

SECTION 17

In the event a schedule of performance is tolled, the time for commencement of construction or completion of the Improvements hereunder shall be extended for the same duration as applies to the schedule of performance. It is understood and agreed to by the Contracting Parties that they cannot, and will not, claim force majeure or request that the time for commencement of construction or completion of the Improvements be tolled the based on an economic downturn of any type. Any such extension may be granted without notice to Contracting Parties' surety and shall not affect the validity of this Agreement or release the surety on any security given for this Agreement.

IN WITNESS WHEREOF, City and has executed this Agreement as of the date first written above.

ATTEST:

CITY OF MARINA

Anita Shepherd-Sharp
Deputy City Clerk

Layne Long
City Manager

APPROVED AS TO FORM:

City Attorney

[Signatures Continue on Following Page]

DRAFT

IN WITNESS WHEREOF Contracting Parties have executed this agreement as of

_____.

WATHEN CASTANOS PETERSON HOMES, INC.,
a Delaware Corporation

By: _____
Joshua E. Peterson, President

104 INVESTMENTS, LLC,
a California limited liability company

By : _____
Farid Assemi, Manager

LOCANS INVESTMENTS, LLC,
a California limited liability company

By: _____
Farid Assemi, Manager

WATHEN CASTANOS PETERSON COASTAL, LP,
a California limited partnership

By: Assemi Group, Inc. a California corporation

By: _____
Farid Assemi, President

By: _____
John A. Bezmalinovic, Secretary

MARINA DEVELOPERS, INC.,
a California corporation

By: _____
Joshua E. Peterson, President

NOTE: If Developer is a corporation, the complete legal name and corporate seal of the corporation and the corporate titles of the persons signing for the corporation shall appear above.

Per GC Sec. 40814; CC Sec. 1181

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of June 21, 2022

**THE CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-
AUTHORIZING THE CITY MANAGER TO ENTER INTO A LEASE
AGREEMENT WITH THE TRANSPORTATION AGENCY FOR
MONTEREY COUNTY FOR SEGMENTS OF THE MONTEREY
BRANCH LINE CORRIDOR BETWEEN MARINA AND SAND CITY SO
LONG AS THE FINAL LEASE DOES NOT SIGNIFICANTLY ALTER
THE TERMS OF THE ATTACHED DRAFT LEASE; AND SUBJECT TO
FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY.**

RECOMMENDATION: City Council consider:

- (1) Consider adopting Resolution No. 2022-, authorizing the City Manager to enter into a lease agreement with the Transportation Agency for Monterey County for segments of the Monterey Branch Line corridor between Marina and Sand City so long as the final lease does not significantly alter the terms of the attached draft lease; and subject to final review and approval by the City Attorney.

SUMMARY:

Provides an overview of the lease agreement prepared by TAMC.

BACKGROUND:

The Transportation Agency for Monterey County (TAMC) received two unsolicited proposals for temporary use of a portion of the TAMC-owned Monterey Branch Line, including a section within Marina City limits. The TAMC Board of Supervisors directed their staff to pursue leasing a portion of the Monterey Branch Line to the City of Marina. As lessee, the City of Marina would bear responsibility for CEQA analysis and permitting prior to operation of the Monterey Branch Line. TAMC staff prepared a draft lease agreement with the City of Marina, which was scheduled for review by the TAMC Board of Directors at a June 22, 2022, public meeting.

At a regularly scheduled public meeting on June 7, 2022, the Marina City Council selected the Museum of Handcar Technology as the winning proposal for temporary use of a portion of the Monterey Branch Line. City staff are working on a separate lease agreement with the Museum of Handcar Technology, which would be the sublessee and sole operator of the Marina – Sand City portion of the Monterey Branch Line. In addition to the lease agreement, the Museum of Handcar Technology must receive appropriate permits and approvals for the City of Marina, Monterey County, and the California Public Utilities Commission prior to beginning operations.

DISCUSSION:

The lease agreement will make TAMC lessor and the City of Marina lessee of the Marina – Sand City portion of the Monterey Branch Line for a portion of two (2) years, with the potential for extension of the lease depending on implementation of TAMC's long-term plans for the right-of-way (BRT bus line), the City's interest in extending the lease, and the operator's plans for operations.

Attached is the draft lease agreement from TAMC (**“EXHIBIT A”**). Key provisions of the agreement are:

- The initial term of the agreement will be up to two (2) years
- The city will be the lead agency under the California Environmental Quality Act (CEQA).
- The lease is \$4,248 for Area 1, \$3,035 for Area 2, and \$1,575 for the parking and storage area (Area 3).
- The TAMC lease will only allow for recreational uses within the project area.

FISCAL IMPACT:

The lease includes a \$20,000 non-refundable payment for TAMC cost recovery from the City of Marina and monthly rent totaling \$8,858. These costs will be transferred to the operator through a separate lease agreement between the City of Marina and the Museum of Handcar Technology.

ENVIRONMENTAL REVIEW:

Staff will determine what level of CEQA analysis is required prior to issuing permits. As the lead agency, City staff will coordinate CEQA analysis with Monterey County and TAMC. Currently we are expecting a Notice of Exemption with detailed background material to cost the selected vendor about \$12,000 as the railway already has detailed habitat and plant species documented for the project area.

CONCLUSION:

This request is submitted for City Council consideration and comment.

Respectfully submitted,

Alec Barton, AICP
Contract Planner
City of Marina

REVIEWED/CONCUR:

Guido F. Persicone, AICP
Community Development Director
City of Marina

Layne Long
City Manager
City of Marina

RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA AUTHORIZING THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT WITH THE TRANSPORTATION AGENCY FOR MONTEREY COUNTY FOR SEGMENTS OF THE MONTEREY BRANCH LINE CORRIDOR BETWEEN MARINA AND SAND CITY SO LONG AS THE FINAL LEASE DOES NOT SIGNIFICANTLY ALTER THE TERMS OF THE ATTACHED DRAFT LEASE; AND SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY.

WHEREAS, the City Council of the City of Marina selected Museum of Handcar Technology as the sole operator for the Marina – Sand City portion of the Monterey Branch Line; and

WHEREAS, the City Council and TAMC must formalize a lease agreement before the Museum of Handcar Technology can begin operations of the Marina – Sand City portion of the Monterey Branch Line.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Marina that does hereby:

- (1) Approves authorizing the City Manager to enter into a lease agreement with the Transportation Agency For Monterey County for segments of the Monterey Branch Line corridor between Marina and Sand City so long as the final lease does not significantly alter the terms of the attached draft lease; and subject to final review and approval by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 21st day of June, by the following vote:

AYES, COUNCIL MEMBERS:

NOES, COUNCIL MEMBERS:

ABSENT, COUNCIL MEMBERS:

ABSTAIN, COUNCIL MEMBERS:

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

LEASE

This LEASE AGREEMENT, hereinafter called “LEASE” is made between the TRANSPORTATION AGENCY FOR MONTEREY COUNTY, hereinafter called “LESSOR” and the CITY OF MARINA, hereinafter called “LESSEE” as of the last date opposite the respective signatures below as follows:

1. DESCRIPTION OF PREMISES

The LESSOR hereby leases to LESSEE, and TENANT hires from LESSOR, on the terms and conditions hereinafter set forth, in a nonexclusive grant lease, those certain premises (Premises) known as the property (hereafter referred to as the “Property”).

- a. Exhibit A depicts three sub-components of the Property, identified as Area 1, Area 2 and Area 3.
- b. The Property includes an encroachment into the LESSOR’s railroad right of way, located in the County of Monterey, for an approximate length of three and a half (3.5) miles from the Palm Avenue and Marina Drive intersection in Marina, under the Highway 1 overcrossing and over the bike path, to the balloon spur tracks in the Fort Ord Dunes State Park (Area 1), with a possible additional two and a half (2.5) miles towards Sand City (Area 2). There is also an area of fifty (50) by two hundred and twenty-five (225) feet for a fenced in storage area along the railroad tracks in the City of Marina near Marina Drive and Palm Avenue (Area 3). Besides the railroad track, there are no buildings or permanent structures on the Premises.
- c. The LESSEE is directly overseeing recreational uses outlined in the SUBLESSEE’s proof of concept for the Project (Project).
- d. LESSEE agrees to prohibit entry to the Property to anyone not participating in the leased activities.

2. TERM

The initial term shall be two (2) years and the term of this Lease shall begin on **xx date** (“Lease Commencement Date”) and will continue until **xx date** terminated sooner as provided for hereinafter in **Section 16**. Upon completion of the initial lease term, the LESSOR and LESSEE may renew the Lease for **xx additional term**. During initial or renewed lease term, LESSOR reserves the right to end lease term. LESSEE shall give LESSOR written notice of its intent to renew sixty (60) days prior to expiration of initial lease term. Said

advance notice period of sixty (60) days may be altered by mutual consent. LESSOR shall give LESSEE advance written notice of its intent to end lease term thirty (30) days prior to end of lease term.

3. TERMINATION BY LESSOR

- a. LESSEE understands and agrees that the LESSOR has future plans for the Property, such as the SURF! Busway and Bus Rapid Transit Project, and other transportation uses. Thus, LESSEE agrees to vacate the Property during the term of the Agreement or any renewal or extension of the Lease, without liability to the LESSOR.
- b. LESSOR may terminate this LEASE if there is a default by the LESSEE with respect to any of the provisions of this LEASE or LESSEE's obligations under it, including the payment of the Rent, after giving LESSEE notice of default and failure by LESSEE to cure the default within thirty (30) days. This provision, however, shall not be deemed to extend the term of the LEASE by any cure period.

4. DESIGNATION OF LEAD AGENCY

The California Environmental Quality Act ("CEQA") provides that where a proposed project is to be carried out or approved by more than one public agency, an agency is to be determined to be the Lead Agency under CEQA, and such Lead Agency is to be responsible for preparing the appropriate environmental documentation. Section 15051(d) of CEQA Guidelines (14 CCR § 15051) also provides that where more than one public agency meets the criteria for being a Lead Agency, the public agencies may designate a Lead Agency by agreement. The Parties agree that the CITY OF MARINA, the LESSEE, shall be designated as the Lead Agency for the purpose of environmental review, or any other review or oversight process such as environmental compliance and site inspections before or during the LEASE period.

The CITY OF MARINA, as Lead Agency, shall be responsible for the costs of conducting any said environmental review, up to and including possible approval of the environmental document, and litigation (if any) related to such approval.

5. PAYMENT FOR COST RECOVERY

LESSEE agrees to pay LESSOR a non-refundable payment of Twenty Thousand Dollars (\$20,000) upon execution of the LEASE as a not-to-exceed amount for LESSOR staff and legal counsel for certain reasonable and necessary costs for the timely review, processing,

and administration time to oversee and verify compliance with this LEASE, such as environmental compliance and site inspections before, during, and after the TERM period.

6. RENT

LESSOR AND LESSEE agree that the monthly rent for the term of this Lease shall be structured based on the cost of 4.6 cents per square foot per month for Areas 1 and 2 and 14 cents per square foot per month for Area 3.

- a. LESSEE agrees to pay LESSOR non-refundable monthly rent in the amount of Four Thousand, Two Hundred and Forty-Eight Dollars (\$4,248) for Area 1.
- b. LESSEE agrees to pay LESSOR non-refundable monthly rent in the amount of Three Thousand and Thirty-Five Dollars (\$3,035) for Area 2 if and only if LESSEE agrees to the use of Area 2.
- c. LESSEE agrees to pay LESSOR non-refundable monthly rent in the amount of One Thousand, Five Hundred Seventy-Five Dollars (\$1,575) for the use of Area 3.

7. USE/FACILITIES COVERED

The use of the facilities is to be limited to the rail line area noted in the description of premises. Use of the rail line is limited to recreational uses as described **Section 8**. The use of surrounding property for storage is limited to Area 3. Any irreversible changes to the Property must first be proposed to LESSOR and approved by LESSOR. Additionally, any irreversible changes are to be within any safety standards pursuant to the type of changes proposed and it is the LESSEE'S duty to be knowledgeable about and compliant with all legal requirements, including but not limited to, federal, state, and local statutory and regulatory obligations.

8. PERMITTED USES OF ACTIVITY USE AREAS

LESSEE shall be entitled to use or SUBLEASE the Premises for recreational activities including recreational vehicles along Route, vegetation and debris clearing along Route, storage of recreational materials in designated areas, and for giving trainings and guided tours along Route. LESSOR shall be able to use the property to access any areas including, but not limited to, areas relevant to current or future studies, transportation, utilities and engineering projects and other official uses of the Property or Route.

9. MAINTENANCE AND REPAIR

LESSOR makes no representations as to the condition of the Property. LESSEE takes occupancy of this Property in an “as is” condition. LESSEE acknowledges that the Property and all improvements thereon are in good order and condition, and LESSEE hereby covenants and agrees to keep the same in good order and condition during the term of this Lease, and upon the expiration of this Lease and any renewal term to surrender the Property and improvements to LESSOR in as good condition as when received, except for loss or damage by fire, natural disaster, act of God, and reasonable use and wear. LESSOR will not repair or maintain nor contribute funding toward the repair or maintenance of the Property during the term of this LEASE.

10. MODIFICATIONS AND ALTERATIONS

All and any modifications and alterations made by LESSEE or SUBLESSEE shall be approved by the LESSOR as well as any relevant local or state agencies. Any permanent modifications or alterations by the LESSEE or SUBLESSEE to the tracks or railroad ties of the PROPERTY shall be within specifications that have been proposed to LESSOR reviewed by LESSOR and approved by LESSOR. Non-permanent modifications, including but not limited to tenting, portable restrooms, storage units, fencing, signage, waste receptacles and other items utilized during the terms of the Lease will be removed and Area 3 shall be cleaned and restored to its pre-Lease condition once the Lease term has ended. Any issues or complaints related to non-permanent modifications shall be the responsibility of LESSEE to address and, if appropriate, correct.

If the LESSOR approves of a proposed permanent modification, the LESSOR may also require that the LESSEE return the property to its original or improved condition prior to the termination of the LEASE. If LESSOR does in fact require this, the LESSEE will give the LESSOR the opportunity to review the final condition of the property to ensure that the property has in fact been returned to its original or improved condition.

11. DESTRUCTION OF PREMISES

LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, and to keep the premises clean and clear of use or storage of hazardous materials as defined by local, state, and federal laws, rules, or regulations, and clear of any refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to LESSOR. If the leased premises shall be damaged by LESSEE or SUBLESSEE which damage puts the premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of said damage caused by

LESSEE or SUBLESSEE and to restore the premises to the condition which existed prior to said damage, or LESSEE agrees to clear and remove from the leased premises all debris and contaminants resulting from said damage caused by LESSEE or SUBLESSEE and rebuild or restore the premises to the condition which existed prior to such damage. LESSEE agrees to use any insurance proceeds which may become available from any such damage to first pay for the cost of any repairs and restorations.

12. MUTUAL INDEMNIFICATION AND INSURANCE

a. INDEMNIFICATION

- i. In consideration for use of the Property, LESSEE agrees to indemnify, defend, and save harmless LESSOR and its officers, agents, and employees, from and against any and all claims, liabilities, or losses whatsoever arising out of or in any way related to LESSEE'S use of the Property under this LEASE, including but not limited to claims for Property damage, personal injury, death, injuries to reputation, economic losses, and emotional distress, and any legal expenses (such as attorney's fees, court costs, investigation costs, and expert fees) incurred by the LESSOR in connection with such claims. "LESSEE'S use" includes LESSEE'S or SUBLESSEE'S action or inaction and the action or inaction of its officers, employees, and agents, including but not limited to SUBLESSEE'S customers. The obligation of LESSEE to indemnify does not extend to claims or losses arising out of the sole negligence or willful misconduct of the LESSOR or LESSOR'S directors, officers, agents, or employees.
- ii. LESSEE agrees to indemnify, defend, and save harmless LESSOR and its directors, officers, agents, and employees from and against any equipment or bodily injury damages sustained by any party using the Property.

b. INSURANCE

- i. Commercial general liability insurance including but not limited to premises, personal injuries, products, operations and completed operations, to protect against loss from liability imposed by law for damages occurring on account of bodily injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever, resulting directly or indirectly from any act or activities of LESSOR or LESSEE, its SUBLESSEE or any person acting for LESSOR or LESSEE or under its control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from acts or activities of LESSOR or LESSEE, or its SUBLESSEE, or

any person acting for LESSOR or LESSEE, or under its control or direction. Such insurance shall also provide for and protect LESSOR against incurring any legal cost in defending claims for alleged loss. Such public liability and property damage insurance shall be maintained in full force and effect during the entire term of this Lease in the amount of not less than \$1,000,000 combined single limit per occurrence and \$2,000,000 in the aggregate. Coverage shall be at least as broad as ISO Commercial General Liability Occurrence Form CG0001.

- ii. Workers' Compensation Insurance. If LESSEE or SUBLESSEE employs others in the performance of this contract, LESSEE or SUBLESSEE shall procure and maintain during the entire term of this Lease a Workers' Compensation Insurance Policy in accordance with California Labor Code section 3700 and with a minimum of \$1,000,000 per occurrence for employer's liability.
- iii. All insurance required by this LEASE shall be with a company acceptable to LESSOR and authorized by law to transact insurance business in the State of California. All such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of two years following termination of this LEASE. Each liability policy shall provide that LESSOR shall be given notice in writing at least thirty (30) days in advance of any endorsed reduction in coverage or limit, cancellation or intended non-renewal thereof.
- iv. Liability policies shall provide an endorsement naming LESSOR, their directors, officers, agents, and employees, as Additional Insureds and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the LESSOR and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by LESSEE'S insurance.
- v. Prior to execution of this LEASE by LESSOR, LESSEE shall file certificates of insurance with LESSOR, showing that the LESSEE has in effect the insurance required by this LEASE. LESSEE shall file a new or amended certificate of insurance within five (5) calendar days after any change is made in any insurance policy that would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect. LESSEE agrees that the provisions of this section as to insurance shall not be construed as limiting in any way the extent to which the LESSEE may be held responsible for the payment of damages to

persons or property resulting from LESSEE's activities, the activities of its SUBLESSEE or the activities of any person or persons for which Tenant is otherwise responsible.

- vi. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by LESSOR. At the option of the LESSOR either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the LESSOR, its officers, officials, employees and volunteers; or LESSEE shall provide a financial guarantee satisfactory to LESSOR guaranteeing payment of losses and related investigations, claim administration and defense expenses.

13. LIENS

LESSEE agrees to keep the Property free from liens of every character, and in the event that any liens for labor or materials should arise during the term hereof on account of any act or omission by LESSEE arising from LESSEE's use of the Property, LESSEE agrees to discharge and pay the same.

14. NO GIFT OF PUBLIC FUNDS

This LEASE prohibits the giving or lending of public funds to any person or entity, public or private. Prohibition includes aid, making of gift, pledging of credit or payment of liabilities and encompasses the giving of monetary funds and any "thing of value".

15. COMPLIANCE WITH LAWS

LESSEE shall not do, or permit to be done, or keep, or permit to be kept, in or about the Property, anything which shall be a nuisance, or which shall be in violation of any law, ordinance, rule or regulation of any governmental authority, or of any rule or regulation of the, relating to the Property, or which shall increase, or tend to increase, the existing rates of insurance of the Property.

16. TERMINATION

This lease may be terminated by either party as of the last day of any calendar month by giving sixty (60) days prior written notice thereof to the other party. Termination of this lease shall not terminate either party's obligation to defend, indemnify and hold harmless the other, as provided in this Lease, nor shall terminate either party's obligation to maintain sufficient insurance, as provided in this Lease.

17. DEFAULT

- a. The occurrence of any of the following, to the extent of the LESSEE's use, shall constitute a default by the LESSEE: Abandonment and vacation of the Property for thirty (30) days.
- b. Failure to perform any other provision of this LEASE if the failure to perform is not cured within thirty (30) days after notice has been given to LESSEE. If the default cannot be reasonably cured within thirty (30), LESSEE shall not be in default of this LEASE if LESSEE commences to cure the default within the thirty (30) day period and diligently and in good faith continues to cure the default.
- a. Upon default, LESSOR shall have the right to terminate this LEASE and take possession of the Property. Said remedy is not exclusive and is cumulative in addition to other remedies now or later allowed by law.

18. CONDITIONS TO LEASE

LESSOR reserves the right to grant access to people including, but not limited to, TAMC employees, contractors, and TAMC project affiliates. This LEASE certifies that LESSEE and any SUBLESSEES must accommodate the other users of the Route and Property.

19. ASSIGNMENT AND SUBLETTING

LESSEE may not assign this LEASE, or any interest herein, or underlet the Property, or any part thereof, without the prior written consent of the LESSOR which shall not be unreasonably withheld. LESSEE agrees that any SUBLEASE entered cannot conflict with the terms of the LEASE.

20. COORDINATION:

The parties to this LEASE agree that, unless otherwise indicated in writing, the following persons have primary responsibility for liaison and coordination of activities required to carry out this LEASE:

for LESSOR: TAMC

for LESSEE: City of Marina

Todd Muck, Executive Director

Layne Long, City Manager

todd@tamcmonterey.org

llong@cityofmarina.org

21. INSPECTION

LESSOR has the right to inspection of the property within twenty-four (24) hours of a written or verbal notification to the LESSEE.

22. NONDISCRIMINATION:

The LESSEE herein covenants by and for itself, administrators and assigns, and all persons claiming under or through them, and this LEASE is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons on account of race, color creed, disability, religion, sex, marital status, national origin, ancestry, or sexual preference in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the land herein leased, nor shall the LESSEE itself or any person claiming under or through LESSEE establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of lessees, sublessees, or vendees on the Property herein leased.

23. NOTICE

Any notices that either party desires to or is required to give to the other party or any other person shall be sent by email. Such notices shall be addressed to the other party at the address set forth above. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within seventy-two (72) hours from the date of emailing, if emailed as provided in this paragraph. LESSEE shall not assign out rights to any other party.

24. SUCCESSORS AND RESTRICTION ON ASSIGNMENT

LESSEE shall not assign its rights under this agreement. This LEASE, and all terms, covenants, and conditions hereof, shall be binding upon and shall inure to the benefit of the heirs, legal representatives, and successors of the respective parties hereto.

25. OWNERSHIP

The LESSOR is the owner of the Property and all site improvements on the Property on the effective date of this LEASE. All right, title, and interest in and to the Property and those site improvements shall belong to the LESSOR, including improvements made by LESSEE as described in Paragraph 10.

26. POSSESSORY INTEREST AND PROPERTY TAXES

Pursuant to California Revenue and Taxation Code section 107.6, notice is hereby given that LESSEE is responsible for any possessory interest, utility or Property taxes that may be imposed as a result of, or related to, this LEASE. Additionally, any fines imposed on the Property during the LEASE period that are a result of LESSEE's actions, or the actions of the use permitted by LESSEE on the property, shall be the sole responsibility of LESSEE.

DRAFT

IN WITNESS WHEREOF the parties hereto have executed this LEASE this ____ day of _____, 2022.

CITY OF MARINA, LESSEE:

BY: _____

Layne Long, City Manager

Approved as to form:

City Attorney

TRANSPORTATION AGENCY FOR MONTEREY COUNTY, LESSOR

BY: _____

Todd Muck, Executive Director

Approved as to form:

TAMC Counsel

Exhibit A



June 13, 2022,

Item No. **8g(3)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of June 21, 2022

CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-, APPROVING THE REVISED MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT AND THE CITY OF MARINA REGARDING, FOOD WASTE REDUCTION AND ORGANICS RECYCLING REGULATIONS, INCORPORATING COSTS ANTICIPATED FOR FISCL YEAR 2022-2023, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDMENT SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY, AND AUTHORIZING THE FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUGETARY ENTRIES.

REQUEST:

It is requested that the City Council consider adopting Resolution 2022- for the following action:

1. Approving the revised Memorandum of Understanding (MOU) between the Monterey Regional Waste Management District and the City of Marina regarding, food waste reduction and organics recycling regulations, incorporating costs anticipated for fiscal year 2022-2023,
2. Authorizing the City Manager to execute the amendment subject to final review and approval by the City Attorney, and
3. Authorizing the Finance Director to make necessary accounting and budgetary entries.

BACKGROUND:

In September 2016, Governor Edmund Brown Jr. set methane emissions reduction targets for California (SB 1383 Lara, Chapter 395, Statutes of 2016) in a statewide effort to reduce emissions of short-lived climate pollutants (SLCP). The targets must reduce organic waste disposal 50 percent by 2020 and 75 percent by 2025 and rescue for people to eat at least 20 percent of currently disposed surplus food by 2025.

The City of Marina is a Member Agency of the Monterey Regional Waste Management District (MRWMD) Joints Powers Authority responsible for managing solid waste on behalf of the Cities and unincorporated County communities of coastal Monterey County. The City participates on the Technical Advisory Committee (TAC) for SB 1383 led by the District and comprised of staff from each member jurisdiction, the three haulers in the District service area, and MRWMD staff. The District's TAC has been working collaboratively for approximately 2 years planning for SB 1383, California's SLCP regulation. The regulation will have significant impact on each member jurisdiction in meeting the goals set under these regulations. Regulations took effect and local program implementation began January 1, 2022.

The Member Agencies of Carmel, Del Rey Oaks, Marina, Monterey, Sand City, Seaside, Pacific Grove, and the Pebble Beach Community Services District (PBCSD) joined the Local Assistance Grant Program effort as a regional collaborative project for the implementation of regulation requirements associated with SB 1383, in coordination with other jurisdictions of the Monterey County region to maximize project impact and cost-effectiveness across the countywide area, consistent with existing cooperative SB 1383 planning, preparation and implementation practices already underway throughout the service territory. This regional grant-funded project will be coordinated through the two local waste management governmental agencies within Monterey County, MRWMD, and the Salinas Valley Solid Waste Authority.

While the regulation places the program implementation responsibility on the member jurisdictions, the TAC has been collectively analyzing who best should implement each element of the regulation between the member jurisdictions, waste haulers, or District. The TAC determined that many of the requirements are best completed using shared resources. As such, an MOU between the District and each of its member jurisdictions was created to have the District incur the shared costs and bill each member jurisdiction twice annually for reimbursement. The City Council adopted Resolution 2021-93 on August 17th, 2021 approving the MOU between MRWMD and Member Jurisdictions for SB 1383 Shared Costs.

In January 2022, the Department of Resources Recycling and Recovery (CalRecycle), the agency responsible for administering SB 1383, released application guidelines and instructions related to the SB 1383 Local Assistance Grant Program (OWR1: 2021-22) as a one-time grant program meant to provide aid in the implementation of regulations adopted by CalRecycle pursuant to Chapter 395, Statutes of 2016 and SB170 Budget Act of 2021. Funding from CalRecycle will be allocated to each jurisdiction based on grant program estimates according to the Department of Finance's January 2021 population statistics. This non-competitive grant program provides funding to local jurisdictions to assist with the implementation of regulation requirements associated with SB 1383.

On February 15, 2022, the City Council approved an amendment to MOU regarding cooperative assistance to comply with Senate Bill 1383, with the estimation of receiving \$29,771 from SB 1383 Local Assistance Grant Program. This amount is increased in the approved application by State to \$31,992.00.

ANALYSIS:

To consider the inflation rate, the MRWMD has updated the contribution of all member agencies in the grant funding program for FY 22-23. In the proposed memorandum **“EXHIBIT E”** from MRWMD it's been requested from member agencies to approve the updated version of Exhibits A, B, and D.

- **“Exhibit A” – Detailed Activities and Costs:** Contains the scope of work, and associated costs related to general SB 1383 activities. (Enacted June 2021, updated annually)
- **“Exhibit B” – Member Agencies’ Annual Proportionate Shares and Costs:** Allocation of such costs to the Member Agencies. (Enacted June 2021, updated annually.)
- **“Exhibit C” – Member Agencies’ Estimated Allocation of CalRecycle Local Assistance Grant Program Funding:** Details proposed programs funded by the CalRecycle Local Assistance Grant Program. (Enacted February 2022, to be updated if additional funding becomes available.)
- **“Exhibit D” – Member Agencies’ Estimated Procurement Requirements of Organic Material:** The addition of Exhibit D which includes details about organic material (compost or mulch) procurement requirements and costs for each Member Agency. (Enacted with this approval, to be updated in 2026)

“EXHIBIT A” declares the list of actions that will be done by MRWMD with associated costs, which comes to a total number of \$193,717 for FY22-23. **“EXHIBIT B”** states that the City of Marina is responsible for \$37,880 of the mentioned total cost. Also, **“EXHIBIT D”** provides the estimated procurement requirements of organic material for all member agencies and the Marina's share is \$28,484.96. In sum, the City of Marina needs to pay \$66,364.96 for practices and procurements related to SB 1383 under this MOU.

On the other hand, the City of Marina will receive \$31,992.00 for SB 1383 Local Assistance Grant Program from the State of California. Below table shows how assistance grant funding allocated to the City of Marina will be spent:

Item	Amount
Project coordination through participation in Technical Advisory Committee meetings, coordination of grant activities, expenditure tracking, reporting and related activities.	\$10,708.00
Development of compost procurement incentives and demand generation for large-scale use through Zero Foodprint or similar services and small-scale use through localized coupon, voucher, or similar program.	\$9,930.00
Capacity building planning and coordination, education, outreach & technical assistance program design, planning and implementation, stakeholder engagement and technical assistance for businesses, residents, multifamily facilities, food rescue organizations and services, and other stakeholders in support of organics collection, compost/product procurement and demand generation, and edible food recovery program planning and design, and implementation.	\$10,429.00
Kitchen and/or cooking and food preservation supplies for edible food recovery programs and capacity building activities related to Task 3. Grant funds are also allocated to fund kitchen pails or similar materials to be distributed to residents or businesses to encourage and promote food scrap composting	\$855.00
Total	\$31,992.00

In conclusion the difference of total costs and the assistance grant funding program from the State will be \$34,354.96, which the City needs to consider in the annual budget plan.

FISCAL IMPACT:

The estimated annual cost to the City for FY 2022-2023 will be \$66,364.96. The efforts being carried out under the MOU, as with past solid waste efforts, are funded through franchise fees collected and remitted to the City. Efforts in FY 2022-2023 will be offset by a grant from CalRecycle in the amount of \$31,992.

CONCLUSION:

This request is submitted for City Council consideration and action.

Respectfully submitted,

Saber Messhenas
Assistant Civil Engineer
City of Marina

REVIEWED/CONCUR:

Brian McMinn, P.E., P.L.S.
Public Works Director/City Engineer
City of Marina

Layne Long
City Manager
City of Marina

RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING THE REVISED MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT AND THE CITY OF MARINA REGARDING, FOOD WASTE REDUCTION AND ORGANICS RECYCLING REGULATIONS, INCORPORATING COSTS ANTICIPATED FOR FISCL YEAR 2022-2023, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDMENT SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY, AND AUTHORIZING THE FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUGETARY ENTRIES.

WHEREAS, in September 2016, Governor Edmund Brown Jr. set methane emissions reduction targets for California (SB 1383 Lara, Chapter 395, Statutes of 2016) in a statewide effort to reduce emissions of short-lived climate pollutants (SLCP). The targets must reduce organic waste disposal 50 percent by 2020 and 75 percent by 2025 and rescue for people to eat at least 20 percent of currently disposed surplus food by 2025; and

WHEREAS, the City of Marina is a Member Agency of the Monterey Regional Waste Management District (MRWMD) Joints Powers Authority responsible for managing solid waste on behalf of the Cities and unincorporated County communities of coastal Monterey County. The City participates on the Technical Advisory Committee (TAC) for SB 1383 led by the District and comprised of staff from each member jurisdiction, the three haulers in the District service area, and MRWMD staff. The District's TAC has been working collaboratively for approximately 2 years planning for SB 1383, California's SLCP regulation. The regulation will have significant impact on each member jurisdiction in meeting the goals set under these regulations. Regulations took effect and local program implementation began January 1, 2022; and

WHEREAS, the Member Agencies of Carmel, Del Rey Oaks, Marina, Monterey, Sand City, Seaside, Pacific Grove, and the Pebble Beach Community Services District (PBCSD) joined the Local Assistance Grant Program effort as a regional collaborative project for the implementation of regulation requirements associated with SB 1383, in coordination with other jurisdictions of the Monterey County region to maximize project impact and cost-effectiveness across the countywide area, consistent with existing cooperative SB 1383 planning, preparation and implementation practices already underway throughout the service territory. This regional grant-funded project will be coordinated through the two local waste management governmental agencies within Monterey County, MRWMD, and the Salinas Valley Solid Waste Authority; and

WHEREAS, the regulation places the program implementation responsibility on the member jurisdictions, the TAC has been collectively analyzing who best should implement each element of the regulation between the member jurisdictions, waste haulers, or District. The TAC determined that many of the requirements are best completed using shared resources. As such, an MOU between the District and each of its member jurisdictions was created to have the District incur the shared costs and bill each member jurisdiction twice annually for reimbursement; and

WHEREAS, the City Council adopted Resolution 2021-93 on August 17th, 2021 approving the MOU between MRWMD and Member Jurisdictions for SB 1383 Shared Costs; and

WHEREAS, in January 2022, the Department of Resources Recycling and Recovery (CalRecycle), the agency responsible for administering SB 1383, released application guidelines and instructions related to the SB 1383 Local Assistance Grant Program (OWR1: 2021-22) as a one-time grant program meant to provide aid in the implementation of regulations adopted by CalRecycle pursuant to Chapter 395, Statutes of 2016 and SB170 Budget Act of 2021. Funding from CalRecycle will be allocated to each jurisdiction based on grant program estimates according to the Department of Finance's January 2021 population statistics. this non-competitive grant program provides funding to local jurisdictions to assist with the implementation of regulation requirements associated with SB 1383; and

WHEREAS, the City Council approved an amendment to MOU regarding cooperative assistance to comply with Senate Bill 1383, with the estimation of receiving \$29,771 from SB 1383 Local Assistance Grant Program. This amount is increased in the approved application by State to \$31,992.00; and

WHEREAS, to consider the inflation rate, the MRWMD has updated the contribution of all member agencies in the grant funding program for FY 22-23 (**Exhibit E**); and

WHEREAS, **Exhibit A** declares the list of actions that will be done by MRWMD with associated costs, which comes to a total number of \$193,717 for FY22-23. “Exhibit B” states that the City of Marina is responsible for \$37,880 of the mentioned total cost. Also, “Exhibit D” provides the estimated procurement requirements of organic material for all member agencies and the Marina’s share is \$28,484.96. In sum, the City of Marina needs to pay \$66,364.96 for practices and procurements related to SB 1383 under this MOU; and

WHEREAS, the estimated annual cost to the City for FY 2022-2023 will be \$66,364.96. The efforts being carried out under the MOU, as with past solid waste efforts, are funded through franchise fees collected and remitted to the City. Efforts in FY 2022-2023 will be offset by a grant from CalRecycle in the amount of \$31,992.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Marina does hereby:

1. Approve the revised Memorandum of Understanding (MOU) between the Monterey Regional Waste Management District and the City of Marina regarding, food waste reduction and organics recycling regulations, incorporating costs anticipated for fiscal year 2022-2023,
2. Authorize the City Manager to execute the amendment subject to final review and approval by the City Attorney, and
3. Authorize the Finance Director to make necessary accounting and budgetary entries.

PASSES AND ADOPTED, by the City Council of the City of Marina at a regular meeting duly held on the 21st day of June 2022 by the following vote:

AYES, COUNCIL MEMBERS:

NOES, COUNCIL MEMBERS:

ABSENT, COUNCIL MEMBERS:

ABSTAIN, COUNCIL MEMBERS:

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

EXHIBIT E

MEMORANDUM OF UNDERSTANDING

BETWEEN THE MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT AND ITS MEMBER AGENCIES REGARDING ASSISTANCE WITH COMPLIANCE WITH CALIFORNIA SENATE BILL 1383

This Memorandum of Understanding (“MOU”) is made and entered into as of the date of the signatures set forth below by and between the MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT (“District”, “MRWMD”), a California Garbage and Refuse Disposal District, and its member agencies including the cities of CARMEL-BY-THE-SEA, DEL REY OAKS, MARINA, MONTEREY, PACIFIC GROVE, SAND CITY, and SEASIDE; THE PEBBLE BEACH COMMUNITY SERVICES DISTRICT; and THE COUNTY OF MONTEREY (“Member Agencies”). Collectively these entities shall be known herein as “Parties” or individually as a “Party.”

Recitals

- A. The State of California has passed legislation, known as Senate Bill 1383, California’s Short-Lived Climate Pollutants regulation. The regulation will have significant impact on each Member Agency, with the goal of reducing organic material being landfilled by 75% by 2025, compared to a 2014 basis. The legislation mandates that Member Agencies undertake certain activities around the handling of organic waste materials collected within their jurisdictions. The regulation also requires 20% recovery of edible food by 2025 to direct it to a beneficial use and thus prevent it from entering the waste stream. Regulations take effect, and local program implementation will begin, on January 1, 2022.
- B. The Member Agencies have determined that it is in their best interest to coordinate their activities related to this legislation. This coordination is being facilitated by the District’s Technical Advisory Committee (TAC) comprised of staff from each Member Agency, the three Haulers in the District service area (Haulers), Salinas Valley Recycles (SVR) and MRWMD.
- C. The Member Agencies have further determined that the District has the expertise and resources necessary to implement some of these activities on the Member Agencies’ behalf and have now requested that the District incur costs to provide these activities.
- D. The Member Agencies have agreed to reimburse the District for proportionate shares of certain designated annual costs incurred by the District for these activities.
- E. The form and content of this MOU have been presented to the TAC, and the TAC has recommended it for approval by the Parties

NOW THEREFORE, in consideration of the mutual benefits to be derived by the District and the Member Agencies, and of the promises contained in this MOU, the Parties agree as follows:

Section 1. Recitals: The recitals set forth above are incorporated into this MOU.

Section 2. Purpose: The purpose of this MOU is to provide a structure for the Member Agencies to reimburse the District for SB 1383-related activities it performs on behalf of the Member Agencies.

Section 3. Voluntary: This MOU is voluntarily entered into by the Parties for the purpose of facilitating the implementation of SB 1383.

Section 4. Term: This MOU shall become effective on the last day of its execution by a Party and shall remain in effect until terminated by the Parties.

Section 5. Scope of Work, Costs & Cost Sharing: The scope of work, and associated costs, are set out in Exhibit A, entitled Detailed Activities and Costs, attached hereto and incorporated herein. Allocation of such costs to the Member Agencies is set out in Exhibit B, entitled Member Agencies' Annual Proportionate Shares and Costs, attached hereto and incorporated herein. Exhibit C outlines estimated individual Member Agencies' allocations related to the Department of Resources Recycling and Recovery (CalRecycle) SB 1383 Local Assistance Grant Program (OWR1: 2021-22), attached hereto and incorporated herein. Exhibit D defines the estimated annual procurement requirements of organic material and estimated cost per ton of compost for each Member Agency, attached hereto and incorporated herein.

No later than March 1 of each year, and at such other times as directed by the Parties, the TAC shall meet to consider and, if deemed necessary, modify Exhibits A, B, ~~and/or C,~~ and/or D subject to direction from the governing bodies of each Member Agency to its TAC representative.

Section 6. The District Agrees:

(a) District staff will manage activities as identified in Exhibit A, ~~and C,~~ and D which activities include contracting with third party vendors when reasonably necessary and paying those vendors for contracted costs.

(b) Two times per year, on dates to be determined by the TAC, District will invoice Member Agencies for each Member Agency's proportionate share of costs as shown in Exhibit B with each invoice to be fifty percent (50%) of the Member Agency's share of costs.

(c) Upon award of CalRecycle SB 1383 Local Assistance Grant Program funds, the District will invoice Member Agencies for their full allocation of grant funds as shown in Exhibit C. Four times during the grant term, aligned with dates identified by CalRecycle grant Terms & Conditions, the District shall report to Member Agencies a summary of actual grant expenditures and progress toward grant tasks to date.

(~~d~~e) District will maintain an accounting of activities and expenses and provide reconciliation of payments annually. Material differences between estimated costs and actual

incurred costs will result in either: 1) an adjustment made to the final annual payment for each Member Agency, or 2) such cost difference shall be incorporated into the subsequent year cost allocation.

(ed) In year one only, in recognition of expected continuation of improved recycling revenues for the District from recyclable material sales, the District will off-set \$140,000 of the costs identified in Exhibit A. This off-set is reflected in the cost allocations set out in Exhibit B for FY 2021-22.

Section 7. The Member Agencies Agree:

(a) To reimburse the District for all expenses incurred by the District under this MOU in accordance with each Member Agency's proportionate share as shown on Exhibit B₁ ~~and C₁~~ and D.

(b) To make a full-faith effort to cooperate with one another and with the District to achieve the purposes of this MOU by providing information, reviewing information in a timely manner, and informing their respective administration and governing bodies.

Section 8. Termination. Any Party may terminate its participation in this MOU upon giving written notice to the District no later than April 1 of any calendar year during the term of this MOU. Within ten days following a Party's termination date, such party shall pay District all charges then due and payable and shall pay when determined any additional charges that shall later come due under the MOU, subject to the limits set out in Exhibits A, B₁ ~~and C₁~~ and D.

Section 9. General Provisions.

(a) This MOU is binding and for the benefit of the respective successors, heirs, and assigns of each Party and the District; provided however, no Party may assign its respective rights or obligations under this MOU without the prior written consent of the District.

(b) This MOU is governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.

(c) If any provision of this MOU is determined by any court to be invalid, illegal, or unenforceable to any extent, then the remainder of this MOU will not be affected, and this MOU will be construed as if the invalid, illegal, or unenforceable provision had never been contained in this MOU.

(d) Waiver by the District or any Party to this MOU of any term, condition, or covenant of this MOU will not constitute a waiver of any other term, condition₁ or covenant. Waiver by the District or any Party of any breach of the provisions of this MOU will not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this MOU.

(e) This MOU may be executed in any number of counterparts, each of which is an original but all of which taken together will constitute one and the same instrument, provided, however, that such counterparts have been delivered to all parties to this MOU.

(ff) All parties acknowledge they have been represented, or have had the opportunity to be represented, by counsel in the preparation and negotiation of this MOU. Accordingly, this MOU will be construed according to its fair language. Any ambiguities will be resolved in a collaborative manner by the District and the Parties and must be rectified by amending this MOU.

IN WITNESS WHEREOF, the District and the Parties have caused this MOU to be executed by their duly authorized representatives as of the date of their respective signatures.

MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT

By: _____

DATE: _____

APPROVED AS TO FORM:

CITY OF MARINA

By: _____

DATE: _____

APPROVED AS TO FORM:

EXHIBIT A

DETAILED ACTIVITIES & COSTS FY 2022-2023

Scope of Work

The activities related to the implementation of SB 1383 may include contracting and policy development; public education; materials purchasing and distribution; reporting; contamination monitoring; edible food recovery; enforcement; procurement; organics processing; rate setting; cost monitoring; and any other related activities the Parties choose to address.

The District will take the lead producing public education campaigns in concert with the already-provided Hauler and/or Member Agency resources. The Member Agencies will be responsible for production and mailing fees associated with outreach. The District will also contract with a vendor to administer contamination monitoring in the form of curbside lid flipping within each Member Agency, except for the County of Monterey, where the County of Monterey will decide how to proceed. The District will also provide CalRecycle reporting services to the Member Agencies. In addition, funds will be allocated to edible food recovery support.

Costs

SB 1383 Shared Costs MOU - Exhibit A

SB 1383 Fee Category	Detail	FY 22/23 Cost	Notes
HF&H General Support & TAC meetings	Task #5 (SB 1383 general support) & task #6 (monthly TAC meetings) of HF&H CY 2022 proposal	\$ 22,500	
Edible Food Recovery Capacity Building			Joint grant or applicaion process w/ SVR to determine need. SVR also
Edible Food Recovery Program Administration	Assessment Living Document EFR Network Capacity Building (Grant Program) Implementation Schedule CalRecycling Capacity Planning Generation Calculation Tool Refined Survey Tool	\$ 60,000 \$ 47,006	allocating \$60k. MRWMD member agency portion, split with SVR
Public Education		\$ 50,000	Covers creation of materials, but not production or distribution
Recyclist Fees		\$ 11,711	Omits County & City of Monterey
MRWMD Staff Time	TAC/SB 1383 Coordination/CalRecycle Reporting	\$ 20,000	
		\$ 211,217	
Reduction from MRWMD from recycling revenues		\$ (100,000)	
		\$ 111,217	
			Estimate —exact cost based on results from RFP. / Omits County due to WM Smart Truck
Contamination Monitoring (Lid Flipping)	RFP to determine vendor	\$ 15,000	
Total		\$ 126,217	

EXHIBIT A
(Continued)

HF&H Franchise Management Fees

Task #	Detail	CY 2022	
1	Review Contractor's Quarterly Reports	\$	12,500.00
2	Review Contractor's Annual Report	\$	2,500
3	Review Franchise Fee Payments	\$	2,500
4	Review Contractor's Annual Rate Adjustments	\$	50,000
Total		\$	67,500

EXHIBIT B

MEMBER AGENCIES' ANNUAL PROPORTIONATE SHARES & COSTS* FY 2022-2023

Public Education - Shared With County

	Population			
	#	%	Per Agency Cost/Year	With \$2,500 Minimum
Carmel	3,830	2.4%	\$ 1,196	\$ 2,500
DRO	1,525	1.0%	\$ 476	\$ 2,500
Marina	21,981	13.7%	\$ 6,863	\$ 6,048
PG	15,522	9.7%	\$ 4,847	\$ 4,271
PBCSD	4,531	2.8%	\$ 1,415	\$ 1,247
Sand City	310	0.2%	\$ 97	\$ 2,500
Seaside	33,956	21.2%	\$ 10,602	\$ 9,342
Monterey City	28,352	17.7%	\$ 8,853	\$ 7,801
County	50,128	31.3%	\$ 15,652	\$ 13,792
TOTAL	160,135		\$ 50,000	\$ 50,000

96.5% \$ 42,500

Other TAC Costs - Excluding County

	Population			
	#	%	Per Agency	With \$2,500
Carmel	3,830	3.5%	\$ 2,654	\$ 2,500
DRO	1,525	1.4%	\$ 1,057	\$ 2,500
Marina	21,981	20.0%	\$ 15,229	\$ 14,476
PG	15,522	14.1%	\$ 10,754	\$ 10,222
PBCSD	4,531	4.1%	\$ 3,139	\$ 2,984
Sand City	310	0.3%	\$ 215	\$ 2,500
Seaside	33,956	30.9%	\$ 23,526	\$ 22,363
Monterey City	28,352	25.8%	\$ 19,643	\$ 18,672
TOTAL	110,007		\$ 76,217	\$ 76,217

94.9% \$ 68,717

Contract Management

	Population			
	#	%	Per Agency Cost/Year	With \$2,500 Minimum
Carmel	3,830	4.7%	\$ 3,166	\$ 2,500
DRO	1,525	1.9%	\$ 1,261	\$ 2,500
Marina	21,981	26.9%	\$ 18,171	\$ 17,356
PG	15,522	19.0%	\$ 12,831	\$ 12,256
PBCSD	4,531	5.5%	\$ 3,746	\$ 3,578
Sand City	310	0.4%	\$ 256	\$ 2,500
Seaside	33,956	41.6%	\$ 28,070	\$ 26,811
TOTAL	81,655		\$ 67,500	\$ 67,500

93.1% \$ 60,000

Total Costs

	Population			
	#	%	Per Agency Cost/Year	With Minimums
Carmel	3,830	2.4%	\$ 7,015	\$ 7,500
DRO	1,525	1.0%	\$ 2,793	\$ 7,500
Marina	21,981	13.7%	\$ 40,263	\$ 37,880
PG	15,522	9.7%	\$ 28,432	\$ 26,749
PBCSD	4,531	2.8%	\$ 8,300	\$ 7,808
Sand City	310	0.2%	\$ 568	\$ 7,500
Seaside	33,956	21.2%	\$ 62,198	\$ 58,516
Monterey City	28,352	17.7%	\$ 28,496	\$ 26,473
County	50,128	31.3%	\$ 15,652	\$ 13,792
TOTAL	160,135		\$ 193,717	\$ 193,717

*Member Agencies' proportionate costs subject to adjustment annually in accordance with any change in scope and total costs.

EXHIBIT C

MEMBER AGENCIES' ESTIMATED ALLOCATION OF CALRECYCLE LOCAL ASSISTANCE GRANT PROGRAM FUNDING (OWR1: 2021-22)**

The Member Agencies of Carmel, Del Rey Oaks, Marina, Monterey, Sand City, Seaside, Pacific Grove, and the Pebble Beach Community Services District (PBCSD) join the Local Assistance Grant Program as a regional collaborative project for the implementation of regulation requirements associated with SB 1383, in coordination with other jurisdictions of the Monterey County region to maximize project impact and cost-effectiveness across the countywide area. This regional grant-funded project will be coordinated through the two local waste management governmental agencies within Monterey County, Monterey Regional Waste Management (MRWMD), and Salinas Valley Solid Waste Authority (SVSWA).

The Member Agencies, along with each of the MRWMD and SVSWA member agencies are applying individually to this grant program using a unified regional project design, budget and implementation approach. All participating jurisdictions' individual grant funding will be pooled together and expended in a cooperative manner by their agencies' respective waste districts, MRWMD and SVSWA. The County of Monterey is applying separately and will manage its budget and project implementation independently, in coordination with broader regional planning efforts.

Based on current regional needs and findings to date related to SB 1383 in Monterey County, the following four major components will comprise the principal focus areas of program expenditures under the proposed regional project approach:

- 1) Grant Management, Tracking & Reporting
- 2) Agency Procurement Support
- 3) Edible Food Recovery Implementation and Capacity Building
- 4) Organics & Edible Food Recovery Education, Outreach and Technical Assistance

Each element will be informed by regional coordination through the established MRWMD and SVSWA Technical Advisory Committee forums, Capacity Planning Assessments and related studies completed or in process throughout the region, and new data and information obtained through program implementation trials, stakeholder feedback and best practices as identified. All expenditures will be incurred jointly, facilitated through each respective waste agency, and tracked and reported by each jurisdiction, based on the percentage of grant funds received by each agency compared to the full funding received collectively by all participating member agencies. CalRecycle, based on per capita calculations, using the Department of Finance's January 2021 population statistics, estimates jurisdictions' proportionate grant allocations. A summary of individual and collective agency grant allocations is presented below as **Table 1**.

EXHIBIT C
(Continued)

MEMBER AGENCIES' ESTIMATED ALLOCATION OF CALRECYCLE LOCAL
ASSISTANCE GRANT PROGRAM FUNDING (OWR1: 2021-22)**

Table 1. Thirteen Agency Collaborative Approach Budget Summary

Agencies	Estimated Funding	% of District Subtotal	% of Region Total	Waste District
Carmel-by-the-Sea	\$20,000	9%	4%	MRWMD
Del Rey Oaks	\$20,000	9%	4%	MRWMD
Marina	\$29,771	14%	6%	MRWMD
Monterey	\$38,247	18%	7%	MRWMD
Pacific Grove	\$21,398	10%	4%	MRWMD
Sand City	\$20,000	9%	4%	MRWMD
Seaside	\$43,151	20%	8%	MRWMD
Pebble Beach Community Services District	\$20,000	9%	4%	MRWMD
Subtotal (MRWMD):	\$212,566	100%	41%	
Gonzales	\$20,000	6%	4%	SVSWA
Greenfield	\$25,157	8%	5%	SVSWA
King City	\$20,665	7%	4%	SVSWA
Salinas	\$211,143	68%	40%	SVSWA
Soledad	\$33,095	11%	6%	SVSWA
Subtotal (SVSWA):	\$310,060	100%	59%	
TOTAL (13 Agency Regional Approach):	\$522,626		100%	

** Working in coordination with the designated CalRecycle grant manager or other agency representatives as appropriate, the region may adjust these proposed expenditure areas, amounts, or priorities, consistent with grant expenditure eligibility requirements, as needed during the course of the grant term based on the needs of the region.

EXHIBIT D
MEMBER AGENCIES' ESTIMATED PROCURMENT REQUIRMENTS
OF ORGANIC MATERIAL

The list below indicates the annual recovered organic waste product procurement targets for each jurisdiction (city, county, or city and county) that will be in effect from January 1, 2022 through December 31, 2026 per CalRecycle.

Member Jurisdiction	Population (1/1/21 estimate)	% of Population	Annual Procurement Target (Tons of Organic Waste)	Tons of Compost (.58)	Cost /Ton Compost	Cost of Compost
Carmel-by-the-Sea	4,023	1%	322	187	\$ 28.00	\$ 5,229.28
Del Rey Oaks	1,670	0%	134	78	\$ 28.00	\$ 2,176.16
Marina	21,920	7%	1,754	1,017	\$ 28.00	\$ 28,484.96
Monterey	28,382	8%	2,271	1,317	\$ 28.00	\$ 36,881.04
Pacific Grove	15,536	5%	1,243	721	\$ 28.00	\$ 20,186.32
Sand City	385	0%	31	18	\$ 28.00	\$ 503.44
Seaside	32,121	10%	2,570	1,491	\$ 28.00	\$ 41,736.80
Pebble Beach CSD	4531	1%	362	210	\$ 28.00	\$ 5,878.88
Unincorporated County*						\$ -
Total MRWMD	108,568	32%	8,687	5,038		\$ 141,076.88

*Unincorporated County not participating in procurement portion of MOU
All product quoted as unbagged F.O.B MRWMD site.
Transportation costs are not included.

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of June 21, 2022

RECOMMENDATION TO CONSIDER ADOPTING RESOLUTION NO. 2022-, APPROVING THE PHASE 4A FINAL MAP FOR THE SEA HAVEN DEVELOPMENT PROJECT SUBDIVISION (FORMERLY MARINA HEIGHTS), AND AUTHORIZING THE CITY CLERK TO CERTIFY THE FINAL MAP ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY

RECOMMENDATION:

It is recommended that the City Council:

1. Consider adopting Resolution No. 2022-, approving the Phase 4A Final Map for Sea Haven Development Project Subdivision (“**EXHIBIT A**”); and
2. Consider authorizing the City Clerk to certify the Final Map on behalf of the City subject to final review and approval by the City Attorney.

BACKGROUND:

At the regular meeting of March 21, 2006, the City Council adopted Resolution No. 2006-56, approving the Phase 1 Final Map for the Marina Heights Development Project Subdivision. The Phase 1 final map and improvement plans were only for the major roadways (Arterials) and utilities for the Marina Heights Project.

At the regular meeting of September 6, 2006, the City Council adopted Resolution 2006-228, approving the Phase 2 Final Map for the Marina Heights. The Phase 2 final map and improvement plans were for the first 299 residential units in the Marina Heights Project.

At the regular meeting of August 7, 2019, the City Council adopted Resolution 2019-81, approving the Phase 5A Final Map for the Marina Heights (now Sea Haven).

At the regular meeting of February 4, 2020, the City Council adopted Resolution 2020-23, approving the Phase 3A Final Map for the Sea Haven project.

At the regular meeting of March 16, 2021, the City Council adopted Resolution 2021-19, approving the Phase 3B Final Map for the Sea Haven project.

ANALYSIS:

The developers have submitted the Phase 4A subdivision map (“**EXHIBIT A**”) to the City and the Marina Coast Water District for review and approval. Improvement plans have also been submitted to the City and the Marina Coast Water District for review and approval (“**EXHIBIT B**”- Cover Sheet Only). After review, staff has determined that the conditions of approval have been met for the Final Map and Improvement Plans for Phase 4A with the exception of a Public Improvement Agreement. Marina Coast Water District staff have also reviewed and approved the plans.

The Developer has also submitted a Public Improvement Agreement for Council consideration and will provide labor and materials and faithful performance bonds required for the recordation of the Phase 4A Final Map. The Public Improvement Agreement will be discussed during this meeting and is a Tentative Map condition of Final Map approval and that it be accepted prior to Final Map approval. It has been determined that all other Tentative Map Conditions of Approval have been met.

The Phase 4A final map and improvement plans are for 216 residential units in the Marina Heights Project. The Phase 4A final map and improvement plans include the specific neighborhood improvements such as parks and open space that support 216 residential units including five below market rate unit sites. Each site will have six units for a total of thirty below market rate units for this phase.

All required future phased final maps must meet all the appropriate conditions of approval and will be presented to City Council for consideration at a future date.

FISCAL IMPACT:

Should the City Council approve this request, the Developer has provided payment to cover the costs associated with the production, review, and recording of the Final Map.

CONCLUSION:

This request is submitted for City Council consideration and possible action.

Respectfully submitted,

Edrie Delos Santos, P.E.
Senior Engineer, Engineering Division
City of Marina

REVIEWED/CONCUR:

Brian McMinn, P.E., P.L.S.
Public Works Director/City Engineer
City of Marina

Layne P. Long
City Manager
City of Marina

RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY OF MARINA APPROVING THE PHASE 4A
FINAL MAP FOR THE SEA HAVEN DEVELOPMENT PROJECT
SUBDIVISION (FORMERLY MARINA HEIGHTS), AND AUTHORIZING
THE CITY CLERK TO CERTIFY THE FINAL MAP ON BEHALF OF THE
CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY
ATTORNEY

WHEREAS, at the regular meeting of March 21, 2006, the City Council adopted Resolution No. 2006-56, approving the Phase 1 Final Map for the Marina Heights Development Project Subdivision. The Phase 1 final map and improvement plans were only for the major roadways (Arterials) and utilities for the Marina Heights Project, and;

WHEREAS, at the regular meeting of September 6, 2006, the City Council adopted Resolution 2006-228, approving the Phase 2 Final Map for the Marina Heights. The Phase 2 final map and improvement plans were for the first 299 residential units in the Marina Heights Project, and;

WHEREAS, at the regular meeting of August 7, 2019, the City Council adopted Resolution 2019-81, approving the Phase 5A Final Map for the Marina Heights (now Sea Haven), and;

WHEREAS, at the regular meeting of February 4, 2020, the City Council adopted Resolution 2020-23, approving the Phase 3A Final Map for the Sea Haven project, and;

WHEREAS, at the regular meeting of March 16, 2021, the City Council adopted Resolution 2021-19, approving the Phase 3B Final Map for the Sea Haven project, and;

WHEREAS, the developers have submitted the Phase 4A subdivision map (“**EXHIBIT A**”) to the City and the Marina Coast Water District for review and approval. Improvement plans have also been submitted to the City and the Marina Coast Water District for review and approval (“**EXHIBIT B**”- Cover Sheet Only). After review, staff has determined that the conditions of approval have been met for the Final Map and Improvement Plans for Phase 4A with the exception of a Public Improvement Agreement. Marina Coast Water District staff have also reviewed and approved the plans, and;

WHEREAS, the Developer has also submitted a Public Improvement Agreement for Council consideration and will provide labor and materials and faithful performance bonds required for the recordation of the Phase 4A Final Map. The Public Improvement Agreement will be discussed during this meeting and is a Tentative Map condition of Final Map approval and that it be accepted prior to Final Map approval. It has been determined that all other Tentative Map Conditions of Approval have been met, and;

WHEREAS, the Phase 4A final map and improvement plans are for 216 residential units in the Marina Heights Project. The Phase 4A final map and improvement plans include the specific neighborhood improvements such as parks and open space in the area of the 216 residential units including thirty below market rate units, and;

WHEREAS, all required future phased final maps must meet all the appropriate conditions of approval and will be presented to City Council for consideration at a future date, and;

WHEREAS, should the City Council approve this request, the Developer has provided payment to cover the costs associated with the production, review, and recording of the Final Map.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Marina that:

1. Approve the Phase 4A Final Map for Sea Haven Development Project Subdivision (**"EXHIBIT A"**), and;
2. Authorize the City Clerk to certify the Final Map on behalf of the City subject to final review and approval by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 7th day of June 2022, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ATTEST:

Bruce Delgado, Mayor

Anita Sharp, Deputy City Clerk

N: 2,138,950 E: 5,746,200

OWNER'S STATEMENT

WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF, OR HAVE SOME RIGHT, TITLE OR INTEREST IN AND TO THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION SHOWN UPON THIS MAP, AND WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID PROPERTY, AND WE CONSENT TO PREPARATION AND RECORDATION OF SAID MAP AND SUBDIVISION AS SHOWN WITHIN THE SUBDIVISION BOUNDARY LINE.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED IN FEE FOR PUBLIC PURPOSES:

- FOR ROAD AND UTILITY PURPOSES, THOSE PORTIONS OF LAND DESCRIBED HEREON, ANDESITE DRIVE, ARROYO DRIVE, CAHOON COURT, EL CAPITAN DRIVE, LAMONT WAY, MADERA WAY, MacARTHUR DRIVE, RUBICON COURT, SANTA LUCIA WAY AND SANTA YNEZ WAY WITHIN THE SUBDIVISION. THIS OFFER OF DEDICATION TO THE CITY OF MARINA IS IRREVOCABLE; SUBJECT TO THE RESERVATION OF THE RIGHT TO MAINTAIN LANDSCAPING, IRRIGATION AND STORM DRAIN WITHIN SAID STREETS.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES:

- FOR INGRESS AND EGRESS OF EMERGENCY VEHICLES (EMERGENCY VEHICLE ACCESS EASEMENT, OR EVAE), TO THE CITY OF MARINA, WITHIN THE SUBDIVISION, THE AREAS DESIGNATED HEREON AS PARCELS 4A1, 4A2, 4A3, 4A4, AND 4A6.
- FOR PEDESTRIAN ACCESS PURPOSES, PUBLIC TRAIL EASEMENTS (TE), TO THE CITY OF MARINA, WITHIN THE SUBDIVISION, OVER PORTIONS OF PARCELS G3 & G5 AND OVER PARCELS N38, N39, N41, N44 & N45 AND AREAS WHERE DESIGNATED WITHIN THE SUBDIVISION SHOWN ON THIS MAP.
- PUBLIC UTILITY EASEMENTS (PUE), OVER PARCELS 4A1, 4A2, 4A3, 4A4, 4A6, N38, N39, N41 & N45 AND AREAS WHERE DESIGNATED WITHIN THE SUBDIVISION SHOWN ON THIS MAP FOR THE CONSTRUCTION, MAINTENANCE, USE, REPLACEMENT, IMPROVEMENT, AND OPERATION OF, SANITARY SEWERS, AND WATER PIPELINES, GAS AND ELECTRICITY TRANSMISSION LINES, AND TELEPHONE LINES, AND ALL THE NECESSARY APPURTENANCES THERETO, TOGETHER WITH THE RIGHT OF INGRESS TO AND EGRESS FROM SAID EASEMENT.

WE ALSO HEREBY CREATE A STORM DRAIN EASEMENT (SDE) OVER, UNDER, AND ACROSS THE DESIGNATED AREAS AS SHOWN HEREON, WHICH WILL REMAIN PRIVATE AND WILL BE TRANSFERRED TO THE HOME OWNER'S ASSOCIATION AT A FUTURE DATE.

AREAS DESIGNATED "PROPOSED SANITARY SEWER EASEMENT" OR "SSE" WILL BE GRANTED BY SEPARATE INSTRUMENT TO THE MARINA COAST WATER DISTRICT AS A NON-EXCLUSIVE EASEMENT FOR SANITARY SEWER PURPOSES INCLUDING THE CONSTRUCTION, ACCESS, AND MAINTENANCE OF WORKS, IMPROVEMENTS, AND STRUCTURES, AND THE CLEARING OF OBSTRUCTIONS AND VEGETATION.

WE ALSO HEREBY RELINQUISH ANY AND ALL RIGHTS OF INGRESS AND EGRESS TO VEHICULAR TRAFFIC (ABUTTERS RIGHTS) ACROSS THE LINES AS SHOWN ON HEREON MAP AND DEPICTED AS [|||||]

WE ALSO HEREBY CREATE PARCELS B16, G3, G5, N38, N39, N41, N45, 4A1, 4A2, 4A3, 4A4, AND 4A6 WHICH WILL REMAIN PRIVATE AND WILL BE TRANSFERRED TO THE HOME OWNER'S ASSOCIATION AT A FUTURE DATE.

SUBDIVIDER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS CITY COUNCIL, PLANNING COMMISSION, AGENTS, OFFICERS AND EMPLOYEES FROM ANY CLAIM, ACTION OR PROCEEDING AGAINST THE CITY OR ITS CITY COUNCIL, PLANNING COMMISSION, AGENTS, OFFICERS OR EMPLOYEES, TO ATTACK, SET ASIDE, VOID OR ANNUL AN APPROVAL OF THE CITY, ITS CITY COUNCIL, PLANNING COMMISSION, OR OTHER BOARD, ADVISORY AGENCY OR LEGISLATIVE BODY CONCERNING THIS SUBDIVISION. CITY WILL PROMPTLY NOTIFY THE SUBDIVIDER OF ANY CLAIM, ACTION OR PROCEEDING AGAINST IT AND WILL COOPERATE FULLY IN THE DEFENSE. THIS CONDITION IS IMPOSED PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 66474.9.

WATHEN CASTANOS PETERSON HOMES, INC., A DELAWARE CORPORATION

BY: JOSHUA E. PETERSON, PRESIDENT

104 INVESTMENTS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

BY: FARID ASSEMI, MANAGER

LOCANS INVESTMENTS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

BY: FARID ASSEMI, MANAGER

WATHEN CASTANOS PETERSON COASTAL, LP, A CALIFORNIA LIMITED PARTNERSHIP
BY: ASSEMI GROUP, INC. A CALIFORNIA CORPORATION, ITS GENERAL PARTNER

BY: FARID ASSEMI, PRESIDENT

BY: JOHN A. BEZMALINOVIC, SECRETARY

OWNER'S ACKNOWLEDGEMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT TO THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF)
COUNTY OF)
ON ,
BEFORE ME, , NOTARY PUBLIC

PERSONALLY APPEARED , WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND, AND OFFICIAL SEAL.

SIGNATURE
NOTARY PUBLIC'S NAME:
COUNTY OF BUSINESS:
COMMISSION EXPIRATION DATE:
COMMISSION NUMBER:

OWNER'S ACKNOWLEDGEMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT TO THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF)
COUNTY OF)
ON ,
BEFORE ME, , NOTARY PUBLIC

PERSONALLY APPEARED , WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND, AND OFFICIAL SEAL.

SIGNATURE
NOTARY PUBLIC'S NAME:
COUNTY OF BUSINESS:
COMMISSION EXPIRATION DATE:
COMMISSION NUMBER:

COUNTY RECORDER'S STATEMENT

FILED THIS DAY OF , 2022, AT : M. IN VOLUME OF
CITIES AND TOWNS, AT PAGE AT THE REQUEST OF OLD REPUBLIC TITLE COMPANY.

STEPHEN L. VAGNINI BY:
MONTEREY COUNTY CLERK-RECORDER
NAME: .DEPUTY

DOCUMENT NO.: FEE:\$

OWNER'S ACKNOWLEDGEMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT TO THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF)
COUNTY OF)
ON ,
BEFORE ME, , NOTARY PUBLIC

PERSONALLY APPEARED , WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

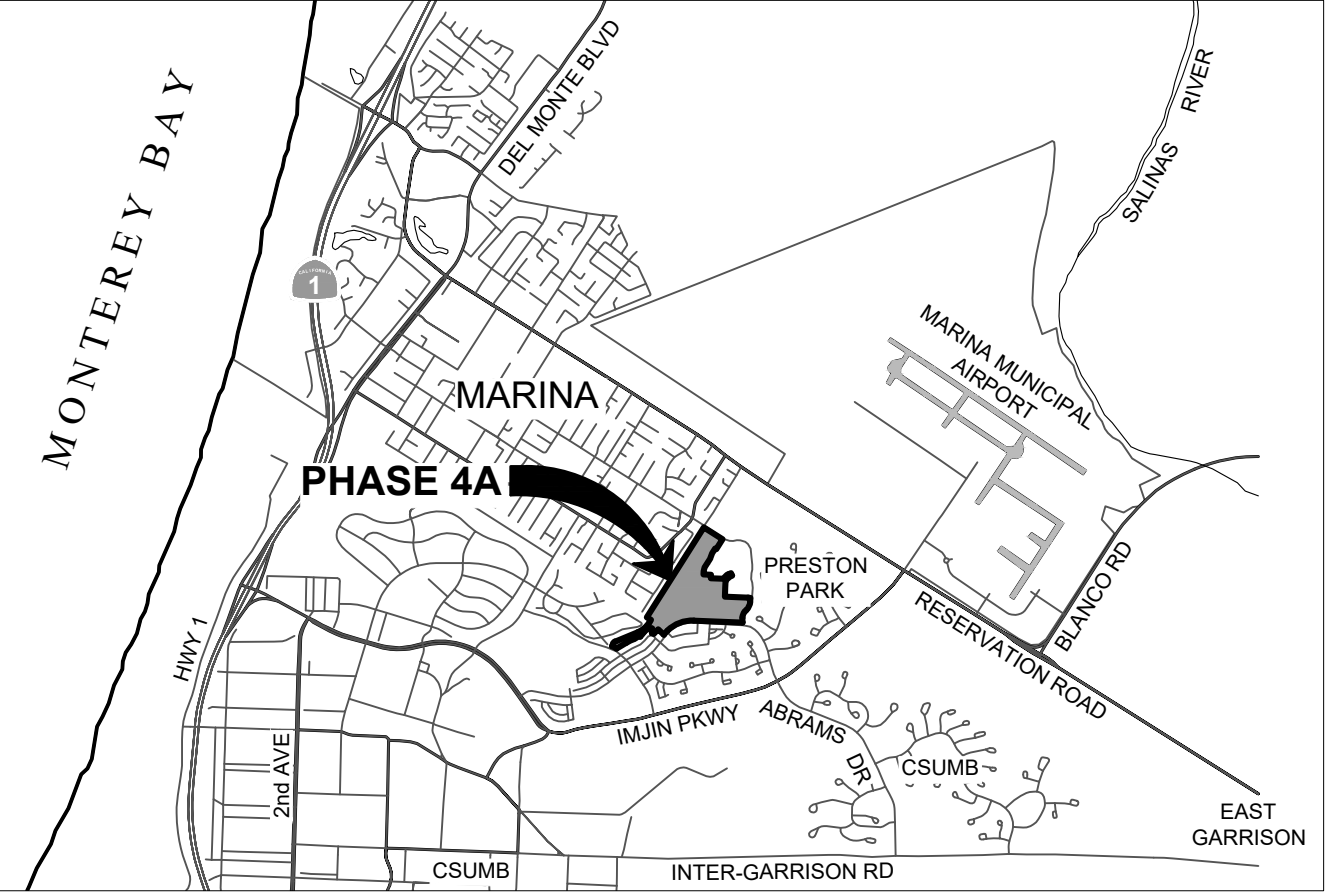
I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND, AND OFFICIAL SEAL.

SIGNATURE
NOTARY PUBLIC'S NAME:
COUNTY OF BUSINESS:
COMMISSION EXPIRATION DATE:
COMMISSION NUMBER:

VICINITY MAP

SCALE: 1" = 4000'



TRACT NO. MARINA HEIGHTS PHASE 4A

A 50.71 AC. SUBDIVISION OF THE PARCELS 4A & 4B.3 AS SHOWN ON "PARCEL MAP, MARINA HEIGHTS PHASE 4A & 4B", FILED IN VOLUME 24 PARCEL MAPS, PAGE 15 OFFICIAL RECORDS OF MONTEREY COUNTY, CALIFORNIA

PREPARED BY: WHITSON ENGINEERS
6 HARRIS COURT, MONTEREY CALIFORNIA

JOB NO. 4007.01 MAY 19, 2022 SHEET 1 OF 14

BENEFICIARY STATEMENT

CYPRESS MARINA HEIGHTS LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, AS BENEFICIARY UNDER A DEED OF TRUST RECORDED AS DOCUMENT #2018015916, OFFICIAL RECORDS OF MONTEREY COUNTY, CALIFORNIA, DOES HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF THIS MAP AND SUBDIVISION AS SHOWN HEREON AS BENEFICIARY.

CYPRESS MARINA HEIGHTS, LLC,
A CALIFORNIA LIMITED LIABILITY COMPANY

BY: _____
NAME: _____
TITLE: AUTHORIZED REPRESENTATIVE

NOTARY ACKNOWLEDGEMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT TO THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF _____)
COUNTY OF _____)
ON _____ ,
BEFORE ME, _____ , NOTARY PUBLIC

PERSONALLY APPEARED _____ , WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND, AND OFFICIAL SEAL.
(NOTE: NOTARY SEAL NOT REQUIRED IF THE BELOW INFORMATION IS COMPLETED)

SIGNATURE _____
NOTARY PUBLIC'S NAME: _____
COUNTY OF BUSINESS: _____
COMMISSION EXPIRATION DATE: _____
COMMISSION NUMBER: _____

DEDICATION CERTIFICATE

THE CITY OF MARINA SHALL, AS REQUIRED BY CALIFORNIA GOVERNMENT CODE SECTION 66477.5 IN ITS PRESENT FORM OR AS IT MAY FROM TIME TO TIME BE AMENDED, RECONVEY THOSE PORTIONS OF LAND DESIGNATED AS ANDESITE DRIVE, ARROYO DRIVE, CAHOON COURT, EL CAPITAN DRIVE, LAMONT WAY, MADERA WAY, MacARTHUR DRIVE, RUBICON COURT, SANTA LUCIA WAY, AND SANTA YNEZ WAY WITHIN THE SUBDIVISION IN FEE FOR PUBLIC USE, TO THE SUBDIVIDER NAMED BELOW, THEIR SUCCESSORS, HEIRS OR ASSIGNEES, IF THE CITY COUNCIL OF THE CITY OF MARINA SHOULD DETERMINE THAT THE SAME PUBLIC PURPOSE FOR WHICH SAID PARCELS WERE DEDICATED NO LONGER EXISTS OR THAT SAID PARCELS OR ANY PORTION THEREOF IS NOT NEEDED FOR PUBLIC UTILITIES, EXCEPT FOR ALL OR ANY PORTIONS OF THE PROPERTY THAT IS STILL REQUIRED FOR THAT SAME PUBLIC PURPOSE OR FOR PUBLIC UTILITIES.

SUBDIVIDERS:

WATHEN CASTANOS PETERSON COASTAL, L.P.
2505 ALLUVIAL AVENUE
CLOVIS, CA 93611

WATHEN CASTANOS PETERSON HOMES, INC.
2505 ALLUVIAL AVENUE
CLOVIS, CA 93611

104 INVESTMENTS, LLC
10210 GREENBELT ROAD LANHAM,
MD 20706

LOCANS INVESTMENTS, LLC
1396 W. HERNDON AVENUE, SUITE 101
FRESNO, CA 93711

BENEFICIARY STATEMENT

BANK OZK, AS BENEFICIARY UNDER A DEED OF TRUST RECORDED AS DOCUMENT #2021019806, OFFICIAL RECORDS OF MONTEREY COUNTY, CALIFORNIA, DOES HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF THIS MAP AND SUBDIVISION AS SHOWN HEREON AS BENEFICIARY.

BANK OZK

BY: _____
NAME: MATT BUCHANAN
TITLE: EXECUTIVE VICE PRESIDENT

NOTARY ACKNOWLEDGEMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT TO THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF FLORIDA

COUNTY OF PALM BEACH

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME, BY MEANS OF () PHYSICAL PRESENCE OR () ONLINE NOTARIZATION, THIS _____ DAY OF _____ , 2021, BY _____, IN HIS/HER CAPACITY AS AN AUTHORIZED REPRESENTATIVE OF CYPRESS MARINA HEIGHTS LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, WHO IS () PERSONALLY KNOWN TO ME OR WHO HAS PRODUCED _____ (TYPE OF IDENTIFICATION) AS IDENTIFICATION.

NOTARY PUBLIC
MY COMMISSION EXPIRES _____)

CITY ENGINEER & SURVEYOR'S STATEMENT

I, BRIAN McMINN, CITY ENGINEER AND CITY SURVEYOR OF THE CITY OF MARINA, HEREBY STATE THAT I HAVE EXAMINED THIS MAP; THAT THE SUBDIVISION SHOWN HEREON IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP, AND ANY APPROVED ALTERATIONS THEREOF, AS APPROVED BY THE CITY COUNCIL OF THE CITY OF MARINA, ON THE 16TH DAY OF SEPTEMBER, 2003; THAT ALL PROVISIONS OF THE CALIFORNIA "SUBDIVISION MAP ACT", AS AMENDED, AND THE CITY OF MARINA SUBDIVISION ORDINANCE, TITLE 16 OF THE MARINA MUNICIPAL CODE HAVE BEEN COMPLIED WITH, AND THIS MAP IS TECHNICALLY CORRECT.

BRIAN McMINN, PE 64143, PLS 8116
CITY ENGINEER, CITY SURVEYOR
CITY OF MARINA, CALIFORNIA

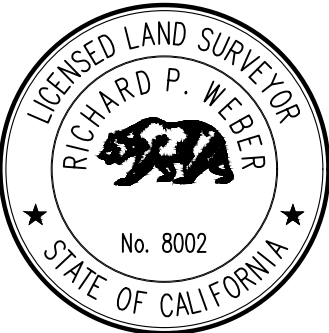
DATE: _____

SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF WATHEN CASTANOS PETERSON HOMES, INC IN SEPTEMBER 2019. I HEREBY STATE THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED, OR THAT THEY WILL BE SET IN THOSE POSITIONS ON OR BEFORE DECEMBER, 2023 AND THAT THE MONUMENTS WILL BE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP.

RICHARD P. WEBER
P.L.S. No. 8002

DATE: _____



PLANNING COMMISSION STATEMENT

I, GUIDO F. PERSICONE, COMMUNITY DEVELOPMENT DEPARTMENT DIRECTOR, CITY OF MARINA, HEREBY STATE THAT I HAVE EXAMINED THIS MAP; THAT THE SUBDIVISION SHOWN HEREON IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP, AND ANY APPROVED ALTERATIONS THEREOF, AS APPROVED BY THE CITY COUNCIL OF THE CITY OF MARINA ON SEPTEMBER 16, 2003, THAT ALL THE PROVISIONS OF THE CALIFORNIA "SUBDIVISION MAP ACT", AS AMENDED, AND THE CITY OF MARINA SUBDIVISION ORDINANCE, TITLE 16 OF THE MARINA MUNICIPAL CODE, HAVE BEEN COMPLIED WITH..

GUIDO F. PERSICONE
COMMUNITY DEVELOPMENT DIRECTOR
CITY OF MARINA

DATE

CITY CLERK'S STATEMENT

I, ANITA SHEPHERD-SHARP, DEPUTY CITY CLERK OF THE CITY OF MARINA, HEREBY CERTIFY THAT THE CITY COUNCIL OF SAID CITY OF MARINA APPROVED THE HEREIN MAP ON THE _____ DAY OF _____, 2022, AND ACCEPTS ON BEHALF OF THE PUBLIC, IN FEE, SUBJECT TO IMPROVEMENTS, THOSE PORTIONS OF SAID LANDS DESIGNATED ON SAID MAP BY RESOLUTION NO. _____ AND ACCEPTS ON BEHALF OF THE PUBLIC ALL PARCELS OFFERED FOR DEDICATION, IN CONFORMITY WITH THE TERMS OF THE OFFER OF DEDICATION, AND ACCEPTS ALL PUBLIC EASEMENTS OFFERED FOR DEDICATION.

BY: _____
ANITA SHEPHERD-SHARP
DEPUTY CITY CLERK OF MARINA

SIGNATURE OMISSIONS

SIGNATURES OF THE FOLLOWING HOLDERS OF EASEMENT INTERESTS OVER THE SUBDIVIDED LANDS HAVE BEEN OMITTED FROM THIS MAP IN ACCORDANCE WITH SECTION 66445(e) OF THE CALIFORNIA SUBDIVISION MAP ACT:

1. PACIFIC GAS & ELECTRIC COMPANY – EASEMENT HOLDER PER REEL 3506, PAGE 133 AND DOC. #2006063194, OFFICIAL RECORDS OF MONTEREY COUNTY
2. MARINA COAST WATER DISTRICT – EASEMENT HOLDER PER DOC. # 2006063192, OFFICIAL RECORDS OF MONTEREY COUNTY
3. OWNERS OF LOTS 632, 633, 634 & 635, VOL. 23 C&T PG. 42, HOLDERS OF APPURTENANT EASEMENTS FOR SLOPE PURPOSES PER SAID MAP.

SOILS REPORT STATEMENT

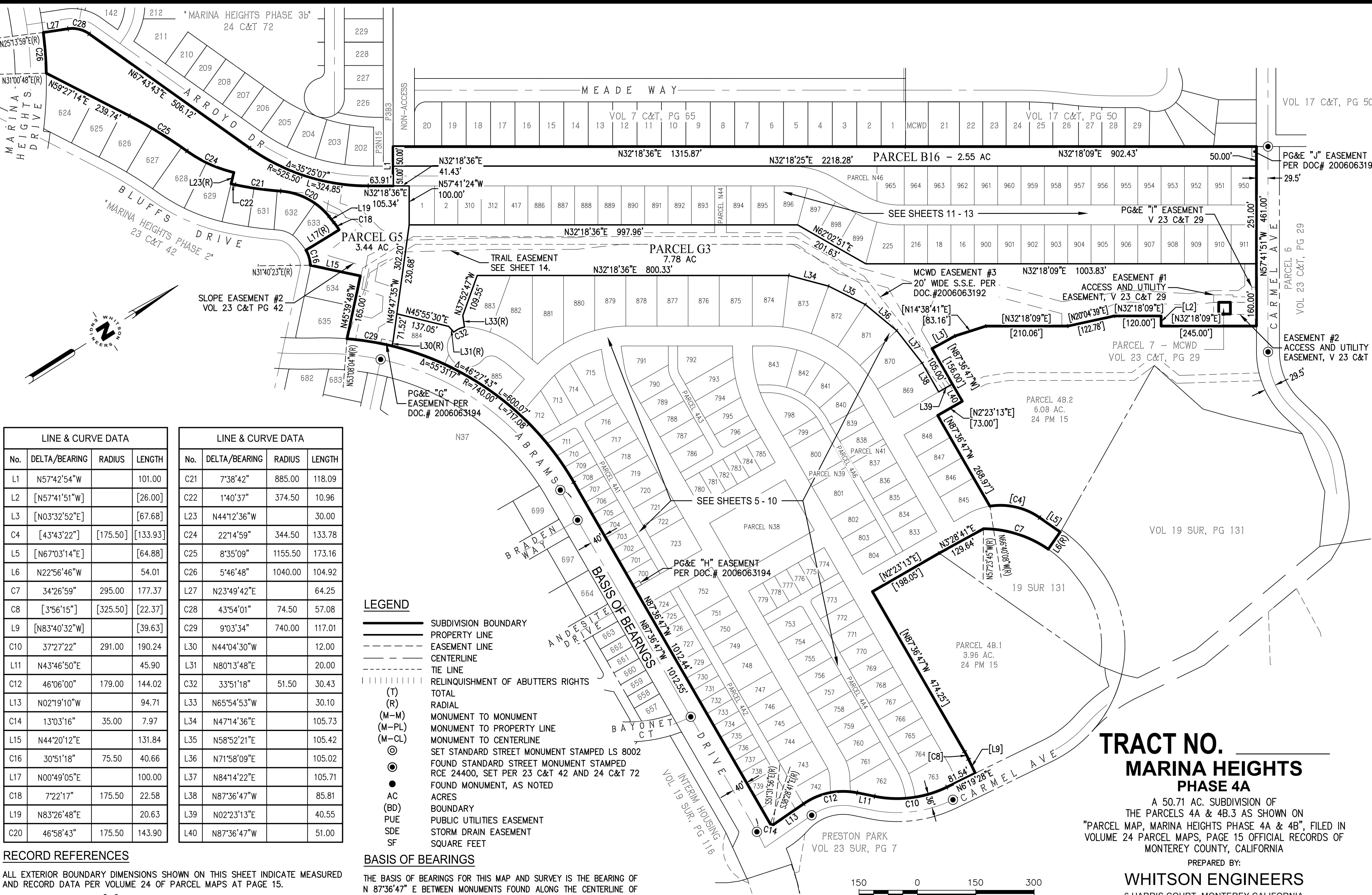
A SOILS REPORT DATED JULY 7, 2021 PREPARED BY QUANTUM GEOTECHNICAL INC. HAS BEEN SPECIFICALLY PREPARED FOR THIS SUBDIVISION AND IS ON FILE WITH THE CITY OF MARINA'S PUBLIC WORKS DEPARTMENT.

TRACT NO. _____
MARINA HEIGHTS
PHASE 4A

A 50.71 AC. SUBDIVISION OF
THE PARCELS 4A & 4B.3 AS SHOWN ON
"PARCEL MAP, MARINA HEIGHTS PHASE 4A & 4B", FILED IN
VOLUME 24 PARCEL MAPS, PAGE 15 OFFICIAL RECORDS OF
MONTEREY COUNTY, CALIFORNIA

PREPARED BY:
WHITSON ENGINEERS
6 HARRIS COURT, MONTEREY CALIFORNIA

JOB NO. 4007.01 MAY 19, 2022 SHEET 2 OF 14



LINE & CURVE DATA			
No.	DELTA/BEARING	RADIUS	LENGTH
L1	N57°42'54"W		101.00
L2	[N57°41'51"W]		[26.00]
L3	[N03°32'52"E]		[67.68]
C4	[43°43'22"]	[175.50]	[133.93]
L5	[N67°03'14"E]		[64.88]
L6	N22°56'46"W		54.01
C7	34°26'59"	295.00	177.37
C8	[3°56'15"]	[325.50]	[22.37]
L9	[N83°40'32"W]		[39.63]
C10	37°27'22"	291.00	190.24
L11	N43°46'50"E		45.90
C12	46°06'00"	179.00	144.02
L13	N02°19'10"W		94.71
C14	13°03'16"	35.00	7.97
L15	N44°20'12"E		131.84
C16	30°51'18"	75.50	40.66
L17	N00°49'05"E		100.00
C18	7°22'17"	175.50	22.58
L19	N83°26'48"E		20.63
C20	46°58'43"	175.50	143.90

LINE & CURVE DATA			
No.	DELTA/BEARING	RADIUS	LENGTH
C21	7°38'42"	885.00	118.09
C22	1°40'37"	374.50	10.96
L23	N44°12'36"W		30.00
C24	22°14'59"	344.50	133.78
C25	8°35'09"	1155.50	173.16
C26	5°46'48"	1040.00	104.92
L27	N23°49'42"E		64.25
C28	43°54'01"	74.50	57.08
C29	9°03'34"	740.00	117.01
L30	N44°04'30"W		12.00
L31	N80°13'48"E		20.00
C32	33°51'18"	51.50	30.43
L33	N65°54'53"W		30.10
L34	N47°14'36"E		105.73
L35	N58°52'21"E		105.42
L36	N71°58'09"E		105.02
L37	N84°14'22"E		105.71
L38	N87°36'47"W		85.81
L39	N02°23'13"E		40.55
L40	N87°36'47"W		51.00

LEGEND

- SUBDIVISION BOUNDARY
- PROPERTY LINE
- EASEMENT LINE
- CENTERLINE
- TIE LINE
- RELINQUISHMENT OF ABUTTERS RIGHTS
- (T) TOTAL
- (R) RADIAL
- (M-M) MONUMENT TO MONUMENT
- (M-PL) MONUMENT TO PROPERTY LINE
- (M-CL) MONUMENT TO CENTERLINE
- SET STANDARD STREET MONUMENT STAMPED LS 8002
- FOUND STANDARD STREET MONUMENT STAMPED RCE 24400, SET PER 23 C&T 42 AND 24 C&T 72
- FOUND MONUMENT, AS NOTED
- ACRES
- BOUNDARY
- PUE PUBLIC UTILITIES EASEMENT
- SDE STORM DRAIN EASEMENT
- SF SQUARE FEET

BASIS OF BEARINGS

THE BASIS OF BEARINGS FOR THIS MAP AND SURVEY IS THE BEARING OF N 87°36'47" E BETWEEN MONUMENTS FOUND ALONG THE CENTERLINE OF ABRAMS DRIVE AND SHOWN HEREON, AS SHOWN ON THAT MAP FILED FOR RECORD IN VOLUME 23 OF CITIES AND TOWNS AT PAGE 42, MONTEREY COUNTY, CALIFORNIA.

RECORD REFERENCES

ALL EXTERIOR BOUNDARY DIMENSIONS SHOWN ON THIS SHEET INDICATE MEASURED AND RECORD DATA PER VOLUME 24 OF PARCEL MAPS AT PAGE 15. COURSES INDICATED AS [...] ARE PARCEL LINES CREATED BY VOLUME 24 OF PARCEL MAPS AT PAGE 15. ALL OTHER COURSES ARE ALSO MEASURED AND RECORD DATA PER VOLUME 24 OF CITIES AND TOWNS AT PAGE 72.

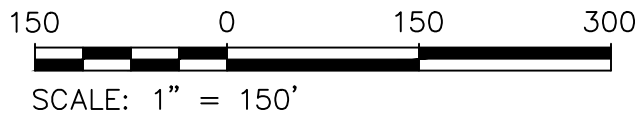
TRACT NO. MARINA HEIGHTS PHASE 4A

A 50.71 AC. SUBDIVISION OF THE PARCELS 4A & 4B.3 AS SHOWN ON "PARCEL MAP, MARINA HEIGHTS PHASE 4A & 4B", FILED IN VOLUME 24 PARCEL MAPS, PAGE 15 OFFICIAL RECORDS OF MONTEREY COUNTY, CALIFORNIA

PREPARED BY:

WHITSON ENGINEERS 6 HARRIS COURT, MONTEREY CALIFORNIA

JOB NO. 4007.01 MAY 19, 2022 SHEET 3 OF 14

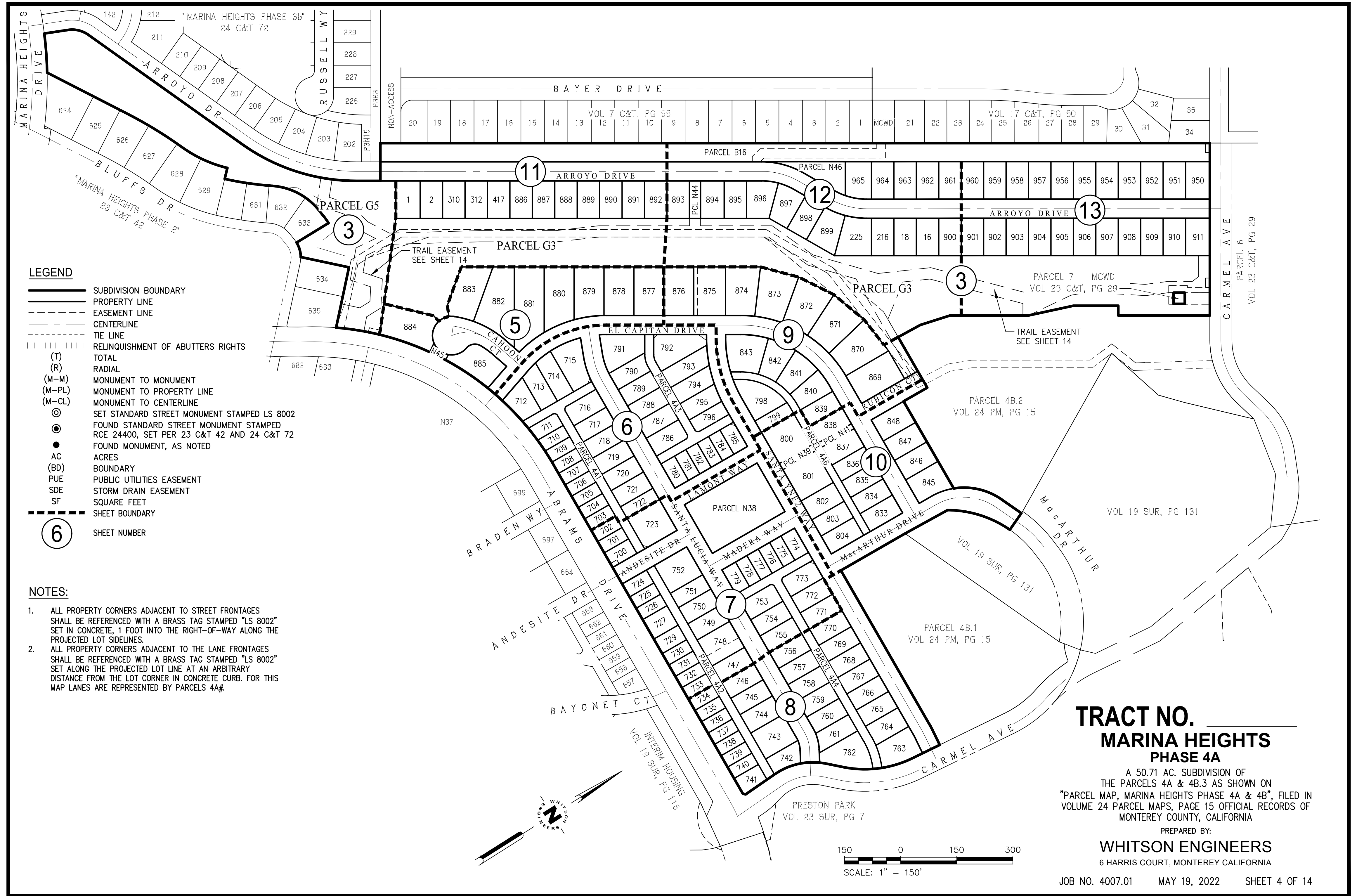


LEGEND

- SUBDIVISION BOUNDARY
- PROPERTY LINE
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- TIE LINE
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- AC ACRES
- (BD) BOUNDARY
- PUE PUBLIC UTILITIES EASEMENT
- SDE STORM DRAIN EASEMENT
- SF SQUARE FEET
- SHEET BOUNDARY
- 6 SHEET NUMBER

NOTES:

- ALL PROPERTY CORNERS ADJACENT TO STREET FRONTAGES SHALL BE REFERENCED WITH A BRASS TAG STAMPED "LS 8002" SET IN CONCRETE, 1 FOOT INTO THE RIGHT-OF-WAY ALONG THE PROJECTED LOT SIDELINES.
- ALL PROPERTY CORNERS ADJACENT TO THE LANE FRONTAGES SHALL BE REFERENCED WITH A BRASS TAG STAMPED "LS 8002" SET ALONG THE PROJECTED LOT LINE AT AN ARBITRARY DISTANCE FROM THE LOT CORNER IN CONCRETE CURB. FOR THIS MAP LANES ARE REPRESENTED BY PARCELS 4A#.



TRACT NO.
MARINA HEIGHTS
PHASE 4A

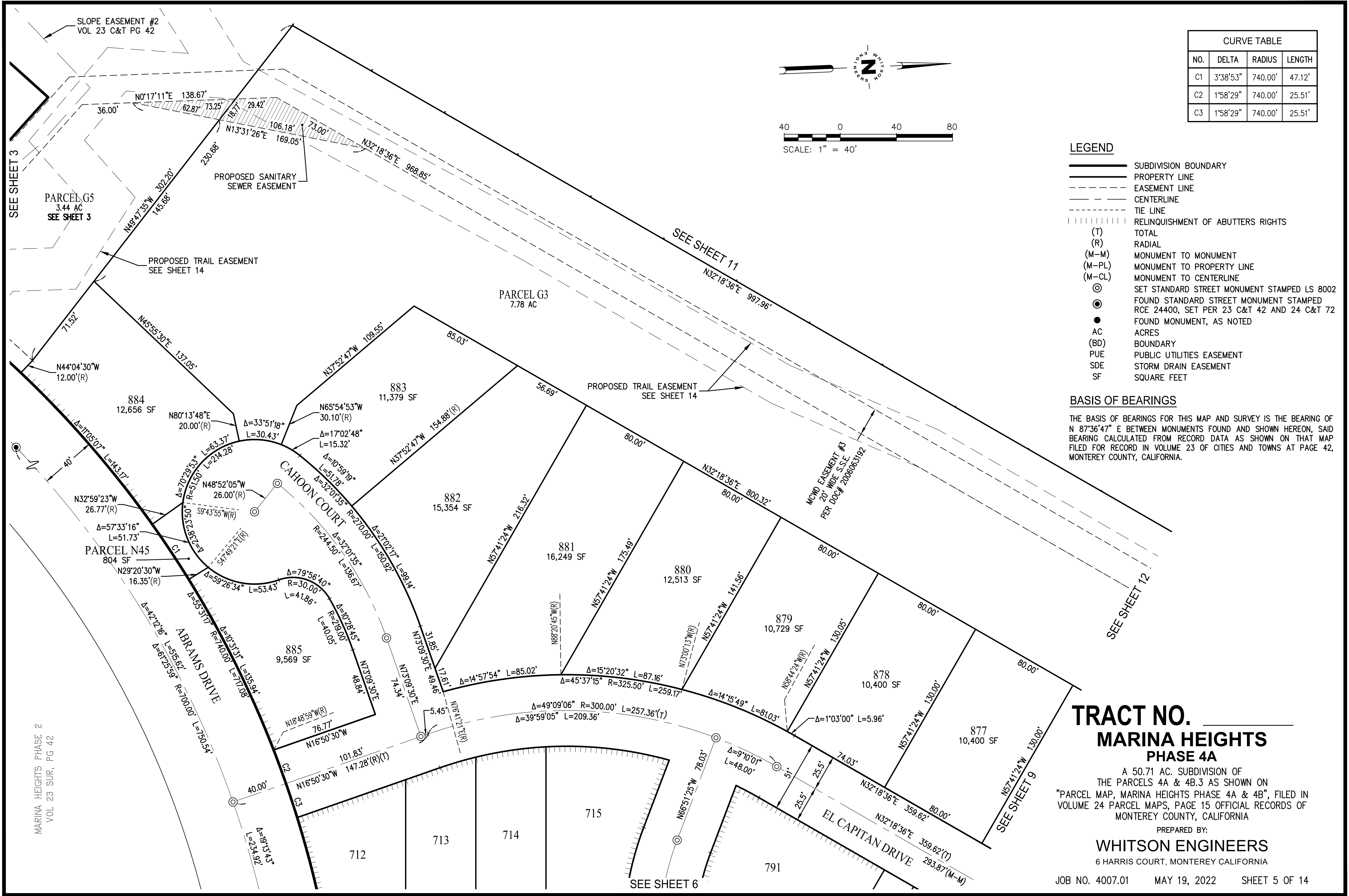
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THE PARCELS 4A & 4B.3 AS SHOWN ON
"PARCEL MAP, MARINA HEIGHTS PHASE 4A & 4B", FILED IN
VOLUME 24 PARCEL MAPS, PAGE 15 OFFICIAL RECORDS OF
MONTEREY COUNTY, CALIFORNIA

PREPARED BY:

WHITSON ENGINEERS

6 HARRIS COURT, MONTEREY CALIFORNIA

JOB NO. 4007.01 MAY 19, 2022 SHEET 4 OF 14



CURVE TABLE			
NO.	DELTA	RADIUS	LENGTH
C1	3°38'53"	740.00'	47.12'
C2	1°58'29"	740.00'	25.51'
C3	1°58'29"	740.00'	25.51'

LEGEND

- SUBDIVISION BOUNDARY
- PROPERTY LINE
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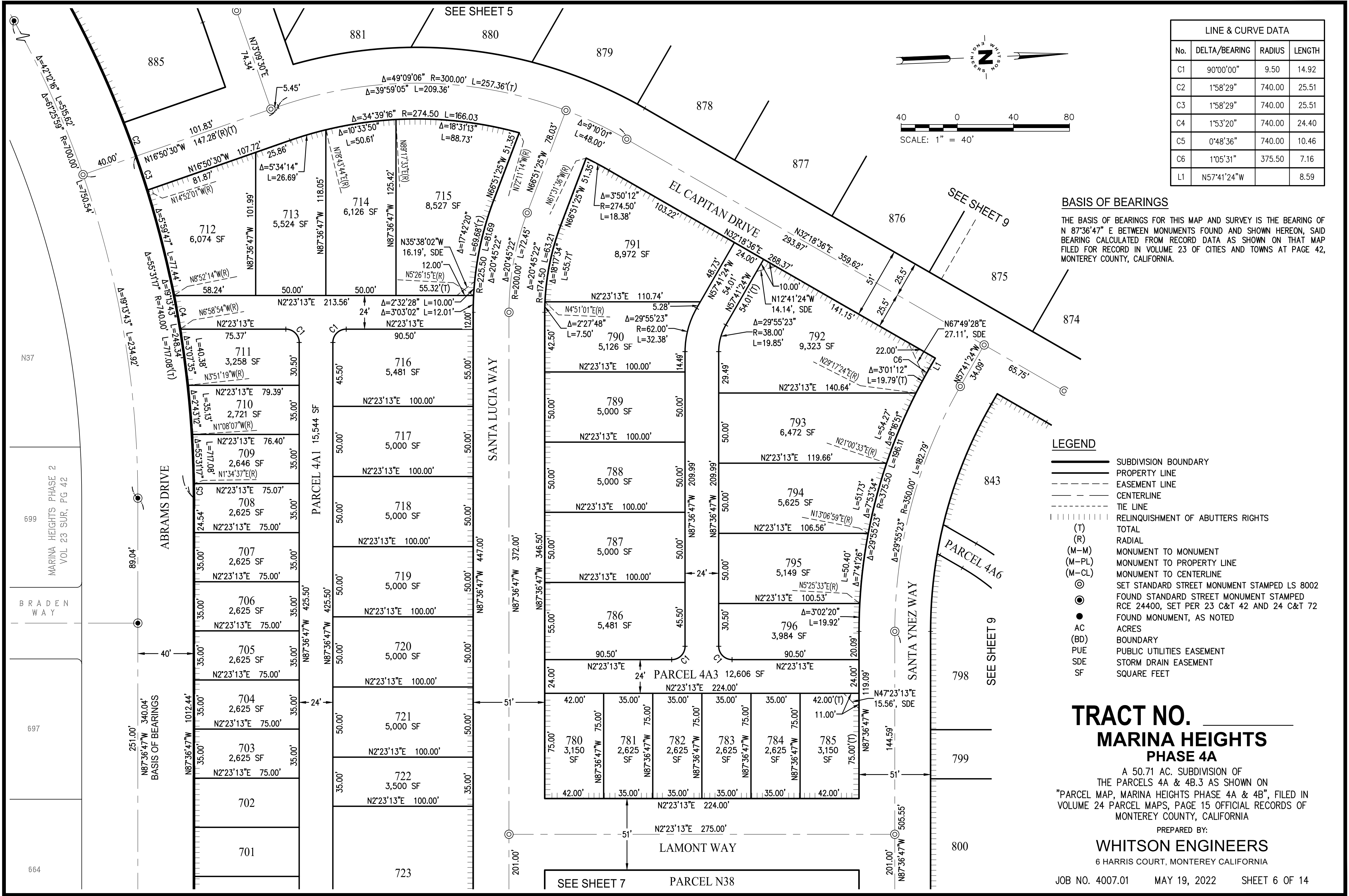
BASIS OF BEARINGS

THE BASIS OF BEARINGS FOR THIS MAP AND SURVEY IS THE BEARING OF N 87°36'47" E BETWEEN MONUMENTS FOUND AND SHOWN HEREON, SAID BEARING CALCULATED FROM RECORD DATA AS SHOWN ON THAT MAP FILED FOR RECORD IN VOLUME 23 OF CITIES AND TOWNS AT PAGE 42, MONTEREY COUNTY, CALIFORNIA.

TRACT NO. MARINA HEIGHTS PHASE 4A

A 50.71 AC. SUBDIVISION OF THE PARCELS 4A & 4B.3 AS SHOWN ON "PARCEL MAP, MARINA HEIGHTS PHASE 4A & 4B", FILED IN VOLUME 24 PARCEL MAPS, PAGE 15 OFFICIAL RECORDS OF MONTEREY COUNTY, CALIFORNIA

PREPARED BY: WHITSON ENGINEERS 6 HARRIS COURT, MONTEREY CALIFORNIA



LINE & CURVE DATA			
No.	DELTA/BEARING	RADIUS	LENGTH
C1	90°00'00"	9.50	14.92
C2	1°58'29"	740.00	25.51
C3	1°58'29"	740.00	25.51
C4	1°53'20"	740.00	24.40
C5	0°48'36"	740.00	10.46
C6	1°05'31"	375.50	7.16
L1	N57°41'24"W		8.59

BASIS OF BEARINGS

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LEGEND

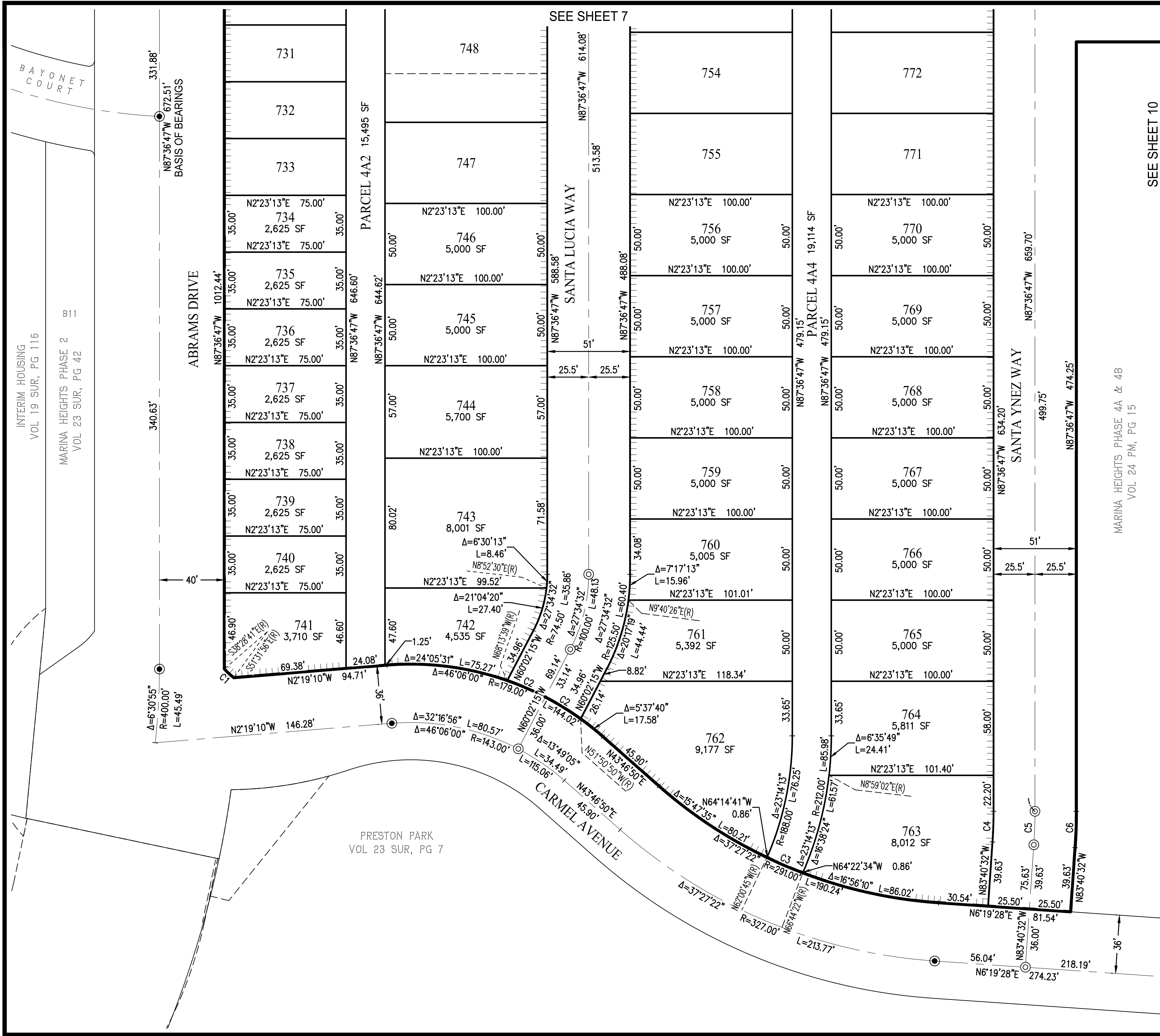
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TRACT NO. MARINA HEIGHTS PHASE 4A

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PREPARED BY:
WHITSON ENGINEERS
6 HARRIS COURT, MONTEREY CALIFORNIA

JOB NO. 4007.01 MAY 19, 2022 SHEET 6 OF 14



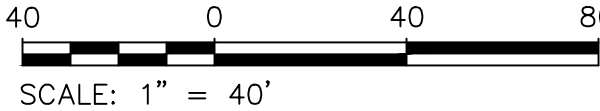
CURVE TABLE			
NO.	DELTA	RADIUS	LENGTH
C1	13°03'16"	35.00'	7.97'
C2	8°11'24"	179.00'	25.587'
C3	4°43'38"	291.00'	24.01'
C4	3°56'15"	274.50'	18.86'
C5	3°56'15"	300.00'	20.62'
C6	3°56'15"	325.50'	22.37'

LEGEND

- SUBDIVISION BOUNDARY
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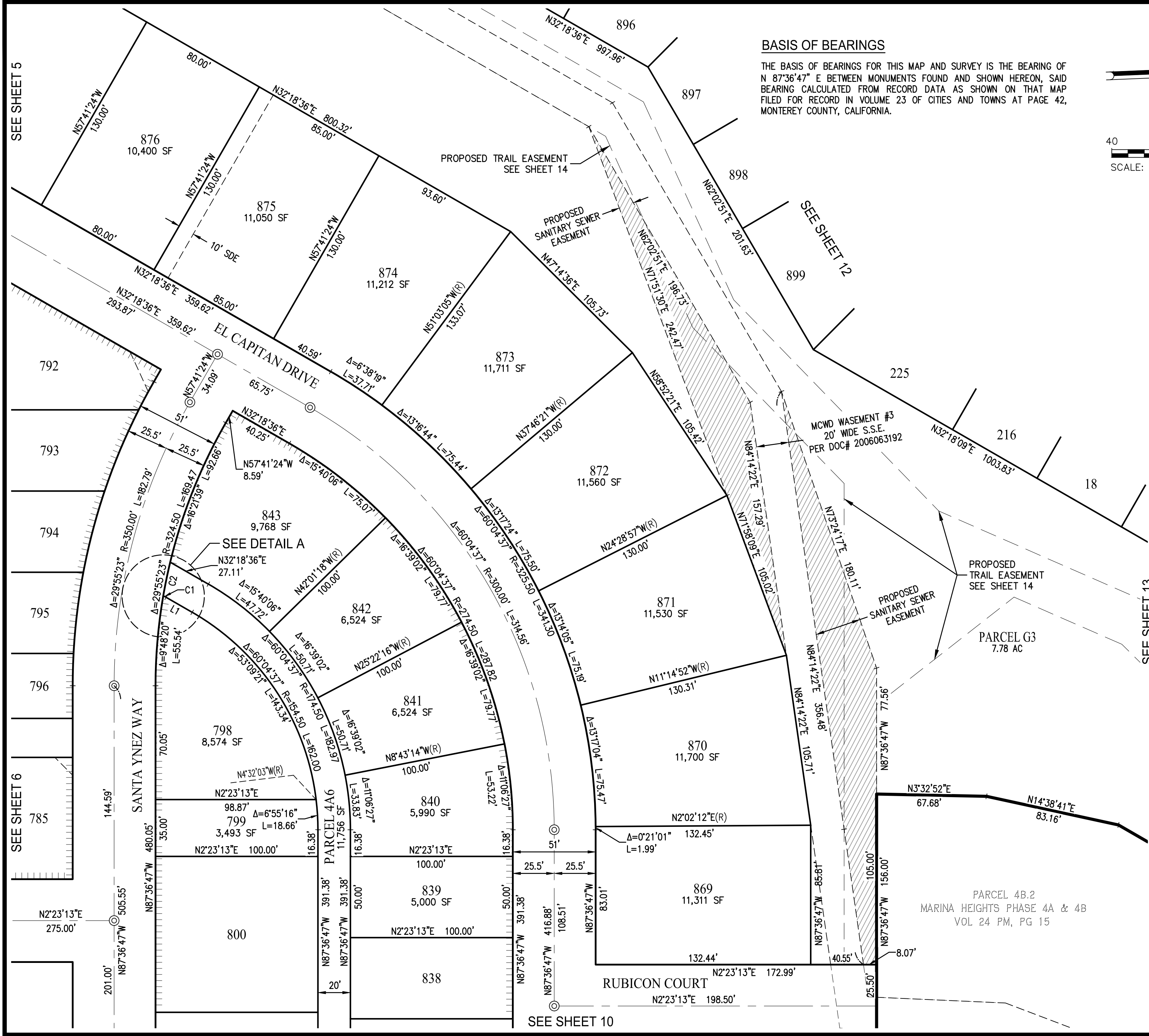


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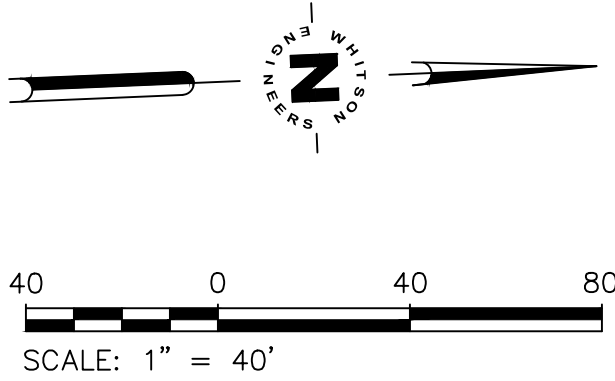
PREPARED BY:

WHITSON ENGINEERS
6 HARRIS COURT, MONTEREY CALIFORNIA

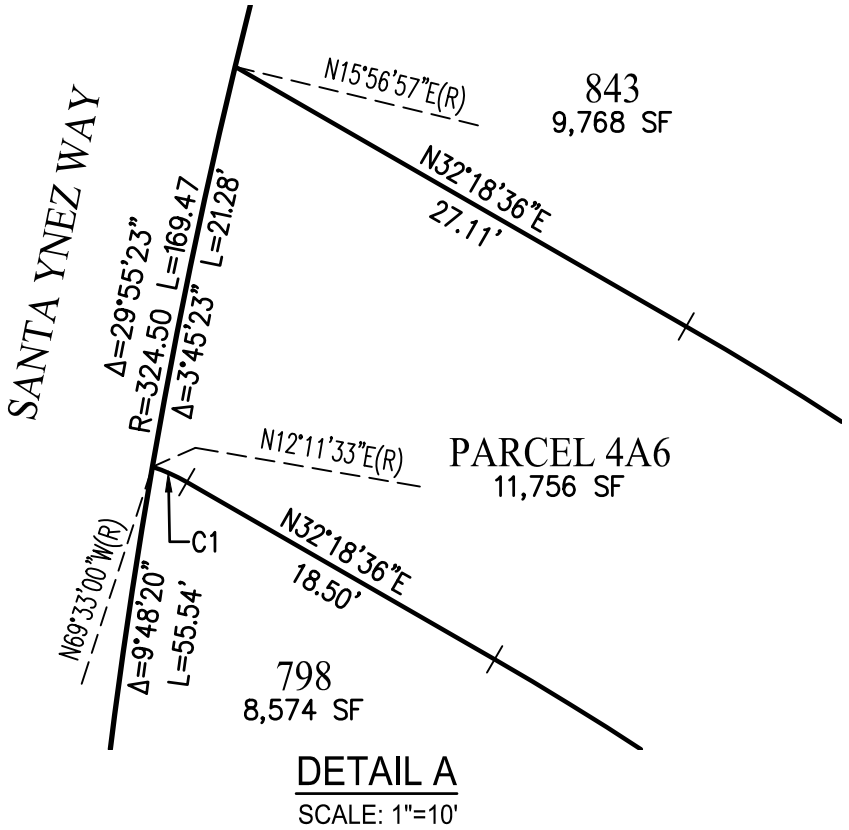


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LINE & CURVE DATA			
No.	DELTA/BEARING	RADIUS	LENGTH
C1	11°51'36"	9.50	1.97
C2	3°45'23"	324.50	21.28
L1	N32°18'36"E		18.50



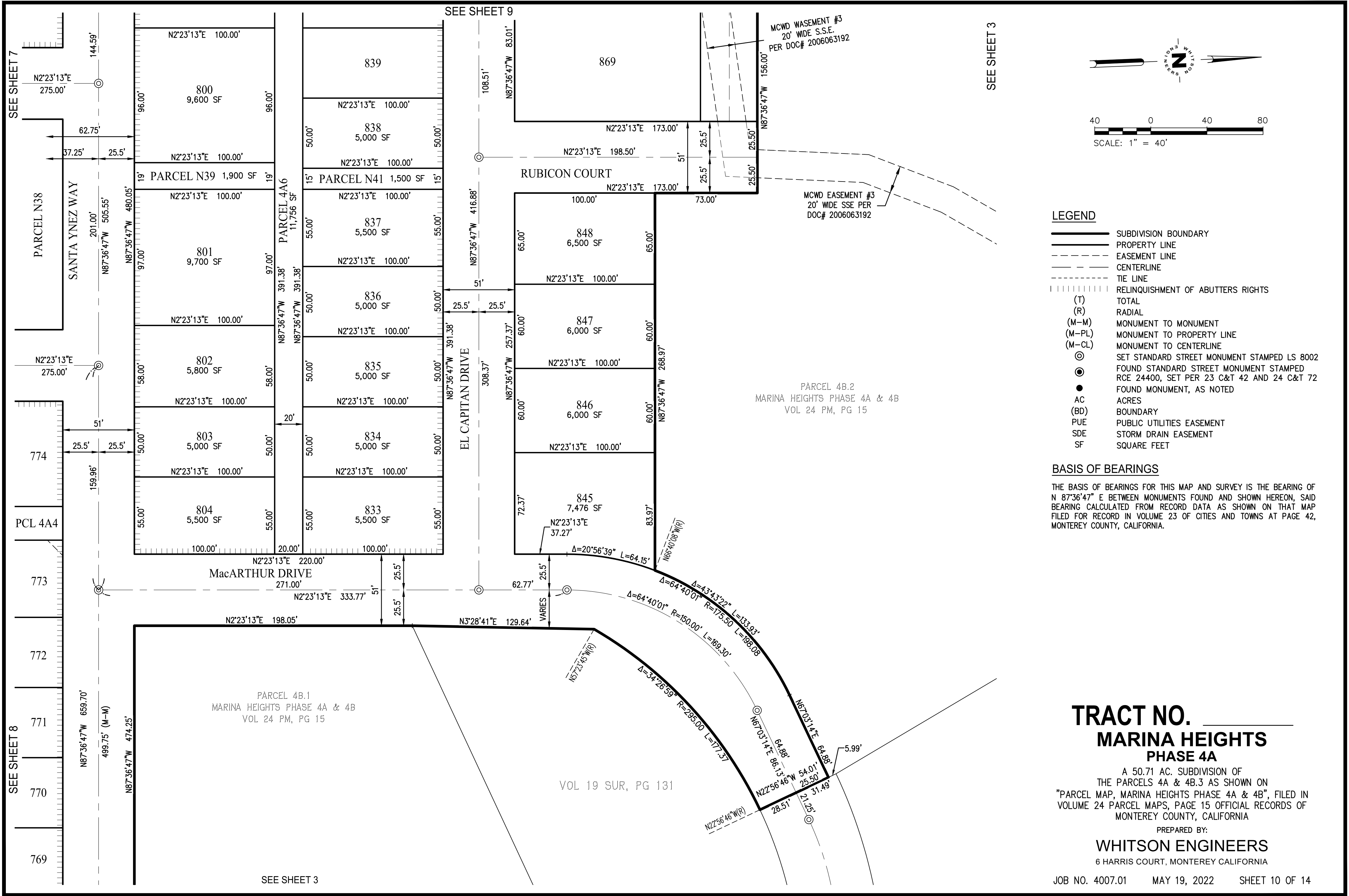
LEGEND

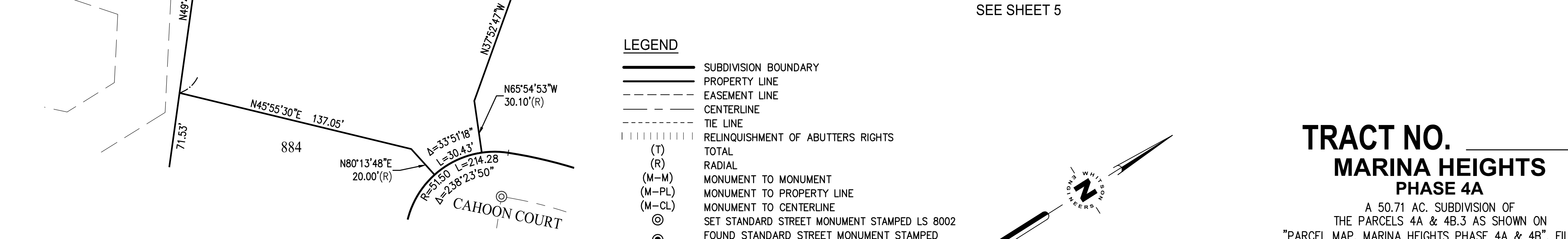
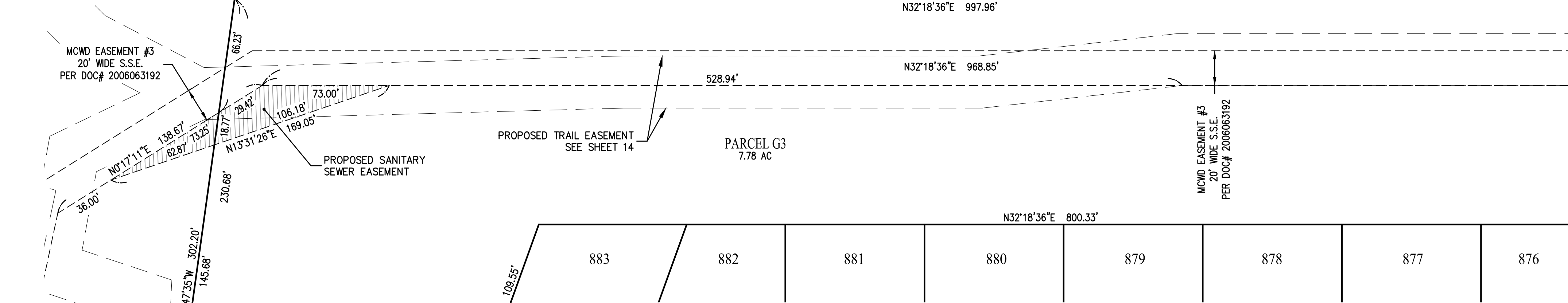
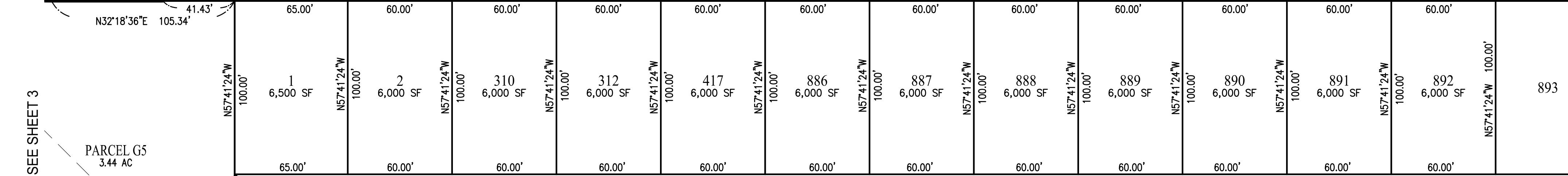
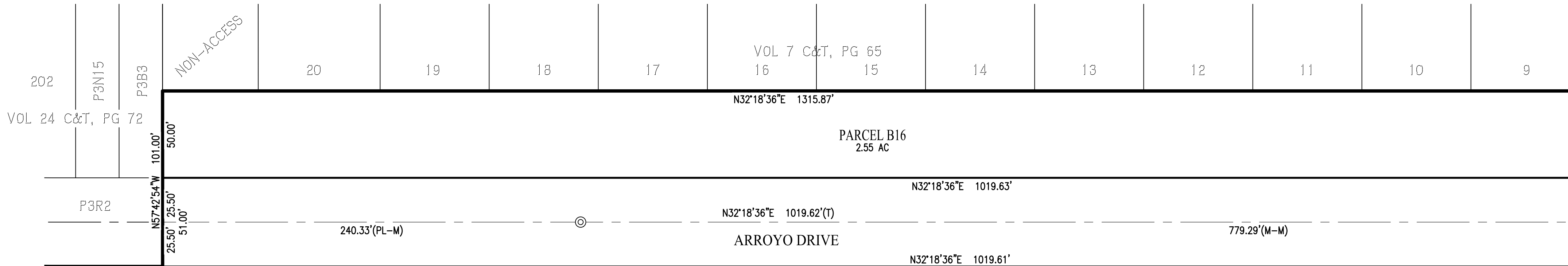
- SUBDIVISION BOUNDARY
- PROPERTY LINE
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TRACT NO. MARINA HEIGHTS PHASE 4A

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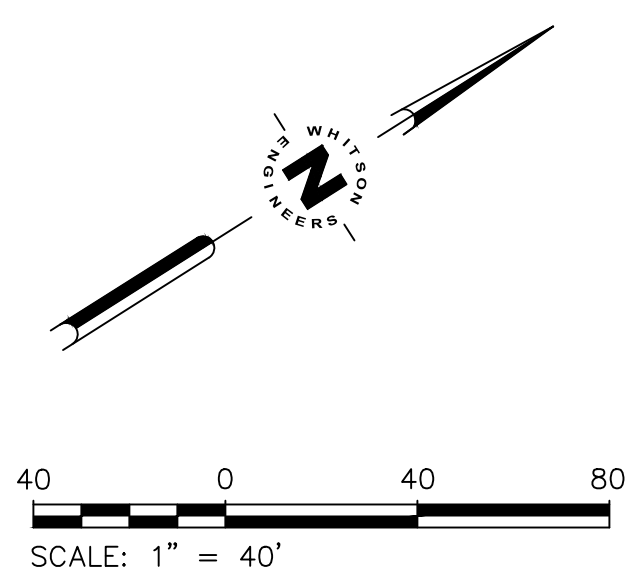
PREPARED BY:
WHITSON ENGINEERS
6 HARRIS COURT, MONTEREY CALIFORNIA



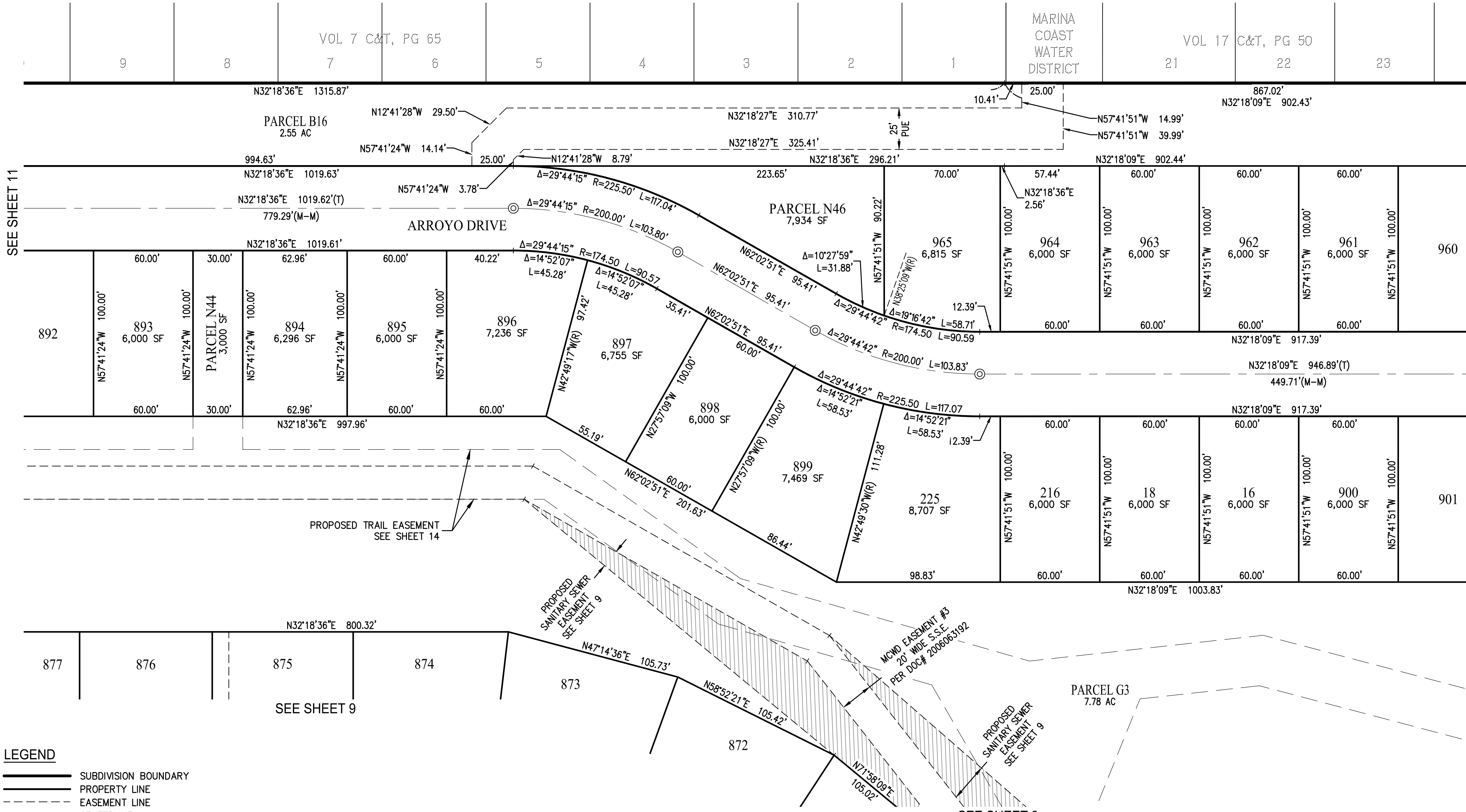


BASIS OF BEARINGS
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- LEGEND**
- SUBDIVISION BOUNDARY
 - PROPERTY LINE
 - EASEMENT LINE
 - CENTERLINE
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 - (M-PL) MONUMENT TO PROPERTY LINE
 - (M-CL) MONUMENT TO CENTERLINE
 - SET STANDARD STREET MONUMENT STAMPED LS 8002
 - FOUND STANDARD STREET MONUMENT STAMPED RCE 24400, SET PER 23 C&T 42 AND 24 C&T 72
 - FOUND MONUMENT, AS NOTED
 - ACRES
 - (BD) BOUNDARY
 - PUE PUBLIC UTILITIES EASEMENT
 - SDE STORM DRAIN EASEMENT
 - SF SQUARE FEET



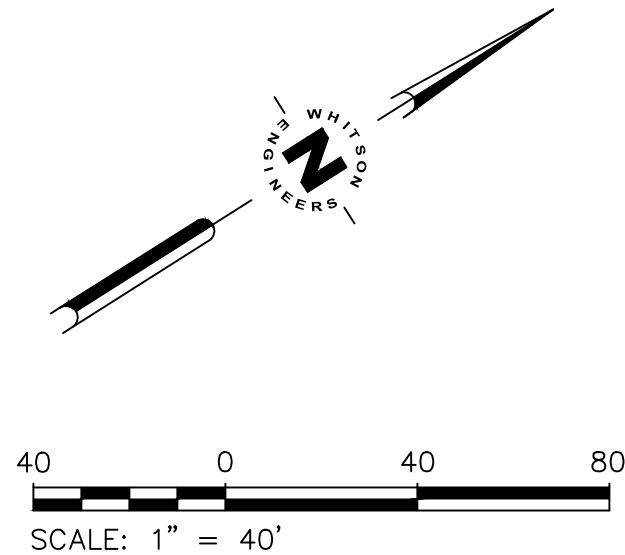
TRACT NO. MARINA HEIGHTS PHASE 4A
A 50.71 AC. SUBDIVISION OF THE PARCELS 4A & 4B.3 AS SHOWN ON "PARCEL MAP, MARINA HEIGHTS PHASE 4A & 4B", FILED IN VOLUME 24 PARCEL MAPS, PAGE 15 OFFICIAL RECORDS OF MONTEREY COUNTY, CALIFORNIA
PREPARED BY:
WHITSON ENGINEERS
6 HARRIS COURT, MONTEREY CALIFORNIA
JOB NO. 4007.01 MAY 19, 2022 SHEET 11 OF 14



- LEGEND**
- SUBDIVISION BOUNDARY
 - PROPERTY LINE
 - EASEMENT LINE
 - CENTERLINE
 - TIE LINE
 - RELINQUISHMENT OF ABUTTERS RIGHTS
 - (T) TOTAL
 - (R) RADIAL
 - (M-M) MONUMENT TO MONUMENT
 - (M-PL) MONUMENT TO PROPERTY LINE
 - (M-CL) MONUMENT TO CENTERLINE
 - ⊙ SET STANDARD STREET MONUMENT STAMPED LS 8002
 - ⦿ FOUND STANDARD STREET MONUMENT STAMPED RCE 24400, SET PER 23 C&T 42 AND 24 C&T 72
 - FOUND MONUMENT, AS NOTED
 - AC ACRES
 - (BD) BOUNDARY
 - PUE PUBLIC UTILITIES EASEMENT
 - SDE STORM DRAIN EASEMENT
 - SF SQUARE FEET

BASIS OF BEARINGS

THE BASIS OF BEARINGS FOR THIS MAP AND SURVEY IS THE BEARING OF N 87°36'47" E BETWEEN MONUMENTS FOUND AND SHOWN HEREON, SAID BEARING CALCULATED FROM RECORD DATA AS SHOWN ON THAT MAP FILED FOR RECORD IN VOLUME 23 OF CITIES AND TOWNS AT PAGE 42, MONTEREY COUNTY, CALIFORNIA.



TRACT NO. MARINA HEIGHTS PHASE 4A

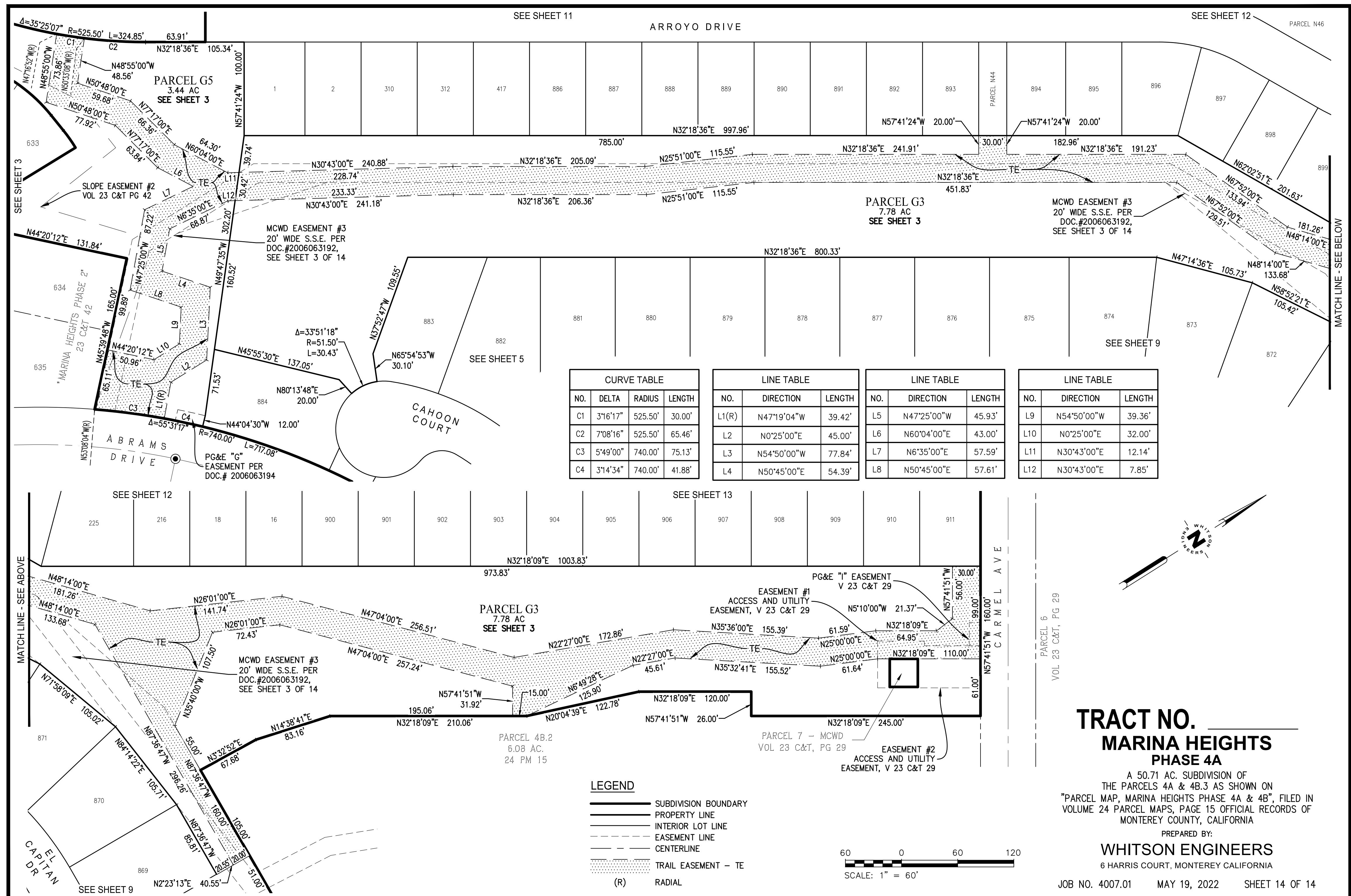
A 50.71 AC. SUBDIVISION OF THE PARCELS 4A & 4B.3 AS SHOWN ON "PARCEL MAP, MARINA HEIGHTS PHASE 4A & 4B", FILED IN VOLUME 24 PARCEL MAPS, PAGE 15 OFFICIAL RECORDS OF MONTEREY COUNTY, CALIFORNIA

PREPARED BY:

WHITSON ENGINEERS

6 HARRIS COURT, MONTEREY CALIFORNIA

JOB NO. 4007.01 MAY 19, 2022 SHEET 12 OF 14



PROJECT TEAM

APPLICANT/DEVELOPER
MARINA DEVELOPERS, INC.
3180 IMJIN ROAD
SUITE 151
MARINA, CA 93933

DAN GARSON
(805) 310-2498

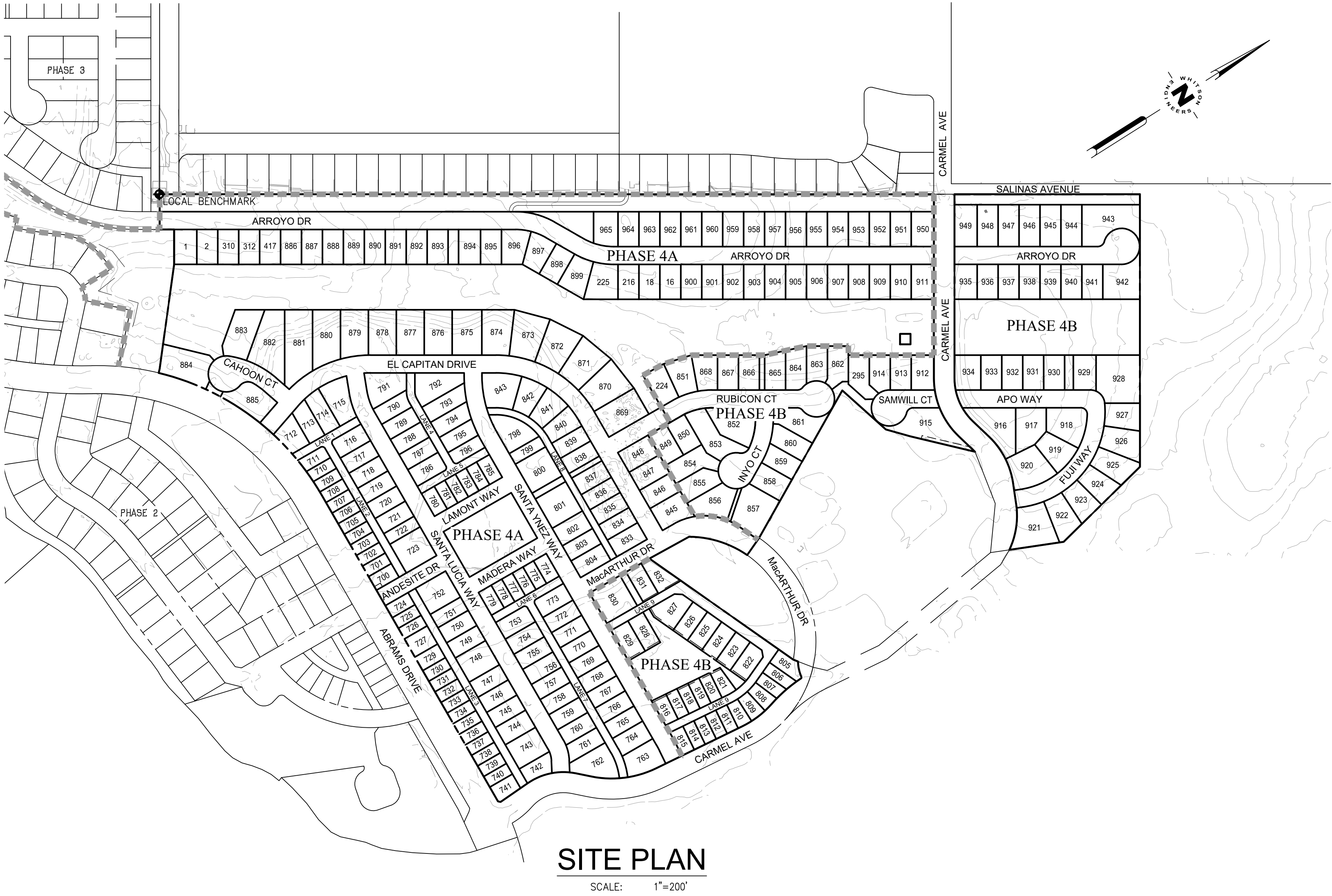
CIVIL ENGINEER
WHITSON ENGINEERS
6 HARRIS COURT
MONTEREY, CA 93940

ANDREW HUNTER, RCE 67730
(831) 649-5225

GEOTECHNICAL ENGINEER
QUANTUM GEOTECHNICAL INC.
6288 SAN IGNACIO AVENUE
SUITE D
SAN JOSE, CA 95119

SIMON MAKDESSI, PE, GE 2548
(408) 629-3822

SEA HAVEN
PHASE 4
MARINA, CALIFORNIA
IMPROVEMENT PLANS

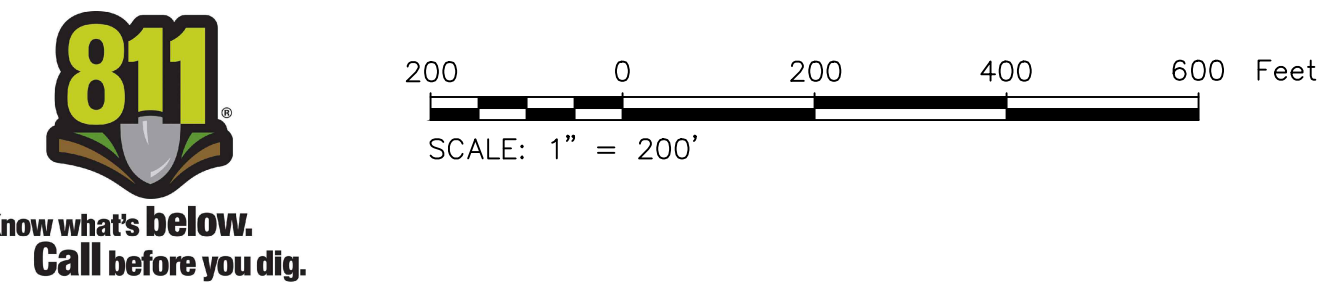


SITE PLAN

SCALE: 1"=200'

BENCHMARK NOTES

- SURVEY CONTROL IS BASED ON PROPAGATION OF AN EXISTING CONTROL NETWORK PREVIOUSLY ESTABLISHED BY CENTRAL COAST SURVEYORS FOR PREVIOUS PROJECT PHASES OF THE SEA HAVEN (MARINA HEIGHTS) DEVELOPMENT. HORIZONTAL CONTROL UTILIZES A GROUND-BASED COORDINATE SYSTEM APPROXIMATELY BASED UPON THE CALIFORNIA COORDINATE SYSTEM, NAD 83 ZONE IV. AN AVERAGE COMBINED SCALE FACTOR OF 1.0000616448 WAS USED IN CONVERTING GRID TO GROUND DISTANCES. BEARINGS ARE GRID BEARINGS PER THE CALIFORNIA COORDINATE SYSTEM, NAD83 ZONE IV.
- ELEVATIONS ARE RELATIVE TO THE PREVIOUSLY ESTABLISHED PROJECT DATUM, HOLDING A PROVIDED LOCAL BENCHMARK ELEVATION OF 157.70' FOR A REBAR WITH PLASTIC CAP STAMPED "CCS" FOUND IN THE SOUTHEAST QUADRANT OF THE INTERSECTION OF ABRAMS DRIVE AND DENALI DRIVE. THE PROJECT DATUM WAS FOUND TO BE CONSISTENT WITH THE NATIONAL GEODETIC VERTICAL DATUM OF 1929, (NGVD29) BASED ON SUBSEQUENT SURVEY TIES TO THE BENCHMARK DESIGNATED "L 813 RESET" (PID: GU2130) AS PUBLISHED BY THE NATIONAL GEODETIC SURVEY, HAVING A PUBLISHED (SUPERSEDED) NGVD29 ELEVATION OF 143.20'.
- AN ELEVATION OF 175.36' FOR A BRASS DISC STAMPED "FOMR AP-45" AT AN ANGLE POINT IN THE BOUNDARY OF THE FORMER FORT ORD MILITARY RESERVATION, SHOWN HEREON, IS THE LOCAL SITE BENCHMARK.



****CAUTION - EXISTING GAS LINES!!**

CONTRACTOR TO EXERCISE EXTREME CAUTION WHEN POT-HOLING AND WORKING NEAR EXISTING GAS LINES!!

LOCATION OF EXISTING UTILITIES IS APPROXIMATE AND SHOULD BE VERIFIED PRIOR TO THE START OF CONSTRUCTION.

A LINE MECHANIC MUST BE PRESENT DURING ANY EXCAVATIONS NEAR THE GAS LINE. THIS INSPECTION CAN BE COORDINATED THROUGH UNDERGROUND SERVICE ALERT (USA) BY CALLING 811.

ANY EXCAVATIONS ABOVE OR AROUND THE GAS TRANSMISSION FACILITIES MUST BE PERFORMED WHILE A PG&E INSPECTOR IS PRESENT.

MINIMALLY INVASIVE CONSTRUCTION TECHNIQUES MUST BE UTILIZED TO MINIMIZE DAMAGE TO THE LINE.

APPROVED FOR CONSTRUCTION

[Signature]

BRIAN McMINN, P.E. 64143 (EXP 12-31-22)
CITY ENGINEER

5/20/22

DATE



MARINA COAST WATER DISTRICT

11 RESERVATION ROAD
MARINA, CA 93933
(831) 384-6131

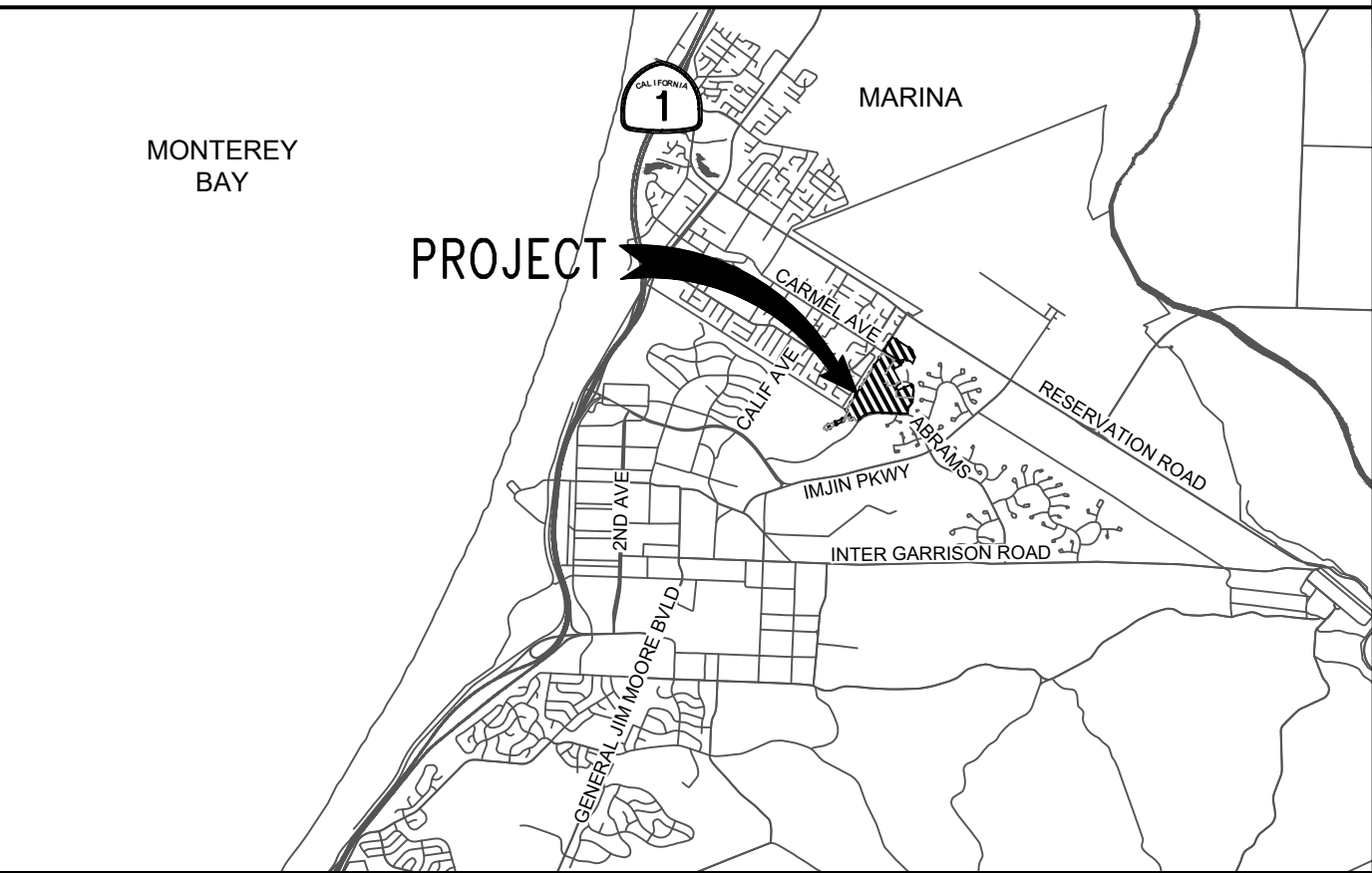
APPROVED FOR CONSTRUCTION:

ANDY STERBENZ, P.E., INTERIM DISTRICT ENGINEER

4/13/22

DATE

LOCATION MAP



NOT TO SCALE

NORTH

LEGEND

DESCRIPTION	PROPOSED	EXISTING
SUBDIVISION BOUNDARY	---	---
LOT LINE	---	---
RIGHT-OF-WAY	---	---
CENTER LINE	---	---
EASEMENT LINE	---	---
SUB-PHASE BOUNDARY	---	---
HINGE LINE/TOP SLOPE	---	---
TOE SLOPE	---	---
SAWCUT LIMIT	---	---
GUTTER FLOWLINE	---	---
EARTH DITCH	---	---
CONCRETE V-DITCH	---	---
CURB AND GUTTER	---	---
SIDEWALK	---	---
DRIVEWAY CURB CUT	---	---
CURB RAMP	---	---
DOMESTIC WATER MAIN	---	---
SANITARY SEWER	---	---
STORM DRAIN	---	---
STORM MANHOLE	---	---
STANDARD CURB INLET	---	---
STORM DRAIN FIELD INLET	---	---
STORM DRAIN OUTFALL PROTECTION	---	---

ABBREVIATIONS

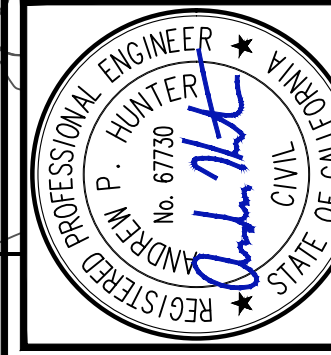
AB	AGGREGATE BASE
AC	ASPHALT CONCRETE
B	BUBBLER
BC	BEGINNING OF CURVE
BEG	BEGIN
BFP	BACK FLOW PREVENTER
BO	BLOW OFF VALVE
BOW, BW	BACK OF WALK
BVCE	BEGIN VERTICAL CURVE ELEVATION
BVCS	BEGIN VERTICAL CURVE STATION
BWV	BACK WATER VALVE
(C)	COMMERCIAL
CATV	CABLE TELEVISION
CB	CATCH BASIN
CG&S	CURB, GUTTER & SIDEWALK
CL	CENTERLINE
CO	CLEAN OUT
CONC	CONCRETE
CR	CROWN
DI	DROP INLET/DITCH INLET
DW	DRIVEWAY LIP
DW	DRIVEWAY
EC	END OF CURVE
EM	EASEMENT
EP	EDGE OF PAVEMENT
ER	END OF RETURN
EVCE	END VERTICAL CURVE ELEVATION
EVCS	END VERTICAL CURVE STATION
EX, EXIST, (E)	EXISTING
(F)	FUTURE
FC	FACE OF CURB
FES	FLARED END SECTION
FF	FINISH FLOOR
FG	FINISH GRADE
PH	FIRE HYDRANT
FL	FLOW LINE
FS	FINISHED SURFACE
FUT	FUTURE
GB	GRADE BREAK
OFF	GARAGE FINISH FLOOR
GL	GARAGE LIP
GP	GARAGE PAD
GND	GROUND
GR	GRATE
HGL	HYDRAULIC GRADE LINE
HL	HINGE LINE
HP	HIGH POINT
IEUE	INGRESS, EGRESS & UTILITY EASEMENT
INTX	INTERSECTION
K	DISTANCE IN FEET REQUIRED TO ACHIEVE A 1% CHANGE IN GRADE
IM	IRRIGATION METER
INV	INVERT
IS	IRRIGATION SLEEVE
LL	LENGTH
LP	LOT LINE
LS	LOW POINT
LT	LANDSCAPE
MAX	LEFT
MID	MAXIMUM
MIN	MIDDLE
NE	MINIMUM
NW	NORTHEAST
OB	NORTHWEST
OH	OVERBUILD
PR, (P)	OVERHEAD ELECTRIC
P	PROPOSED
PCC	PAD
PFF	PORTLAND CEMENT CONCRETE
PIP	PORCH FINISH FLOOR
PL	PROTECT IN PLACE
PL	PROPERTY LINE
PRO	POINT OF REVERSE CURVE
PT	POINT OF TANGENT
PUE	PUBLIC UTILITY EASEMENT
PVC	POLYVINYL CHLORIDE
PVI	POINT OF VERTICAL INTERSECTION
RCP	REINFORCED CONCRETE PIPE
RET	RETAINING
RT	RIGHT
R/W	RIGHT OF WAY
SC	SAW CUT
SDMH	STORM DRAIN MANHOLE
SE	SOUTHEAST
SO	SIDE OPENING
SS	SANITARY SEWER
SSMH	SANITARY SEWER MANHOLE
STA	STATION
STD	STANDARD
SW	SOUTHWEST
S/W	SIDEWALK
TB	TOP OF BANK
TBC	TOP OF BAND CURB
TC	TOP OF CURB
TI	TRAFFIC INDEX
TRC	TOP OF ROLLED CURB
TW	TOP OF WALL
TYP	TYPICAL
UG	UNDERGROUND GAS
UT	UNDERGROUND TELEPHONE
W	WATER
WOSS	WATER QUALITY SAMPLING STATION
WV	WATER VALVE
XJT	EXISTING JOINT TRENCH

INDEX OF SHEETS

SHEET	DESCRIPTION
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2	IMPROVEMENT PLAN NOTES
3-4	SHEET INDEX STREETS & LANES
5	MCWD STANDARD NOTES AND STRUCTURE SCHEDULES
6-8	UTILITY DETAILS
9-11	IMPROVEMENT PLAN DETAILS & STREET SECTIONS
12-14	STORMWATER CHAMBER DETAILS
15-17	MCWD STANDARD WATER DETAILS
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63-66	CURB RETURN PROFILES
67-68	KNUCKLE AND CUL-DE-SAC PROFILES
69-70	STORM DRAIN CROSSINGS
71-74	SIGNING AND STRIPING PLAN
75-77	LANE TRANSITION DETAILS

WDID No.: **3 27C31735**
RISK LEVEL: **2**

Civil Engineering
Land Surveying
6 Harris Court
Monterey, California
831.649.5225
whitsonengineers.com



SUBMITTAL / REVISION	APPROVED PLANS
3	2/18/2022
APH	

MARINA, CALIFORNIA

SEA HAVEN - PHASE 4
IMPROVEMENT PLANS

TITLE, LEGEND AND VICINITY MAP

SCALE: AS SHOWN
DRAWN: APH
JOB No.: 4007.04

SHEET
1
OF 76

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of June 21, 2022

**THE CITY COUNCIL OF THE CITY OF MARINA APPROVE
RESOLUTION NO. 2022-, APPROVING THE ASSIGNMENT OF THE
DEVELOPMENT AGREEMENT RELATED TO THE MARINA STATION
PROJECT TO 3RD MILLENNIUM PARTNERS**

**THE CITY COUNCIL OF THE CITY OF MARINA READ BY TITLE
ONLY AND APPROVE THE FIRST READING OF ORDINANCE 2022-,
APPROVING THE FIRST AMENDMENT TO THE DEVELOPMENT
AGREEMENT RELATED TO THE MARINA STATION PROJECT**

REQUEST

It is requested that the Marina City Council:

1. Approve Resolution 2022-, approving the assignment of the Development Agreement related to the Marina Station Project to 3rd Millennium Partners
2. Read by title only and waive further reading and approve the first reading of Ordinance 2022-, approving the First Amendment to the Development Agreement related to the Marina Station Project.

BACKGROUND:

The City of Marina and Creekbridge Homes, LLC ("Original Developer") originally entered into a Development Agreement dated March 4, 2008, related to the Marina Station project (the "Development Agreement") (**"EXHIBIT B"**). The Development Agreement provided the Original Developer the opportunity to develop a 320-acre site into a mixed-use project on either side of Del Monte Avenue at the northern boundary of the City of Marina. The Development Agreement stipulated the terms and conditions for development of 1,360 residential units (887 single family units and 473 multifamily units), approximately 60,000 square feet of retail space, approximately 144,000 square feet of office space, approximately 652,000 square feet of business park/industrial, parks and open space (the "Development"). The project approvals include requirements for the development of affordable housing and the reservation of a parcel if needed for the development of a fire station.

The Development Agreement was entered into by the City of Marina and the Original Developer pursuant to Government Code Section 65864 and the Marina Municipal Code Chapter 4.04. The Development Agreement was approved by the City Council on March 4, 2008. At that regular meeting of March 4, 2008, the City Council certified the EIR, approved the General Plan Amendments, the Specific Plan (**"EXHIBIT C" Link to approved Specific Plan**), Zoning Ordinance Map Amendments, a Vesting Tentative Map (collectively the "Project Approvals"), Design Review and the Development Agreement for the Marina Station Project.

Development of the Project has been delayed because of a variety of factors, including the recession, litigation, and transfer of the property to a new ownership group. The Project Approvals were challenged in court resulting in delays in implementation of the Development. The court challenge coincided with the Great Recession that weakened the housing market. As a result of these events as well as the fact that the Original Developer dropped out of the Development and the Property was sold to a new ownership group, the Development has been delayed.

The litigation and related settlement agreement between the Sierra Club and Creekbridge Homes, LLC resulted in some changes in the Development to better accommodate conservation and habitat resource protection (in the northwest portion of the property). As a result of the expanded conservation and habitat resource protection activities, some of the approved housing units in that phase of the project needed to be relocated. This relocation occurred to the east of Del Monte Boulevard. The conservation and habitat protection area required by the settlement agreement also necessitated the relocation of certain park improvements and resulted in the reduction of park acreage.

Creekbridge Homes of Salinas, California was the original developer of the project. Creekbridge Homes dropped out of the project in 2010. Subsequently, the owners of the property began seeking a new developer to move the project forward. The property was sold in 2017 to new property owners. The new ownership group brought in 3rd Millennium Partners, Inc. of San Jose ("3MP") to act as the developer of the Development in 2019. 3MP, acting as the Developer, has been working with the City since that time to move the Development forward.

Given the prior delays in the Development, it is impossible for the Development to be completed by the original expiration date of the Development Agreement – March 2026. 3MP and property owners have requested a 10-year extension of the Development Agreement (to 2036). Although the full 10 additional years most likely will not be needed, the additional time will cover unforeseen events that may occur as development proceeds, including economic cycles.

The Developer is required prior to recording the first final map to obtain City Council approval of a below market rate housing agreement consistent with the Housing Element of the City's General Plan in effect in 2008. The Development Agreement requires that 20% of the homes be affordable to very low, low and moderate income households with the following breakdown of the affordable units:

- 95 units for moderate income households (120 percent of County median income)
- 95 units for low income households (80 percent of County median income)
- 82 units for very low-income households (50 percent of County median income)

The below market rate homes will be dispersed throughout the project and likely be a mix of rental and for-sale units. The below market rate housing agreement will include details such as the mix of units between rental and ownership, the timing for development of the units in relation to market rate units, the size of the units and the dispersal of the units through the Development.

Assignment Agreement.

The City originally entered into the Development Agreement with Creekbridge Homes, LLC. Creekbridge was party to a purchase and sale agreement with the then existing property owner. In 2010 Creekbridge dropped out of Development. The Armstrong Family, the then existing owner of the property, assumed the rights and obligations under the Development Agreement. In 2017 the Armstrong Family sold the property to the current property owners. The rights and obligations under the Development Agreement run with the land and the new owners assumed those rights and obligations when they acquired the Property. The current owners have entered into an agreement with 3MP to act as developer under the terms and conditions of the Development Agreement.

Under the terms of the Development Agreement, the Developer cannot assign the Development Agreement without the consent of the City, which consent may not be unreasonably withheld. The City can refuse to approve an assignment only if the City, in its reasonable opinion, determines that the assignee would not be able to perform the obligations to be assumed. A review of the qualifications of 3MP has determined that 3MP will be able to perform the obligations under the Development Agreement.

Development Agreement

The Development Agreement is a valid and enforceable contract which creates rights and responsibilities for both the City and the Developer. The Development Agreement grants the Developer vested rights in the Project Approvals for the term of the Development Agreement and prevents the City from applying new city laws to the Development that conflict with the Project Approvals during the term of the Development Agreement except to the extent that such conditions or requirements are mandated by State or Federal law or required for reasons of public health and safety, such as Building and Fire Code changes. Development Agreements are authorized by Government Code Section 65864 et seq and are designed to provide developers with certainty about development rights, particularly for large scale projects that may be constructed over multiple years. The City of Marina adopted a development agreement ordinance (Chapter 4.04 of the Municipal Code). The City's procedures for the approval of development agreements and amendments to development agreements requires that both the Planning Commission and the City Council hold public hearings.

The Planning Commission held a public hearing on July 8, 2021, on the Development Agreement Amendment as well as the Developer's compliance with the terms of the Development Agreement to date. The Planning Commission unanimously recommended that the City Council approve the amendment to the Development Agreement and found that the Developer is in compliance with the terms of the Development Agreement.

Development Agreement Amendments (“EXHIBIT B”)

The property owner and 3MP have requested a 10-year extension of the term of the Development Agreement. The extension request is based in part on delays that were caused by the great recession, the litigation and most recently the global pandemic, all events outside the control of the Developer. The Development Agreement provides for an automatic extension of the term if the Development is delayed because of certain force majeure events. Some portion of the requested 10-year extension is required as of right under the existing Development Agreement but currently the full 10 years cannot be justified by force majeure events. Since the requested extension requires an amendment to the Development Agreement, the City and the Developer have also reviewed the Development Agreement to determine other amendments that are necessary to address changes that may have occurred since the Development Agreement was originally entered into. The amendment to the Development Agreement proposes the following changes:

- Extends the Term of the Development Agreement for 10 years with a new expiration date of March 4, 2036.
- Clarifies Section 2.3 of the Development Agreement to require that the Development be built to building codes in effect at the time of approval of the building permits as well as clarifies that the City's then current codes with respect to trees and fencing will be applicable to the Development.
- Removes language regarding escrowing TAMC fees since TAMC has now adopted its regional fee which will be applicable to the Development.
- Requires that an update of the 2008 Fiscal Impact study be prepared. The updated fiscal impact study will include as part of the assumptions the formation of community facilities and community service districts to cover some costs of infrastructure as well as all of the City's ongoing maintenance costs of the infrastructure, including one half of the costs of operation of the fire station serving the area. If the updated fiscal impact study does not show that the Development is at least fiscally neutral to the City, the City does not have to approve the Final Map until the City and the Developer have reached agreement on additional impact fees or a reallocation of maintenance responsibilities to reach fiscal neutrality.

- Adds language to clarify that City processing fees in effect at the time a permit application is filed will be applicable to the Development.
- Updates language regarding park improvements to reflect the current configuration of the parks as well as the improvements to be constructed on the parks and to allow the City and the Developer to agree on the standards for the park improvements. The requirements in the existing Development Agreement included specific park improvements that are outdated.
- Revises the City's maintenance obligations related to parks to address that change in the Park in Phase 8 that is now, as a result of the Settlement Agreement, conservation and habitat protection area. The Developer will remain responsible for the maintenance of that area in accordance with the terms of the Settlement Agreement.
- Imposes a park impact fee on the development to address the reduction in parks and recreational areas that result from changes to the total acreage of parks and park improvement. The Developer will now be responsible for paying 51.9% of the City's park impact fee on each residential unit.
- Grants the City access to the Property owners' vernal ponds for monitoring and testing should the owners grant such access to any other party.

The City Council, in considering the approval of the amendments to the Development Agreement is required to make certain findings in accordance with the Municipal Code Chapter 4.04 as follows:

- That the Development Agreement is consistent with the objectives, policies, general land uses, and programs specified in the General Plan and the Specific Plan;
- That the Development Agreement is compatible with the uses authorized in and the regulations prescribed for, the land use district in which the Property is located
- That the Development Agreement is in conformity with public convenience, general welfare, and good land use practice;
- Whether the Development Agreement will be detrimental to the health, safety, and general welfare;
- Whether Development Agreement will adversely affect the orderly development of property or the preservation of property values;
- That the Development Agreement is consistent with the provisions of the Government Code related to development agreements.

The City Council made these finding for this Development when the original Development Agreement was approved. The Development has not substantially changed since its original approval and remains subject to the same General Plan and Specific Plan provisions that were applicable in 2008. The Amendment to the Development Agreement will not adversely affect the orderly development of the property or the preservation of property values and in fact will contribute to the orderly development of the property by completing the Development that was approved in 2008. The Amendment to the Development Agreement is consistent with the provisions of the Government Code related to development agreements. The ordinance prepared for the approval of the Amendment to the Development Agreement makes the required findings based on the above information and the information contained elsewhere in this staff report.

Environmental Determination

On March 4, 2008, the City Council of the City of Marina certified the final environmental impact report for the Marina Station Project (State Clearing House Number 2005061056) ("EIR"). The EIR served as the environmental review for the Development and the Project Approvals and entitlements as well as for the approval of the Development Agreement. Section 15162 of the

CEQA Guidelines states that if an EIR or negative declaration has been adopted for a project, no subsequent EIR is to be prepared unless there have been substantial changes to the project, substantial changes with respect to the circumstances under which the project is undertaken or new information of substantial importance shows that the project would have significant effects not discussed in the EIR. Since certification of the EIR there have been

- (i) no substantial changes to the project which would require revisions to the EIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified effects. Although there have been changes to the Project since the certification of the EIR as a result of the Settlement Agreement, those changes do not significantly alter the Development or change the density or intensity of the uses approved for the Development such that there are new significant environmental effects;
- (ii) no substantial changes have occurred with respect to the circumstances under which the project is being undertaken which require revisions to the EIR due to new significant environmental effects or a substantial increase in the severity of a previously identified effect. The City's urban growth boundary, which was in effect when the Development was approved was recently extended for an additional 20 years so will remain in effect for the duration of the development period. There have been no significant changes in the areas surrounding the Development since the EIR was approved that involve new significant impacts; and
- (iii) no new information shows that the Development will
 - a. have any significant effects that were not discussed in the EIR,
 - b. that significant effects that were previously examined will be more severe
 - c. mitigations measures or alternatives that were found infeasible would in fact be feasible and reduce one or more significant effects; or
 - d. new mitigation measures or alternatives that were not considered in the EIR would substantially reduce one or more significant effects of the Development on the environment.

Based on the above, no additional environmental analysis is required for the approval of the Amendment to the Development Agreement.

TONIGHT'S ACTION: Staff is recommending the following actions:

That the Marina City Council

1. Approve Resolution 2022-, approving the assignment of the Development Agreement related to the Marina Station Project to 3MP
2. Read by title only and waive further reading and approve the first reading of Ordinance 2022-, approving the Amendment to the Development Agreement related to the Marina Station Project.

FISCAL IMPACT:

The approval of the Amendment to the Development Agreement will result in the following beneficial fiscal impacts to the City:

1. The project will be fiscally neutral or beneficial to the City based on an updated fiscal impact study that must be completed before the City approves the Final Map for the first phase. If the fiscal impact study does not demonstrate that the project is fiscally neutral, the Developer will be obligated to either assume more in the way of maintenance obligations or pay additional impact fees.

2. Development of the project as contemplated will result in increased property taxes benefiting the City as well as the other taxing entities.

CONCLUSION:

This request is submitted for City Council discussion and action.

Respectfully submitted,

Alyson Hunter, AICP
Senior Planner, Community Development Department
City of Marina

REVIEWED/CONCUR:

Guido F. Persicone, AICP
Director, Community Development Department
City of Marina

Layne P. Long
City Manager
City of Marina

RESOLUTION NO. 2022-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING THE
ASSIGNMENT OF THE DEVELOPMENT AGREEMENT RELATED TO THE MARINA STATION
PROJECT TO 3RD MILLENNIUM PARTNERS

WHEREAS, Creekbridge Homes, LLC and the City previously entered into that certain Development Agreement dated as of March 4, 2008 (the "Development Agreement"), pursuant to which the City and Creekbridge Homes, LLC agreed to certain matters with respect to the development of a mixed use community with residential, commercial, office, industrial, public, cultural, recreation, and park land uses (the "Project") as more specifically provided for in the Marina Station Specific Plan adopted by the City of Marina; and

WHEREAS, Creekbridge Homes, LLC elected not to proceed with the development of the Project in accordance with the Development Agreement and Creekbridge Homes, LLC's rights and obligations under the Development Agreement were assumed by the owner of the Property at the time, the Armstrong Family, and the City recognized the Armstrong Family as the successor in interest to Creekbridge Homes, LLC under the Development Agreement; and

WHEREAS, the Armstrong Family subsequently sold the Property to Valle del Sol Properties, LLC, the 2004 Ramirez Family Revocable Trust (Restated 2013) and the Villam Legacy Irrevocable Trust (2017) (the "Subsequent Owner") and the Subsequent Owner succeeded to the Armstrong Family's rights under the Development Agreement; and

WHEREAS, the Subsequent Owner has entered into an agreement with 3rd Millennium Partners, a California Corporation ("3MP") for 3MP to act as the developer of the Project; and

WHEREAS, the Development Agreement requires that the City consent to the assignment of the Development Agreement;

WHEREAS, the City has reviewed the qualifications of 3MP and has determined that 3MP has the necessary qualification to complete the project;

WHEREAS, based on the information provided in the staff report no new environmental review for the project is required pursuant to CEQA Guidelines Section 15162 and the final environmental impact report for the Marina Station Project (State Clearing House Number 2005061056) shall serve as the environmental review for the approval of the Amendment to the Development Agreement.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Marina hereby approves the assignment of the Development Agreement to 3MP in accordance with that certain assignment and assumption agreement on file with the City Clerk.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 21st day of June 2022, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCILMEMBERS:

ABSTAIN: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

ATTEST:

Anita Sharp, Deputy City Clerk

Bruce C. Delgado, Mayor

ORDINANCE NO. 2022-

AN ORDINANCE OF THE CITY OF MARINA APPROVING AN AMENDMENT TO DEVELOPMENT AGREEMENT FOR THE MARINA STATION PROJECT

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 *et seq.* (the "Development Agreement Statute") which authorizes cities to enter into agreements for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property; and

WHEREAS, in accordance with the Development Agreement Statute, the City of Marina (the "City") has enacted Chapter 4.04 of the Marina Municipal Code (the "Development Agreement Regulations") to implement procedures for the processing and approval of development agreements in accordance with the Development Agreement Statute; and

WHEREAS, the City and Creekbridge Homes, LLC previously entered into that certain Development Agreement dated as of March 4, 2008 (the "Development Agreement"), pursuant to which the City and Developer agreed to certain matters with respect to the development of a mixed use project including 1320 residential units, approximately 60,000 square feet of retail space, approximately 144,00 square feet of office, approximately 652,000 square feet of industrial space as well as approximately 52 acres of open space and parks along with roadways and other infrastructure serving the development (the "Project") on certain real property consisting of approximately three hundred twenty (320) acres, located in the northern section of the City of Marina (the "Project Site"), which is more particularly described in the Development Agreement; and

WHEREAS, Creekbridge Homes, LLC elected not to proceed with the development of the Project in accordance with the Development Agreement and Creekbridge Homes, LLC's rights and obligations under the Development Agreement were assumed by the owner of the Property at the time, the Armstrong Family.

WHEREAS, The Armstrong Family subsequently sold the Property to Valle del Sol Properties, LLC a California limited liability company, the 2004 Ramirez Family Revocable Trust dated January 16, 2004 and Restated on June 14, 2013 and the Villam Legacy Irrevocable Trust dated October 16, 2017 (collectively the "Subsequent Owner");

WHEREAS, Subsequent Owner has entered into an agreement with 3rd Millennium Partners, a California corporation ("3MP") to act as developer of the Property and the City has approved the assignment of the rights and obligations under the Development Agreement to 3MP pursuant to the terms of an Assignment and Assumption Agreement meeting the requirements of Article 5 of the Development Agreement;

WHEREAS, prior to its adoption of the Development Agreement, the City has approved a Specific Plan (the "Specific Plan") for the Project Site, General Plan Amendments (the "General Plan Amendments"), a Specific Plan Zoning Ordinance and Map Amendments, a Vesting Tentative Map and certified an EIR (collectively the "Project Approvals"); and

WHEREAS, the development of the Project has been delayed and the Developer has requested that the City approve an extension of the Development Agreement to account for those delays; and

WHEREAS, the City and Developer have negotiated the terms of the Amendment to the Development Agreement (the "Amendment") amending the terms of the Development Agreement; and

WHEREAS, on March 4, 2008, the City certified the Final Environmental Impact Report for the Project (State Clearing House Number 2005061056) (the "Final EIR"); and

WHEREAS, the complexity, magnitude and long term buildout of the Project would be difficult for Developer to undertake if the City had not determined, through the Development Agreement, to inject a sufficient degree of certainty in the land use regulatory process to justify the substantial financial investment associated with development of the Project; and

WHEREAS, the Amendment to the Development Agreement will assure both the City and Developer that the Project can proceed without disruption caused by a change in City planning and development policies and requirements, which assurance will thereby reduce the actual or perceived risk of planning, financing and proceeding with construction of the Project and promote the achievement of the private and public objectives of the Project; and

WHEREAS, pursuant to Section 65867 of the Government Code, the Planning Commission held a duly noticed public hearing on July 8, 2021, on amending the Development Agreement consistent with the terms of the First Amendment to the Development Agreement during which public hearing the Planning Commission received comments from the Developer, City staff, and members of the general public; and

WHEREAS, following said public hearing, the Planning Commission recommended approval of the Amendment to the Development Agreement; and

WHEREAS, pursuant to Section 65867 of the Government Code, the City Council, on June 21, 2022, held a duly noticed public hearing on the Amendment to the Development Agreement during which public hearings, the City Council received comments from the Developer, project consultants, City staff, and members of the general public;

THE CITY COUNCIL OF THE CITY OF MARINA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. This Ordinance incorporates, and by this reference makes a part hereof, the Development Agreement and the Amendment to the Development Agreement substantially in the form on file with the City Clerk as of the date of passage of this Ordinance, subject to the provisions of Section 5 hereof.

SECTION 2. This Ordinance is adopted under the authority of Government Code Section 65864 et seq., and pursuant to Chapter 4.04 of the Municipal Code of the City of Marina, which was added by City Ordinance No. 2003-04, establishing procedures and requirements for consideration of development agreements pursuant to Government Code Section 65864 et seq. (the "Development Agreement Regulations").

SECTION 3. In accordance with Section 4.04.090 of the Development Agreement Regulations, the City Council hereby finds and determines, as follows:

- (a) The Amendment to the Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the Specific Plan and the General Plan, as amended;
- (b) The Amendment to the Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use districts in which the Property which is subject to the Development Agreement is located;
- (c) The Amendment to the Development Agreement is in conformity with public convenience, general welfare and good land use practice;
- (d) The Amendment to the Development Agreement will not be detrimental to the public health, safety and general welfare;
- (e) The Amendment to the Development Agreement will not adversely affect the orderly development of property or the preservation of property values; and
- (f) The Amendment to the Development Agreement is consistent with the provisions of Government Code Sections 65864 through 65869.5.
- (g) Based on the information provided that no new environmental review for the project is required pursuant to CEQA Guidelines Section 15162 and that the Final EIR shall serve as the environmental review for the approval of the Amendment to the Development Agreement.

SECTION 4. The foregoing findings and determinations are based upon the following:

- (a) The Recitals set forth in this Ordinance, which are deemed true and correct;
- (b) The Final EIR;
- (c) The City's General Plan;
- (d) The Marina Zoning Map;
- (e) All City staff reports (and all other public reports and documents) prepared for the Planning Commission, City Council, or others relating to the Final EIR, the Specific Plan, the General Plan Amendments, the Development Agreement, the Amendment and other actions relating to the Property;
- (f) All documentary and oral evidence received at public hearing or submitted to the Planning Commission or City during the comment period relating to the Amendment; and
- (g) All other matters of common knowledge to the City Council, including, but not limited to the City's fiscal and financial status; City policies and regulations; reports, projections and correspondence related to development within and surrounding the City; State laws and regulations and publications.

SECTION 5. The City Council hereby approves the Amendment to the Development Agreement, substantially in the form on file with the City Clerk subject further to such minor, conforming and clarifying changes consistent with the terms thereof as may be approved by the City Manager prior to execution thereof, including but not limited to completion of references and status of planning approvals, and completion and conformity of all exhibits thereto, as amended and as approved by the City Council.

SECTION 6. Upon the effective date of this Ordinance as provided in Section 9 hereof, the City Manager and City Clerk are hereby authorized and directed to execute the Amendment to the Development Agreement on behalf of the City of Marina.

SECTION 7. The City Manager is hereby authorized and directed to perform all acts authorized to be performed by the City Manager in the administration of the Amendment to the Development Agreement and the Development Agreement pursuant to the terms of the Development Agreement as amended by the Amendment, including but not limited to provisions for certain administrative amendments and transfers and assignments as authorized therein.

SECTION 8. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 9. This Ordinance shall be in full force and effect thirty (30) days after its passage and adoption; as certified by the City Clerk.

THE FOREGOING ORDINANCE was first read at a regular meeting of the Marina City Council on the 21st day of June 2022 and was passed and adopted at a regular meeting of the Marina City Council on the 6th day of July 2022.

AYES, COUNCIL MEMBERS:

NOES, COUNCIL MEMBERS:

ABSTAIN, COUNCIL MEMBERS:

ABSENT, COUNCIL MEMBERS:

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:
City of Marina
211 Hillcrest Avenue
Marina, CA 93933
Attn: City Manager

EXHIBIT A

NO FEE FOR RECORDING PURSUANT TO
GOVERNMENT CODE SECTION 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF MARINA

AND

VALLE DEL SOL PROPERTIES, LLC, THE 2004 RAMERIZ FAMILY
REVOCABLE TRUST (RESTATED 2013), THE VILLAM LEGACY
IRREVOCABLE TRUST (2017) AND 3RD MILLENNIUM PARTNERS

FOR THE MARINA STATION PROJECT

This First Amendment to Development Agreement (the "First Amendment") is made as of this day of _____, 2022 by and between the CITY OF MARINA, a California municipal corporation (the "City") and VALLE DEL SOL PROPERTIES, LLC ("Valle"), THE 2004 RAMERIZ FAMILY REVOCABLE TRUST (RESTATED 2013) ("Ramirez Trust"), THE VILLAM LEGACY IRREVOCABLE TRUST (2017) ("Villam Trust") (collectively, Valle, Ramirez Trust and Villam Trust are referred to as the "Subsequent Owner"), and 3RD MILLENNIUM PARTNERS, a California corporation ("the "Developer") with reference to the following facts and circumstances.

RECITALS

A. Creekbridge Homes, LLC and the City previously entered into that certain Development Agreement dated as of March 4, 2008 and approved by the City on May 20, 2008 (the "Development Agreement"). A copy of the Development Agreement is attached hereto as Exhibit A, pursuant to which the City and Creekbridge Homes, LLC agreed to certain matters with respect to the development of a mixed use community with residential, commercial, office, industrial, public, cultural, recreation, and park land uses (the "Project") as more specifically provided for in the Marina Station Specific Plan adopted by the City of Marina on May 20, 2008, located on approximately 320 acres of real property in the City more particularly described in Exhibit B (the "Property").

B. Creekbridge Homes, LLC elected not to proceed with the development of the Project in accordance with the Development Agreement and Creekbridge Homes, LLC's rights and obligations under the Development Agreement were assumed by the owner of the Property at

the time, the Armstrong Family, and the City recognized the Armstrong Family as the successor in interest to Creekbridge Homes, LLC under the Development Agreement.

C. The Armstrong Family subsequently sold the Property to the Subsequent Owner.

D. The Subsequent Owner has entered into an agreement with the Developer to act as developer of the Property, and the City, by Resolution 2022-___ has approved the assignment of the rights and obligations under the Development Agreement to the Developer pursuant to the terms of an Assignment and Assumption Agreement between the Subsequent Owner and the Developer meeting the requirements of Article 5 of the Development Agreement. The Assignment and Assumption Agreement between the Subsequent Owner and the Developer has been approved by the City, and it is being recorded concurrently with this First Amendment.

E. The development of the Project has been delayed and the Developer has requested that the City approve an extension of the Development Agreement in part to account for those delays and also to provide time for the Developer to complete the Project.

F. Each of the City and the Developer are requesting modification to the Development Agreement to facilitate the development of the Project, which in turn will bring financial and other benefits to the City.

G. The City and the Developer now desire to amend the Development Agreement pursuant to the terms of this First Amendment.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Defined Terms.** All terms defined in the Development Agreement when used herein shall have their respective meanings as set forth in the Development Agreement unless expressly superseded by the terms of this First Amendment. All references in this First Amendment to an “Article” or a “Section” shall refer to the applicable Article or Section of the Development Agreement, unless otherwise specifically provided.

2. **Term.** The first sentence of Section 1.2.2 of the Development Agreement is amended to read as follows:

The Term of this Agreement shall commence on the Effective Date and shall continue until March 4, 2036 (as may be extended, the “Term”) unless this Agreement is otherwise terminated or extended in accordance with the provision of this Agreement.

3. **Construction Codes.** Section 1.1.8 of the Development Agreement is amended in its entirety to read as follows:

The California Building Standards Code (Title 24 of the California Code of Regulations), as it may be updated by the California Building Standards Commission from time to time (although generally on a triennial basis), and which currently consists of the California Building Code, the California Residential Code, the California Electrical Code, the California Mechanical Code, the California Plumbing Code, the California Energy Code, the California Fire Code, the California Existing Building Code, the California Green Building Standards Code (also referred to as CALGreen), Building Conservation Code and the Uniform Building Security Code. Uniform Building Codes shall include local amendments to the Uniform Building Codes only if such local amendments have been filed with, and approved, by (i) the California Building Standards Commission pursuant to California Health & Safety Code Sections 18941.5, and (ii) for local amendments relating to Part 6 of Title 24 of the California Code of Regulations (the California Energy Code), Part 11 of Title 24 of the California Code of Regulations (the California Green Building Standards Code) and any successor regulations, the California Energy Commission pursuant to California Public Resources Code Section 25402.1(h)(2).

4. **Applicability of New City Laws.** Notwithstanding anything set forth in Section 2.4, the City shall be entitled to apply the provisions related to trees and fencing in Marina Municipal Code Chapter 17.62 and Title 17.42 in effect at the time the Developer submits applications related to trees and fencing.

5. **Impact Fees, Dedication and Processing Fees.**

(a) The final sentence of the first paragraph of Section 2.7 of the Development Agreement is amended to read as follows:

Notwithstanding the previous sentence, the Developer acknowledges that the Project and Property shall be subject to the Regional Development Impact Fee proposed by the Transportation Agency of Monterey County (TAMC).

The second paragraph of Section 2.7, and Subsections 2.7.1.1, 2.7.1.2, 2.7.1.3 and 2.7.1.4 are deleted in their entirety.

(b) Section 2.7.3 of the Development Agreement is amended in its entirety to read as follows:

Developer shall be obligated to pay those processing fees, including application, plan check, map review, inspection and monitoring fees and fees of outside consultants, for land use approvals, grading and building permits and other permits and entitlements (“Processing Fees”) in connection with the Project that are in effect at the time the application is submitted to the City, provided, however, the Developer retains the right to challenge such fees as excessive under state law, provided, however, if the Developer requests expedited processing for any approval, plan check, map review, or inspection or other services, the Developer

shall pay an increases costs incurred by the City to accommodate the request for expediting.

5. **Municipal Services Financing, Plan/Fiscal Neutrality.** The opening paragraph of Section 2.16 of the Development Agreement is amended in its entirety to read as follows:

Pursuant to the requirements of the General Plan, a City staff directed fiscal analysis was prepared at the time the Development Agreement was approved in 2008 (“2008 Fiscal Impact Study”) that summarized costs associated with providing required public services to, and the revenues generated by the Project. Based upon the findings of the 2008 Fiscal Impact Study, the City determined that the economic impact of the Project on the City was fiscally neutral, provided that the ownership of infrastructure and maintenance responsibilities are shared between the City of Marina’s General Fund and the Marina Station Home Owners Association (HOA) as set forth in subsection 2.16.1 through 2.16.4. The City will not issue the Final Map for the first phase of the Development until the City has completed an update to the 2008 Fiscal Impact Study and that update demonstrates that the Project is fiscally neutral to the City. For purposes of completing the update to the 2008 Fiscal Impact Study, the City will assume that community facilities districts and community service districts will be formed at the Developer’s expense that will cover the maintenance costs for all landscaping, lighting, parks, and roadways that are the responsibility of the City and that will also cover one-half of the City’s costs of operating its fire station serving the Project. If the update to the 2008 Fiscal Impact Study fails to demonstrate fiscal neutrality, the Developer and the City shall make adjustments to the ownership and maintenance responsibilities for infrastructure or the Developer shall agree to additional impact fees or other exactions as necessary to achieve fiscal neutrality. Any community facilities districts and community service districts contemplated in the update to the 2008 Fiscal Impact Study must be formed prior to the approval of the Final Map for the first phase of the Development.

6. **City-Maintained Parks.** Section 2.16.3 of the Development Agreement is hereby amended in its entirety to read as follows:

The City shall maintain all of the improvements within Tentative Map Parcels 3, 8, 11, 13, 14, 16, and 29, including the trees and landscaping between the property line of the parcels and the back of the curb.

7. **Construction and Dedication of Parks and Streets.** The first two sentences of Section 2.16.4 of the Development Agreement are hereby amended in their entirety to read as follows:

The Developer shall construct or install all improvements within both the City-maintained areas and the HOA maintained areas described in Section 2.16.1, 2.16.2, and 2.16.3 above. The parks shall incorporate those facilities set forth in Exhibit C to this Amendment. Exhibit C replaces Appendix E of the Marina Station Specific

Plan. The facilities shall be generally consistent with those facilities listed in Exhibit C as such facilities may be revised or modified by mutual agreement of the Parties.

Section 3 of Exhibit C of the Development Agreement is hereby amended to read as follows:

The Developer shall, in connection with the Project, dedicate to the City, the parks and recreational areas set forth in Section 2.16.3 of this Amendment for park and recreational purposes, which shall be maintained in accordance with Section 2.16 of the Agreement. The Developer and the City dispute whether the park and recreation spaces to be dedicated to the City based on the current submissions to the City are less than contemplated originally in the Development Agreement, and the Developer and the City have agreed to resolve this dispute by the Developer agreeing to pay a portion of the City's Park Fees as set forth in the Marina Municipal Code Section 3.26.05 equal to 51.9% of the City's Park Fee per residential unit as such Park Fee increases annually, such fee to be paid upon issuance of the building permits for each residential unit. The Developer shall irrevocably dedicate to the City the parkland within each phase of the Project in an unimproved condition at the time of the City Approval of a Final Map that includes said parkland. Additionally, the Developer shall irrevocably dedicate to the City the parkland shown within Parcel 3 of the Vesting Tentative map prior to City approval of the Final Map for the second phase of the Project. Each park shall be improved by Developer when more than 50% of the residences on the streets surrounding that park (as shown on the final map that includes that park) are installed, and Developer shall bond for each park when it submits the improvement plans and draft final map for that phase which includes that park. The City agrees not to delay occupancy of residential units based upon the status of park improvements.

8. **Exhibits.** Exhibit D of the Development Agreement is deleted in its entirety.

9. **City Access to Wetlands.**

9.1 **Purposes.** In consideration for the City's extension of the Development Agreement, the Subsequent Owner on behalf of itself and its successors and assigns, agrees to provide the City with reasonable access to wetlands and vernal pools located on Subsequent Owner's property in the area shown as "Wetlands Area" on Exhibit D to this First Amendment for purposes of testing and monitoring the wetlands' and vernal pools' hydrologic condition if at any time during the Term of this Agreement, the Subsequent Owner provides access to the Wetlands Area to any other person or entity for purposes of testing and monitoring the wetlands' and vernal pools' hydrologic condition. If the Subsequent Owner provides such access to the Wetlands Area to any other person or entity, then the City shall be allowed such access, and the City's access shall be on the same terms as provided to such other person or entity.

10. **MCWD Cooperation.** If infrastructure required by the Marina Coast Water District ("MCWD") is to be funded in whole or in part by a community facilities district established by the City, the City agrees to cooperate with the Developer in negotiating and entering into an infrastructure agreement with MCWD mutually acceptable to the City and the Developer provided such agreement does not require the City to commit any funds toward the development of water infrastructure other than funds from a community facilities district and does not require the City to incur any liability with regard to the infrastructure to be constructed. Nothing herein shall eliminate or retrain the City Council discretion in approving any such agreement with MCWD and the parties understand and agreed that any such agreement is subject to City Council approval.

10. **Conflict and Effectiveness.** In the event of a conflict between terms and condition of this First Amendment and the terms and conditions of the Development Agreement, the terms and conditions of this First Amendment shall control. This First Amendment shall be effective as of the date that the Ordinance adopting this First Amendment is effective.

11. **No Further Modification.** Except as set forth in this First Amendment, all other terms and provisions of the Development Agreement are hereby ratified and confirmed and shall be and remain unmodified and in full force.

12. **Counterparts.** This First Amendment may be executed in any number of counterparts, each of which counterparts shall be deemed to be an original, and all of which counterparts, when taken together, shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have entered into this First Amendment as of the day and year first above written.

"DEVELOPER":

3RD MILLENNIUM PARTNERS,

By: _____

Its: _____

"SUBSEQUENT OWNER":

VALLE DEL SOL PROPERTIES, LLC

By: _____

Its: _____

THE 2004 RAMERIZ FAMILY
REVOCABLE TRUST (RESTATED 2013)

By: _____

Its: _____

THE VILLAM LEGACY IRREVOCABLE

TRUST (2017)

By: _____

Its: _____

“CITY”:

CITY OF MARINA

By: _____

Name:

Title:

List of Exhibits

Exhibit A – Development Agreement approved by the City in May 2008

Exhibit B – Map of Property subject to Development Agreement

Exhibit C – Park Facilities to be included in Project

Exhibit D – Map of Locations of Wetlands Areas

**EXHIBIT A
DEVELOPMENT AGREEMENT**

**EXHIBIT B
MAP OF PROPERTY**

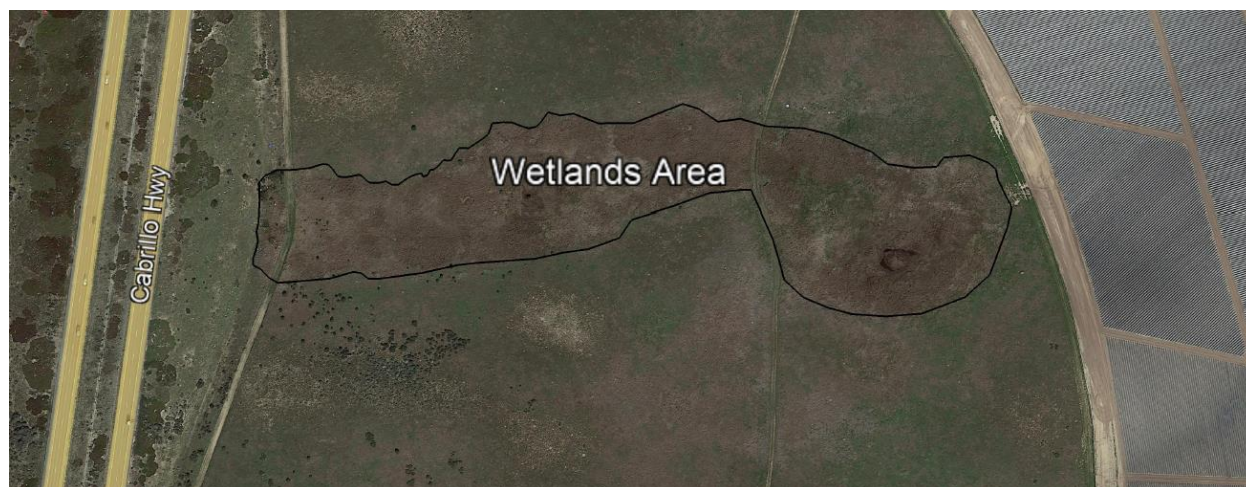
EXHIBIT C
PARK FACILITIES TO BE PROVIDED
 (Replaces Exhibit E to the Marina Station Specific Plan)

SPECIFIC PLAN, APPENDIX E
Specifications for Marina Station Park Facilities *

	2 Mile Promenade	Park 1	Park 2	Park 3	Park 4	Park 5	Park 6	Park 7	Park 8	Park 9	Park 10	Total
Soccer Field	-	1	-	-	-	1	-	-	1	-	-	3
Baseball Field	-	-	1	-	-	1	-	-	-	-	-	2
Basketball Court	-	-	1	-	-	-	-	-	1	-	-	2
Tot Lot Play Structure	-	1	-	-	-	1	-	1	-	-	-	3
Standard Play Structure	-	-	1	-	1	-	-	-	1	-	-	3
Large Play Structure	-	-	-	-	-	-	-	-	-	1	-	1
Park bench	12	-	-	1	2	1	2	1	1	2	4	26
Picnic Table	-	3	1	-	-	-	3	-	3	2	-	12
Barbeque Grill	-	1	-	-	-	-	1	-	1	-	-	3
Trash Receptacle	5	2	2	1	1	2	2	1	2	2	2	22
Drinking fountains	5	1	1	-	1	1	1	1	1	1	1	14
Permanent Restroom	-	1	1	-	-	-	1	-	1	-	-	4
Seasonal Restroom	-	-	0	-	-	1	-	-	-	1	-	2
Pet Waste Disposal System	7	1	1	-	-	1	1	1	1	1	1	15
Park Size in Acres or LF	15,682 LF	2.25	2.73	0.26	0.78	2.37	0.45	2.01	4.82	2.21	1.06	= 18.94
Park Type*	A, C, F	A,B,C,D,E	A,B,C,D	A,B,C	A,B,C	A,B,C,D,E	A,C,E	A,B,C	A,B,C,D,E	A,B,C,E	A,C,E	

The parks and facilities outlined in red and lined out will not be built by the Developer.

**EXHIBIT D
MAP OF LOCATIONS OF WETLANDS AREAS**



CITY COUNCIL OF THE CITY OF MARINA

ORDINANCE NO. 2008-04

AN ORDINANCE OF THE CITY OF MARINA APPROVING A
DEVELOPMENT AGREEMENT WITH CREEKBRIDGE HOMES, LLC
FOR THE MARINA STATION PROJECT

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 *et seq.* (the "Development Agreement Statute") which authorizes cities to enter into agreements for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property; and

WHEREAS, in accordance with the Development Agreement Statute, the City of Marina (the "City") has enacted Chapter 4.04 of the Marina Municipal Code (the "Development Agreement Regulations") to implement procedures for the processing and approval of development agreements in accordance with the Development Agreement Statute; and

WHEREAS, Creekbridge Homes, LLC ("Developer") has an equitable interest in the Property (defined herein) in that it has the contractual right to purchase, in phases, approximately 320 acres of real property in the City known generally as Marina Station, a part of the Armstrong Ranch located within the City Limits of the City of Marina, which property is described in the Legal Description of the Property, attached hereto as Exhibit A-I, and shown on the map set forth in the Map of the Property, attached hereto as Exhibit A-2 ("Property"); and

WHEREAS, the City and Developer have negotiated the terms of the Development Agreement (the "Development Agreement") to be entered into between the City and Developer pursuant to the Development Agreement Statutes and the Development Agreement Regulations, among other matters; and

WHEREAS, prior to its adoption of this Ordinance, the City has approved a Specific Plan (the "Specific Plan") for the Property, a General Plan Map and Text Amendments (the "General Plan Amendments") and zoning map amendment to conform the Development Agreement's permitted uses to the uses permitted in the City's Zoning Ordinance, the Specific Plan, the General Plan and the Zoning Ordinance; and

WHEREAS, consistent with the Specific Plan, and the General Plan, as amended, Developer has proposed the development of the Property as a mixed use development including 1360 residential units, industrial development, commercial and office developments as when as public parks and other amenities (the "Project").

WHEREAS, on **March 4, 2008**, the City certified the Final Environmental Impact Report for the Marina Station Specific Plan (the "Final EIR"); and

WHEREAS, prior to adopting this Ordinance, the City Council, on March 4, 2008, adopted Resolution No 2008-43, finding that, where feasible, mitigation measures have been imposed and modifications incorporated into the Project which avoid or substantially lessen all significant adverse environmental impacts and that social, economic and other benefits outweigh the remaining adverse environmental impacts that cannot be mitigated to a level of insignificance; and

WHEREAS, Developer desires to carry out the development of the Property as a mixed use development consistent with the Specific Plan, the General Plan, as amended. and the Development Agreement; and

WHEREAS, the complexity, magnitude and long term buildout of the Project would be difficult for Developer to undertake if the City had not determined, through the Development Agreement, to inject a sufficient degree of certainty in the land use regulatory process to justify the substantial financial investment associated with development of the Project; and

WHEREAS, the Development Agreement will assure both the City and Developer that the Project can proceed without disruption caused by a change in City planning and development policies and requirements, which assurance will thereby reduce the actual or perceived risk of planning, financing and proceeding with construction of the Project and promote the achievement of the private and public objectives of the Project; and

WHEREAS, pursuant to Section 65867 of the Government Code, the Planning Commission held a duly noticed public hearing on October 11, November 1, and November 29, 2007 and February 7, 2008, on the Development Agreement, the Specific Plan, and the General Plan Amendments, among other project-related approvals, during which public hearing the Planning Commission received comments from the Developer, project consultants, City staff, public agencies and members of the general public; and

WHEREAS, following said public hearing, the Planning Commission, by Resolution Nos. 2008-10, 2008-07, and 2008-05, adopted on February 7, 2008, adopted all appropriate findings and recommended approval of the Development Agreement, the Specific Plan and the General Plan Amendments and the other related approvals, respectively; and

WHEREAS, pursuant to Section 65867 of the Government Code, the City Council, on February 20, 2008, held a duly noticed public hearing on the Development Agreement, the Specific Plan, the General Plan Amendment and the other project related approvals which public hearing was continued to March 4, 2008, during which public hearing, the City Council received comments from the Developer, project consultants, City staff, public agencies and members of the general public;

THE CITY COUNCIL OF THE CITY OF MARINA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. This Ordinance incorporates, and by this reference makes a part hereof, the Development Agreement substantially in the form on file with the City Clerk as of the date of passage of this Ordinance, subject to the provisions of Section 5 hereof.

SECTION 2. This Ordinance is adopted under the authority of Government Code Section 65864 et seq., and pursuant to Chapter 4.04 of the Municipal Code of the City of Marina, which was added by City Ordinance No. 2003-04, establishing procedures and requirements for consideration of development agreements pursuant to Government Code Section 65864 et seq. (the "Development Agreement Regulations").

SECTION 3. In accordance with Section 4.04.090 of the Development Agreement Regulations, the City Council hereby finds and determines, as follows:

- (a) The Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the Specific Plan and the General Plan, as amended;
- (b) The Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use districts in which the Property which is subject to the Development Agreement is located;
- (c) The Development Agreement is in conformity with public convenience, general welfare and good land use practice;
- (d) The Development Agreement will not be detrimental to the public health, safety and general welfare;
- (e) The Development Agreement will not adversely affect the orderly development of property or the preservation of property values; and
- (f) The Development Agreement is consistent with the provisions of Government Code Sections 65864 through 65869.5.

SECTION 4. The foregoing findings and determinations are based upon the following:

- (a) The Recitals set forth in this Ordinance, which are deemed true and correct;
- (b) The report and recommendations of the Planning Commission on the Specific Plan and the General Plan Amendments, as contained in Resolution No. 2008-05 and Resolution No. 2008-07, adopted by the Planning Commission on February 7, 2008, including all findings, determinations and recommendations contained therein;
- (c) The report and recommendations of the Planning Commission on a zoning map (the "Marina Zoning Map Revision"), as contained in Resolution No. 2008-06, adopted by the Planning Commission on February 7, 2008, including all findings, determinations and recommendations contained therein;
- (d) The report and recommendations of the Planning Commission on Design Review DR 2004-1 for the six (6) residential unit types Project, as contained in Resolution No. 2008-08, adopted by the Planning Commission on February 7, 2008, including all findings, determinations and recommendations contained therein;
- (e) The report and recommendations of the Planning Commission regarding, the Vesting Tentative Map TM2004-1 for the subdivision of an approximately 320-acre site into 909 residential parcels, 48 industrial and office parcels and parcels for parks, open space and an Olson Elementary School expansion site contained in Resolution No. 2008-09 adopted by the Planning Commission on February 7,

2008, including all findings, determinations and recommendations contained therein.

- (f) The report and recommendations of the Planning Commission on the Development Agreement, as contained in Resolution No. 2008-10, adopted by the Planning Commission on February 7, 2008, including all findings, determinations and recommendations contained therein;
- (g) The Final Environmental Impact Report for the Marina Station Specific Plan, including the appendices and technical reports and other documents and references cited in and/or relied upon in preparing the EIR, and including project specific mitigation measures as certified and adopted by City with the EIR, and as specified within the adopted Mitigation Monitoring and Reporting Program certified by the City Council of City by Resolution No 2008-41, adopted March 4, 2008;
- (h) Resolution No. 2008-41, adopted by the City Council on March 4, 2008, making findings as to the Final EIR for the Marina Station Specific Plan, including the Statement of Findings and Facts and Statement of Overriding Considerations (Exhibit A thereto), and the Mitigation Monitoring and Reporting Program (Exhibit B thereto) approved by and incorporated in said Resolutions, which Resolutions and exhibits are incorporated herein by reference as if set forth in full;
- (i) The City's General Plan, as amended by the General Plan Amendment adopted by the City Council by Resolution No. 2008-42 prior to adoption of this Ordinance;
- (j) The Marina Zoning Map, as amended by the Marina Zoning Map Revision adopted by the City Council by Ordinance No. 2008-03 prior to adoption of this Ordinance;
- (k) The Design Standards for six (6) types of residential properties, adopted by the City Council by Resolution No. 2008-44 prior to adoption of this Ordinance;
- (l) An City staff reports (and all other public reports and documents) prepared for the Planning Commission, City Council, or others relating to the EIR, the Specific Plan, the General Plan Amendments, the Development Agreement, and other actions relating to the Property;
- (m) All documentary and oral evidence received at public hearings or submitted to the Planning Commission or City during the comment period relating to the EIR the Specific Plan, the General Plan Amendments, the Development Agreement, and other actions relating to the Property; and
- (n) An other matters of common knowledge to the Planning Commission and City Council, including, but not limited to the City's fiscal and financial status; City policies and regulations; reports, projections and correspondence related to development within and surrounding the City; State laws and regulations and publications.

SECTION 5. The City Council hereby approves the Development Agreement, substantially in the form on file with the City Clerk, subject to the provisions of Section 6 hereof, and subject further to such minor, conforming and clarifying changes consistent with the terms thereof as may be approved by the City Manager or Development Services Director prior to execution thereof, including but not limited to completion of references and status of planning approvals, and completion and conformity of all exhibits thereto, and conformity to the General Plan, as amended and as approved by the City Council.

SECTION 6. The approvals contained in Section 5 hereof are subject to and conditioned upon all of the following becoming effective:

- (1) Resolution No. 2008-43, adopted by the City Council prior to adoption of this Ordinance approving the Specific Plan;
- (2) Resolution No. 2008-42, adopted by the City Council prior to adoption of this Ordinance, approving the General Plan Amendments;
- (3) Ordinance No. 2008-03, introduced by City Council prior to introduction of this Development Agreement Ordinance, and passed prior to passage of this Development Agreement Ordinance approving the zoning map amendment.

SECTION 7. Upon the effective date of this Ordinance as provided in Section 10 hereof, the Mayor and City Clerk are hereby authorized and directed to execute the Development Agreement on behalf of the City of Marina.

SECTION 8. The City Manager and Development Services Director are hereby authorized and directed to perform all acts authorized to be performed by the City Manager or Development Services Director in the administration of the Development Agreement pursuant to the terms of the Development Agreement, including but not limited to provisions for certain administrative amendments and transfers and assignments as authorized therein.

SECTION 9. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 10. This Ordinance shall be in full force and effect thirty (30) days after its passage and adoption; provided, however, that if all of the actions referred to in Section 6 hereof are not effective on such date, then the effective date of this Ordinance shall be the date on which all of said actions become effective, as certified by the City Clerk.

* * * * *

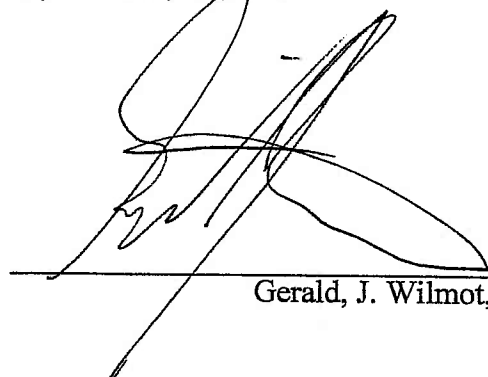
THE FOREGOING ORDINANCE was first read at a regular meeting of the Marina City Council on the 4th day of March, 2008, and was passed and adopted at a regular meeting of the Marina City Council on the 20th day of May 2008.

AYES, COUNCIL MEMBERS: Amadeo, Gray, MaCall, Wilmot

NOES, COUNCIL MEMBERS: None

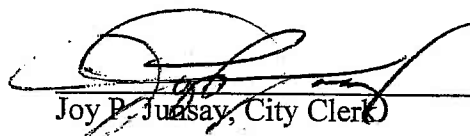
ABSTAIN, COUNCIL MEMBERS: Ford

ABSENT, COUNCIL MEMBERS: None



Gerald, J. Wilmot, Mayor

ATTEST:



Joy P. Jussay, City Clerk

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN
TO:

City of Marina
City Clerk's Office City Hall
211 Hillcrest Avenue
Marina, CA 93933

Record for the Benefit of
The City of Marina
Pursuant to Government Code
Section 6301.

[FOR MEETING OF
CITY COUNCIL

_____, 2008
(reflects changes discussed at March 4th
Council meeting)

Space Above Reserved for Recorder's Use Only

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF MARINA,

and

CREEKBRIDGE HOMES, LLC

for

MARINA STATION PROJECT

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**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF MARINA
AND CREEKBRIDGE HOMES, LLC
FOR THE MARINA STATION PROJECT**

This Development Agreement ("Development Agreement" and sometimes "Agreement"), dated as of March 4, 2008 ("Effective Date"), is entered into by and between the CITY OF MARINA, a California municipal corporation, (hereinafter "City"), and CreekBridge Homes, LLC., (hereinafter "Developer"), pursuant to section 65864 *et seq.* of the California Government Code and the City's police powers. (Developer and City are, from time to time, referred to individually in this Agreement as a "Party" and collectively as the "Parties").

This Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties.

RECITALS

A. Purpose. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 *et seq.* (the "Development Agreement Statute") which authorizes cities to enter into agreements for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property. In accordance with the Development Agreement Statute, the City has enacted Chapter 4.04 of the Marina City Code (the "Development Agreement Regulations") to implement procedures for the processing and approval of development agreements in accordance with the Development Agreement Statute. (The provisions of the Development Agreement Statute and the Development Agreement Regulations are collectively referred to herein as the "Development Agreement Law.") This Agreement has been drafted and processed pursuant to the Development Agreement Law.

B. Developer's Interest in Property. The Developer has an equitable interest in the Property (defined herein) in that it has the contractual right to purchase, in phases, approximately 320 acres of real property in the City known generally as Marina Station, a part of the Armstrong Ranch located within the City Limits of the City of Marina, which property is described in the Legal Description of the Property, attached hereto as **Exhibit A-1**, and shown on the map set forth in the Map of the Property, attached hereto as **Exhibit A-2** ("Property"). The Property comprises all of the approximately 320 acres of property included in the Marina Station Specific Plan (referred to in Recital D hereof).

C. Planning Uses. Consistent with the City of Marina General Plan, Developer has proposed, and City has approved in the Project Approvals, the development of the Property as a new mixed-use community with residential, commercial, office, industrial, public, cultural, recreation, park land uses as more specifically provided for in the Specific Plan, together with construction, relocation, site preparation and installation of infrastructure (the "Project").

D. Project Approvals. The Project Approvals (as applicable to the Project and the Property) include the following:

1. Certification of a Final Environmental Impact Report for the Marina Station Specific Plan (EIR), including project-specific mitigation measures as certified and adopted by City with the EIR, and as specified within the adopted Mitigation Monitoring and Reporting Program ("EIR") certified by the City Council of Marina by Resolution No. _____ adopted {To be inserted at City Council Approval}.
2. The Marina Station Specific Plan, ("Specific Plan") approved by the City Council of Marina by Resolution No. ____ adopted on {to be inserted at City Council Approval}.
3. General Plan text amendments and map amendments approved by the City Council of Marina Resolution No. _____ adopted on {To be inserted at City Council Approval}.
4. Zoning Ordinance map amendments adopted by the City Council of the City of Marina by Ordinance No. _____ adopted on {To be inserted at City Council Approval}.
5. A Vesting Tentative Map, including Conditions of Approval approved by the City Council of the City of Marina by adopted on {To be inserted at City Council Approval}.
6. Design review approval pursuant to the Specific Plan.
7. This Development Agreement approved by the City Council of Marina by Ordinance No. _____, adopted on {To be inserted at City Council Approval} (the "Enacting Ordinance").
8. All Subsequent Project Approvals, as defined below, immediately upon approval.

E. Subsequent Project Approvals. In addition to the Project Approvals, the Project will require various additional future land use and construction approvals and permits from City in connection with development of the Project ("Subsequent Project Approvals"), which shall be deemed to be part of the Project Approvals as they are approved. Subject to the terms and requirements of this Development Agreement, Developer may convey fee title interest in portions of the Property to affiliates or to third parties who will complete development of those portions of the Property. Developer may also convey portions of the Property to users who will apply to City, as needed, for required Subsequent Approvals to complete development of their portions of the Property.

F. Developer Requirements. Developer desires to carry out the development of the Property as a mixed use development consistent with the General Plan, the Project Approvals and this Agreement. The complexity, magnitude and long term build-out of the Project would be difficult for Developer to undertake if the City had not determined, through this Agreement, to inject a sufficient degree of certainty in the land use regulatory process to justify the substantial

financial investment associated with development of the Project. As a result of the execution of this Agreement, both Parties can be assured that the Project can proceed without disruption caused by a change in City planning and development policies and requirements, which assurance will thereby reduce the risk of planning, financing and proceeding with construction of the Project and promote the achievement of the private and public objectives of the Project.

G. City Interests. City desires to advance the socio-economic interests of the City and its residents by encouraging quality development, economic growth, housing and mixed use development in the incorporated portion of the Armstrong Ranch, thereby enhancing housing and employment opportunities for residents and expanding the City's tax base. City is also desirous of creating a range of housing opportunities in Marina serving all economic segments of the population by providing below market rate housing. The City is also desirous of encouraging development that maintains a healthy environment for its citizens and future residents. City is also desirous of gaining the public benefits of the Project under the Project Approvals and this Agreement, which are in addition to those dedications, conditions and exactions required by laws or regulations, and which advance the planning objectives of, and provide benefits to, the City.

I. City Council Findings. City has given the required notice of its intention to adopt this Development Agreement and has conducted public hearings thereon pursuant to Government Code Section 65857 and Chapter 4.04 of the Marina City Code. As required by Government Code Section 65867.5, City has found that the provisions of this Development Agreement and its purposes is consistent with the public health, safety and general welfare of the City and that all of its provisions are consistent with the goals, policies, standards and land use designations specified in the General Plan, as well as all other applicable plans, policies and regulations of the City.

J. Compliance with CEQA. The environmental impacts of the Project including the Development Approvals and the Subsequent Development Approvals have properly been reviewed and assessed by City pursuant to California Environmental Quality Act, Public Resources Code section 21000 et seq.; California Code of Regulations Title 14; section 15000 et seq. (collectively, "CEQA"). On _____, pursuant to CEQA and following consideration of the recommendations of the Planning Commission, the City Council certified a final environmental impact report covering the Marina Station Specific Plan at a programmatic level of analysis and the Project at a project level of analysis ("EIR").

K. Enacting Ordinance. On _____, _____, the City of Marina Planning Commission (the "Planning Commission"), the initial hearing body for purposes of Development Agreement review, recommended approval of this Development Agreement pursuant to Resolution No. _____. {To be inserted upon approval by the Planning Commission}. On _____, _____, the City Council of City adopted its Ordinance No. ____ approving this Development Agreement and authorizing its execution, and that Ordinance ("Enacting Ordinance") became effective on _____, _____. {To be inserted upon City Council approval}.

L. Project Provides Substantial Benefits. For the reasons recited herein, City and Developer have determined that the Project is a development for which this Agreement is appropriate. This Agreement will eliminate uncertainty regarding Project Approvals and

Subsequent Project Approvals, thereby encouraging planning for, investment in and commitment to use and development of the Property. Continued use and development of the Property will in turn provide substantial employment and tax benefits, housing, and other public benefits to City, and contribute to the provision of needed infrastructure for area growth, thereby achieving the goals and purposes for which the Development Agreement Law was enacted.

M. Applicability to Property. This Agreement shall be applicable to the Property and portions thereof and Developer shall be bound by the terms hereof.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other valuable consideration, the Parties hereby agree as follows:

SECTION 1 ADMINISTRATION

1.1 Definitions. As used in this Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section. To the extent that any capitalized terms contained in this Agreement are not defined below, then such terms shall have the meaning otherwise ascribed to them in this Agreement or Applicable City Regulations.

1.1.1 "Administrative Amendment" shall have the meaning set forth in Section 3.1.7.

1.1.2 "Affiliate" means any limited liability company, partnership, joint venture, trust, or corporation who now or hereafter (a) is a member of Developer; (b) directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, the Developer; or (c) in which fifty percent (50%) or more of the equity interest of which is held beneficially or of record by the Developer, as the context may require; or (d) is Controlled by or under the day-to-day management of a member of Developer.

1.1.3 "Agreement" shall mean this Development Agreement, as set forth in the preamble of this Agreement.

1.1.4 "Applicable City Regulations" shall mean all of the following to the extent the following do not conflict with or are not inconsistent with the Project Approvals: The rules, regulations, ordinances, and official policies of the City (whether adopted by the City Council, the Planning Commission, or the voters of the City) existing on the Effective Date governing the permitted uses of the land, density, design, improvement, and construction standards and specifications, applicable to development of the Property. Applicable City Regulations, may include in whole or in part without limitation, (i) the General Plan, Specific Plan, and the Municipal Code (including standard specifications, design standards, and relevant public facility master plans), (ii) Exactions listed on Exhibit C to this Agreement; and (iii) all other City laws that relate to or specify the permitted uses of land or improvements, the density or intensity of use, the subdivision of land for development, that are existing and in effect on the Effective Date; and (iv) all those existing and approved permits, entitlements, agreements, and other grants of approval having force and effect on the Effective Date relating to the Project and Property, including without limitation their text, terms and conditions of approval. A list of Applicable City Regulations, other than the Exactions and the Project Approvals, is set forth in

Exhibit B to this Agreement. Exceptions to Applicable City Regulations include Construction Codes (as defined in Section 1.1.8 and referenced in Section 2.3), and the application of New City Laws (as defined in Section 1.1.22) permitted under Sections 2.4.1 and 2.4.5.

1.1.5 "CEQA" shall mean the California Environmental Quality Act, California Public Resources Code Section 2100, et seq., and the State CEQA Guidelines, (California Code of Regulations, Title 14, Section 15000, et seq.), as each is amended from time to time.

1.1.6 "City" shall mean the City of Marina.

1.1.7 "City Council" shall mean the City Council of the City.

1.1.8 "Construction Codes" shall mean the Uniform Administrative Code, the International Building Code, and any other recognized uniform construction, fire and other codes applicable to improvements, structures and development in the City, and the applicable version or revision of such codes.

1.1.9 "Control" means the possession, directly or indirectly, of the power to cause the direction of the management and policies of any entity including but not limited to a limited liability company, a partnership, a joint venture, a trust, or a corporation, whether through the ownership of voting securities, by contract, or otherwise.

1.1.10 "Developer" shall mean CreekBridge Homes, LLC, and, subject to Section 5.3, its successors and assigns.

1.1.11 "Development Agreement Law" shall have the meaning given in Recital A.

1.1.12 "Development Agreement Regulations" shall have the meaning given in Recital A.

1.1.13 "Development Agreement Statute" shall have the meaning given in Recital A.

1.1.14 "Effective Date" shall mean the date determined under Section 1.2.1.

1.1.15 "EIR" shall have the meaning given in Recital J.

1.1.16 "Enacting Ordinance" shall mean the Ordinance Approving this Agreement as first referenced in Recital K of this Agreement.

1.1.17 "Exactions" shall have the meaning given in Section 2.7.1

1.1.18 "Force Majeure Event" shall mean a delay in performance beyond the control of the Party claiming the same. For the purpose of this definition, a cause shall be beyond the control of the Party whose performance would otherwise be required only if such cause would prevent or hinder the performance of such a requirement by any reasonable person similarly situated and shall not apply to causes peculiar to the Party claiming the benefit of a

Force Majeure Event (such as the failure to order materials in a timely fashion). A Force Majeure Event shall include, without limitation, any of the reasons set forth in this Section 1.1.18: (a) delay attributable to acts of God, accident, strikes or labor disturbances or disputes, (b) delay attributable to the actions or inaction of any governmental agency including the City that unreasonably delays development of the Property, (c) delays of the City in processing any Project Approval beyond the period of time permitted by law or required by this Agreement for the processing of such Project Approval, (d) delay attributable to inclement weather, earthquake or other natural disaster resulting in suspension of Project work for safety purposes, e.g., heavy rainfall, (e) delay attributable to inability to procure or a general shortage of labor, equipment, materials or supplies in the open market, rationing or restrictions on the use of utilities, or failure of transportation (but not attributable to a mere increase in price unless such price is commercially unreasonable and will extend for a period of time under the circumstances), (f) delay caused by acts of a public enemy, war, terrorism, insurrections, civil disturbance, riots, mob violence, sabotage, malicious mischief, or casualty, (g) delay attributable to a development moratorium (including but not limited to a sewer or water moratorium) approved by the City or other entity having jurisdiction, (h) delay caused by litigation or administrative action preventing or delaying the approval or development of the Project or adversely affecting the ability of the City or other public entity or the Developer or its successors or assigns to obtain financing for the Project, (i) delay attributable to local, state or federal laws or regulations (other than those expressly permitted by this Development Agreement), (k) delay attributable to governmental agencies in issuing permits or approvals or taking other actions required for development of the Project, (l) delay attributable to the commencement of circulation of an initiative or referendum petition or the filing of any court action to set aside or modify this Development Agreement, the Project Approvals or any Subsequent Project approvals, (m) delay attributable to insufficient water available to serve the Project or any phase or portion thereof, or (n) any delay claimed by a Party in the performance of any term, covenant, condition or obligation under this Agreement caused by a default of the other Party.

1.1.19 "General Plan" shall mean the City of Marina General Plan.

1.1.20 "Moratorium" shall mean any action by or on behalf of the City or another public entity having jurisdiction (including but not limited to action taken by virtue of an initiative) which delays or halts the processing or approval of subdivision maps, building permits or other Project Approvals.

1.1.21 "Municipal Code" shall mean the City of Marina Municipal Code.

1.1.22 "New City Laws" shall mean any ordinances, resolutions, orders, rules, official policies, standards, specifications or other regulations, which are promulgated or adopted by the City or its electorate (through their power of initiative or otherwise) after the Effective Date. The application of New City Laws to the Project shall be governed by Sections 2.4.1 and 2.4.5.

1.1.23 "Non-Curable Default" shall mean a default for which a cure period shall not exist, as set forth in Section 4.1.2.

1.1.24 "Planning Commission" shall mean the Planning Commission for the City of Marina.

1.1.25 "Project" shall mean the project commonly known as "Marina Station" which is proposed to be constructed on the Property as more fully described in Recital C.

1.1.26 "Project Approvals" shall mean the permits and approvals granted by the City for the Project, including each Subsequent Project Approval, as set forth in Recital D.

1.1.27 "Property" shall mean the real property described in Exhibits A-1 and A-2 attached and incorporated herein by this reference.

1.1.28 "Processing Fees" shall have the meaning given in Section 2.7.3.

1.1.29 "Rights of Access" shall mean the right of Developer to enter or encroach on certain public improvements as set forth in Section 2.9.

1.1.30 "Specific Plan" shall mean the Marina Station Specific Plan as adopted by the City Council, and amended from time to time.

1.1.31 "Development Services Director" shall mean that City official designated with such title or his or her designated representative and any City official who is authorized to assume and carry out the duties of such official under the same or a different title.

1.1.32 "Subsequent Project Approvals" shall have the meaning given in Recital E.

1.1.33 "Subdivision Map Act" means that legislation set forth in California Government Code Sections 66410 through 66499.58.

1.1.34 "Tentative Map" shall mean one or more tentative subdivision maps, whether a vesting tentative map or not, for the Property, including Conditions of Approval.

1.1.35 "Term" shall have that meaning as set forth in Section 1.2.2 of this Agreement.

1.1.36 "Vested Elements" shall have that meaning as set forth in Section 2.1.1 of this Agreement.

1.2 Effective Date and Term.

1.2.1 The Effective Date of this Agreement shall be the date that the Enacting Ordinance has become final, which is inserted at the beginning of this Agreement.

1.2.2 The Term of this Agreement shall commence on the Effective Date and shall continue for a period of 18 years until, and then terminate at 12:01 a.m., on {Date to be inserted as effective date of the Enacting Ordinance} (as may be extended, the "Term"), unless this Agreement is otherwise terminated or extended in accordance with the provision of

this Agreement. The Term has been established by the Parties as a reasonable estimate of the time required to develop and build out the Project taking into consideration the phasing complexity of the Project, anticipated actions of other public agencies, normal market and economic conditions and other contemplated potential circumstances which could affect the timing of development. Notwithstanding the foregoing, the Term of this Agreement shall be automatically extended for the period that development is prevented or delayed, in whole or in part due, to a Force Majeure Event lasting more than a period of 30 days for a single event or more than 60 days cumulatively for two or more events. Following the occurrence of a Force Majeure Event and the passage of time giving rise to an extension of this Agreement, upon request of the Developer, the Developer and Development Services Director shall extend, in writing, as a ministerial act, the Term of this Agreement in the form of an Administrative Amendment under Section 3.1.7 hereof, which extension shall be recorded in the Official Records of Monterey County Recorder.

1.2.3 Section 65868.5 of the Development Agreement Statute requires that this Agreement be recorded with the County Recorder no later than 10 days after the Effective Date, and that the burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement.

1.2.4 This Agreement shall terminate as to each individual residential unit and lot and each non-residential building and the lot or site thereof on the date a Certificate of Occupancy is issued for such individual residential unit or non-residential building; provided, however, such termination shall not affect the rights or obligations of the Parties as to the remainder of the Property, which rights and obligations shall continue during the Term.

1.2.5 In accordance with Government Code Section 66452.6(a), the term of any Tentative Map, including modifications or amendments thereto, relating to the Property or any portion thereof shall automatically be extended to and until the later of the following: (1) the duration of this Agreement; or (2) the expiration of the tentative map in accordance with the Subdivision Map Act without reference to any extension given under this Agreement.

1.2.6 If this Agreement terminates for any reason before expiration of rights given under the Project Approvals or any Tentative Map pursuant to the Subdivision Map Act, such termination shall not affect Developer's rights to proceed in accordance with the law governing such Project Approvals and/or Tentative Map. If this Agreement terminates for any reason, including expiration of the Term, the rules, regulations and policies specified in the Development Agreement and Project approvals shall continue to govern the Project unless the City has previously specifically amended such rules, regulations and policies until such time as the City amends such rules, regulations and policies.

1.2.7 The term of any and all Project Approvals shall automatically be extended for the longer of the Term of this Agreement or the term otherwise applicable to such Project Approvals.

SECTION 2 DEVELOPMENT OF THE PROPERTY

2.1 Vested Rights.

2.1.1 The permitted uses of the Property, the density or intensity of use, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes, the subdivision of land and requirements for infrastructure and public improvements, the general location of public utilities, and other terms and conditions of development of the Property shall be governed by the Project Approvals, Applicable City Regulations and this Development Agreement (collectively "Vested Elements"), except as expressly provided in this Agreement.

2.1.2 Developer shall have a vested right to develop the Property in accordance with the Vested Elements subject to the terms and conditions of this Agreement.

2.2 **Applicable City Regulations.** The City shall have the right to regulate the development of the Property and uses within the Project pursuant to those laws, rules, regulations and official policies of City applicable to the Project at the time of execution of this Development Agreement which are listed in Exhibit B hereto, if, and only to the extent, such regulations do not conflict with or are not inconsistent with the Project Approvals ("Applicable City Regulations"). The parties agree that any density bonuses, incentives, concessions, waivers and reductions, reduced parking and all other incentives of any kind whatsoever that the Developer may be eligible for pursuant to the City's Density Bonus Ordinance and Government Code Section 65915 et seq. shall be waived unless set forth in the Below Market Rate Housing Agreement to be entered into by the Developer and the City pursuant to Section 2.17 of this Agreement.

2.3 **Construction Codes.** In the construction of the Project, Developer shall be subject as to each particular improvement, to all Construction Codes in force and effect when a building, grading or other application for a building permit or equivalent permit is granted by the City, provided the following conditions are satisfied:

2.3.1 The Construction Codes shall be interpreted and applied in a reasonable manner consistent with the express provisions and limits in the particular Construction Codes adopted by City; and

2.3.2 The provisions of the Construction Codes shall be interpreted and applied to the Project in a manner consistent with the generally prevailing standards of interpretation of such provisions under the State Building Standards Code.

2.4 Applicability of New City Laws.

2.4.1 New City Laws (including referendums and initiatives, and amendments to Applicable City Regulations) shall not be applicable to the Property unless such New City Laws are (a) not inconsistent with the Vested Elements or the terms of this Agreement or (b) meet one of the following requirements: (i) they are mandated by State or Federal law pursuant to Section 2.4.6; or (ii) they are required for reasons of public health or safety, based on findings by the

City Council supported by substantial evidence, that the failure of the City to do so would place the residents of the Property, or the residents of the City, or both, in a condition dangerous to their health or safety; provided, however, that no rent control or price control laws or regulations shall be applicable to the Property.

2.4.2 Either Party shall have the right to challenge the application under subsections (a) and (b) of Section 2.4.1 of New City Laws to the Project. If Developer believes that the application by the City of a New City Law to the Project is inconsistent with the Vested Elements or the terms of this Agreement, Developer shall give written notice to the City of the inconsistency in accordance with Section 6.8 of this Agreement. Developer's written notice shall inform the City of the factual and legal reasons why Developer believes the City cannot apply the New City Law to the Project consistent with the Vested Elements and this Agreement. The City shall respond to Developer's notice within forty-five (45) days of receipt of such notice. Thereafter, the Parties shall meet and confer within thirty (30) days of the date of Developer's receipt of the City's response with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. If no mutually acceptable solution is reached at the conclusion of the meet-and-confer period, the Parties may initiate dispute resolution proceedings in accordance with Section 4.4 below, or Developer may initiate a legal action or proceeding challenging such application. If it is determined at the conclusion of such dispute resolution process or legal action that such New City Laws apply to the Project, and if such New City Laws have the effect of substantially and materially preventing development of the Project in accordance with the Vested Elements (i) the Parties shall process an amendment to this Agreement in accordance with the Development Agreement Law, and/or (ii) the Parties shall amend the Project Approvals or amend the Applicable City Regulations without amending this Development Agreement to allow the Project to be built as originally intended.

2.4.3 The limitation in Section 2.4.1 shall not be construed to interfere with City's right to adopt or apply the New City Laws with regard to any areas of City except for the Property.

2.4.4 There shall be a rebuttable presumption that any New City Laws affecting the Project and having any of the following effects shall be considered inconsistent with the Vested Elements and this Agreement:

2.4.4.1 Limiting or reducing, directly or indirectly, the total number of Residential Units in the Project in excess of one percent (1.0%).

2.4.4.2 Limiting or materially changing the location of Residential Units, buildings, grading, or other improvements on the Property.

2.4.4.3 Imposing new or additional dedication requirements or materially affecting the costs of infrastructure and/or public improvements to be provided by Developer.

2.4.4.4 Imposition of a Moratorium. This limitation on the City shall not apply when a Moratorium meets the requirements of Section 2.4.1 for application of New City Laws to the Property; provided that the application of any such Moratorium to the Property shall be limited in both scope and time to only effectuate the purpose for which it was imposed.

2.4.4.5 Materially frustrating the intent or purpose of the Vested Elements or otherwise materially increasing the costs of the Project, including costs of lots and improvements.

2.4.5 Developer, by giving written notice to the City, may elect to have all or part of the Property subject to any New City Laws that are otherwise not applicable to the Property under Section 2.4.1. In the event Developer so elects, Developer shall provide written notice to the City of that election (such notice to be provided pursuant to this Agreement) and thereafter such New City Law shall be deemed part of the Applicable City Regulations.

2.4.6 In the event State or Federal laws or regulations enacted after the Effective Date of this Development Agreement or action by any other governmental agency other than City prevent or preclude compliance with one or more provisions of the Vested Elements or this Development Agreement, or require changes in plans, maps or permits approved by City, this Development Agreement shall be modified, extended or suspended as may be necessary to comply with such State or Federal laws or regulations or the regulations of such other governmental agency. Immediately after enactment of any such new law or regulation, the Parties shall meet and confer in good faith to determine the necessity of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Development Agreement. It is the intent of the Parties that any such modification or suspension be limited to that which is necessary, and to preserve to the extent possible the original intent of the Parties in entering into this Development Agreement. If such modification or suspension is infeasible or the City does not fairly adjust the Development Agreement to allow close as possible the original intent of the Development Agreement in Developer's reasonable business judgment, then Developer shall have the right, at its sole election, to either: (1) submit the issue of whether City has acted in an arbitrary, capricious or unreasonable manner under this section to dispute resolution pursuant to Section 4.4, or (2) initiate a legal action or proceeding against City, or (3) to terminate this Development Agreement by written notice to City.

2.4.7 Rent or Price Controls. Developer and City intend to enter into a Below Market Rate Housing Agreement concerning below-market-rate housing to be provided or financed by Developer in connection with the Project in compliance with the General Plan and the Housing Element. Compliance by Developer with the Below Market Rate Housing Agreement shall be deemed to satisfy Developer's obligations under the City's Inclusionary Housing Program and related laws, regulations and policies, and shall be in lieu of, and the Property shall be exempt from, any other law, regulation or policy imposing rental or sale restrictions on residential units and/or any requirements for provision of affordable rental or for-sale housing, or any in-lieu fee, exaction, dedication, tax or other requirement for such purposes. No other price control, rent control or housing affordability criteria imposed by the City through Council action or by initiative or otherwise shall be applicable to the Property during the period in which any contractual provisions or deed restrictions recorded against any portion of the Property limiting its use, occupancy, rental or sale based upon affordability criteria remain in effect.

2.5 Processing and Inspection.

2.5.1 A subdivision, as defined in Government Code Section 66473.7, shall not be approved unless any tentative map for the subdivision complies with the provisions of said Section 66473.7. This provision is included in this Agreement to comply with Section 65867.5 of the Development Agreement Statute.

2.5.2 The City shall promptly accept, process, review and act upon all applications for permits and approvals for the Project, in a professional, timely manner including Subsequent Project Approvals under Section 2.8.1 hereof. City shall insure that adequate staff is available to timely process all applications for permits and approvals for the Project on an expedited schedule. Upon request of the Developer, the City shall inform the Developer of the necessary application requirements for any requested City approval or requirement relating to the Project.

2.5.3 City and Developer shall cooperate in processing all applications for permits and approvals for the Project, provided, however, that such cooperation shall not include any obligation, on the City's part, to incur any un-reimbursed expense, and the City shall be entitled, subject to the terms of this Agreement and Developer's rights hereunder, to exercise all discretion to which it is entitled by law in processing and issuing any permits and approvals for the Project.

2.5.4 The Parties shall cooperate and diligently work to implement any zoning, tentative map, final development plan and/or land use, grading or building permits or approvals which are necessary or desirable in connection with the development of the Project in substantial conformance with the Vested Elements.

2.5.5 Notwithstanding any administrative or judicial proceedings, initiative or referendum concerning any of the Project Approvals, City shall process applications for permits and approvals as provided herein to the fullest extent allowed by law and Developer may proceed with development of the Project pursuant to the Project Approvals or Subsequent Project Approvals to the fullest extent allowed by law. City shall be entitled, subject to the terms of this Agreement and Developer's rights hereunder, to exercise all discretion to which it is entitled by law in processing and issuing any permits and approvals for the Project.

2.6 Development Timing.

2.6.1 The Parties acknowledge that Developer cannot at this time predict when or the rate at which the phases of the Property will be developed or the order in which each phase will be developed. Such decisions depend upon numerous factors which are not within the control of the Developer, such as discovery of endangered species or historical or cultural artifacts, approval of habitat conservation plans or measures by other agencies, market conditions and demand, interest rates, absorption, and other similar factors. In particular, and not in any limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the Parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it

is the Parties' desire to avoid that result by acknowledging that, unless otherwise expressly so provided in this Agreement, Developer shall have the vested right to develop the Project in such order and at such rate and at such times as Developer deems appropriate in the exercise of its business judgment provided Developer is in compliance with the Project Approvals, provided, however, nothing herein shall override any phasing or timing for development set forth in the Vesting Tentative Map Conditions of Approval and the Specific Plan.

2.6.2 The Tentative Map Conditions of Approval are intended to assure the timely provision of adequate infrastructure and services, including but not limited to water supplies, sewer, storm-water drainage, and streets, including emergency access.

2.7 Impact Fees, Dedications and Processing Fees.

2.7.1 Except as provided in Sections 2.7.2 and 2.7.3, City shall impose or exact only those taxes, assessments, development impact fees, other fees, mitigations on the Project (collectively, "Exactions") set forth in Exhibit C attached and incorporated herein by this reference and City shall not impose or exact any new, increased or modified Exactions on the Project, the Property or Developer, whether through the exercise of the police power, the taxing power, or any other means. Notwithstanding the previous sentence, the Developer acknowledges that the Project and Property shall be subject to a Regional Development Impact Fee proposed by the Transportation Agency of Monterey County (TAMC) if such fee becomes effective and applicable to development in the City of Marina.

The parties acknowledge that a Regional Development Impact Fee is proposed for adoption by Transportation Agency for Monterey County (TAMC) and participating land use jurisdictions in Monterey County through a Joint Powers Agreement. The program specifies that two-thirds of the TAMC member agencies must adopt the fee program in order for it to take effect. As of the Effective Date, the necessary two-thirds approval has not been obtained, and the City of Marina has not yet approved or implemented the TAMC fee program. However, on January 3, 2008, based on a Regional Impact Fee Nexus Study Update dated January 16, 2008, the TAMC Board approved a draft Regional Transportation Impact Fee Program (RTIFP) and associated legal documents for circulation to the TAMC member agencies for approval. The RTIFP proposes that different fees be assessed within three identified zones, North-County Greater Salinas, Peninsula-South Coast, and South County. The fee proposed for the Peninsula-South Coast area, in which the Project is located, is \$3,498 per single-family dwelling unit; \$ 2,456 per apartment dwelling unit; \$ 2,142 per "condo/townhouse" unit; \$5,185 per 1,000/SF of retail building; \$4,070 per 1,000/SF of office or government buildings; and \$813 per 1,000/SF of industrial and other buildings ("Proposed TAMC Fee"). Accordingly, so long as the Development Agreement remains in effect, Developer shall pay fees to mitigate regional traffic impacts according to the following program:

2.7.1.1 Escrow Account. Within 30 days after the Effective Date of the Development Agreement, Developer shall establish an interest-bearing escrow account with a title company acceptable to the City ("Escrow Account"). At the time of issuance of a building permit for each residential unit in the Marina Station Project, and until such time as the TAMC Regional Development Impact Fee ("TAMC Fee") is approved and implemented by the member agencies and by the City of Marina, Developer shall pay into the Escrow Account an amount equal to the Proposed TAMC Fee for the type of unit being constructed.

2.7.1.2 Funding of Improvements. Pending full approval and implementation of the TAMC Fee pursuant to paragraph 1, funds in the Escrow Account shall be used to finance Developer's proportional share of one or more of the traffic improvements identified in Mitigation Measures 4.13-14 and 4.13-16 through 4.13-23 of the Mitigation Monitoring and Reporting Program at the time each such improvement is fully funded and approved by the agency with jurisdiction over the improvement. Alternatively, the Escrow Account shall be used to finance Developer's proportional share of one or more alternative traffic improvements or programs which mitigate the projects impacts (for example, establishing an express bus service to reduce the traffic on Highway 1).

2.7.1.3 Approval of TAMC Fee. Upon full approval and implementation of the TAMC Fee pursuant to Section 2.7.1 above, all funds remaining in the Escrow Account, together with accrued interest, shall be paid to TAMC. Thereafter, Developer shall pay, at the time of issuance of each building permit for the Project, the prevailing TAMC Fee approved and implemented by the member agencies.

2.7.1.4. Disbursement Upon Expiration. Any funds remaining in the Escrow Account as of the expiration of this Agreement or earlier termination, together with accrued interest, shall be paid to Developer or its successor-in-interest or to such other party as Developer may designate during the life of the Development Agreement.

2.7.2 Notwithstanding Section 2.7.1, the Property shall remain subject to general property taxes existing as of the Effective Date and to increases in such taxes permitted by law and Developer shall be obligated to incur Exactions in addition to those set forth in Exhibit C that may be imposed pursuant to State or Federal law, under the provisions of Section 2.4.6.

2.7.3 Developer shall be obligated to pay only those processing fees, including application, plan check, map review, inspection and monitoring fees and fees of outside consultants, for land use approvals, grading and building permits, and other permits and entitlements ("Processing Fees") in connection with the Project as set forth in Exhibit D, provided, however, that Developer retains the right to challenge such fees as excessive under state law; provided, however, if the Developer requests expedited processing for any approval, plan check, map review, or inspection or other services, the Developer shall pay any increased costs incurred by the City to accommodate the request for expediting.

2.8 Subsequent Project Approvals. City may deny an application for a Subsequent Project Approval only if such application does not comply with this Agreement or Applicable City Regulations or is materially inconsistent with the Project Approvals (provided, however, that inconsistency with the Project Approvals shall not constitute grounds for denial of a Subsequent Project Approval which is requested by Developer as an amendment to a Project Approval). City may approve an application for a Subsequent Project Approval subject to any conditions reasonably necessary to bring the Subsequent Project Approval into compliance with this Agreement or Applicable City Regulations, or as necessary to make the Subsequent Project Approval consistent with the Project Approvals. If City denies any application for a Subsequent Project Approval, City shall specify in writing the reasons for such denial and suggest a modification consistent with this Agreement, the Project Approvals and Applicable City Regulations that would permit approval. The parties recognize that there may be Subsequent

Project Approvals making certain land use changes to Phase 8 of the Project as a result of negotiations between the Developer and the Sierra Club. In the event any Subsequent Project Approval for Phase 8 resulting from Developer's negotiations with the Sierra Club or other citizens groups results in additional parks, open space or streets, such Subsequent Project Approval may be conditioned upon the Developer agreeing to changes to the provisions of Section 2.16 of this Agreement to ensure that such Subsequent Project Approval does not result in increased maintenance costs to the City.

2.9 Streets and Related Easements.

2.9.1 Developer shall improve or cause to be improved certain streets as specified in the Vesting Tentative Map to be dedicated as public streets and these streets shall be accepted upon completion by the City and maintained by the City upon expiration of the Developer's one year warranty period. Streets or alleys not specified on the Vesting Tentative Map to be dedicated shall remain private property, and shall be maintained by the Developer or by a homeowners' association, and use of such streets or alleys by the public shall be permissive only.

2.9.2 The City shall grant to Developer Rights of Access subject to City's standard conditions for such Right of Access as may be necessary across, under, and over the surface and subsurface of all City streets as may be required from time to time for construction and installation of the following improvements:

2.9.2.1 Gas, electricity, water, wastewater, drainage, telephone, cable media, computer, security, telecommunications, and all other utilities, facilities and like improvements (including without limitation their related conduits, wires, lines, pipes, mains, pumps, meters and other structures, stations and improvements) necessary or desirous to the Project; and

2.9.2.2 Construction, paving, striping, cleaning, and repairing streets within the Project.

2.10 Improvement Plan Processing.

2.10.1 In any instance where Developer is required to install improvements that are subject to inspection and approval by the City, Developer shall obtain City approval of the plans and specifications, and provided Developer has supplied all information required by the City, the City shall promptly review and act on the application for such approval in a diligent manner in accordance with law. The commentary on plans shall specify the changes required to comply with City regulations. Developer shall correct the plans as requested or shall explain in writing why any changes were not made, or deviated from the changes requested by the City.

2.11 Significant Actions by Third Parties Necessary for Approval. At Developer's sole discretion, but consistent with the Project Approvals, Developer may apply for such other permits, grants of authority, agreements, and other approvals from other private, public and quasi-public agencies, organizations, associations or other public entities as may be necessary to the development of, or the provision of services and facilities to, the Project. The City shall cooperate with Developer in its endeavors to obtain such permits and approvals.

2.12 Cooperation of Parties. Each of the Parties shall act toward each other and the tasks necessary or desirous to the Project in a fair, diligent, expeditious and reasonable manner (except in those cases where a Party is given sole discretion under this Agreement), and no Party shall take any action that will unreasonably prohibit, impair or impede the other Party's exercise or enjoyment of its rights and obligations secured through this Agreement. This agreement to cooperate shall not require either Party to incur any un-reimbursed expenses.

2.13 Eminent Domain. The City acknowledges that use of its eminent domain powers may be necessary to facilitate implementation of the Subsequent Project Approvals. Developer acknowledges the City must comply with Title 7 of the California Code of Civil Procedure prior to exercising its eminent domain powers. Developer agrees to reimburse the City for all costs and attorneys' fees that may be expended by the City should the City exercise such powers to facilitate implementation of the Subsequent Project Approvals in accordance with such laws.

2.13.1 PG&E Property. In order to install required extensions of DeForest Road and Crescent Avenue at the southern border of the Project, the Developer must acquire right of way across a parcel currently owned by Pacific Gas and Electric, shown on the Vesting Tentative Map on Sheet 11 as "proposed public right-of-way to be acquired by City APN: 175-011-018" ("PG&E Property"). Developer shall use its commercially reasonable best efforts to attempt to acquire the PG&E Property. If Developer's negotiations with PG&E to acquire this property are unsuccessful, the City shall use good faith efforts to negotiate to acquire the PG&E Property at fair market value and, if the City is not successful in acquiring the PG & E Property pursuant to voluntary negotiations, the City agrees to consider a resolution of necessity to acquire the PG&E Property through eminent domain. Developer understands that the decision to exercise the power of eminent domain is subject to the discretion of the City Council based on all information available to the Council at time of consideration of the resolution of necessity. Nothing herein is intended to limit the City Council's exercise of such discretion. If the City Council adopts a resolution of necessity, the City shall pursue eminent domain of the PG&E Property as expeditiously as possible, provided, however, the City shall not file any such eminent domain action until Developer has provided the City with a deposit in the full amount of the City's appraised fair market value of the PG & E Property plus an additional sum equal to the City's estimated cost for legal fees and related costs associated with bringing such action. The costs associated with the acquisition of the PG&E Property, including legal expenses incurred in an eminent domain action, will be funded by Developer.

2.14 Marina Greens Drive. The existing right-of-way in the section of Marina Greens Drive between Paul Davis Drive and Del Monte Blvd. shall be abandoned and the City's interests quitclaimed to Developer in exchange for the new right-of-way for Marina Greens Drive as shown on the Vesting Tentative Map.

2.15 Developer's Right to Rebuild. City agrees that Developer may renovate or rebuild portions of the Project within the Term of this Agreement should it become necessary due to natural disaster or changes in seismic requirements. Such renovations or reconstruction shall be processed as a Subsequent Project Approval. Any such renovation or rebuilding shall be subject to all design, density and other limitations and requirements imposed by this Agreement, and shall comply with the Project Approvals, the building codes existing at the time of such rebuilding or reconstruction, and the requirements of CEQA.

2.16 Municipal Services Financing Plan/Fiscal Neutrality. Pursuant to the requirements of the General Plan, a City staff directed fiscal analysis was prepared that summarized costs associated with providing required public services to, and the revenues generated by, the Project. Based upon the findings of the fiscal impact study, the City has determined that the economic impact of the Project on the City will be fiscally neutral, provided that the ownership of infrastructure and maintenance responsibilities are shared between the City of Marina's General Fund and the Marina Station Home Owners Association, (HOA) as follows:

2.16.1 Home Owner Association-Maintained Streets, Alleys, Parks. The HOA shall maintain all surface improvements, including the trees, and rain gardens within all alleys, streets, and parks within Marina Station not listed below as City-maintained streets, parks and recreational areas.

2.16.2 City-Maintained Streets. The City shall maintain all surface improvements including the trees and landscaping within the Right of Way (all of the area dedicated to public use for public street purposes including, without limitation, roadways, medians, sidewalks and curbs) of the following streets:

1. The extension of Crescent Ave from its existing terminus to Golf Blvd except that the ground cover planting in the park strip shall be maintained by the adjacent private property owner and the ground cover within the "rain gardens" shall be maintained by the HOA.
2. Golf Blvd from Paul Davis Drive extension to the Crescent Ave extension including the landscaping, trees, and bike path/promenade within the Right of Way.
3. Paul Davis Drive from its existing terminus to the relocated Marina Green Drive, except that the ground cover planting in the park strip shall be maintained by the adjacent private property owner and the ground cover within the "rain gardens" shall be maintained by the HOA.
4. Marina Green Drive from Tentative Map Parcel 3 to Del Monte Blvd, including the landscaping, trees and promenade within the right of way on the south side except that the ground cover planting in the park strip on the north side of the Right of Way shall be maintained by the adjacent private property owner and the ground cover within the "rain gardens" on both sides of the street shall be maintained by the HOA.
5. Del Monte Blvd, including the landscaped center medians and rain gardens and the reconstructed bike path on the west side of the Right of Way. Tentative Map Parcel 204 shall be owned and maintained by the HOA. The Developer shall not be required to install the parking on the west side of the Right of Way until and unless the express bus service is provided and the station and plaza are built prior to expiration of the Development Agreement.

2.16.3 City-Maintained Parks. The City shall maintain all of the improvements within Tentative Map Parcels 1a, 1b, 3, 8, 11, 13, 14, 15, 16 and 29, including the trees and landscaping between the property line of the parcels and the back of curb.

2.16.4 Construction and Dedication of Parks and Streets. The Developer shall construct or install all improvements within both the City-maintained areas and the HOA-maintained areas described in Section 2.16.1, 2.16.2 and 2.16.3 above. The parks shall incorporate those facilities listed in Appendix E of the Marina Station Specific Plan. To the extent that the adopted Mitigation Monitoring and Reporting Program (MMRP) allows, the Developer may at its discretion, plant the ground cover areas of the trails and center medians and rain gardens and parks, in materials which will satisfy the requirements of the MMRP sections 4.4-1 (spine flower) and 4.4-13 (coastal dune scrub and native grassland.). If Developer installs such mitigation ground cover pursuant to the MMRP, it shall be responsible for any on-going maintenance costs in connection with such mitigation program (including, without limitation, costs of a qualified biologist and submittal of monitoring data) other than ordinary maintenance costs necessary to promote a healthy, weed-free environment. The Developer shall maintain all ground cover mitigation areas until the coverage meets the requirement of the MMRP or one year after planting, whichever is longer. All other planted areas within the City-maintained areas shall be maintained by the Developer for one year following the City acceptance of the subdivision improvements. Upon successful establishment of ground cover mitigation areas in compliance with the MMRP, Developer shall record a conservation easement over these areas and dedicate the respective areas to the City or HOA.

2.17 Affordable Housing Agreement. Prior to the recordation of the Final Map for the first phase of the Development, the Developer and the City shall enter into a Below Market Rate Housing Agreement that will obligate the Developer to provide affordable housing as part of the Development consistent with the requirements of the City General Plan and Housing Element. The specific terms of the Below Market Rate Housing Agreement are to be negotiated between the City, the Developer and a potential affordable housing developer to be selected by the Developer. The Below Market Rate Housing Agreement shall provide that a minimum of 20% of the 1360 residential units developed as part of the Development, excluding the "Carriage Apartments" as defined in the Specific Plan, shall be affordable units, within the following definitions and categories: 6% shall be affordable to and occupied by Very Low Income Households (less than or equal to fifty percent (50%) of Median Income), 7% shall be affordable to and occupied by Low Income Households (households with incomes greater than 50% of Median Income and less than or equal to 80% of Median Income) and 7% shall be affordable to and occupied by Moderate Income Households (households with incomes greater than 80% of Median income and less than or equal to 120% of Median Income). Median Income shall mean the median income level for Monterey County, adjusted for household size, as periodically published by HUD and the State Department of Housing and Community Development.

SECTION 3 AMENDMENT OF AGREEMENT AND SUBSEQUENT APPROVALS

3.1 Amendment of Project Approvals. The Project Approvals from time to time, may be modified in the following manner:

3.1.1 Amendment to this Agreement Not Contemplated. Subsequent Project Approvals and (except as expressly provided below) modifications to Project Approvals shall not require an amendment to the terms of this Agreement, and the terms of this Agreement shall apply to all Subsequent Project Approvals and amendments to modifications to Project Approvals, without any further action of the Parties.

3.1.2 Determination of Need for an Amendment. Upon the written request of the Developer, the City Attorney shall determine whether any requested modification of the Project Approvals requires an amendment to the terms of this Agreement. If the City Attorney finds that the proposed modification does not result in a material change to the terms of this Agreement, the modification may be approved without amendment of this Agreement.

3.1.3 Processing of Amendments. Any request by the Developer for a modification of the Project Approvals that is determined by the City Attorney to require an amendment to this Agreement shall be processed as an amendment to this Agreement in accordance with the Development Agreement Statute, subject to Developer's right to initiate dispute resolution proceedings as set forth in Section 4.4.

3.1.4 Administrative Approval of Project Modifications. Minor modifications to Project Approvals may be recommended by Development Services Director to the City Manager for approval as an administrative amendment to this Agreement, without notice, hearing, CEQA review, or formal action by a commission or board or the City Council, such as: lot line and parcel adjustments, changes in vehicle circulation or access not materially affecting capacity or service levels, changes in landscaping, location of utilities or other infrastructure not materially affecting design concepts; provided, however, prior to recommending any such minor modification administratively, the Development Services Director shall confirm with the City's Community Development Director or his or her designee, that such modifications are consistent with the Specific Plan, the City's General Plan and the Applicable City Regulations.

3.1.5 CEQA Review. The City has conducted extensive environmental review of the Project Approvals and has certified the EIR pursuant to the requirements of CEQA. To the maximum extent permitted by law, the City shall process Subsequent Project Approvals under the existing CEQA approvals (or as a supplement to the existing CEQA approvals) and shall not require further CEQA action unless such additional review is legally mandated under the CEQA Guidelines. The Parties acknowledge that certain discretionary Subsequent Project Approvals, if any, may be legally required to be subject to additional review under CEQA. The City shall promptly commence and diligently process any and all initial studies and assessments required by CEQA, and to the extent permitted or required by CEQA, the City shall process all documents required under CEQA including, but not necessarily limited to, any subsequent or supplemental EIR, negative declaration, addendum, or supplement to any existing EIR for the

Project. Notwithstanding any other provision of this Agreement, nothing contained in this Agreement is intended to limit or restrict the discretion of the City to take any appropriate action as may be required by CEQA with respect to any such discretionary Subsequent Project Approvals.

3.1.6 Amendment of This Agreement. This Agreement may be amended from time to time in accordance with the Development Agreement Statute, only upon the mutual written consent of the City and Developer.

3.1.7 Administrative Amendments to this Agreement. This Agreement may be amended or clarified by an Administrative Amendment upon mutual consent of the City Manager and Developer, without requirement of notice, hearing or adoption of an ordinance, for minor or clarifying changes or interpretations, or to reflect the changes in the Property referenced in Recital B hereof, or to extend the Term of this Development Agreement pursuant to Section 1.2.2 hereof, provided, however, prior to recommending any such amendments to the City Manager, the Development Services Director has confirmed with the City's Community Development Director that such amendments are consistent with the Specific Plan, the City's General Plan and the City's Zoning Ordinance.

SECTION 4 DEFAULT, REMEDIES, TERMINATION

4.1 Defaults.

4.1.1 Except for Non-curable Defaults, any failure by the City or Developer to perform any term or provision of this Agreement, which failure continues uncured for a period of ninety (90) days following written notice of such failure from the other Party (unless such period is extended by written mutual consent), shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which such alleged failure may be satisfactorily cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 90-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure, provided that if the cure is not diligently prosecuted to completion, the default shall continue and no additional cure period shall be provided. If the alleged failure is cured, then no default shall exist and the noticing Party shall take no further action. If the alleged failure is not cured, then a default shall exist under this Agreement and the non-defaulting Party may exercise any of the remedies available under Section 4.3.

4.1.2 Any Assignment or other transfer in violation of Section 5 shall be considered a Non-curable Default.

4.1.3 No failure or delay in giving notice of default shall constitute a waiver of default; provided, however, provision of notice and opportunity to cure shall nevertheless be a prerequisite to the enforcement or correction of any Default.

4.2 Actions During Cure Period. During any cure period specified under Section 4.1.1 and during any period prior to delivery of any notice of default, the Party charged shall not

be considered in default for purposes of this Agreement. If there is a dispute regarding the existence of a default, the Parties shall otherwise continue to perform their obligations hereunder, to the maximum extent practicable in light of the disputed matter and pending its resolution or formal termination of the Agreement as provided herein.

4.3 Remedies for Non-Defaulting Party.

4.3.1 In the event either Party is in default under the terms of this Agreement, subject to any applicable requirements of Section 4.4, the other Party may elect to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies as provided in this Agreement; and (iii) pursue any judicial remedies available. In the event a default by the City delays or impairs development of the Project, then in addition to all other remedies at law, the Term of this Agreement (and the duration of any Vested Elements and/or Project Approvals) shall be extended to include the full period of such delay or impairment, in addition to the duration of any administrative or judicial proceedings in connection with such default ("Default Extension").

4.3.2 Unless otherwise provided in this Agreement, either Party, in addition to any other rights or remedies, may institute legal action, pursuant to Section 4.4.2, to cure, correct, or remedy any default by the other Party to this Agreement, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation hereunder or to seek specific performance. The Term of this Agreement shall be extended for the period of such legal action, including any appeals.

4.4 Dispute Resolution; Legal Action.

4.4.1 Mediation. Except as otherwise provided herein, no action or proceeding with respect to any dispute, claim or controversy arising out of or relating to this Agreement ("Dispute") may be commenced until the matter has been submitted to JAMS for mediation. Either Party may commence mediation by providing to JAMS and the other Party a written request for mediation, setting forth the subject of the Dispute and the relief requested. The Parties shall cooperate with JAMS and with one another in selecting a mediator from JAMS panel of neutrals, and in scheduling the mediation proceedings in Monterey County (unless otherwise agreed by the Parties). The Parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts and attorneys, and by the mediator and any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either Party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process. Except for such an action to obtain equitable relief, neither Party may commence a civil action or proceeding with respect to the matters submitted to mediation until after the completion of the initial mediation session, or 45 days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action or proceeding, if the Parties so desire. The provisions of this Section 4.4.1 may be enforced by any court of competent jurisdiction, and

the Party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the Party against whom enforcement is ordered.

4.4.2 Judicial Reference. If the mediation required under the provisions of this Agreement has not resolved the Dispute and any Party to this Agreement commences an action or proceeding relating to a Dispute, all the issues in such action or proceeding, whether of fact or law, shall be resolved by judicial reference pursuant to the provisions of Code of Civil Procedure Sections 638.1 and 641 through 645.1. The Parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. The following shall apply to any such proceedings:

4.4.2.1 The Parties shall use the procedures adopted by JAMS for judicial reference and selection of a referee (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the Parties).

4.4.2.2 The proceeding shall be brought and held in Monterey County, unless the Parties agree to an alternative venue.

4.4.2.3 The referee shall be a retired judge or a licensed attorney with substantial experience in relevant real estate matters.

4.4.2.4 The Parties shall agree upon a single referee who shall have the power to try any and all of the issues raised, whether of fact or of law, which may be pertinent to the matters in dispute, and to issue a statement of decision thereon. Any dispute regarding the selection of the referee shall be resolved by JAMS, or, if no entity is involved, by the court in accordance with California Code of Civil Procedure Sections 638 and 640.

4.4.2.5 The referee shall be authorized to provide all remedies available in law or equity appropriate under the circumstances of the controversy, other than punitive damages.

4.4.2.6 The referee may require one or more pre-hearing conferences.

4.4.2.7 The Parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

4.4.2.8 A stenographic record of the trial shall be made.

4.4.2.9 The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable.

4.4.2.10 The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

4.4.2.11 The Parties shall promptly and diligently cooperate with each other and the referee and perform such acts, as may be necessary for an expeditious resolution of the dispute.

4.4.2.12 The costs of such proceeding, including the fees of a referee, shall be borne equally by the Parties to the Dispute.

4.4.2.13 The statement of decision of the referee upon all of the issues considered by the referee shall be binding upon the Parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the court. The Parties acknowledge and agree that by providing for judicial reference of disputes, they are waiving their right to a jury trial.

4.5 Annual Review.

4.5.1 Each year during the Term of this Agreement beginning on or about the first anniversary date of the execution of this Agreement, the City shall review the extent of good faith compliance by Developer with the terms of this Agreement. This review shall be conducted by the City and shall be limited in scope to compliance with the terms of this Agreement pursuant to the Development Agreement Statute.

4.5.2 A finding by the City of good faith compliance by Developer with the terms of this Agreement, or a lack of a finding to the contrary, shall conclusively determine such good faith compliance up to and including the date of such review.

4.5.3 With respect to each year for which an annual review of compliance with this Agreement is conducted, upon request of Developer, the City shall provide Developer with a written "Notice of Compliance," or, based on substantial evidence of a material failure of Developer to comply in good faith with the terms of this Agreement after notice and a reasonable opportunity to Developer to cure such failure, "Notice of Non-compliance," as applicable, duly executed and acknowledged by the City. Either Party shall have the right to record any such notice.

4.5.4 Failure by the Developer to request review under this Section 4.5 or failure of City to initiate review under this Section 4.5 shall not invalidate any provisions of this Agreement or constitute a default hereunder.

4.5.5 The provision of this Section 4.5 shall be administered by the City's Development Services Director, subject to Section 4.4.

4.6 Force Majeure Delay, Extension of Times of Performance.

4.6.1 In addition to specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in default where delays or defaults are due to a Force Majeure Event.

4.6.2 Any Party claiming a delay as a result of a Force Majeure Event shall provide the other Party with written notice of such delay, the reason for the delay and an estimated length of delay. Upon the other Party's receipt of such notice, the period of time for performance of any obligation or duty shall be automatically extended for the period of the Force Majeure Event, unless the other Party objects in writing within thirty (30) days after receiving

the notice. In the event of such objection, the Parties shall meet and confer within thirty (30) days after the date of objection to arrive at a mutually acceptable solution to the disagreement regarding the delay. If no mutually acceptable solution is reached at the conclusion of the meet and confer session(s), either Party may initiate dispute resolution proceedings as set forth in Section 4.4 of this Agreement. During the period of any Force Majeure Event extension, the Parties shall use their best efforts to minimize potential adverse effects resulting from the Force Majeure Event.

4.7 Legal Challenge by Third Party.

4.7.1 In the event of any administrative, legal or equitable action or other proceeding instituted by any person, entity or organization (not a Party to this Agreement) challenging the validity or enforceability of this Agreement, the Parties shall cooperate with each other in the defense of any such challenge, provided such cooperation shall not extend to payment of funds or expenses in defending such challenge unless agreed by the cooperating Party.

4.7.2 Developer shall indemnify and hold harmless the City, its officers, agents, employees, officers from any action brought by a third party (i) challenging the validity of this Agreement or (ii) seeking damages which may arise directly or indirectly from the negotiation, formation, execution, enforcement or termination of this Agreement. Nothing in this Section shall be construed to mean that Developer shall hold the City harmless or defend it to the extent that such claims, costs or liability arise from, or are alleged to have arisen from, the sole negligence or willful misconduct of the City. The City shall cooperate with Developer in the defense of any matter in which Developer is defending or holding the City harmless and for such purpose Developer shall retain competent legal counsel approved by the City, which approval shall not be unreasonably withheld or delayed.

4.8 Estoppel Certificate.

4.8.1 Either Party may, at any time, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party:

4.8.1.1 This Agreement is in full force and effect, and unless otherwise indicated has not been amended.

4.8.1.2 To best of knowledge, the Party requesting such certificate is not in default of the performance of its obligations under this Agreement, or alternatively, if a default exists or notice of default has been given, the nature and amount of any such defaults.

4.8.2 A Party receiving a request hereunder shall execute and return such certificate within twenty (20) business days following the receipt thereof. The Parties acknowledge that any certificate given hereunder may be relied upon by any governmental agency, any assignee, and other persons having an interest in the Project, including holders of any deed of trust. The City Manager shall be authorized to execute any such certificate for the City, unless otherwise directed by the City Council.

4.9 Termination of Agreement. This Agreement is terminable by mutual written consent of the Parties, and shall not require or be contingent upon the approval or consent of any other person or entity. Any obligations of indemnification and defense relating to matters arising before termination of this Agreement shall survive termination of this Agreement.

4.9.1 Except as otherwise set forth in this Agreement, if this Agreement is terminated by mutual written consent of the Parties, neither Party shall have any further rights or obligations under this Agreement. Subject to Section 4.9.3, each Party understands that it may have sustained damages that arise, or may arise out of, or relate to the termination of this Agreement that may not be apparent and that are presently unknown. Each Party waives, with respect to termination of this Agreement by mutual written consent of the Parties, any claims for all such damages. The waivers and releases in this Agreement include waivers and releases of any claims for unknown or unanticipated injuries, losses, or damages arising out of or relating to termination of this Agreement by mutual written consent of the Parties.

4.9.2 Subject to Section 4.9.3, each Party waives, with respect to termination of this Agreement by mutual written consent of the Parties, all rights or benefits that it has or may have under Section 1542 of the California Civil Code to the extent it would otherwise apply. Section 1542 reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

4.9.3 Nothing herein contained shall release or excuse Developer in the performance of its obligations to indemnify and defend the City as provided in this Agreement.

SECTION 5 ASSIGNMENTS

5.1 Limitation As To Assignment. Except as permitted by Sections 5.2 and 5.3 of this Agreement, Developer shall not assign, or attempt to assign or otherwise transfer this Agreement or any right herein (each referred to as an "Assignment") in whole or in part, without the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed. The City may refuse to give its consent only if, in light of the proposed assignment and financial resources, such assignee would not in the City's reasonable opinion be able to perform the obligations proposed to be assumed by such assignee. The Developer acknowledges that the identity, make-up and proposal of the Developer are of particular concern to the City and it is because of these matters that the City has entered into this Agreement.

5.2 Permitted Assignment. The prior written approval of the City shall not be required for the following Assignments:

5.2.1 Any Assignment to one or more Affiliates of Developer; or

5.2.2 The merger, consolidation, restructuring or sale of substantially all of the assets of Developer or of any Affiliate, provided that a third party Certified Public Accountant

certifies that the resulting entity has a net worth, with assets calculated based on current market value (not book value), equal to or greater than twenty million dollars (\$20,000,000); or

5.2.3 The assignment to any trustee by way of a deed of trust in favor of holder or beneficiary under such deed of trust, or the absolute or collateral assignment, pledge, grant or transfer to such holder, of the Developer's right, title and interest in, to and under this Agreement for the purpose of creating an encumbrance on or security interest in such interest, or to or by any such holder or other purchaser in connection with its acquisition of the Project Site by foreclosure or deed in lieu of foreclosure; or

5.2.4 The sale of individual parcels to third parties (provided, however, that such parcels shall be subject to the Specific Plan and Project Approvals).

5.3 Assumption of Assigned Obligations. As a condition to any Assignment under this Agreement, any person or entity accepting such Assignment ("Assignee") shall assume all of the obligations of this Agreement as they pertain to the portion of the Property being transferred to the Assignee. The assumption shall be on a form acceptable to the City and following the Assignment shall be recorded on the portion of the Property transferred. This requirement shall apply whether or not the transfer requires approval of the City.

5.4 Release of Developer. Upon the effectiveness of any Assignment and assumption of Developer's obligations by any Assignee, the Developer shall be fully relieved and released of each of its duties and obligations with respect to the portion of the Property transferred to the transferee from and after the date of such transfer, except as to those obligations of Developer under this Agreement, Project Approvals or Applicable City Regulations that affect more than the portion of the Property being transferred.

5.5 Successive Assignment. In the event of any Assignment under the provisions of this Section 5, the provisions of this Section 5 shall apply to each successive Assignment and Assignee. The Developer's obligations under this Agreement with respect to the portion of the Property transferred which are to be assumed by the Assignee shall be set out in substantially the form of the Assignment and Assumption Agreement.

5.6 Unapproved Transfers Void. Any Assignment, or attempted Assignment, that is not approved by the City as required under this Section 5, or that is inconsistent with the provisions of this Section 5, shall be unenforceable and void and shall not release Developer from any rights or obligations hereunder.

SECTION 6 GENERAL PROVISIONS

6.1 Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure. The Developer's breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to the Project, or any part thereof or interest therein, whether or not said mortgage or deed of trust is subordinated to this Agreement, but, the terms,

conditions, covenants, restrictions and reservations of this Agreement shall be binding and effective against the holder of any such mortgage or deed of trust or any owner of the Project, or any part thereof, whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

6.2 Covenants Binding on Successors and Assigns. This Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants and obligations, shall be binding upon the Parties and their respective successors (by merger, consolidation, or otherwise) and assigns, and all other persons or entities acquiring the Property, or any interest therein, and shall inure to the benefit of the Parties and their respective successors (by merger, consolidation or otherwise) and assigns.

6.3 Covenants Run With Land. The provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Section 1468 of the Civil Code of the State of California. Each covenant to do or refrain from doing some act on the Property which is for the benefit of the Property or shall constitute a burden upon the Property, as applicable, shall run with the land, and is binding upon each Party and each successive owner during its ownership of the Property, or any portion thereof.

6.4 Preamble, Recitals, Exhibits. References herein to "this Agreement" shall include the Preamble, Recitals and all of the exhibits of this Agreement.

6.5 Attorneys Fees. Should any legal action or proceeding be brought by either Party regarding any matter arising out of or relating to this Agreement, the prevailing Party in such action shall be entitled to recover reasonable attorneys' fees incurred, court costs, and such other costs as may be determined by the court.

6.6 Project as a Private Undertaking. It is specifically understood and agreed by and between the Parties hereto that the development of the Project is a separately undertaken private development and Developer shall have full power over and exclusive control of the Project subject only to the limitations and obligations of Developer under this Agreement. No partnership, joint venture, agency or other association of any kind between Developer and the City is formed by this Agreement. The only relationship between the City and Developer is that of a governmental entity regulating development and the owner of the Project.

6.7 Construction. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

6.8 Notices. All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered, mailed by certified mail, return receipt requested, or delivered by reliable overnight courier, to the respective Party as follows:

If to City:
City of Marina
211 Hillcrest
Marina, CA 93933

Attn: City Manager and the Development Services Director

With a Copy To:

City Attorney
City of Marina
857 Cass Street, Suite D
Monterey, CA 93940
Attn: City Attorney

And

The Community Development Director
City of Marina
211 Hillcrest
Marina, California 93933

If to Developer:

CreekBridge Homes
P.O. Box 293
Tres Pinos, CA 95075
Attn: Robert Bikle

A notice shall be effective on receipt. Any Party may change the address stated herein by giving written notice to the other Party, and thereafter notices shall be addressed and transmitted to the new address. Any notice given to the Developer as required by this Agreement shall also be given to any lender which provides written request to City for notice.

6.9 Recordation. The Clerk of the City shall record, at Developer's expense, a copy of this Agreement in the Official Records of the Recorder's Office of Monterey County. Developer shall be responsible for all recordation fees, if any.

6.10 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, or unenforceable, in whole or in part for any reason, the remaining terms and provisions of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provisions, in which case either Party may terminate this Agreement by providing written notice thereof to the other. In the event of such termination, the provisions of Section 4.9 relating to termination of the Agreement by mutual written consent of the Parties shall apply. Without limiting the generality of the foregoing, no judgment determining that a portion of this Agreement is unenforceable or invalid shall release Developer from its obligations to indemnify the City under this Agreement.

6.11 Applicable Law; Venue. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in Monterey County.

6.12 Waivers. No waiver of any obligations under this Agreement shall be enforceable or admissible unless set forth in a writing signed by the Party against which enforcement or admission is sought. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted shall apply solely to the specific instance expressly set forth in such writing. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

6.13 Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and the City. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

6.14 Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

A-1	Legal Description of the Property
A-2	Map of the Property
B	Applicable City Regulations
C	Exactions Applicable to the Project
Table 1 to C	Development Impact Fees
Table 2 to C	Traffic Improvements
D	Processing Fees

6.15 Rules of Construction. The singular includes the plural; "shall" is mandatory, and "may" is permissive. This Agreement has been drafted jointly, and reviewed by the Parties and their attorneys and, therefore, shall not be construed in favor of or against a Party that may have drafted any particular term or provision. Prior versions or drafts of this Agreement shall not be used to interpret the meaning or intent of this Agreement or any provision hereof.

6.16 Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties concerning the subject matter hereof. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiation or previous agreements between the Parties with respect to all or any part of the subject matter hereof. To the extent that there are conflicts or inconsistencies between this Agreement and any prior agreement, the provisions of this Agreement shall prevail.

6.17 Further Assurances and Acts. Each Party shall perform all acts and execute all documents and instruments that may be necessary or convenient to carry out its obligations under this Agreement.

6.18 Time of the Essence. Time is of the essence in the performance of each Party's respective obligations under this Agreement.

6.19 No Third Party Rights. Nothing in this Agreement, whether express or implied, is intended to or shall do any of the following:

- (a) Confer any benefits, rights or remedies under or by reason of this Agreement on any persons other than the express Parties to it;
- (b) Relieve or discharge the obligation or liability of any person not an express Party to this Agreement;
- (c) Give any person not an express party to this Agreement any right of subrogation or action against any Party to this Agreement.

IN WITNESS WHEREOF, the City and Developer have executed this Agreement as of the date first hereinabove written.

"City":

CITY OF MARINA,

a municipal corporation

By: _____
Mayor

ATTEST:

City Clerk

"Developer":

CREEKBRIDGE HOMES, LLC,

By: Hugh P. Bikle,
President
CreekBridge Homes, LLC

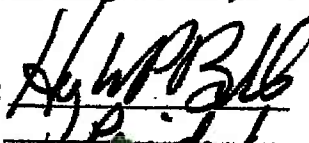
By: 
Its: President

EXHIBIT A-1

LEGAL DESCRIPTION OF THE PROPERTY

[SEE ATTACHED DESCRIPTION]

EXHIBIT A-2

MAP OF THE PROPERTY

[SEE ATTACHED MAP]

EXHIBIT B

APPLICABLE CITY REGULATIONS

To the extent not in conflict with or not inconsistent with the Specific Plan, Vesting Tentative Map, and other Project Approvals, the following rules, regulations and official policies in effect as of the Effective Date shall apply to the Project and Property:

- A. City of Marina General Plan, adopted October 31, 2000, as amended.
- B. City of Marina Subdivision Ordinance, Title 16 of the City of Marina Municipal Code.
- C. City of Marina Zoning Ordinance, Title 17 of the City of Marina Municipal Code.
- D. All other rules, regulations, and official policies governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications, applicable to development of the Property subject to a development agreement in force at the time of execution of the Agreement.
- E. Exactions (see Exhibit C)

EXHIBIT C

EXACTIONS APPLICABLE TO THE PROJECT

[Subject to conforming and clarifying changes prior to execution and recordation]

1. **Development Impact Fees.** City and Developer agree that the maximum development impact fees payable with respect to the specific land uses developed in the Project shall be the amounts set forth in Table 1 to this Exhibit C. Roadway Segments Fee and Intersections Fee set forth on Table 1 comprise the City's Traffic Impact Fees. Using December 31, 2006, as the starting index date, on April 1 of each calendar year, the Development Impact Fees set forth in Table 1 shall be automatically adjusted based on the increase or decrease in the Engineering News Record Construction Cost Index for the San Francisco Bay Area for the period ending December 31 of the preceding calendar year. Fees paid after the date of such adjustment shall be paid at the adjusted rate.

2. **Fire Station Site.** Fire protection services to the Project are anticipated to be provided from the existing fire station on Palm Avenue. The Fire Department should be able to maintain an average response time of four minutes to the Project from the existing fire station, which meets current standards.

During final map approvals for each phase of the Project after Phase 1, the City and the Developer shall meet to review the current Fire Department service level impacts the Project has created and fire station needs to insure assumptions were accurate. The fire station may be required prior to development north of the Urban Growth Boundary ("UGB"). Developer shall reserve a location on the project site for a neighborhood fire station.

Future development north of the Urban Growth Boundary will increase the demand for fire protection services and the increased distance from existing fire stations to such development will preclude service within current response times. Accordingly, if development is proposed north of the UGB, past the point where it can be adequately serviced from the existing fire station, an additional fire station site will be required. Developer shall reserve, or cause to be reserved, a one-acre site in a location between the UGB and the Del Monte/Highway 1 intersection as determined by the Fire Department.

3. **Park Dedication and Improvements.** Developer shall, in connection with the Project, dedicate to the City, the parks and recreational areas shown on the Specific Plan for park and recreational purposes, which shall be maintained in accordance with Section 2.16 of the Agreement. Such dedication shall be deemed to satisfy any and all requirements and obligations set forth in Municipal Code Section 16.08.090 and Government Code Section 66477 and no fees in-lieu of land dedication that would otherwise be required under Municipal Code Section 16.08.090(E) or otherwise shall be imposed or required of Developer, and Developer shall not be entitled to any credits against payment of park fees. Developer shall provide the specific improvements set forth in Exhibit E of the Specific Plan for the parks and recreational areas dedicated in connection with this Agreement. Developer shall irrevocably dedicate to the City the parkland within each phase of the Project in an unimproved condition at the time of the City approval of a Final Map that includes said parkland. Additionally, the Developer shall irrevocably dedicate to the City the parkland shown within Parcel 3 on the Vesting Tentative Map as playfield totaling approximately 8.21. acres, prior to the City approval

of a Final Map for the second phase of the project. Each park shall be improved by Developer when more than 50% of the streets surrounding that park (as shown on the final map that includes that park) are installed, and CreekBridge shall bond for the park on that final map. The City agrees not to delay occupancy of residential units based upon the status of park improvements.

4. Traffic Mitigation Measures. City agrees not to impose on the Project any traffic mitigation measures other than those specifically set forth in the EIR. CreekBridge will be reimbursed for all of the costs (including, without limitation, design, engineering, bidding, construction, inspection and approval) for the projects it builds where someone other than Marina Station is listed as: "Party Responsible to Pay Cost of Improvement" in Table 2 of Exhibit C, provided however, if the other Party Responsible to Pay Cost of Improvement is not the City, Developer shall be responsible for collecting any such reimbursement and the City shall have not responsibility for collecting such reimbursement.

5. Environmental Mitigation and Implementation Measures. The Parties understand that the EIR was intended to be used in connection with the Project Approvals and the Subsequent Project Approvals needed for the Project. Consistent with the CEQA streamlining policies applicable to specific plans, including but not limited to California Code of Regulations, Title 14, Section 15182, the City agrees to use the EIR in connection with the processing of any Subsequent Project Approval to the maximum extent allowed by law.

6. Public Safety Program Improvements. Prior to approval of the first final map, the Developer shall provide a plan showing a wireless, mounted, transmitter/repeater plan for every two hundred residences at key locations within the Project for use by Marina Police and Fire services as part of the City's larger enhanced public safety program. Plan details shall have an installed value of not less than three thousand dollars per wireless location. Where the actual installed value is less than three thousand dollars, the balance, up to three thousand dollars, shall be placed in a defined City fund set aside specifically to support this particular public safety program. Final plan content shall be approved by the Fire Chief.

TABLE 1 TO EXHIBIT C

DEVELOPMENT IMPACT FEES – 2007 US Dollars

Land Use	Public Buildings Fee	Public Safety Fee	Roadway Segments Fee	Parks	Intersections Fee	Total
Residential (per unit)						
<i>Single Family Dwellings</i>	\$2,427	\$1692	\$8,461	0	\$1,858	\$14,438
<i>Senior homes</i>	\$1,618	\$1128	\$3,280	0	\$720	\$12,651
<i>Assisted Living - Senior</i>	\$899	\$627	\$2,422	0	\$532	\$4,480
<i>Multi-Family Dwellings (includes Town homes, Lane Homes, and Row Homes)</i>	\$2,248	\$1,567	\$5,862	0	\$1,287	\$10,964
Non Residential (per 1000 square feet)						
<i>Office/Research</i>	\$719	\$1,044	\$9,734	0	\$2,137	\$13,634
<i>Retail/Service</i>	\$432	\$627	\$17,633	0	\$3,872	\$22,564
<i>Industrial</i>	\$239	\$348	\$6,162	0	\$1,353	\$8,102
<i>Hotel (per room)</i>	\$144	\$209	\$7,224	0	\$1,585	\$9,162

TABLE 2 TO EXHIBIT C

TRAFFIC IMPROVEMENTS INTERSECTIONS

No.	N-S Street	E-W Street	Traffic Study Reference	Recommended Improvements	When Improvement will be Required	Party Responsible to Construct Improvement	Party Responsible to Pay Cost of Improvement	Currently in Marina CIP	Eligible to be included within Marina CIP?
1	NB Highway 1 Ramps	Del Monte Blvd North of Marina	#I-14	Add WB Left Turn Lane and Convert Intersection to All-Way Stop Control	Final Phase of Development	Marina Station	Marina Station	No	No
2	Del Monte Blvd	Golf Blvd	#I-2	Add SB Left Turn Lane	When EB Golf Blvd is Built	Marina Station	Marina TIF*	No	Yes
3	Del Monte Blvd	Marina Green Drive	#I-3	Add SB Left Turn Lane, add WB Right Turn Lane, add EB Right Turn Lane	At Adjoining Phase of Development	Marina Station	Marina TIF *	No	Yes
			#I-4	Convert Intersection to All-Way Stop Control	At Adjoining Phase of Development	Marina Station	Marina TIF *	No	Yes
4	Del Monte Blvd	Cosky Drive	#I-15	Add SB Median Left Turn Acceleration Lane	Final Phase of Development	Marina Station	Marina TIF *	No	Yes
5	SB Highway 1 Ramps	Reservation Road	#I-5	Convert Intersection to All-Way Stop Control	Final Phase of Development	Marina Station	Marina TIF*	No	Yes
			#I-10	Signalize Intersection	City Council Approval **	City of Marina	Marina TIF	Yes	Yes
6	NB Highway 1 Ramps	Reservation Road	#I-11	Signalize Intersection	City Council Approval **	City of Marina	Marina TIF	Yes	Yes

7	Cardoza Avenue	Reservation Road	#S-1	As Part of the Segment Improvement Restripe WB Right Turn Lane as a Through/Right Lane, Extend WB Right Turn Lane to NB Hwy 1 Onramp	City Council Approval **	City of Marina	Marina TIF	Yes	Yes
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No.	N-S Street	E-W Street	Traffic Study Reference	Recommended Improvements	When Improvement will be Required	Party Responsible to Construct Improvement	Party Responsible to Pay Cost of Improvement	Currently In Marina CIP	Eligible to be Included within Marina CIP?
8	Del Monte Blvd	Beach Road	#I-6	Signalize Intersection, add EB Left Turn Lane	City Council Approval **	City of Marina	Marina TIF	Yes	Yes
9	De Forest Road	Beach Road	#I-7	Convert Intersection Control to All-Way Stop Control, add NB Left Turn Lane, add SB Right Turn Lane	At Adjoining Phase of Development	Marina Station	Marina TIF *	No	Yes
10	California Avenue	Reservation Road	#I-8	Signalize Intersection	City Council Approval **	City of Marina	Marina TIF	Yes	Yes
11	Salinas Avenue	Reservation Road	#I-12	Signalize Intersection	City Council Approval **	City of Marina	Marina TIF	Yes	Yes
12	Imjin Road	Reservation Road	#I-9	Widen & Restripe NB as 1-L, 1-T, 3-R	City Council Approval **	City of Marina	Marina TIF	Yes	Yes
			#I-16	Add 2 nd NB and 2 nd Through Lanes	City Council Approval **		University Village	No	No
13	Blanco Road	Reservation Road	#I-13	Add 2 nd WB Through Lane	Final Phase of Development	Marina Station	Marina Station	No	No
14	Highway 68 WB Ramps	Reservation Road	#I-17	Add EB Right Turn Lane	Final Phase of Development	Marina Station	Marina Station	No	No

Notes

1. L, T, R = Left, Through, Right
2. NB, SB, EB, WB = Northbound, Southbound, Eastbound, Westbound

3. "Marina CIP" refers to the City of Marina Capital Improvement Program, which is partially funded through the City's traffic impact fee.
4. "Eligible" refers to if improvement could be added to City of Marina CIP. Improvements not covered would be either under the jurisdiction of another local agency or any mainline freeway improvement.
5. Recommended improvements at Imjin/Reservation were previously conditioned to be financed and implemented by the University Villages development, which is responsible for their construction. As Marina Station would also represent a significant impact at this intersection, it would also be responsible for financing and implementation of this improvement if University Villages does not finance and construct the improvements first. If Project is required to construct this improvement, it shall be reimbursed from fees or other mitigation imposed on University Villages in the amount of all costs to design, bid and construct this improvement.
6. "Marina TIF" refers to the City of Marina Traffic Impact Fee. "TAMC Fee" refers to the regional impact fee administered by the Transportation Agency for Monterey County. Although the amount of the TAMC Fee has been calculated based upon a nexus study, it has not yet been adopted locally by the City or other member agencies, which is necessary in order for the regional traffic mitigation program to be implemented. In cases in which the TAMC Fee is proposed as the mitigation for the Project's traffic impacts, if the TAMC Fee structure is not adopted, the impact will remain significant and unavoidable.
7. Percentage share is the percentage of the project trips out of the total intersection trips during the scenarios cited, minus the existing trips, during the PM peak hour. If percentage is 100%, project is responsible for all of the cost of the improvement. If percentage is less than 100%, then project responsible for that percentage of the cost of the improvement. If percentage not listed, percentage share is moot, because project pays traffic impact fees.
8. "Construction Only" means that project would be responsible for the stated share of the construction costs pursuant to an awarded bid, but would not be responsible for design, engineering, administration, inspection, or implementation of the improvement.
9. * - improvement proposed to be added to City of Marina CIP, in which case project's payment of City of Marina Traffic Impact Fee would cover project impacts. Otherwise, project would be responsible for listed share of improvement cost.
10. ** - improvement not currently in TAMC fee. If improvement added to TAMC fee, payment of fee would mitigate impact. If improvement not added to TAMC fee, impact would remain significant.

TRAFFIC IMPROVEMENTS**SEGMENTS**

No.	Road Segment		Type	Traffic Study Reference	Recommended Improvements	When Project will be Required	Party Responsible to Construct	Party Responsible For Cost	Currently in Marina CIP	Eligible to be Included within Marina CIP?
1	Highway 1	NB Between Nashua / Molera Rd. & Del Monte North Interchange	4-Lane Freeway	#S3	Widen Northbound to 3 Lanes	State Approval	Cal Trans	State Funding, TAMC, TIF, * and Sales Taxes	No	No
2	Highway 1	NB Between Del Monte North Interchange & Reservation Rd.	4-Lane Freeway	#S4	Widen Northbound to 3 Lanes	State Approval	Cal Trans	State Funding, TAMC, TIF, * and Sales Taxes	No	No
3	Highway 1	NB Between Reservation Rd. & Del Monte South Interchange	4-Lane Freeway	#S5	Widen Northbound to 3 Lanes	State Approval	Cal Trans	State Funding, TAMC, TIF, * and Sales Taxes	No	No
4	Highway 1	NB Between Del Monte South & Interchange & Imjin Parkway	6-Lane Freeway	#S6	Widen Northbound to 4 Lanes	State Approval	Cal Trans	State Funding, TAMC, TIF, * and Sales Taxes	No	No
5	Highway 1	SB Between Imjin Parkway & Del Monte Blvd. South	6-Lane Freeway	#S7	Implement Weaving Improvement as Determined from the Conclusions of the Hwy. 1/Imjin Pkwy Interchange Project Study Report	State Approval	Cal Trans	Marina TIF	Yes	Yes
6	Reservation Road Between Hwy 1 NB Ramps at Reservation Rd. & Cardoza Ave		2-Arterial	#S1	Construct Formal WB Right Turn Lane Along Entire Block	City Council Approval **	City of Marina	Marina TIF	Yes	Yes
7	Reservation Road Between Cardoza Ave & Beach Rd		2-Arterial	#S1	Restripe Existing WB Right Turn Lane as Cardoza as a Through/Right Lane	City Council Approval **	City of Marina	Marina TIF	Yes	Yes

No.	Road Segment	Type	Traffic Study Reference	Recommended Improvements	When Project will be Required	Party Responsible to Construct	Party Responsible For Cost	Currently in Marina CIP	Eligible to be Included within Marina CIP?
8	Crescent Ave	2-Collector	NA	Construct New Road as Stipulated in the Marina Station Specific Plan from Southern Project Boarder to Golf Road	Adjoining Phases of Development	Marina Station	Marina TIF	Yes	Yes
9	Golf Blvd	2-Arterial	NA	Construct New Road as Stipulated in the Marina Station Specific Plan from Del Monte Blvd – To the Intersection with Crescent Ave	Adjoining Phases of Development	Marina Station	Marina TIF	Yes	Yes
10	Beach Road	NA	NA	Improvements to Olsen Elementary Frontage	City Council Approval **	Marina Station	Marina TIF	Yes	Yes

Notes:

1. Marina CIP" refers to the City of Marina Capital Improvement Program, which is partially funded through the City's traffic impact fee.
2. "Eligible" refers to if improvement could be added to City of Marina CIP. Improvements not covered would be either under the jurisdiction of another local agency or any mainline freeway improvement.
3. "Marina TIF" refers to the City of Marina Traffic Impact Fee. "TAMC Fee" refers to the regional impact fee administered by the Transportation Agency for Monterey County.
4. Percentage share is the percentage of the project trips out of the total intersection trips during the scenarios cited, minus the existing trips, during the PM peak hour.
5. * - improvement proposed to be added to City of Marina CIP, in which case project's payment of City of Marina Traffic Impact Fee would cover project impacts. Otherwise, project would be responsible for listed share of improvement cost.
6. ** - improvement not currently in TAMC fee. If improvement added to TAMC fee, payment of fee would mitigate impact. If improvement not added to TAMC fee, impact would remain significant.

EXHIBIT D**PROCESSING FEES**

1. Building Plan Check, Permit and Inspection Fees. Fees for building plan check, permits and inspections will be charged in accordance with the City's fee ordinance at the time building permits are issued for both residential and commercial development. Such fees will include a 15% administrative fee to capture the indirect general city administrative costs. Timing for building plan check, permit and inspection to be performed by the City on an expedited basis as defined in the City's ordinances.

2. Subdivision Map and Plan Check; Subdivision Improvement Inspection. Fees for subdivision map and improvement plan checking and inspection of subdivision improvements will be charged in accordance with the City's fee ordinance at the time said maps and plans are submitted for approval. Such fees will include an additional 15% administrative fee to capture the indirect general city administrative costs. Timing of subdivision map and improvement plan check, approval and inspection to be performed by the City on an expedited basis as defined in the City's ordinances.

The estimated budget for subdivision map and plan checking and inspection of subdivision improvements, based on the phases and scope of subdivision improvements shown on the approved Vesting Tentative Map and the Specific Plan, is \$2,980,000, but may be subject to change depending upon the number of phases, timing of submittals and construction, and conformance of plans and construction to the plans and City requirements.

a. Modification to Rates

Rates to be modified annually by CPI for the San Francisco Bay Area as published in the Engineering News Record. Parties to mutually agree upon modification to rate structure based on notification of such changes prior to submission of final maps or improvement plans.

b. Protocol. The estimated budget for plan and map checking services is based on the City providing review and comments on up to three submittals of each set of plans, with the fourth submittal containing mylars for signature (provided, however, that nothing herein shall preclude approval of plans based on fewer submittals). If review and comment on more than three versions of the maps or plans are required due to Developer's failure to make required revisions, such services shall be performed on a time-and-materials basis. Developer and its engineer shall have the right to meet with the engineer performing the map or plan checking after each plan or map check to review and discuss any required changes in detail before making corrections and to meet again to go over any changes made prior to re-submittal. The mutual goal shall be to complete the plan or map check process with no more than two plan or map submittals. Any changes required by the City as a result of the plan or map check shall be in writing and shall be detailed, clear and specific. No additional changes will be required after the

second plan or map check, except for those changes which result from Developer's failure to make previously required changes. All plans and maps shall be checked and returned to Developer's engineer within two weeks of each submittal and shall be corrected and resubmitted by Developer's engineer within two weeks of return, but nothing herein shall preclude earlier turn-around by the City or Developer.

3. Future Planning, Entitlement, Project Management and SDC Administration.

a. Charges. It is understood the above permits, plan check and inspection fees do not cover the planning, entitlement, project management costs nor direct general administrative costs related to the project as administered by the Strategic Development Center. Developer shall be responsible for the payment of such costs on a quarterly basis based on the estimated annual costs as determined by the City prior to the start of each City fiscal year. City shall provide the Developer with the estimated annual costs for the Developer's approval, which approval shall not be unreasonably withheld. If execution of this Agreement occurs prior to the start of the City's fiscal year, then the parties will agree on an annual budget for the remaining portion of the fiscal year. No later than the 15th day prior to the start of each quarter of the fiscal year, the Developer shall deposit one fourth (1/4) of the estimated annual total of the planning, entitlement, project management and SDC administrative charges. No later than the 30th day following the start of each quarter, the Project Manager shall provide the Developer an accounting of all expenses in the prior quarter, and an estimate of next quarter's expenses, adjusted as necessary for any surplus or deficit resulting from the previous quarter.

b. Services. Under the direction of the SDC Director, the project manager shall provide the planning, entitlement and project management services for the City for the Project with the assistance of outside consultants. Prior to hiring any such outside consultants, the City shall provide the Developer with copies of any proposed scopes of work for the Developer's approval, which approval shall not be unreasonably delayed or withheld. Costs for such consultants shall be included in the annual budget estimate and the quarterly deposits required pursuant to subsection (a) above.

c. Previous SDC start up fees. Previous fees paid by the Developer under separate agreement dated December 7, 2005 for the initial start up of the SDC as such fees were defined in said agreement shall be reimbursed to Developer at the time the first set of residential building permits are issued for the Project, as a credit against permit fees required at the time of submission of such plans. The amount of such fees is specified in said agreement.

**SPECIFIC PLAN
APPROVED BY CITY COUNCIL ON MARCH 4, 2008**

This Exhibit is 204 pages with color

<https://www.cityofmarina.org/DocumentCenter/View/10756/MS-Specific-Plan-Feb-2008?bidId=>

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of June 21, 2022

CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-, APPROVING AN AGREEMENT WITH NOLAND, HAMERLY, ETIENNE & HOSS TO PROVIDE MUNICIPAL LEGAL SERVICES TO THE CITY OF MARINA; APPROVE A WAIVER OF CONFLICT OF INTEREST AND CONSENT TO REPRESENT CITY OF MARINA; AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENT AND WAIVER.

RECOMMENDATION: City Council consider:

1. Adopt Resolution No. 2022-, approving an agreement with Noland, Hamerly, Etienne & Hoss to provide municipal legal services to the City of Marina; and approve a waiver of conflict of interest and consent to represent the City of Marina; and
2. Authorize the City Manager to execute the agreement and waiver.

BACKGROUND:

In November 2021, the Wellington Law Offices provided notice to the Mayor and City Council that they would be resigning as the City of Marina's City Attorney and Assistant Attorney effective March 1, 2022. Rob Wellington has been serving as Marina's City Attorney since the City incorporated in November 1975.

The City Council has been reviewing the scope of services for a new City Attorney and is developing an RFP to release for the Council to recruit and select a new City Attorney. This process is expected to take several months. In the interim, there is a need for continued municipal legal services and the proposed contract with Noland, Hamerly, Etienne & Hoss (NHEH) will provide an Interim City Attorney for the City of Marina. During this period of time, the Wellington Law Offices may continue to assist with providing legal services for the City as needed.

ANALYSIS:

Under the proposed agreement, the Interim City Attorney will provide to, or on behalf of the City of Marina, day-to-day advice, written opinions, legal document review and appearances at meetings as needed. The Interim City Attorney will also provide litigation services, upon request and subject to direction of the City Council.

The Interim City Attorney services will be performed principally by Heidi A. Quinn. However, other attorneys, clerks and paralegals may be assigned to represent the City. Attached is a bio for Heidi Quinn who prior to working for NHEH previously worked for the law firm of De Lay & Laredo and served as the Assistant City Attorney for Pacific Grove for fifteen (15) years and has been licensed for over twenty-seven (27) years (**"EXHIBIT A"**). Heidi Quinn's areas of expertise are municipal law, employment, water law, and civil litigation. Also attached is an overview brochure for NHEH which lists their areas of expertise, their other attorneys working for the firm and a list of some of their clients (**"EXHIBIT B"**).

There is no retainer initially required with this agreement (**"EXHIBIT C"**). The City will be billed at the attorneys hourly rate which will range from \$260.00 to \$550.00 per hour. The hourly rate for Heidi Quinn is \$395.00.

The agreement can be terminated by the City or NHEH at any time without cause.

FISCAL IMPACT:

The current budget for Fiscal Year 2021/22 and 2022/23 includes funding for city attorney and legal services and no additional budget adjustments are needed.

Layne Long
City Manager
City of Marina

RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
APPROVING AN AGREEMENT NOLAND, HAMERLY, ETIENNE & HOSS TO PROVIDE
MUNICIPAL LEGAL SERVICES TO THE CITY OF MARINA; APPROVE A WAIVER OF
CONFLICT OF INTEREST AND CONSENT TO REPRESENT CITY OF MARINA AND
AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND WAIVER.

WHEREAS, the Wellington Law Offices has served as Marina's City Attorney since 1975 and has notified the City they will be resigning effective March 1, 2022, and

WHEREAS, the City has continued need for legal services while it is recruiting for a new City Attorney, and Noland, Hamerly, Etienne & Hoss can provide continued municipal legal services and an Interim City Attorney on an hourly basis, and

WHEREAS, Heidi A. Quinn will be the principal person performing Interim City Attorney services.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Marina does hereby:

1. Approve an agreement for Municipal Legal Services with Noland, Hamerly, Etienne & Hoss, and
2. Approve a waiver of conflict of interest and consent to represent City of Marina, and
3. Authorize the City Manager to execute the agreement and waiver.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 21st of June 2022 by the following vote:

AYES, COUNCIL MEMBERS:

NOES, COUNCIL MEMBERS:

ABSENT, COUNCIL MEMBERS:

ABSTAIN, COUNCIL MEMBERS:

ATTEST:

Bruce C. Delgado, Mayor

Anita Sharp, Deputy City Clerk



HEIDI A. QUINN

AREAS OF EMPHASIS

Commercial, Business,
& Contract Law
Water & Land Use Law
Construction & Real Estate
Public & Municipal Agencies
Nonprofit Organizations
Mutual Benefit Corporations

BAR ADMISSIONS

California
U.S. District Court, Northern,
Central and Eastern Districts
of California

PRACTICE EMPHASIS

Ms. Quinn's practice focuses on public agencies and nonprofit organizations. Her expertise extends to construction law, contracts, land use, and water law.

SERVICES TO CLIENTS

Ms. Quinn's clients include public agencies, nonprofit organizations, individuals, business entities, and mutual benefit organizations. She has more than 25 years experience in many aspects of California law, having worked with both regional and local law firms. Her speaking engagement topics have included the Public Records Act and CEQA, and she regularly offers training on attorney-client privilege, AB1234 and AB1825.

PROFESSIONAL AFFILIATIONS

- Monterey County Bar Association
- Monterey County Women Lawyers Association
- California Lawyers Association
- State Bar of California
- American Bar Association

COMMUNITY SERVICE ACTIVITIES

Ms. Quinn is an active member of Toastmasters International and past President of Speakeasy Toastmasters of Monterey. She is a recent graduate of the Monterey County Business Council's *Leadership Monterey County* 2021 class.

EDUCATION

JD, Santa Clara University School of Law

BA, Liberal Studies, San Diego State University

NOLAND
HAMERLY
& ETIENNE
HOSS

Attorneys at Law

A PROFESSIONAL CORPORATION



CLIENT FOCUSED,
RELATIONSHIP DRIVEN

A TRADITION OF EXCELLENCE
SINCE 1928

NOLAND HAMERLY: A FOUNDATION OF SERVICE

SINCE 1928, NOLAND, HAMERLY, ETIENNE & HOSS HAS BUILT ITS LAW PRACTICE ON THE FUNDAMENTAL PHILOSOPHY OF OUTSTANDING CLIENT SERVICE, INTEGRITY, EXCELLENCE AND RESPONSIVENESS. OUR CLIENTS' COMPLETE SATISFACTION IS OUR GOAL.



TODAY WE ARE ONE OF THE LARGEST AND MOST RESPECTED FIRMS ON CALIFORNIA'S CENTRAL COAST, WITH TWO OFFICES IN MONTEREY COUNTY, SERVING INDIVIDUALS, FAMILIES AND BUSINESSES ON THE MONTEREY PENINSULA, THE SALINAS VALLEY, AND THROUGHOUT MONTEREY, SAN BENITO, SANTA CRUZ AND SANTA CLARA COUNTIES.

OUR CLIENTS INCLUDE NATIONAL AND INTERNATIONAL CORPORATIONS, REGIONAL BUSINESSES, FAMILY OWNED BUSINESSES, INDIVIDUALS, AND FAMILIES, MANY OF WHOM HAVE LIVED IN THE REGION FOR GENERATIONS. EACH CLIENT HAS OUR FULL COMMITMENT TO HIGH QUALITY AND COST-EFFECTIVE LEGAL COUNSEL. NOLAND HAMERLY HAS PROUDLY SERVED OUR CLIENTS FOR MANY YEARS, AND WE LOOK FORWARD TO DOING SO FOR MANY YEARS TO COME.

PRACTICE PROFILE

AGRICULTURAL LAW

Land Use and Acquisition

Leasing

Crop Growing and Marketing Agreements

Commission Merchant and Commodity

Crop Damage Claims

PACA (Perishable Agricultural Commodities Act)

Claims

Agricultural Liens

Crop, Seed and Producer's Liens

Water Rights

BUSINESS & TAXATION

*Formation, Operation and Dissolution of
Partnerships, Corporations and Limited
Liability Companies*

Partner, Shareholder and Member Agreements

Sales, Mergers, Acquisitions and Reorganizations

Leases, Banking and Secured Transaction Documents

Business Succession

Letters of Credit

Commercial Paper

Sale and Lease Financing

Intellectual Property

CONSTRUCTION

Contract Preparation, Review and Analysis

Bid Protests and Mistakes

Contract Disputes

Mechanics Liens, Stop Notices and Bond Claims

Defective Design or Installation

Materials Failure

Breach of Warranty

Regulatory Matters and Permitting

Environmental Issues Relating to Construction Projects

Building Code and Licensing Approvals

State Contractor License Board Issues

Project Permitting

Contract Termination
Litigation in State and Federal Courts on
Construction Related Matters

CREDITORS RIGHTS & BANKRUPTCY

Contract Preparation
Secured Transactions
Breach of Contract Claims
Contract Enforcement and Collection
Mechanics Liens, Stop Notices and Bond Claims
on Construction Projects
Prejudgment Remedies to Secure Payment
of Amounts Due
Loan Restructuring
Writs of Attachment and Possession
Bankruptcy
Enforcement of Judgments and Liens

LABOR & EMPLOYMENT

Wage and Hour Law
Discrimination, Harassment and Retaliation
Employment Related Claims Filed in State or
Federal Court or Government Agencies
Government Agency Investigations
Personnel Policies and Procedures
Hiring, Discipline and Termination
Employment and Severance Agreements
Unfair Labor Practice Charges
Union Contract Negotiations and Labor Relations

LAND USE

Subdivisions
Lot-Line Adjustments
Certificates of Compliance
Easements, Encroachments and Right of Ways
Use Permits and Coastal Permits
Annexations
Variances
Historic Resources

Water Rights and Water Systems
Construction Permits
California Environmental Quality Act (CEQA)
Regulatory Compliance
Quiet Title Actions
Partition Actions
Land Owner Disputes
Administrative Hearings

ESTATE PLANNING

Wills
Trusts (Revocable, Irrevocable, and Special Needs)
Durable Powers of Attorney
Advance Health Care Directive
Conservatorships
Guardianships
Medi-Cal Planning
Estate & Gift Tax Planning

LITIGATION & ALTERNATIVE DISPUTE RESOLUTION

Business Disputes
Real Estate Disputes
Easements and Quiet Title Actions
Partition Actions
Construction Litigation
Creditors' Rights
Employment Disputes
Environmental Claims
Trust and Estate Disputes
Landlord/Tenant Disputes
Insurance Disputes
Land Use and CEQA Litigation
Personal Injury and Wrongful Death
Arbitration and Mediation
Appeals
Administrative Hearings

PUBLIC AGENCIES

Statutory Compliance
Governance
Open Meetings Law ("Brown Act")
Public Record Act Issues
*Political Practices and Ethical
Compliance Requirements*
Employee Relations
Contracting
Environmental Compliance
Water Law

REAL ESTATE

Purchase and Sale Transactions
Tax Deferred Exchanges
Mortgages and Foreclosures
Commercial, Residential and Agricultural Leasing
Water Rights
Easement and Right of Way Issues
Covenants, Conditions and Restrictions
Homeowner Association Matters
Financing and Title Issues
Property Tax Appeals and Assessments
Williamson Act Matters
Historic Property Issues
Partition Actions
Quiet Title Actions
Property Disputes
Regulatory Compliance

OUR ATTORNEYS

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MONTEREY INSTITUTE OF INTERNATIONAL STUDIES (M.A., 1988)
HASTINGS COLLEGE OF THE LAW (J.D., 1999)

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UNIVERSITY OF CALIFORNIA SANTA BARBARA (B.S., 2016)
PEPPERDINE UNIVERSITY, CARUSO SCHOOL OF LAW (J.D., 2019)

HARRY L. NOLAND

(1904 – 1991)

PAUL M. HAMERLY

(1920 – 2000)

MYRON E. ETIENNE, JR.

(1924 – 2016)

PETER T. HOSS

(1934 – 2018)

WE VALUE OUR CLOSE WORKING
RELATIONSHIPS WITH OUR CLIENTS.
CLIENT SATISFACTION IS MOST
IMPORTANT TO US, AND WE ARE
COMMITTED TO RESPONDING TO OUR
CLIENTS' NEEDS.

WE STRIVE TO PROVIDE SOUND AND
PRACTICAL LEGAL ADVICE, AS WELL
AS CREATIVE AND COST-EFFECTIVE
SOLUTIONS TO THE CHALLENGES
CONFRONTING OUR CLIENTS. OUR
DEPTH OF PRACTICE AND DIVERSITY OF
EXPERIENCE PROVIDE OUR CLIENTS A
COMPLETE RANGE OF HIGH QUALITY
LEGAL REPRESENTATION.



Overlooking Salinas Valley Fields from River Road



Renowned Big Sur Coastline, with view of Bixby Bridge



California Poppies and Sky Lupine off Highway 101

PHOTOGRAPHY · VECTORPOINT, SALINAS

OUR CLIENTS

OUR CLIENTS INCLUDE MANY OF CENTRAL CALIFORNIA'S LEADING AGRICULTURAL COMPANIES, BANKS, MANUFACTURERS, CONSTRUCTION COMPANIES, HEALTH CARE PROVIDERS, REAL ESTATE BUSINESSES, NON-PROFIT ORGANIZATIONS, AND HOSPITALITY INDUSTRY COMPANIES AND ORGANIZATIONS. THESE ARE SOME OF THE COMPANIES WE HAVE THE HONOR TO SERVE:

AGRICULTURAL

Andrew Smith Company
Duda Farm Fresh Foods
Fanciful Company
Growers Express
King Fresh Produce
Ocean Mist Farms
Pacific Gold Farms
Pacific International Marketing
Quality Farm Labor
Rio Farms, LLC
Seed Dynamics
The Growers Company
Valley Farm Management, Inc.
Vegetable Growers Supply Co.

EDUCATIONAL

All Saints Day School
California State University Monterey Bay
Monterey Bay Aquarium Research Institute

GENERAL BUSINESS

Articulate Solutions, Inc.
Associated Rebar, Inc.
Central Coast Federal Credit Union
Green & Jespersen
Hayashi Wayland
Pacific Gas and Electric Company
Salinas Lincoln-Mercury
Wells Fargo Bank

HEALTH CARE

Health Care for Women

Radiology Group of Santa Cruz County

HOMEOWNERS ASSOCIATIONS

Homeowners at Quail Lodge, Inc.

Las Palmas Homeowners Association

Pasadera Homeowners Association

Prominence at Las Palmas Ranch Homeowners Association

Salinas Valley Foothill Estates

HOSPITALITY

Coastal Hotel Group

Domenico's on the Wharf

Inns of Monterey

Monterey Peninsula Country Club

NON-PROFIT

Carmel Valley Manor

CHISPA

Elkhorn Slough Foundation

The Foundation of CSUMB

Hospice Giving Foundation

Monterey Jazz Festival

REAL ESTATE, CONSTRUCTION, AND LAND USE

Cornerstone Masonry

Hayward Lumber

JM Electric

Pacific Reconstruction

Partington Mutual Water Company

Property Restoration Services

Shaw Development

Yanks Air Museum

NOLAND HAMERLY: A DEDICATION TO OUR COMMUNITY

OUR ATTORNEYS ARE LEADERS IN THE CHARITABLE, CULTURAL AND PUBLIC SERVICE ORGANIZATIONS SERVING THE CENTRAL COAST. WE BELIEVE THE BEST WAY TO GIVE BACK TO OUR COMMUNITY IS TO SERVE THE MANY NON-PROFITS KEY TO THE HEALTH AND CULTURAL DIVERSITY OF OUR AREA. OUR LAWYERS CURRENTLY SERVE ON, OR HAVE SERVED ON, THE BOARD OF DIRECTORS OF:

*Ag Against Hunger
California Chapter of the American Lung Association
California Rodeo
Carmel Bach Festival
Carmel Public Library Foundation
Carmel Sunset Cultural Center
CASA of Monterey County
CHISPA
Elkhorn Slough Foundation
Gilroy Chamber of Commerce
Girl Scouts of Monterey Bay
Hartnell College Foundation
Leadership Gilroy
Legal Services for Seniors
Meals on Wheels
Monterey County Agricultural Education, Inc.
Monterey County Bar Association
Monterey County Historical Resources Review Board
Monterey Jazz Festival
Monterey Peninsula Chamber of Commerce
National Steinbeck Center
Rotary Clubs of Corral de Tierra, Gilroy, Salinas
and Monterey
Salinas Rotary Charities Foundation
Salinas Valley Chamber of Commerce
Salinas Valley Fair
Salinas Valley Leadership Group
Salinas Valley Memorial Health Care System Foundation
San Carlos School
United Way
Visiting Nurses Association
York School*

Our lawyers have held leadership positions with Carmel Bach Festival, Carmel Bach Festival Foundation, Hartnell Community College, Hartnell College Foundation, California State University Monterey Bay (Planned Giving Advisory Committee) and University of California Hastings College of the Law.

SALINAS OFFICE

333 Salinas Street

Salinas, California 93901

*Near the corner of Main and Alisal Streets
in Oldtown Salinas.*

phone 831.424.1414

fax 831.424.1975

MONTEREY OFFICE

470 Camino El Estero

Monterey, California 93940

*Across from Lake El Estero at the
corner of Anthony Street.*

phone 831.373.3622

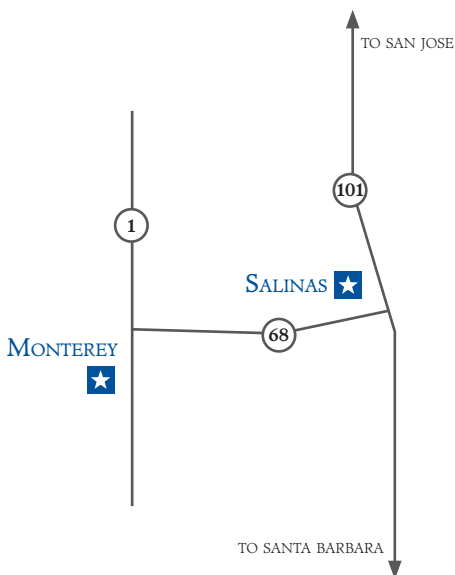
fax 831.649.3043

MAILING ADDRESS

PO Box 2510

Salinas, CA 93902

WWW.NHEH.COM



NOLAND, HAMERLY, ETIENNE & HOSS

Attorney Engagement Agreement

THIS ATTORNEY ENGAGEMENT AGREEMENT (“**Agreement**”) is entered into between CITY OF MARINA, a Municipal Corporation (“**Client**”) and NOLAND, HAMERLY, ETIENNE & HOSS, a Professional Corporation (“**NHEH**”). This Agreement is required by Business and Professions Code section 6148 and is intended to fulfill the requirements of that section. This Agreement sets forth the terms of NHEH’s professional services in the matter described below. When signed, this Agreement will constitute a binding contract and should be carefully reviewed.

1. Conditions. NHEH’s obligation to provide municipal legal services begins only upon each of the following occurring: (i) NHEH’s receipt of a Client-signed copy of this Agreement; and (ii) NHEH’s acceptance of representation by counter-signing this Agreement and returning a fully executed copy to Client,

2. Scope of Engagement. Client engages NHEH to provide municipal legal services (“**Matter**”). The Interim City Attorney will provide to, or on behalf of the City of Marina, day-to-day advice, written opinions, legal document review and appearances at meetings if needed. The Interim City Attorney shall provide litigation services, upon request and subject to direction of the City Council for the City of Marina. The services will be performed principally by Heidi A. Quinn, who shall be assigned as Interim City Attorney. Inasmuch as the City is retaining NHEH, however, NHEH may assign other attorneys, clerks and paralegals to matters if, in NHEH’s judgment NHEH’s representation of the City will be best served by such assignments. This Agreement will also govern any future matters for which NHEH undertakes to represent Client unless the parties agree in writing to a different arrangement. For such future matters, NHEH will endeavor to confirm in a separate agreement with Client, or in an addendum to this Agreement, the scope of NHEH’s representation in such matters at the time they arise. NHEH will provide legal services as reasonably required to represent Client, will take reasonable steps to keep Client informed of material developments and will respond promptly to Client’s inquiries. Client shall cooperate with NHEH and keep NHEH informed of all material facts and developments which may come to Client’s attention; carefully review and provide necessary feedback on all documents NHEH prepares on Client’s behalf; timely pay all statements for services rendered; keep NHEH advised of Client’s current address, telephone and fax numbers, e-mail address and whereabouts; and otherwise abide by the terms of this Agreement.

3. Tax Advice. NHEH has not been retained to provide Client with any tax advice concerning any of the services described in section 2 of this Agreement. Documents prepared by NHEH and business advice may have specific tax ramifications. To ensure Client understands all the potential tax consequences of any documents or advice, Client should consult with Client’s tax advisors regarding these matters.

4. No Guaranty of Results. NHEH will represent Client within the bounds of ethics and the law. Nothing in this Agreement or in NHEH’s statements to Client are to be construed as a promise or guarantee about the outcome of the Matter. NHEH makes no such promises or

guarantees. NHEH's comments about the outcome of the Matter are expressions of opinion only, are neither promises nor guarantees, and are not to be construed as promises or guarantees.

5. No Duty to Advise of Changes in Law. On occasion, NHEH may voluntarily inform Client of developments in the law that may be of interest to Client. However, because laws change frequently and NHEH represents many clients with a wide variety of interests, NHEH cannot provide updates on changes in the law absent a specific request from Client for such updates. NHEH therefore does not undertake to keep Client advised on changes in the law. If at any time Client wants NHEH to provide Client with information regarding changes in the law, Client agrees to make a specific written request for that information. Specific request(s) may be initiated on behalf of the Client by its City Manager, Assistant City Manager, Police Chief, Fire Chief, or a Department Director.

6. Retainer. NHEH will not initially require a retainer ("**Retainer**") in this case. NHEH may later determine that a Retainer is appropriate, and may request Client deposit a Retainer. A Retainer deposited by Client and any estimate of fees given by NHEH are not a representation by NHEH of a flat fee for NHEH's services and will not be a limitation on fees or a guarantee that fees and costs will not exceed the amount of the Retainer or estimate. Actual fees may vary significantly from estimates given. If a Retainer is requested, it will be deposited in a trust account and will not be credited against Client's monthly statement but will be held in reserve and applied in accordance with this Agreement. If the Retainer is depleted, Client shall deposit additional funds at NHEH's request.

Client agrees that NHEH's right to use the Retainer held in a trust account becomes fixed thirty (30) days after the date a bill is sent to Client. Client authorizes NHEH to withdraw the funds from a trust account which holds the Client's Retainer to pay NHEH's fees and costs. If NHEH receives a written objection from Client within sixty (60) days of date the bill is sent to Client, NHEH's right to withdraw the amount that is identified in the objection will be deemed to be disputed, and NHEH will not withdraw the disputed fees and/or costs from the trust account until the dispute is resolved. If NHEH receives an objection from Client more than sixty (60) days after the date the bill is sent to Client and after funds have been withdrawn from the trust account, NHEH shall not be required to redeposit the disputed fees and/or costs into the trust account during the pendency of the dispute.

Upon conclusion of NHEH's representation of Client, NHEH will apply the Retainer to any outstanding statements and promptly refund the remaining unused Retainer, if any. Client authorizes NHEH to withdraw amounts from the trust account in which the Retainer has been deposited in accordance with this Agreement.

7. Interest on Deposits. By law, interest earned on commingled trust accounts is paid to a fund of the State Bar of California, unless NHEH establishes a separate trust account to accrue interest for the benefit of Client and the payment of NHEH's billings.

8. NHEH's Fees. NHEH's legal fees are generally based upon the number of hours devoted to NHEH's representation of Client at the agreed hourly rate(s). Hourly rates of attorneys in the firm range from \$260.00 to \$550.00 per hour, depending on which attorney works on the Matter and on the services rendered. Law clerk time is billed between \$150.00 and \$200.00 per hour. Paralegal time is billed between \$175.00 and \$200.00 per hour. Staff time is billed between

\$80.00 and \$125.00 per hour. Time is recorded in increments of one-tenth of an hour and billed accordingly.

The hourly rate of Heidi A. Quinn for the Matter is \$395.00 per hour. Legal issues that are not routine, or which may expose the City to extraordinary legal, economic, or political risk, may require the skill and experience of senior attorneys with 20 years or more of specialized experience and are billed at \$415-430 per hour. Other attorneys and staff of NHEH may assist in providing legal services to Client. Time spent on this engagement may include conferences between attorneys and staff of NHEH. NHEH may change its hourly rates, costs, or other terms of this Agreement from time to time. NHEH will provide Client advanced written notice of changes in its hourly rates, costs or other terms of this Agreement but Client's acceptance of services after notice of changes in fees, costs and/or terms (including a change in billing shown in NHEH's periodic statements) shall be conclusive proof of the Client's approval of the changes. If Client objects to the change of terms, please immediately notify NHEH.

NHEH personnel may confer among themselves about the Matter. When they do confer, each person will charge for the time expended. Likewise, if more than one of NHEH's attorneys or paralegals attends a meeting, court hearing or other proceeding, each may charge for the time spent. NHEH's attorneys will charge for waiting time in court and elsewhere and for travel time, both local and out of town. Client acknowledges that NHEH has made no promises about the total amount of attorneys' fees to be incurred by Client under this Agreement.

9. Costs and Expenses. In addition to attorneys' fees, NHEH may incur various costs and expenses in performing legal services under this Agreement such as notary fees, investigation expenses, translator/interpreter fees, computer legal research, filing fees, courier deliveries, e-filing charges, and other out-of-pocket expenditures NHEH may incur on Client's behalf. NHEH will bill Client for actual costs and expenses advanced on Client's behalf; Client also agrees to pay transportation, meals, lodging and all other costs of any necessary out-of-town travel by NHEH's personnel on behalf of Client.

10. Experts, Consultants and Investigators. With prior Client consent, NHEH may engage expert witnesses, consultants, investigators or others to provide professional services for Client. Client agrees to pay the fees, and any costs charged by any such witness, consultant, investigator or others engaged by NHEH.

11. Responsibility for Payment. Client is responsible for the timely and full payment of all statements for services rendered by NHEH to Client. If Client recovers legal fees or costs from a third party when prevailing in litigation or under an indemnity agreement, such recovery of legal fees and costs will generally be for the benefit of Client; provided, however, if Client is delinquent in paying NHEH for its billed fees and costs, Client agrees that said legal fees and costs received from third-parties may, at NHEH's discretion, be paid to NHEH by such third party.

NHEH will send Client periodic statements showing the fees, costs and expenses incurred, any amounts withdrawn from the Trust account in which the Retainer is deposited and any current balance owed. The statement will identify the fees, costs and expenses incurred. If no attorneys' fees, costs or expenses are incurred for a particular month, or if they are minimal, the statement may be held and combined with that for the following month. Client may request a

statement at intervals of thirty (30) days or greater. NHEH will provide the statement within ten (10) days after Client's request.

Client shall promptly review all statements rendered by NHEH and promptly communicate to NHEH any objections, questions, or concerns about their contents. Client shall pay NHEH in full for any balance owed within thirty (30) days after the statement is mailed. If the balance is not timely paid, fees and costs will be deemed delinquent for purposes of this Agreement. A finance charge, currently calculated at 12% per annum, will be added to any portion of the balance for which payment is not made within thirty (30) days. Upon written notice to Client, this finance charge may vary from time to time. The failure to pay NHEH's statement within thirty (30) days will constitute good cause under this Agreement for NHEH to withdraw from representation of Client. Except for the Retainer or any advance payment for costs, Client may pay its bill by MasterCard, VISA, or Discover Card by calling NHEH's Accounting Department.

12. Communication and File Retention. NHEH takes seriously its duties to protect all of Client's confidential information and will take reasonable steps to protect Client's confidential information in the Matter. NHEH may communicate with Client about the Matter by telephone, letter, fax, e-mail, and/or other medium. Because digital communication continues to evolve, there may be risks communicating in this manner, including risks related to confidentiality and security. By entering into this Agreement, Client consents to NHEH using digital communication mediums to communicate with Client and Client's representatives and agents. If Client does not want NHEH to use any particular means of communication (such as fax or e-mail), Client must advise NHEH in writing; upon receipt of such notice, NHEH will follow Client's instructions. Client authorizes NHEH to store Client's case information electronically on NHEH's computer systems. At the conclusion of NHEH's representation of Client, NHEH will close Client's file and retain it for a period of five years, unless Client provides written instructions as to its disposition in less than five years. After five years, Client's file may be permanently destroyed. If Client wants documents from Client's file at the time the Matter is concluded, Client must advise NHEH in writing and NHEH will return such documents to Client. In the event Client requests that NHEH transfer possession of Client's file to Client or a third party, NHEH is authorized to retain copies of Client's file for NHEH's use at Client's expense. Client's file includes client materials and property as defined in California Rules of Professional Conduct ("**CRPC**") Rule 1.16(e)(1).

13. Attorneys' Fee Award. Attorneys' fees and/or costs that are awarded to Client as part of a judgment or arbitrator's award are owned by Client. As consideration for entering this Agreement, Client hereby irrevocably assigns to NHEH any fees or costs that Client is awarded in connection with the subject matter of this representation. Accordingly, all attorneys' fees awarded to Client shall belong exclusively to NHEH. However, if Client has paid NHEH all fees, costs and expenses billed to Client by NHEH, then NHEH shall promptly pay over to Client any fees or costs paid by a third party.

Notwithstanding anything else in this Agreement, Client is responsible for payment of NHEH's fees and promises to pay NHEH all of the fees and costs NHEH actually incurs, even if an award of attorneys' fees is less than all of the fees NHEH has incurred in the Matter.

14. Attorneys' Lien. NHEH shall have a lien for unpaid attorneys' fees and costs on all claims and causes of action which are the subject of NHEH's representation of Client under this Agreement and in all proceeds of any recovery obtained (whether by settlement, arbitration, award,

court judgment or other order). The lien in favor of NHEH may become detrimental to Client, in that NHEH would have the right and power to delay payment to Client of any recovery or settlement proceeds until any disputes over the lien are resolved. The delay could be caused by a court order, by NHEH's declination to endorse a settlement check, or NHEH's withholding any disputed amount of fees from Client when placed in NHEH's Client trust account. NHEH is obligated under CRPC Rule 1.8.1 to disclose this reasonably foreseeable detriment to Client; to provide Client an opportunity to obtain independent legal advice concerning the imposition of an attorneys' lien under this Agreement; and to obtain Client's written consent to the imposition of an attorneys' lien. **Client is entitled to seek the advice of independent counsel of Client's choice regarding this lien provision and its consequences, and any other provision in this Agreement prior to signing it. By signing this Agreement, Client acknowledges that it has been advised of the terms of this lien agreement and agrees that the terms are fair and reasonable to Client.** Client's signature on this Agreement will constitute Client's informed written consent to the imposition of an attorneys' lien on any settlement proceeds or recovery, which is the subject of NHEH's representation of Client under this Agreement.

15. Termination. Client has the absolute right to terminate this Agreement and the attorney-client relationship between Client and NHEH at any time without cause. NHEH also reserves the right to terminate the attorney-client relationship at any time, with or without cause, as provided in CRPC Rule 1.16 and applicable law. Once a decision to terminate the Agreement and the attorney-client relationship has been made, NHEH will continue to do sufficient work on the Matter to provide for an orderly transition to new counsel. NHEH will charge for all services provided before the termination, and for the cost of making duplicate files, briefing new counsel, and transferring files to other counsel. Notwithstanding the termination of this Agreement and the attorney-client relationship, Client will remain obligated to pay NHEH at the agreed rates for all services provided and to reimburse NHEH for all costs advanced.

16. Conflicts. Client has given NHEH the identities of the persons Client knows are involved in the Matter for which Client seeks advice. Based on this information, NHEH would have no conflicts of interest.

17. Duty of Confidentiality. NHEH is professionally obligated under Business and Professions Code section 6068(e), CRPC 1.6, CRPC 1.8.2 and CRPC 1.9(c) to maintain in confidence any confidential client information acquired in representing Client in this and in all other matters. NHEH will not disclose any confidential communication between NHEH and Client or use any of Client's confidential information to Client's disadvantage.

18. Arbitration. The parties acknowledge that in any dispute over attorneys' fees, costs or both subject to the jurisdiction of the State of California over attorney's fees, charges, costs or expenses, Client has the right to elect arbitration pursuant to procedures as set forth in Business and Professions Code sections 6200-6206 ("**Mandatory Fee Arbitration Act**"). Arbitration pursuant to the Mandatory Fee Arbitration Act is non-binding unless the parties agree in writing, after the dispute has arisen, to be bound by the arbitration award.

If, after receiving a Notice of Client's Right to Fee Arbitration, Client does not elect to proceed under the Mandatory Fee Arbitration Act procedures by failing to file a request for fee arbitration within thirty (30) days, any dispute over fees, charges, costs or expenses, will be resolved in the following order:

- By binding arbitration conducted by the Monterey County Bar Association.
- If that Association is unable or unwilling to conduct such arbitration, then by binding arbitration by the State Bar of California.
- If the State Bar is unable or unwilling to conduct such arbitration, then by binding arbitration by a single arbitrator selected by the parties.
- If the parties are unable to agree on an arbitrator, the arbitration will be conducted by an arbitrator appointed by the Monterey County Superior Court pursuant to the provisions of the Code of Civil Procedure.

The parties agree that any other dispute under this Agreement or in connection with the provision of NHEH's legal services, including, without limitation, the construction, application or performance of any services under this Agreement, and any claim arising out of or relating to this Agreement or its breach, including, without limitation, professional negligence, or breach of fiduciary duty, shall be resolved by binding arbitration, using a single arbitrator, who is an attorney (active or retired) or a retired judge or justice of a California court of law, in accordance with the rules of the California Judicial Arbitration Act (California Code of Civil Procedure sections 1280 et seq.). Each party shall bear its own costs, expenses, attorneys' fees and an equal share of the administrative fees and arbitrator's fees.

By signing this Agreement in the space provided below, Client and NHEH confirm that they have read and understand this section 18, and voluntarily agree to binding arbitration. In doing so, Client and NHEH voluntarily give up important constitutional rights to trial by judge or jury, as well as rights to appeal. Client may consult with an independent lawyer of Client's choice to review these arbitration provisions, and this entire agreement, prior to signing this Agreement.

General information regarding arbitration of disputes can be obtained from the Monterey County Bar Association. Before signing this Agreement and agreeing to binding arbitration, Client is advised to seek independent advice and counsel.

19. Approval for Settlement. NHEH will not make any settlement or compromise of any nature of any of Client's claims without Client's prior approval. Client retains the absolute right to accept or reject any settlement.

20. Severability. In the event any portion of this Agreement is determined to be invalid or unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect.

21. Entire Agreement; Binding Effect. This Agreement contains the entire agreement of the parties with regard to the Matter. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties with regard to the Matter. This Agreement will bind and benefit NHEH, Client, and their respective successors and assigns, and may be changed only by a writing signed by NHEH and Client.

22. Authority. Any individuals signing this Agreement on behalf of Client represent, covenant, and warrant that they have the full and absolute authority and ability to bind Client and

that no other parties must execute this Agreement to make it effective as to Client. Each Client that is a corporation, limited liability company, limited partnership, partnership, association or similar type entity, represents and warrants to NHEH that it is in good standing in its state of incorporation or organization, and that it is qualified to conduct business in the State of California.

23. Time of the Essence. Time is of the essence of this Agreement and failure to comply strictly with this provision and the time periods specified herein (unless waived or extended by written agreement) shall be a material breach of this Agreement.

24. Effective Date. This Contract will take effect when it is signed by NHEH and Client, but its effective date will be retroactive to the date NHEH first provided services to Client.

25. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The signature page of each counterpart may be detached from such counterpart and attached to a single document which shall for all purposes be treated as an original. To facilitate execution and delivery of this Agreement, the parties may execute and exchange by facsimile or electronic image (*i.e.*, as a “.pdf” file) counterparts of the signature pages and/or sign by electronic means (*i.e.*, with DocuSign).

THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM AS OF THE DATE NHEH FIRST PROVIDED SERVICES. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH AGREES TO BE LIABLE, JOINTLY AND SEVERALLY, FOR ALL OBLIGATIONS UNDER THIS AGREEMENT.

NHEH
NOLAND, HAMERLY, ETIENNE & HOSS
A Professional Corporation

CLIENT
CITY OF MARINA

By _____
Heidi A. Quinn

By _____

Dated: _____

Dated: _____

June 7, 2022

Stephen W. Pearson

Anne K. Secker

Randy Meyenberg

Michael Masuda

Christine G. Kemp

Timothy J. Baldwin

** Charles Des Roches*

** Robert D. Simpson*

Ana C. Toledo

** Leslie E. Finnegan*

Lindsey Berg-James

Anne Frassetto Olsen

Heidi A. Quinn

Sharilyn Payne

Daniel J. Little

Jacob Weeks

William H. Shearer

**VIA E-MAIL LLONG@CITYOFMARINA.ORG;
ERIC@CASTROVILLECSD.ORG**

Mayor and City Council
City of Marina
211 Hillcrest Avenue
Marina, CA 93933

Board of Directors
Castroville Community Services District
11499 Geil Street
Castroville, CA 95012

Re: Waiver of Conflict of Interest and Consent to Represent City of Marina

Dear Mayor and Members of the City Council and CCSD Board of Directors:

Noland Hamerly Etienne & Hoss, a professional corporation ("NHEH"), currently provides general legal representation to the Castroville Community Service District ("District"). The City of Marina ("City") has requested NHEH provide general legal representation to the City as Interim City Attorney.

The Rules of Professional Conduct of the State Bar of California ("Rules") require an attorney to obtain the informed written consent of each client if the representation of one client is directly adverse to another client in the same or a separate matter. A copy of Rule 1.7 is attached hereto.

Based on the information that has been provided to NHEH, NHEH does not believe its representation of the City and the District (each a "Party" and collectively, the "Parties") currently involves any matters in which the Parties are directly adverse, except with respect to the City's and the District's involvement with, and position related to, the California American Water Company ("CalAm") desalination plant ("Desal Project").

* CERTIFIED SPECIALIST IN
PROBATE, ESTATE PLANNING,
AND TRUST LAW BY
THE CALIFORNIA BOARD OF
LEGAL SPECIALIZATION
STATE BAR OF CALIFORNIA

*Harry L. Noland
(1904-1991)*

*Paul M. Hamerly
(1920-2000)*

*Myron E. Etienne, Jr.
(1924-2016)*

*Peter T. Hoss
(1934-2018)*

City of Marina
Castroville Community Services District
June 7, 2022
Page 2

NHEH has not been engaged to represent the City's interests regarding the Desal Project, but does currently represent the District with respect to the Desal Project. The City's interests regarding the Desal Project, including any request for governmental approvals, and/or any related litigation, are represented by special counsel through the law firm of Shartsis Friese LLP. It is anticipated the District would continue to be represented by NHEH with regard to the District's position on, and involvement with, the Desal Project. While the City and the District may desire different outcomes for the Desal Project, it is not anticipated that NHEH's representation of District will involve the assertion of any claim by District against the City.

Because the City's and the District's positions on the Desal Project are directly adverse, NHEH is requesting District's consent to NHEH's representation of City in matters unrelated to the Desal Project, and City's consent to NHEH's continued representation of District, including representation of the District in the Desal Project matter. NHEH believes that, notwithstanding the Parties' different positions regarding the Desal Project, NHEH will be able to provide competent and diligent representation of each Party.

In the future, NHEH's representation of either Party may involve other potential or actual conflicts of interests if the interests of the Parties become inconsistent with the other Party's interests. Should that occur, NHEH will endeavor to apprise each Party promptly of the conflict. At that time, each Party should consider whether it wishes to obtain independent counsel in that matter; however, we must advise the Parties that there is a risk NHEH may be disqualified from representing either Party in such conflicting matters absent further written consent from both Parties to the extent written consent is appropriate and permitted by the Rules.

Of course, should either Party feel for any reason that it needs the advice of another attorney regarding any aspect of the services NHEH provides, each Party should feel free to obtain its own attorney to provide advice and counsel on such matters, and to assure it that NHEH's representation of one Party is not adversely influenced by NHEH's representation of the other Party.

City of Marina
Castroville Community Services District
June 7, 2022
Page 3

Accordingly, each Party's approval and signature of this letter will provide its written consent to NHEH's representation of the other Party for the purposes identified in this letter and waive any conflict NHEH may have by reason of NHEH's representation of District in the Desal Project. NHEH encourages each Party to seek independent counsel regarding the importance of this waiver and consent.

Sincerely,

NOLAND, HAMERLY, ETIENNE & HOSS
A Professional Corporation

Christine Kemp

Christine Kemp

Heidi Quinn

Heidi Quinn

Written Waiver and Consent to Representation Attached

City of Marina
Castroville Community Services District
June 7, 2022
Page 4

WAIVER AND CONSENT TO REPRESENTATION

The Board of Directors of the Castroville Community Services District (“District”) and the City of Marina (“City”) have read the foregoing letter and are sufficiently familiar with the facts of this matter to make an informed decision. We understand that the District’s interests conflict with the interests of City with regard to the Desal Project. Further, we understand that representation of either Party may, in the future, involve potential or actual conflicts of interests, if the interests of one Party in a matter become inconsistent with the others’ interests. Should that occur, NHEH will endeavor to apprise each Party promptly of any such potential or actual conflict so that both Parties can decide whether it wishes to waive the potential conflict or to obtain independent counsel to represent it in that matter. Absent informed written consent from each Party at the time, to the extent permitted by the Rules, there is a risk NHEH may be disqualified from representing either Party in such matter.

Having duly considered the foregoing,

1. The District Board has determined to consent to Noland, Hamerly, Etienne & Hoss (“NHEH”) performing general legal services to the City as Interim City Attorney, and to waive any conflict of interest with the City as it relates to the Desal Project, under the circumstances set forth above, which may exist as a result of NHEH rendering general legal services to the City; and
2. The City has determined to consent to NHEH performing general legal services for the District and to waive any conflict of interest which may exist as a result of NHEH rendering legal services to the District. City acknowledges that its engagement of NHEH does not include the provisions of legal services to City relating to the Desal Project and that it will continue to engage special counsel for that work.

We further understand that we have the right to consult with other counsel regarding the advisability of entering into this consent waiver and that we have either had such consultation or we have decided not to seek such independent advice despite knowing that we have such right.

We further understand that in the future, with regard to potential or actual conflicts of interests, if the interests of one or more of the Parties become inconsistent with the others’ interests, NHEH will endeavor to apprise each Party promptly of any such potential or actual conflict. At that time, each Party should consider whether they wish to obtain independent counsel to represent them in that matter.

We further understand in the event a dispute or conflict arises between the Parties, there

City of Marina
Castroville Community Services District
June 7, 2022
Page 5

is a risk that NHEH may be disqualified from representing either of Party absent written consent from each Party at that time, to the extent such consent is appropriate and permitted by the Rules.

Dated: _____, 2022

Dated: _____, 2022

Name, Title

Name, Title

Castroville Community Services District

City of Marina

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of June 21, 2022

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-,
ADOPTING THE CITY OF MARINA FLAGPOLE POLICY; AND
CONSIDER ADOPTING RESOLUTION NO. 2022-, APPROVING THE
FLYING OF THE RAINBOW PRIDE FLAG AT CITY HALL
THROUGHOUT THE REMAINDER OF THE MONTH OF JUNE 2022 AS
FURTHER RECOGNITION OF JUNE 2022 AS LESBIAN, GAY, BISEXUAL,
TRANSGENDER, QUEER, PLUS (LBGTQ+) PRIDE MONTH IN THE CITY
OF MARINA.**

RECOMMENDATION: City Council consider

1. Consider adopting Resolution No. 2022-, adopting the City of Marina Flagpole Policy; and
2. Consider adopting Resolution No. 2022-, approving the flying of the Rainbow Pride Flag at City Hall throughout the remainder of the month of June 2022 as further recognition of June 2022 as Lesbian, Gay, Bisexual, Transgender, Queer, Plus (LBGTQ+) Pride Month in the City of Marina.

BACKGROUND:

At the June 7, 2022, City Council meeting the City Council under the Special Presentations part of the meeting approved a LGBTQ+ Proclamation declaring the month of June as lesbian, gay, bisexual, transgender, Queer and Plus Pride month symbolizing the City's celebration of diversity and support for the lesbian, gay, bisexual, transgender, queer and plus community. A donation of a Pride flag was made to the City and the City Council expressed a desire to raise the Pride flag on a city flagpole for the remainder of June during Pride month. The Council was advised that the City does not have a flag policy and that the appropriate way to do this to avoid potential future free speech and constitutional legal challenges would be to adopt a flag policy first that establishes policies and procedures for displaying flags on city flag poles.

DISCUSSION

There are constitutional concerns as to whether the City Council can limit free speech through a flag policy or allow religious flags or flags that advocate for a policy party of issue. The first amendment to the United States Constitution states:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Constitutional Freedom of Speech

Forum Analysis

The First Amendment does not require government in general to always allow all speech and at all locations. "Even protected speech is not equally permissible in all places and at all times. Nothing in the Constitution requires the Government freely to grant access to all who wish to exercise their right to free speech on every type of Government property without regard to the

nature of the property or to the disruption that might be caused by the speaker's activities.¹ Thus, the Supreme Court has adopted what is known as "forum analysis" to determine whether government can control speech on government-owned property.

A "traditional public forum" is a place that has traditionally been used by the public for the free exchange of ideas such as a public park. In pre-Twitter days, standing on a soapbox in the public square was the easiest way for a speaker to reach the most people. Regulations on speech in a traditional public forum must serve a compelling government interest and the regulation be narrowly drawn to achieve that interest. This is known as the strict scrutiny test.²

A "designated or limited public forum" is property that the government has intentionally opened for expressive activity under certain conditions, with limitations on the content of speech subject to strict scrutiny, but with other restrictions just needing to be reasonable. The City Council Chambers is an example of a designated or limited public forum during a City Council meeting in which there can be time limits on public speakers, but the public cannot be prohibited from criticizing City government.³ This concept of strict scrutiny on the content of speech is sometimes referred to as "viewpoint neutrality."

A "nonpublic forum" is all remaining government property that is not dedicated to general debate or the free exchange of ideas. Reasonable restrictions are allowed in a nonpublic forum if the intent is not to suppress speech due to the speaker's viewpoint.⁴ Once the government allows public speech on nonpublic forum property- "opens the forum"- then it has arguably created a "designated or limited public forum" where the limitations on the content of speech are subject to strict scrutiny with other restrictions needing to be reasonable. Likewise, a city that has allowed public speech on nonpublic forum property can choose to adopt a policy to close that forum. This was the case when the City of Lexington, Virginia decided to no longer allow third-party groups to fly flags on streetlight flagpoles throughout the city -- other than the flags of the United States, Virginia and Lexington -- after the Sons of Confederate Veterans flew Confederate flags throughout the city.⁵

Government Speech

However, when the State is speaking on its own behalf ("government speech"), the First Amendment restrictions related to various types of government-established forums do not apply.⁶ The Supreme Court provided this example of government speech in the *Matal* case:

During the Second World War, the Federal Government produced and distributed millions of posters to promote the war effort. There were posters urging enlistment, the purchase of war bonds, and the conservation of scarce resources. These posters expressed a viewpoint, but

¹ (*Clark v Burleigh* (1992) 4 Cal. 4th 474, 482, quoting *Cornelius v NAACP Legal Defense & Educ. Fund* (1985) 473 US 788)

² *Ward v Rock Against Racism* (1989) 491 US 781 (consistent sound amplification restrictions on a rock concert in a public park did not violate First Amendment.) "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." (*Texas v. Johnson* (2015) 491 U.S. 397, 414)

³ (see *White v City of Norwalk* (9th Cir 1990) 900 F2d 1421)

⁴ (*Cornelius v NAACP Legal Defense & Educ. Fund* (1985) 473 us 788)

⁵ (*Sons of Confederate Veterans v. City of Lexington* (2012) 894 F. Supp. 2d 769)

⁶ (*Walker v. Texas Division, Sons of Confederate Veterans, Inc.* (2015) 135 S. Ct. 2239 (Supreme Court held that Texas' specialty license plate designs are governmental speech and the State was allowed to reject a flag design with the Confederate flag); *Pleasant Grove City v. Summum* (2008) 555 U.S. 460 (Supreme Court found that the display of a permanent monument in a public park is governmental speech not subject to forum analysis)) "[T]he First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others, [citations omitted] but imposing a requirement of viewpoint- neutrality on government speech would be paralyzing."

*the First Amendment did not demand that the Government balance the message of these posters by producing and distributing posters encouraging Americans to refrain from engaging in these activities*⁷.

A unanimous Supreme Court ruled on May 22, 2022 in Surtleff v City of Boston⁸ that the City of Boston violated the free speech rights of a conservative activist when it refused his request to fly a Christian flag on a flagpole outside City Hall.

Justice Stephen Breyer wrote for the court that the city discriminated against the activist, Harold Shurtleff, because of his “religious viewpoint,” even though it had routinely approved applications for the use of one of the three flagpoles outside City Hall that fly the U.S., Massachusetts and Boston flags. The city had approved 284 consecutive applications to fly flags, usually those of other nations, before it rejected Shurtleff’s because it was a Christian flag. The high court said the lower courts and the city were wrong. The case hinged on whether the flag-flying is an act of the government, in which case Boston can do whatever it wants, or private parties like Shurtleff, Justice Breyer wrote.

“Finally, we look at the extent to which Boston actively controlled these flag raisings and shaped the messages the flags sent. The answer, it seems, is not at all. And that is the most salient feature of this case.” Breyer wrote that “the city’s lack of meaningful involvement in the selection of flags or the crafting of their messages leads us to classify the flag raisings as private, not government, speech—though nothing prevents Boston from changing its policies going forward.”

This case stands for the proposition that in order to shape the message the flags send as government and not private speech the City should have a written policy and clear guidelines. In summary, regarding the First Amendment and Freedom of Speech issues, the display of flags at City facilities beyond the flags of the United States, State of California and City raises First Amendment Free Speech issues and thus the potential for litigation. Those issues depend, in part, on whether the flag is treated as government speech by the City or an opportunity for speech on public property by members of the public (“designated public forum”). If a flagpole is deemed by the City (or later determined by a court) to be “designated public forum” under the First Amendment, the City could not choose which commemorative flags to fly, except on a content-neutral basis. Thus, under the “designated public forum” approach, the City would not be able to avoid disfavored or potentially divisive flags as the City of Lexington discovered after Confederate flags were flown there or the City of Boston found with reference to Mr. Shurtleff’s Christian flag.

However, under the “government speech doctrine”, the City may, in accordance with a written policy creating meaningful involvement by the legislative body in the selection of the flags and the selectin of their message to advance its own government speech on flagpoles it controls- i.e. messages conveyed by flags - without requiring viewpoint neutrality, but will face other potential constraints on governmental speech, such as endorsing a religion or a political party under either the United States Constitution or California Constitution or laws.

Establishment Clause

Government speech must still comply with the Establishment Clause.⁹ In determining whether a governmental regulation or governmental speech impermissibly “establishes” religion, the United

⁷ (*Matal v. Tam* (2017) 137 S. Ct. 1744, 1758)

⁸ *Surtleff et al. v City of Boston et al.* (2022) Docket No. 20-1800) 596 U.S. tbd

⁹ (*Pleasant Grove City v. Sumnum*, 555 U.S. at 468)

States Supreme Court looks to the following factors:

- 1) Does the activity have a valid state secular purpose - does not endorse nor disapprove of religion;
- 2) Does the activity have a principal or primary effect that neither advances nor inhibits religion; and
- 3) Does the activity not foster an excessive government entanglement with religion¹⁰?

The governmental regulation on speech cannot have the purpose or effect of endorsing, favoring or promoting religion - or disapproving of religion.¹¹ If the City holds the position that flags on City flagpoles are government speech - i.e. the viewpoint of the City -- a flag waving on a City flagpole at City Hall would be attributed to the City as the speaker. Further, a flag of a religion or religious movement waving alongside two other powerful governmental symbols -- the flags of the United States and the State of California -would seem to send a strong message of endorsement.

There are historic examples of nonsecular references in governmental operations, such as the motto "In God We Trust" on American money; National Days of Prayer; and reference to "God" in the Pledge of Allegiance to the Flag.¹² These long-standing uses of nonsecular references to religious heritage are treated somewhat differently by the courts. However, a newly created "Christian flag" that has not been part of the religious heritage in the United States or California would arguably not be given the same deference. Further, California's broader legal separation of church and state would suggest even less deference to a new Christian flag flying from a City Hall flagpole. To that end, the Ninth Circuit has found that the Latin crosses on a city's official insignia violated the California Constitution's "no preference" clause.¹³

There have also been many cases regarding religious displays on public property that balance the question of avoiding a violation of the First Amendment's prohibition on the establishment of religion with the First Amendment's freedom of speech. These are fact-based determinations, typically in the context of a public forum (like a public park) or a limited public forum (like the entryway to a county courthouse) and not in the context of "governmental speech." If a religious display in a traditional public forum like a public park can violate the First Amendment's Establishment Clause and the California Constitution's additional "no preference" clause, then arguably a flagpole with a religious flag that the City is deeming not to be a public forum but government speech would cross the line of government endorsing religion.

¹⁰ (*Lemon v. Kurtzman* (1971) 403 U.S. 602)

¹¹ "Endorsement sends a message to nonadherent that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community. Disapproval sends the opposite message." (*Lynch v. Donnelly* (1984) 465 U.S. 668, 688-89 (O'Connor, J. concurring))

¹² (*Lynch v. Donnelly* (1984) 465 U.S. 688, 674-678) The United States Supreme Court described these as "illustrations of the Government's acknowledgement of our religious heritage and governmental sponsorship of graphic manifestations of that heritage." (*Lynch v. Donnelly* (1984) 465 U.S. 688, 677) In challenges to the motto on money, the federal Ninth Circuit Court held that the motto was not the establishment or sponsorship of religion, but "its use is of a patriotic or ceremonial character it is excluded from First Amendment significance because the motto has no theological or ritualistic impact." (*Newdow v. Lefevre* (9th Cir. 2007) 598 F 3d 638, 644 quoting *Aronow v. United States* (9th Cir. 1970) 432 F. 2d 242)).

¹³ (*Ellis v City of La Mesa* (9th Cir 1993) 990 F2d 1518)

First Amendment's Free Exercise of Religion Clause

As to the Free Exercise of Religion Clause of the First Amendment, courts evaluate the following factors in determining whether a governmental practice impermissibly interferes with the free exercise of religion¹⁴:

- 1) The magnitude of the statute's impact on the exercise of the religious belief;
- 2) The existence of a compelling state interest justifying the imposed burden on the exercise of the religious belief; and
- 3) The extent to which recognition of an exemption from the statute would impede the state's objectives.

A flag waving on a city flagpole does not impact the exercise of religion: it does not allow nor prohibit the free exercise of religion. People can practice religion - or not practice religion - regardless of whether there is a flag flying at City Hall. The City's interest in avoiding an Establishment Clause violation would arguably be compelling even if an argument could be made that not allowing flags of a religious movement somehow impacts the exercise of a religious belief.

Prohibition on Partisan Flags or Advocating a Certain Vote in an Election

Under the government speech doctrine, the City may generally advance its own speech without requiring viewpoint neutrality, subject to Constitutional and other legal limits. In considering other categories of speech that would be problematic, a flag of a political party would seem to violate the nonpartisan nature of local elections.¹⁵ Likewise, the use of City resources to make and fly a flag advocating a certain election result would likely violate the California Supreme Court's restriction on the use of public funds to assist the passage or defeat of a ballot measure.¹⁶

CONCLUSION

Flagpoles on City property, including those at the City Hall, are not traditionally intended to serve as a forum for free speech by the public. Instead, and in accordance with a written policy, these flagpoles can be treated as a nonpublic forum used by the city for expressing its own governmental speech. Under the governmental speech doctrine, the City can choose to fly only the flags of the United States, State of California and the City. The City could also choose to fly commemorative flags; although, this would increase the risk of a legal challenge once decisions are made to fly some flags but not others. Nonetheless, the government speech doctrine supports the City Council advancing its own government speech on City flagpoles without requiring viewpoint neutrality, so long as the City Council does not endorse a flag of a religion or political party or a particular outcome in an election or any other prohibited subjects under federal or state law.

The attached policy (**"EXHIBIT A"**) complies with current legal and Constitutional restraints and would allow the City Council to select and display a Commemorative Flag.

Layne Long
City Manager
City of Marina

¹⁴ (*Callahan v Woods* {9th Cir 1984} 736 F2d 1269, 1273, citing *EEOC v Pacific Press Publ'g Ass'n* (9th Cir 1982) 676 F2d 1272, 1279) (on the issue of whether plaintiff could obtain welfare benefits without a social security number because of his belief that numbers are "the mark of the Antichrist"))

¹⁵ (*Cal. Elections Code* section 334)

¹⁶ (*Stanson v. Mott* (1976) 17 Cal. 3d 206)

RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
APPROVING A FLAGPOLE POLICY

WHEREAS, the City of Marina displays and handles all flags in accordance with Federal and State law, and

WHEREAS, the City does not have local rules or guidelines regarding the display of flags at City facilities and

WHEREAS, The City wishes to adopt a policy to provide clear guidelines about the display of flags at City facilities that declares that the City's flagpoles are not intended to be a forum for free expression by the public but rather are used to express official views of the City Council of the City, and

WHEREAS, said City facilities and flagpoles are under the exclusive control of the city and are not public forums for the free expression of the view of the public.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Marina does hereby:

1. Approve and adopt the policy for the display of flags at City facilities contained in Exhibit A attached hereto.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 21st of June 2022 by the following vote:

AYES, COUNCIL MEMBERS:

NOES, COUNCIL MEMBERS:

ABSENT, COUNCIL MEMBERS:

ABSTAIN, COUNCIL MEMBERS:

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

Exhibit A

CITY OF MARINA POLICY FOR FLYING FLAGS AT CITY FACILITIES

It is the policy of the City of Marina that the City's flag poles are not intended to serve as a forum for free expression by the public but rather for the display of the Flags of the United States and the State of California. The flag poles located at all City facilities may also be used to display the flags of the City of Marina, Sister Cities, the existing POW Flag and any Commemorative Flags as may be authorized by the City Council as an expression of the City's official sentiments.

A Commemorative Flag under this policy means a flag that identifies with a specific date historical event, cause, nation or group of people, whereby the City honors or commemorates the date, event, cause, nation or people by flying the flag.

Commemorative Flags shall be displayed at City facilities only upon City Council direction, consistent with the City's vision, mission, and ongoing and strategic priorities.

The City of Marina may hold a ceremony for approved flag raising upon the first raising of the set flag.

PROCEDURE

In addition to the flags of the State of California and the United States of America, the City Council may, by resolution direct City staff to display any Commemorative Flag on the flag poles at City facilities as an expression of the City's official sentiments, for those dates and times and on those terms and conditions as set forth in the resolution. A majority vote of the Council will be required to establish a flag as a commemorative flag of the City of Marina.

Commemorative Flags shall be displayed for a period of time that is reasonable or customary for the subject that is to be commemorated, but no longer than 30 continuous days or one calendar month. No more than one commemorative flag shall be displayed in any given period. This Policy shall remain in effect until modified by the City Council.

RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY OF MARINA APPROVING THE FLYING OF THE RAINBOW PRIDE FLAG AT CITY HALL THROUGHOUT THE REMAINDER OF THE MONTH OF JUNE AS FURTHER RECOGNITION OF JUNE 2022 AS LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER, PLUS (LGBTQ+) PRIDE MONTH IN THE CITY OF MARINA

WHEREAS, the City of Marina has a diverse Lesbian, Gay, Bisexual, Transgender, Queer, Plus (LGBTQ+) community and is committed to supporting visibility, dignity, and equity for all people in the community; and

WHEREAS, many of the residents, students, employees, and business owners within the City of Marina who contribute to the enrichment of our City are part of the LGBTQ+ community; and

WHEREAS, the City of Marina strives to be a place where all residents and visitors feel accepted and welcome; and

WHEREAS, the Rainbow Flag, also known as the LGBTQ+ Pride Flag or Gay Pride Flag, has been used since the 1970s as a symbol of LGBTQ+ pride and social movements; and

WHEREAS, on June 7, 2022, the City Council of the City of Marina declared the month of June as Lesbian, Gay, Bisexual, Transgender and Queer Pride month symbolizing the City's celebration of diversity and support for the Lesbian, Gay, Bisexual, Transgender, Queer and Plus community; and

WHEREAS, the City Council has this date adopted a Flagpole Policy; and

WHEREAS, the Council of the City of Marina wishes to establish the Rainbow Pride Flag as a commemorative flag of the City of Marina in accordance with the Flagpole Policy to communicate its support for diversity, inclusivity, equality, and respect in our City; and

WHEREAS, flying the City's Rainbow Pride Flag during the month of June further symbolizes Marina's official recognition of June as LGBTQ+ Pride month and reflects the City of Marina's viewpoint, and symbolizes the City's celebration of diversity and support for the LGBTQ+ community.

NOW, THEREFORE, BE IT RESOLVED that the City Council of Marina, California does hereby find, determine and approve as follows:

Section 1. Approving the flying of the Rainbow Pride Flag at City Hall throughout the remainder of month of June.

Section 2. This resolution shall become effective immediately upon its passage and adoption.

PASSED AND ADOPTED by the City Council of the City of Marina, California at a regular public meeting thereof held on the 21st day of June 2022 by the following recorded vote:

AYES, COUNCIL MEMBERS:

NOES, COUNCIL MEMBERS:

ABSTAIN, COUNCIL MEMBERS:

ABSENT, COUNCIL MEMBERS:

ATTEST:

Bruce C. Delgado, Mayor

Anita Sharp, Deputy City Clerk

Continued from June 7, 2022

June 2, 2022

Item No: **11c**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of June 7, 2022

CITY COUNCIL CONSIDER RECEIVING A PRESENTATION REGARDING THE LONG-TERM VISION AND FISCAL SUSTANABILITY OF THE MARINA MUNICIPAL AIRPORT, EFFORTS TO PROVIDE QUALITY GENERAL AVIATION FACILITIES TO MEET DEMANDS, AND POTENTIAL SUPPORT FROM THE MILITARY ASSISTANCE PROGRAM (MAP) TO FUND INVESTMENTS IN INFRASTRUCTURE TO SUPPORT HANGAR DEVELOPMENT AND FACILITATE REVENUE SUPPORTING LAND USES

REQUEST:

It is requested that the City Council consider:

1. Receiving a presentation on the long-term vision and fiscal sustainability, hangar and infrastructure needs and solutions, and potential financial support from the Military Assistance Program for the Marina Municipal Airport.

BACKGROUND

The Marina Municipal Airport is the newest general aviation airport on the Monterey Peninsula, residing on 845 acres of former Fort Ord property, with over 400 acres dedicated to aviation. The City of Marina owns and operates the airport. The airport provides support to commercial, military, and private aircraft. Services and facilities currently available include hangar storage, tie-downs, minor aircraft maintenance, skydiving, and fueling. The airport has been open for public use since 1995.

The airport is included in the FAA's National Plan of Integrated Airport Systems (NPIAS). As such, the Airport is eligible for federal development grants. The airfield layout consists of a single runway, measuring 3,483 feet in length and 75 feet in width. Airport facilities currently include five large hangar buildings (approximately 30,000 sq.ft. each), 24 T-hangars, 20 box hangars, 170 tie downs, an airport administration building and six ancillary buildings for non-aviation tenants.

There are estimated to be 50 based aircraft (including 42 single engine piston aircraft, three turboprops, 1 business jet) and 30,000 annual operations. Key tenants today include the U.S. Navy Center for Interdisciplinary Remotely Piloted Aircraft Study (CIRPAS), Skydive Monterey Bay, Light & Motion and most recently Joby Aviation, a leader in the vertical Take-off and Landing (eVTOL) industry, employing hundreds at the Marina Airport with expansion plans for a new large aeronautical manufacturing facility.

The Marina Municipal Airport is committed to supporting the aviation, economic, environmental, and recreational needs of the airport and the Marina community. Key strategies of this vision are:

- Expanding aviation related business by partnering with existing businesses or attracting new businesses.
- Phasing in the expansion of aviation needs

- Identifying revenue generating possibilities and partnering with the community for economic development
- Identifying highest and best use of airport land area
- Making the airport financially self-sustaining

To operate the airport at a bare minimum costs about \$900,000 annually. This includes salaries for two full-time staff, professional services, and minimum maintenance and repair to keep the airport operating. Revenues generated by box hangers, cell towers, aviation use hangers, and fuel sales total about \$550,000 annually. Joby Aviation leases bring in about \$1,000,000 annually in revenues to the airport. Attracting new aviation and non-aviation businesses to the airport are critical to the fiscal sustainability of the airport.

DISCUSSION:

Staff and representatives of the Federal Aviation Administration (FAA) have been in close communication for the last couple of years to support growth at the Marina Municipal Airport and tenants such as Joby Aviation. These talks have resulted in the FAA's greater understanding and attention to the needs and challenges of the airport.

The airport was deeded to the City directly from the federal government following the closure of Fort Ord. The former helicopter airport contained large hangar buildings in need of a great deal of maintenance. While it was documented in the Airport Master Plan that an estimated 43 private small planes could be stored in the 5 large conventional hangars, utilizing these large buildings in this way is not the highest and best use as it is not efficient, is not the highest and best use, and does not provide for fiscal sustainability of the Airport. In comparison, leasing the entire building to single tenant generates much greater revenue for the airport that is used to reinvest in the maintenance and upkeep of the buildings. Below is an example using a large hanger building to compare the rents generated by several small tenants in contrast to one single tenant.

Large Hangar	Individual Tenants	Singe Tenant
Lease Rates	Max capacity of 9 aircraft @ \$250 mo. each = \$2,250 Office space 5,000 s.f. x \$.50 p/s.f. = \$2,500 Total = 4,750 mo.	35,000 sf x .36 p/s.f. = \$12,600 mo.

At current rates the difference between individual tenants versus one tenant is approximately \$7,850 a month or \$94,250 annually. The total annual revenue under these two scenarios are summarized below.

Large Hangar	Individual Tenants	Singe Tenant
Lease Rates	4,750 mo. / \$57,000 annually	\$12,600 mo. / \$151,200 annually

As part of staff's recent analysis of airport fiscal sustainability included long range maintenance costs required to preserve the 50–70-year-old structures constructed by the Army. The engineer's analysis of the needed capital reserve costs over the next 30-years and ongoing annual maintenance costs to preserve each large hanger building requires an approximate total of \$200,000 annually. In addition to the capital and maintenance costs, there are also ongoing operations costs.

After reviewing the financial data presented above the FAA staff agreed that tenants such as Joby Aviation are critical to the long-term sustainability of the airport and the continued quality facilities for the general aviation community. This education for the FAA staff has fortunately opened discussions of the airport participating in the highly selective Military Assistance Program. Nationwide, there are only a few general aviation airports that are selected to participate in MAP at one time. And the funding can be significant (up to \$35 million) over the 5-year funding cycles.

While the FAA staff is supportive of helping our airport to be financially sustainable, they are also concerned that we continue to provide a quality general aviation airport for pilots while also fostering Joby's expansion. In this effort, staff has worked with the Tartaglia Engineering to develop hangar complex plans on the airport that can be phased in over 30-years to meet the demands of the general aviation users of the airport. Also provided were engineering estimates of the costs to develop these complexes.

The presentation attached was presented the FAA staff on May 6, 2022 and was received well. This presentation includes the vision for Airport and how the future expansion of tenants such as Joby Aviation will work in concert with expansion of hangar space to service the general aviation community and provide for revenue supporting land uses to be developed in the future further adding to the financial sustainability of the Airport.

The conclusion of the meeting with the FAA staff was that the City will continue to develop its phasing plan for the Airport and how we propose to use MAP funding towards meeting the vision and financial sustainable future. Staff has met with Tartaglia Engineers to discuss including estimates for infrastructure development to support the Airport Business Park and revenue support area on the north side of the Airport property. The FAA staff also encouraged City staff to meet with Airport tenants and share future vision and hangar plans. This meeting is being planned for evening of June 8th and will be reported back to the FAA at our next meeting.

In addition to these efforts to provide for the Airport's future, staff also continues to try and gain the approval of the FAA for the Joby future factory building on the South Tarmac area. These discussions and meetings are critical to that effort as well and we look forward to having the FAA approval this summer.

Respectfully submitted,

Matt Mogensen
Assistant City Manager
City of Marina

REVIEWED/CONCUR:

Layne Long
City Manager
City of Marina

MARINA MUNICIPAL AIRPORT



Vision and efforts to meet current and future aviation demands

May 6, 2022



VISION FOR THE MARINA MUNICIPAL AIRPORT

- Airport Master Plan Adopted May 2018
- Provides guidance for future development to meet existing and future needs
- Project included public review and input
 - 5 PAC meetings, 2 workshops, Council adoption
- Several Landside Alternatives incorporated
- Annual Budget & CIP review and approval



MARINA MUNICIPAL AIRPORT VISION STATEMENT

Mission Statement

The Marina Municipal Airport's mission is to provide a safe, efficient, customer focused airport to serve the Marina community and Monterey Peninsula area.

Vision

The Marina Municipal Airport is committed to supporting the economic, environmental, and recreational needs of the airport and Marina community through safe and secure operations and fiscal self-sustainability. Key strategies of our vision are:

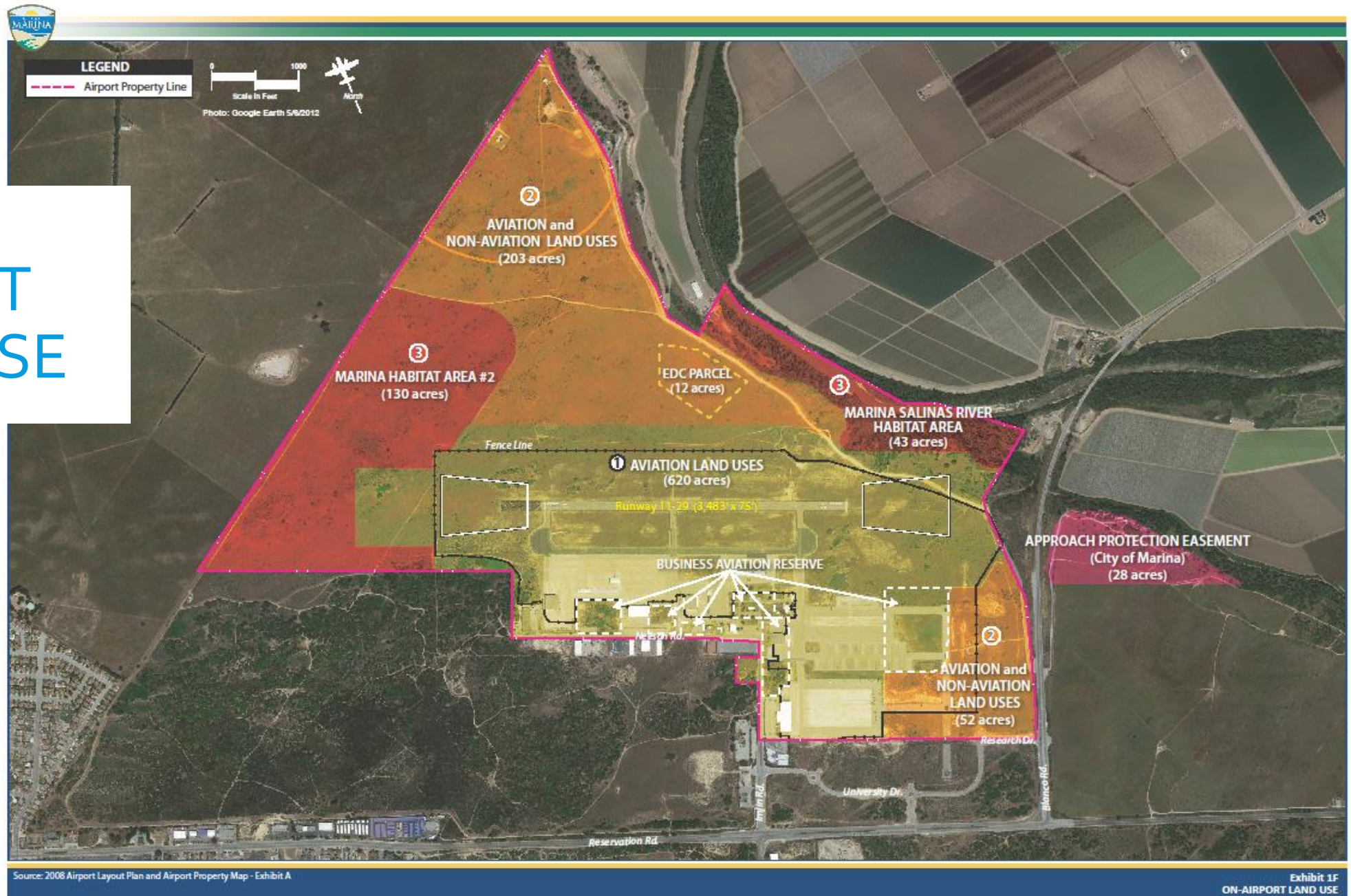
1. Expanding aviation related business by partnering with existing businesses or attracting new businesses.
2. Phasing in the expansion of aviation needs
3. Identifying revenue generating possibilities and partnering with the community for economic development
4. Identifying highest & best use of airport land area
5. Making the airport financially self-sustaining

MARINA MUNICIPAL AIRPORT VISION STATEMENT (CONT.)

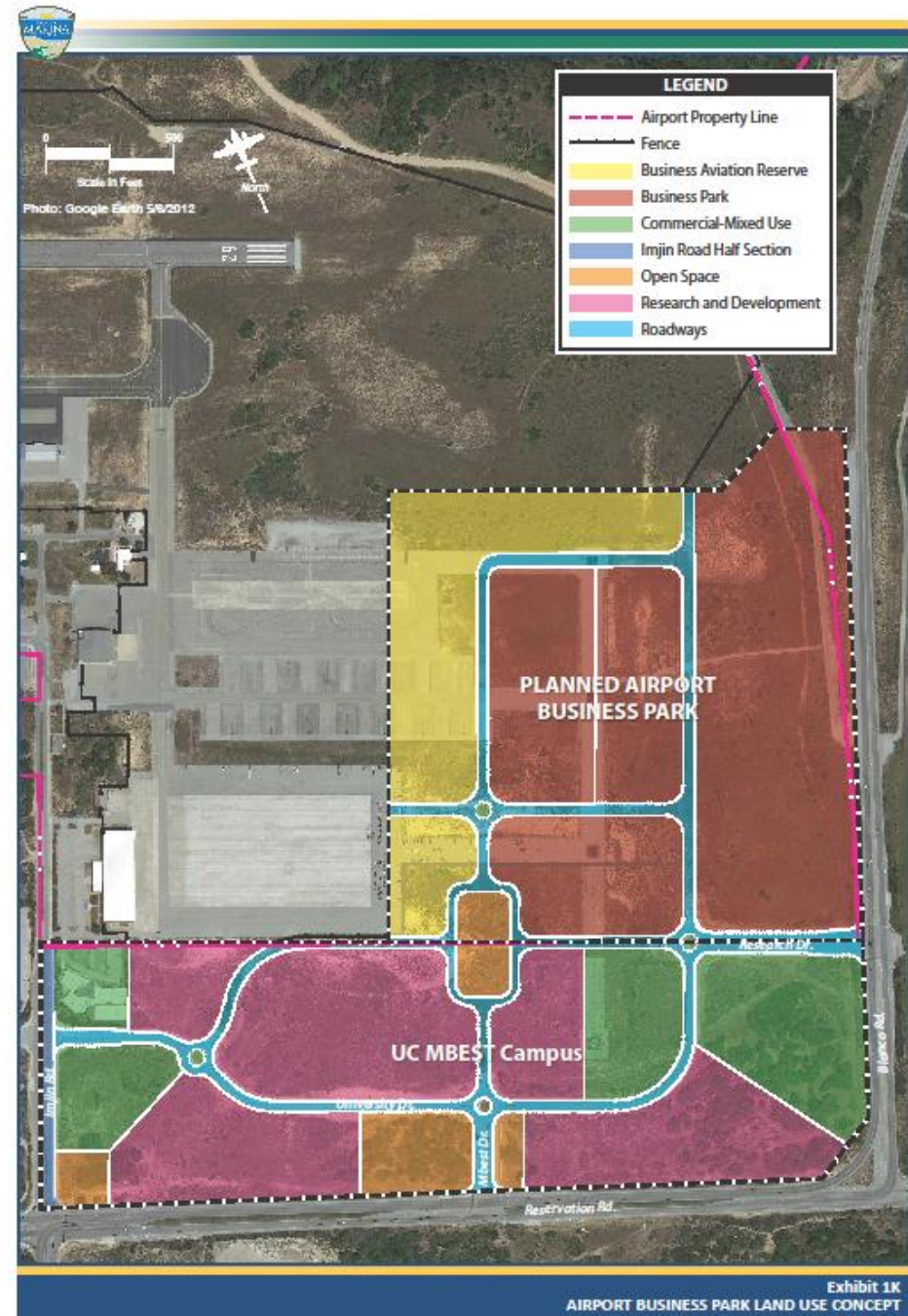
Goals and Objectives

1. Address the needs of the general aviation users
2. Address the general aviation needs of the businesses
3. Maintain and retain current facilities and airport assets including real property, runways, taxiways, ramps, hangars, etc.
4. Provide services and economic value to the City of Marina
5. Be a welcoming gateway for private aircraft access to the Monterey Peninsula
6. Provide a safe environment for all at the airport
7. Enabling the support, acquisition and construction of new airport assets
8. Identifying development projects to fulfill the preferred development plan in the ALP
9. Establish a phasing plan for development projects to meet forecasted needs and review possible funding sources

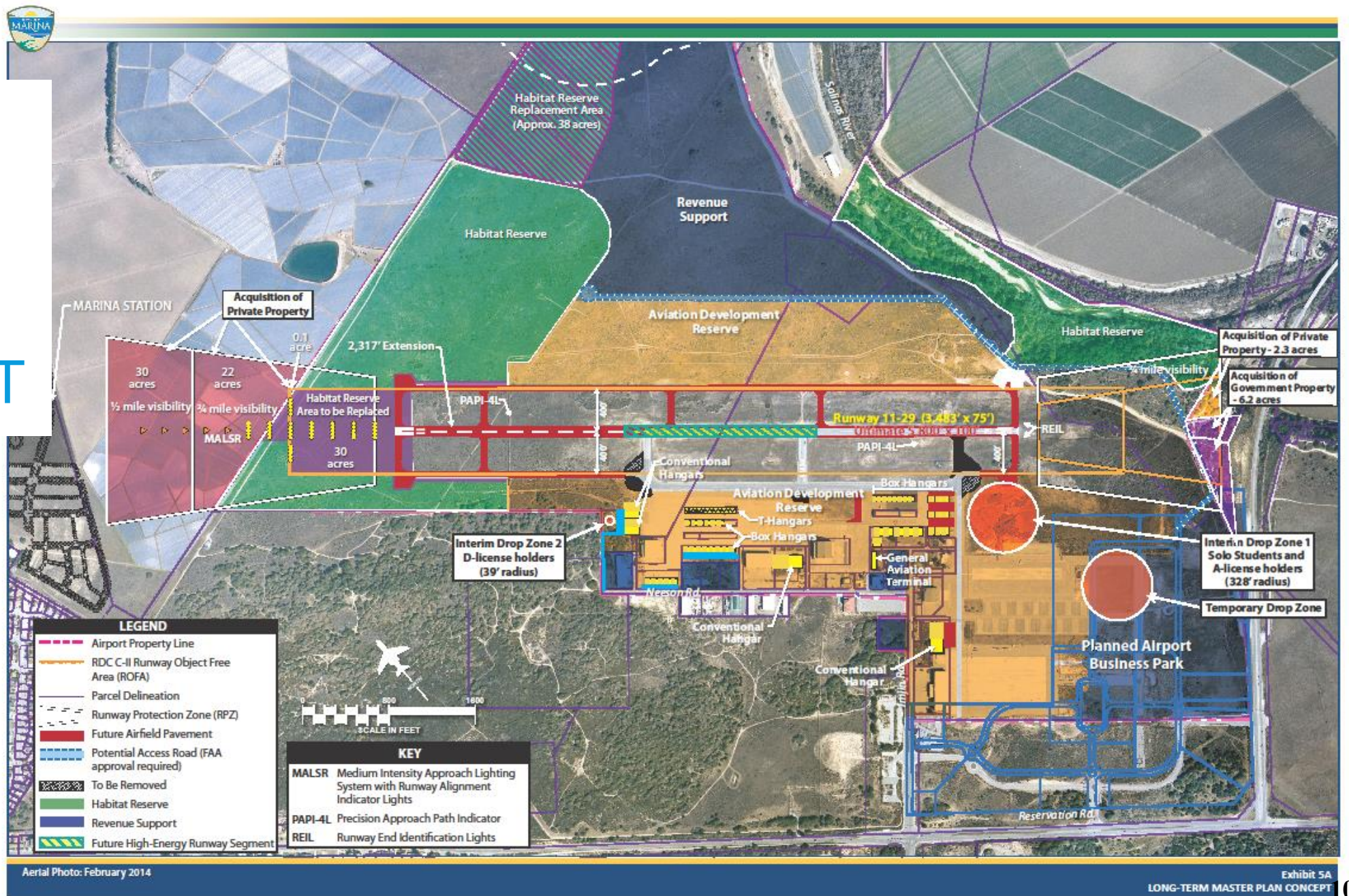
ON-AIRPORT LAND USE



AIRPORT BUSINESS PARK LAND USE CONCEPT



LONG-TERM MASTER PLAN CONCEPT





AIRCRAFT STORAGE AND PARKING INVENTORY

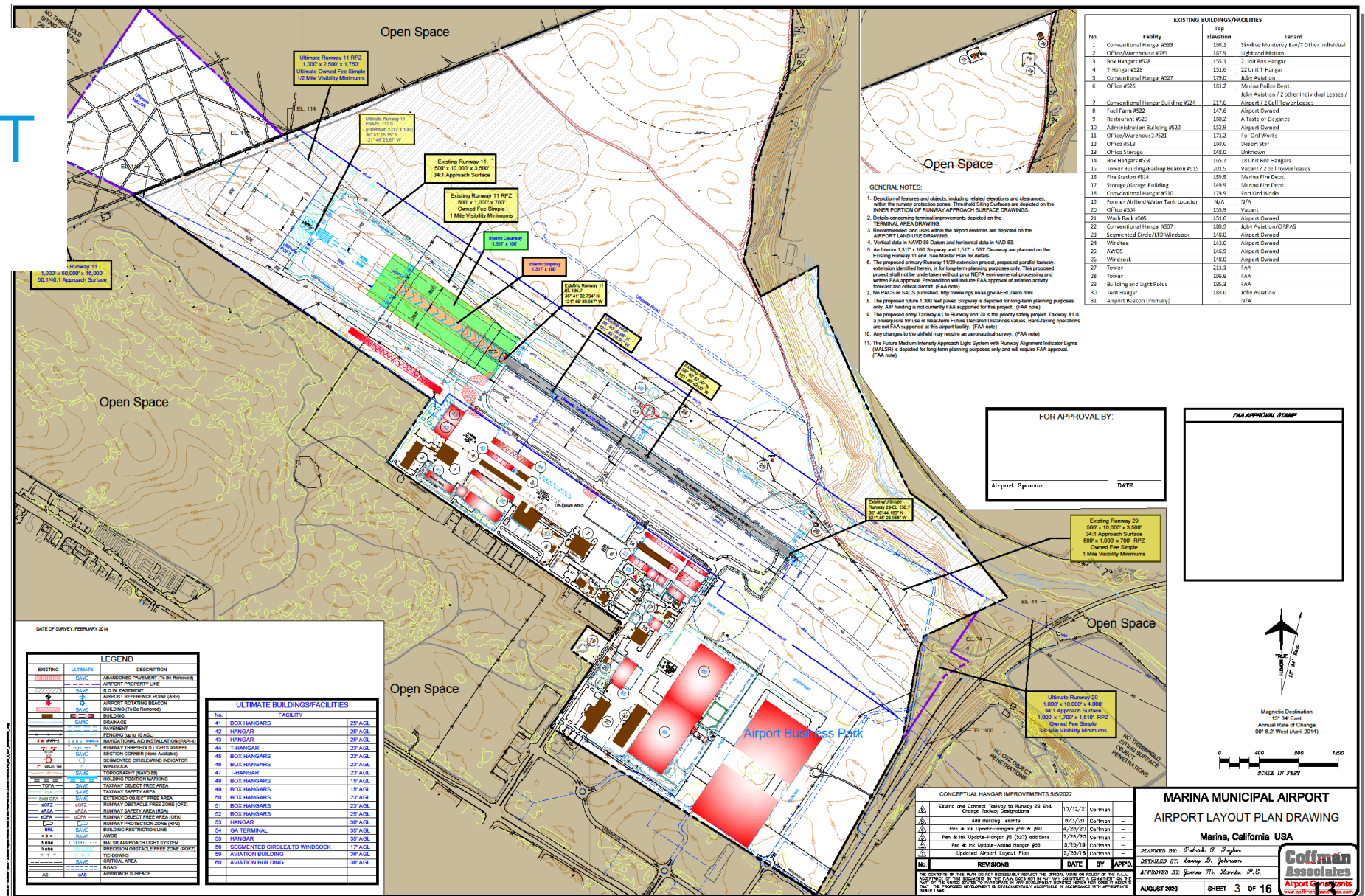
Aviation building space by type	Estimated Total Aircraft Positions	Maintenance/ Office Space (s.f)	Aircraft Storage Space (s.f.)
Total T-Hangar	24	1,000	23,500
Total Box Hangar	20	2,300	27,200
Total Conventional Hangar	43	22,200	125,500*
North Tarmac Tie Down Area	170		388,800
*Actual usage of hangars, especially if there is a single lessee, may result in fewer available aircraft positions.			

POTENTIAL AIRCRAFT STORAGE DEMAND

- Airport maintains and interest list for hangar storage
- List is a few years old and needs to be cleaned up for those that have found storage elsewhere.

Potential Interest List Category (has not been verified to see if still interested)	Total Units in Potential Demand
Total T-Hangar Waitlist	16
Total Box Hangar Waitlist	27
Total Unspecified Hanger Waitlist	51

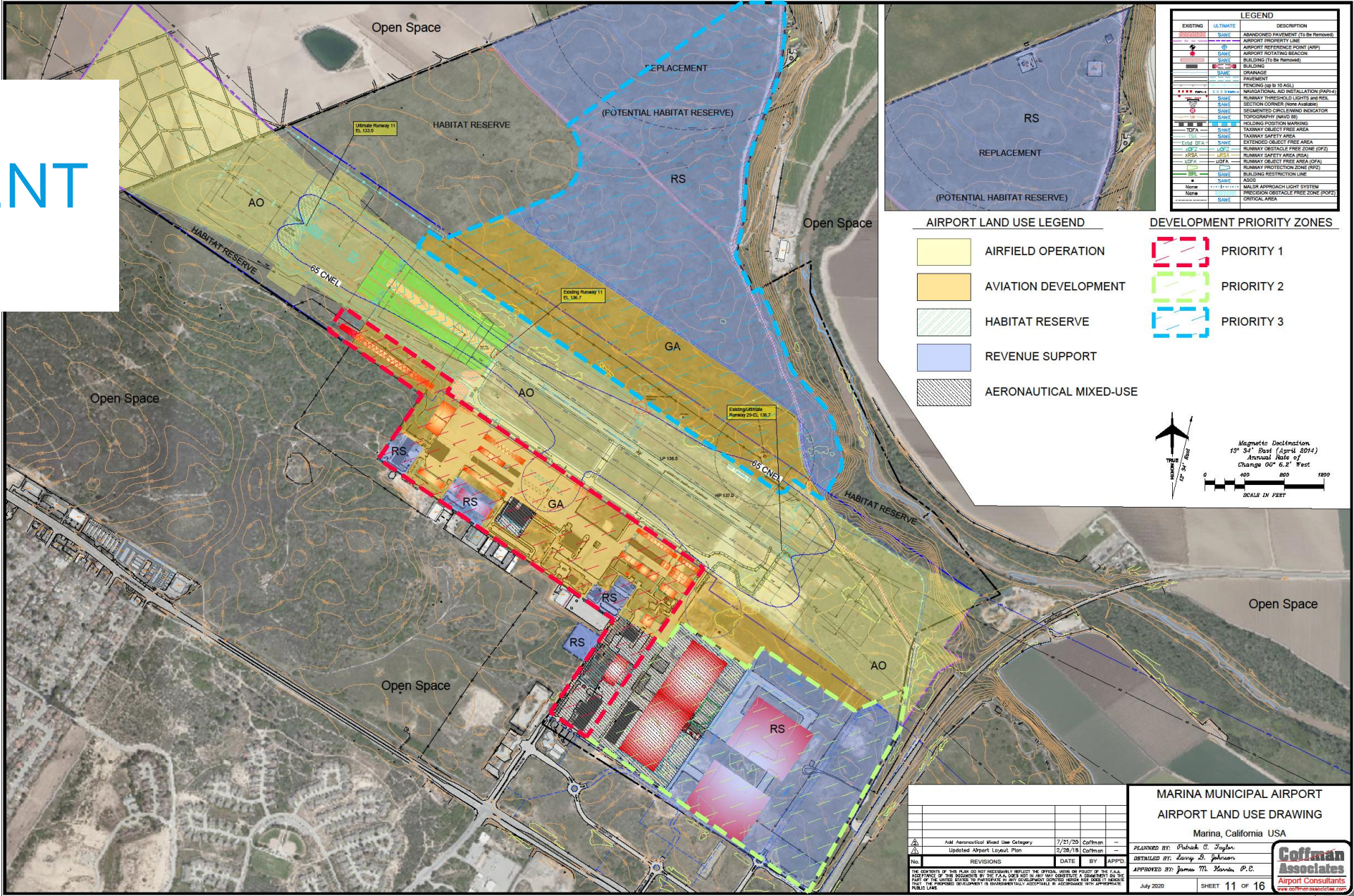
HANGAR DEVELOPMENT PLANNING



PROPOSED ADDITIONAL SUPPLY

Hangar Project	Total Number of Hangars	Size of Hangars		
North Tower Hangar Complex	44	40' x 40' 60' x 60' 160' x 130'	30' x 30' 80' x 100'	50' x 50' 80' x 80'
Neesen Road West Hangar Complex	21	60' x 50' 120' 50' x 120'	100' x 100' 80' x 100'	116' x 120'
West Apron Hangar	5	60' x 50'		
West End Hangar Complex	48	47'6" x 39' 130'	40' x 40'	160' x 130'
Taxi lane Hangar – Small	1	100' x 100'		
Taxi lane Hangar - Large	1	300' x 150'		
Total	120			

AIRPORT DEVELOPMENT PHASES



HANGER ADDITION PHASING

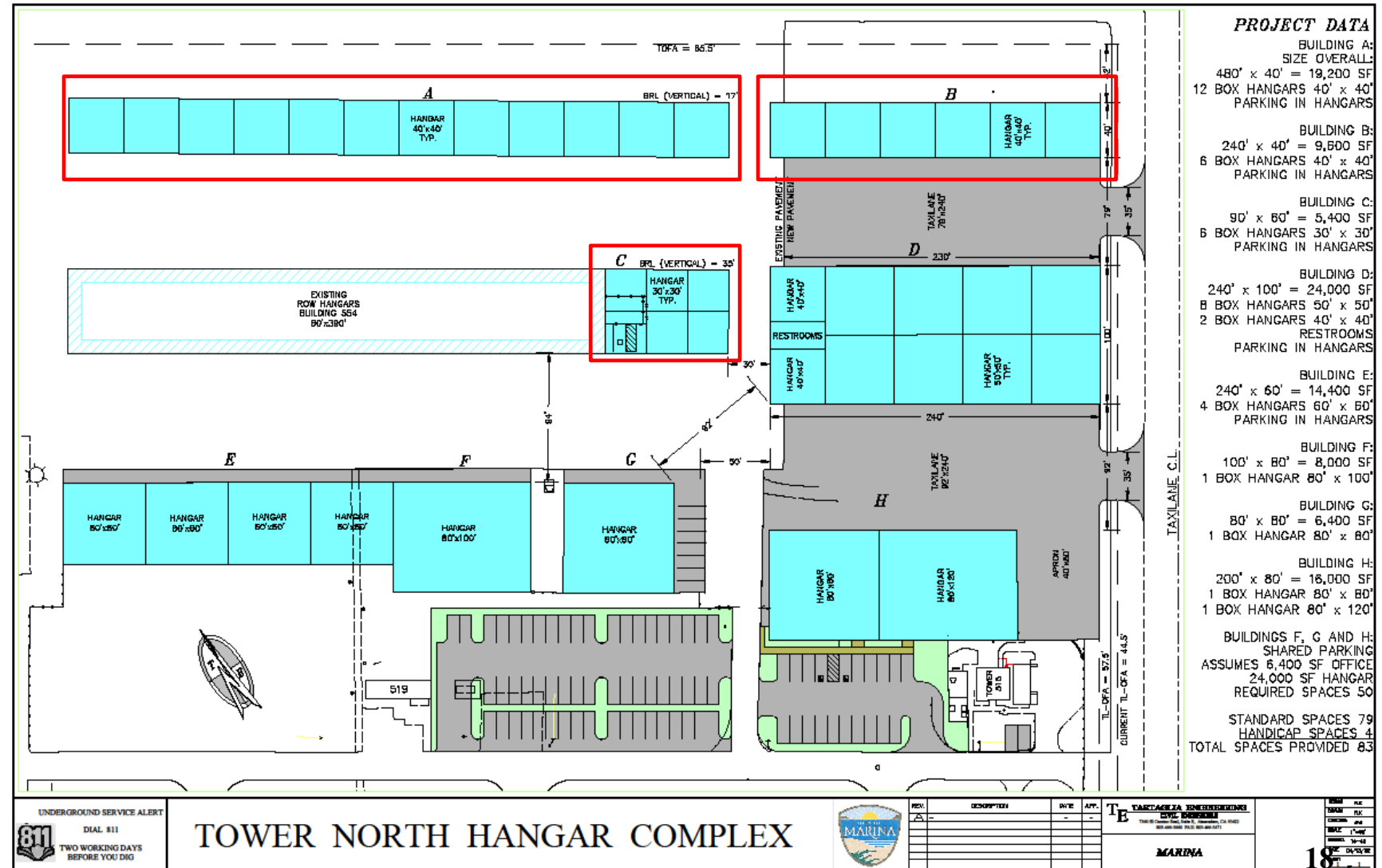
Priority	Phase 1 (Years 1 – 15)	Number of Hangars	Size of Hangars	Percent of Current Potential Demand
1	Tower North Hangar Complex Buildings A, B, C	26	40' x 40' 30' x 30'	28%
2	Tower North Hangar Complex Building D	10	50' x 50'	11%
3	Tower North Hangar Complex Buildings H	2	160' x 130'	2%
4	Tower North Hangar Complex Buildings E	4	60' x 60'	4%
5	Neesen Road West Hangar Complex Building A	11	60' x 50'	12%
6	West Apron Hangar	5	60' x 50'	5%
7	Neesen Road West Hangar Complex Building D	4	80' x 100'	4%
8	Neesen Road West Hangar Complex Building B	1	100' x 100'	1%
	Total	63		67%

HANGER ADDITION PHASING

Priority	Phase 2 (Years 15 – 30)	Number of Hangars	Size of Hangars	Percent of Current Potential Demand
	Tower North Hangar Complex Buildings F and G	2	80' x 100' 80' x 80'	2%
	Neesen Road West Hangar Complex Building C	21	116' x 120'	22%
	Taxilane Hangar - Small	1	100' x 100'	1%
	Taxilane Hangar - Large	1	300' x 150'	1%
	West End Hangar Complex Buildings A - F	48	47'6" x 39' 40' x 40' 160' x 130'	51%

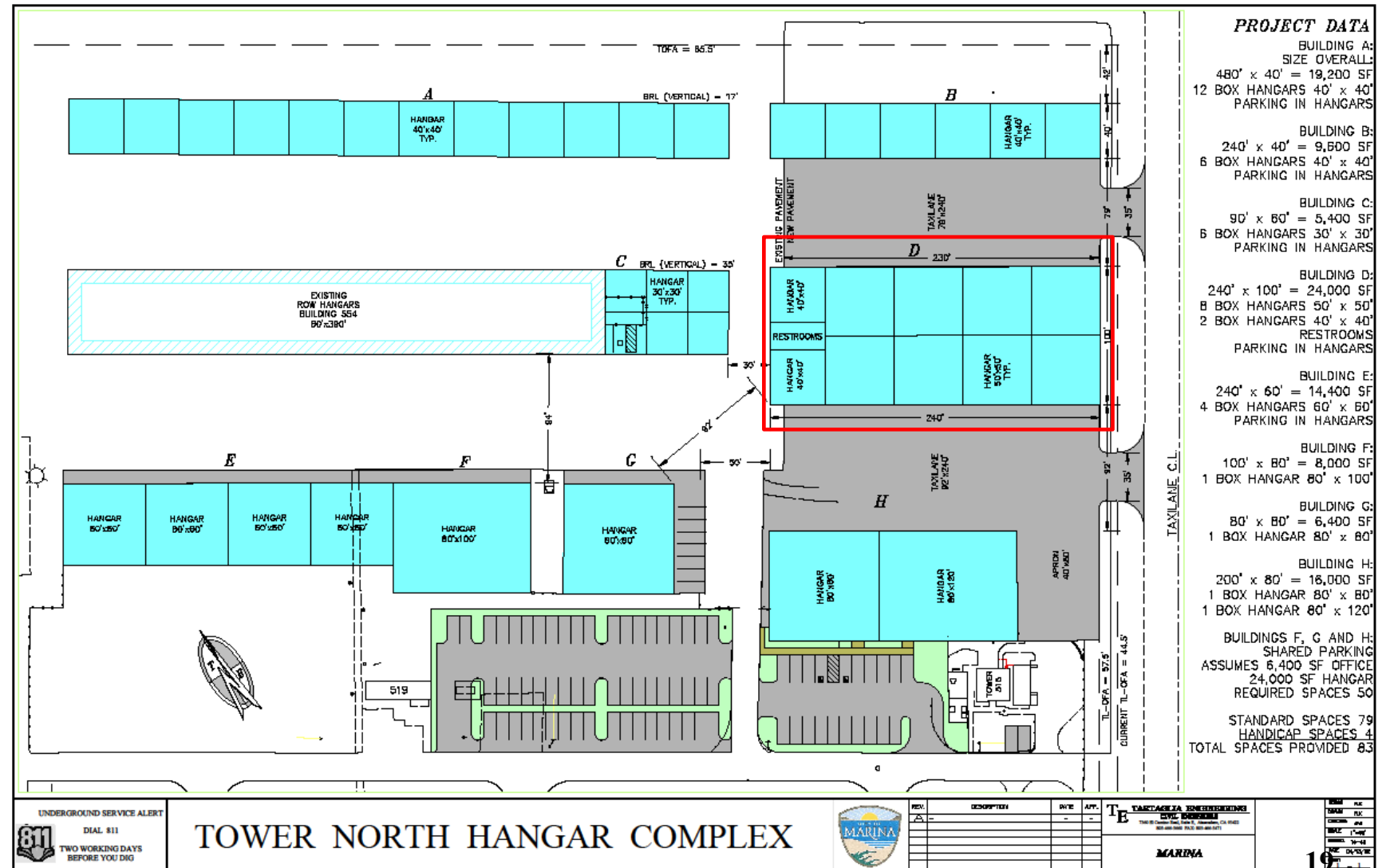
PHASE 1 – PRIORITY 1

	Bldg A	Bldng B	Bldng C	Total
Total Units	12	6	8	26
Unit Size	40' x 40'	40' x 40'	30' x 30'	
Estimated Cost	\$6,102,479			
Annual Revenue	\$153,600			



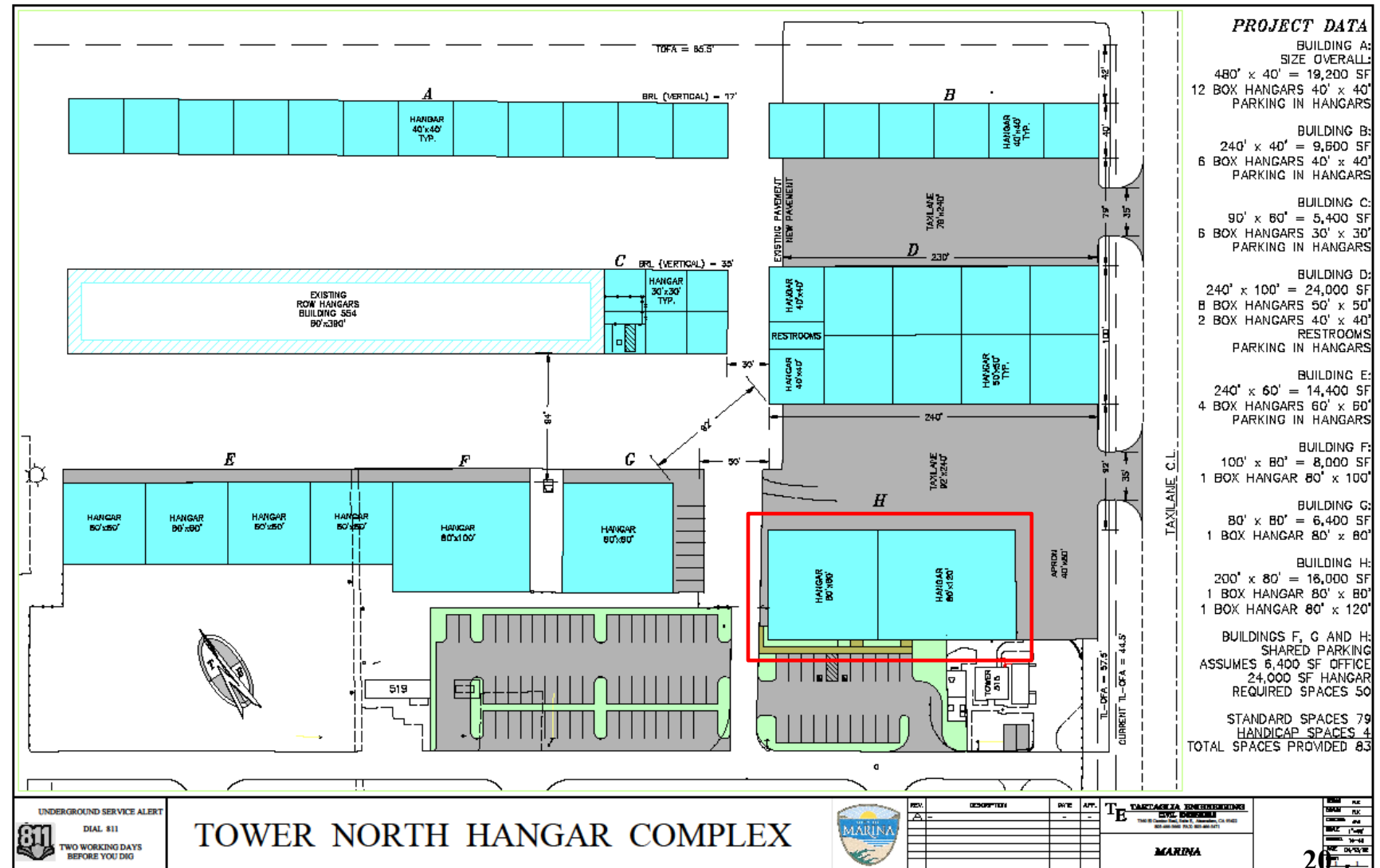
PHASE 1 – PRIORITY 2

	Bldg D	Total
Total Units	10	10
Unit Size	50' x 50'	
Estimated Cost	\$4,423,056	
Annual Revenue	\$72,000	



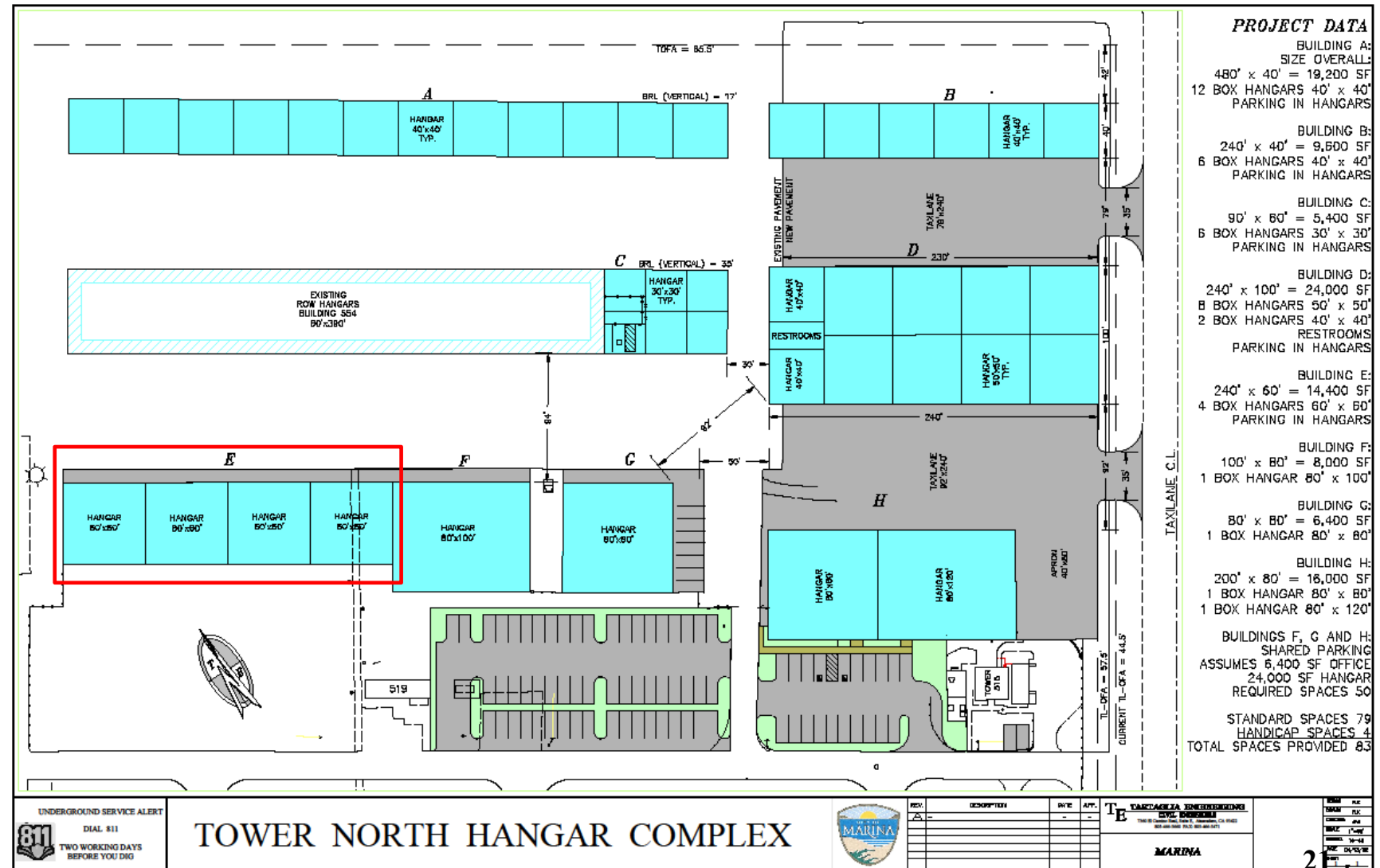
PHASE 1 – PRIORITY 3

	Bldg H	Total
Total Units	2	2
Unit Size	160' x 130'	
Estimated Cost	\$6,073,848	
Annual Revenue	\$53,760	



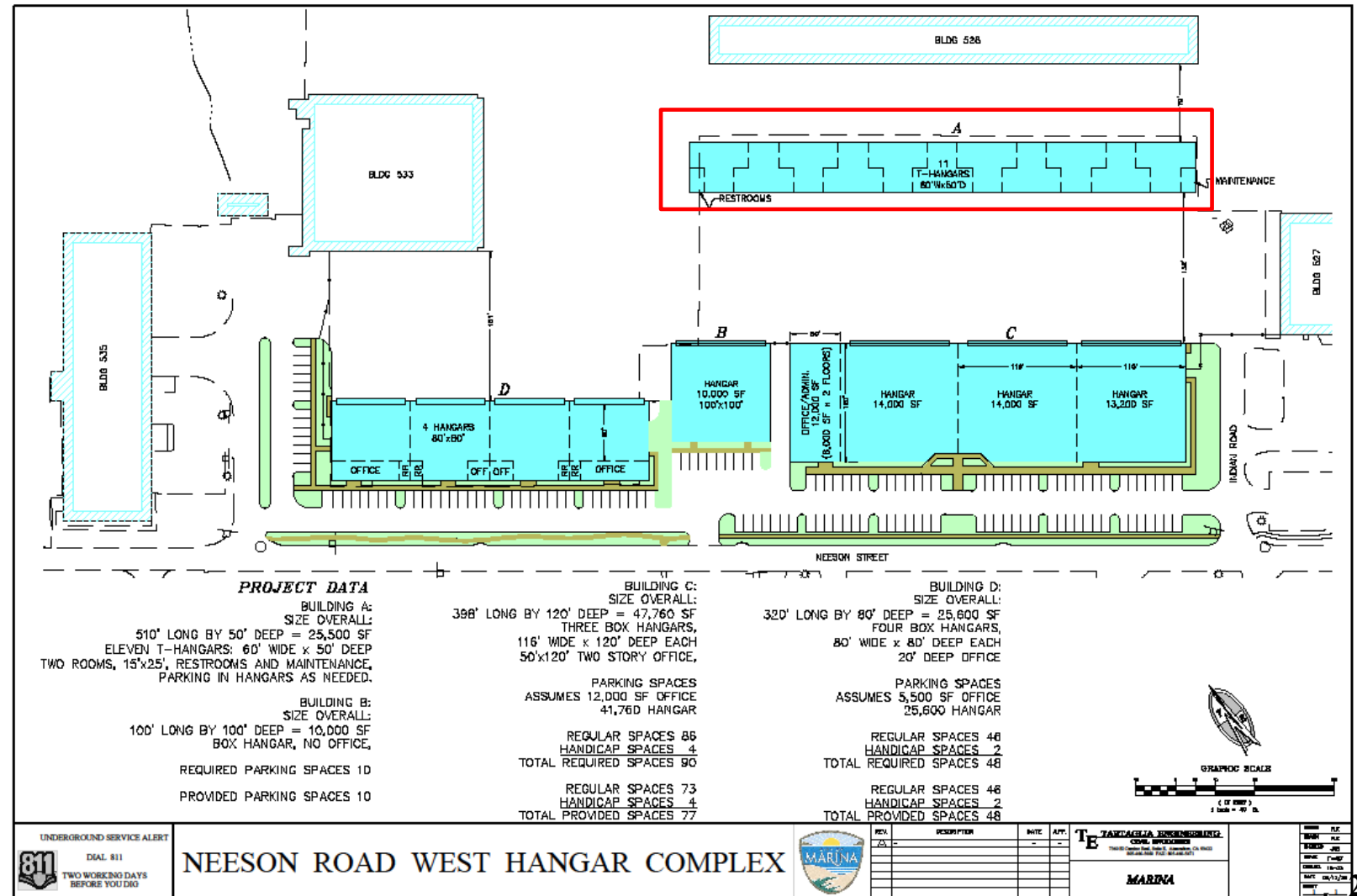
PHASE 1 – PRIORITY 4

	Bldg E	Total
Total Units	4	4
Unit Size	60' x60'	
Estimated Cost	\$3,520,968	
Annual Revenue	\$48,384	



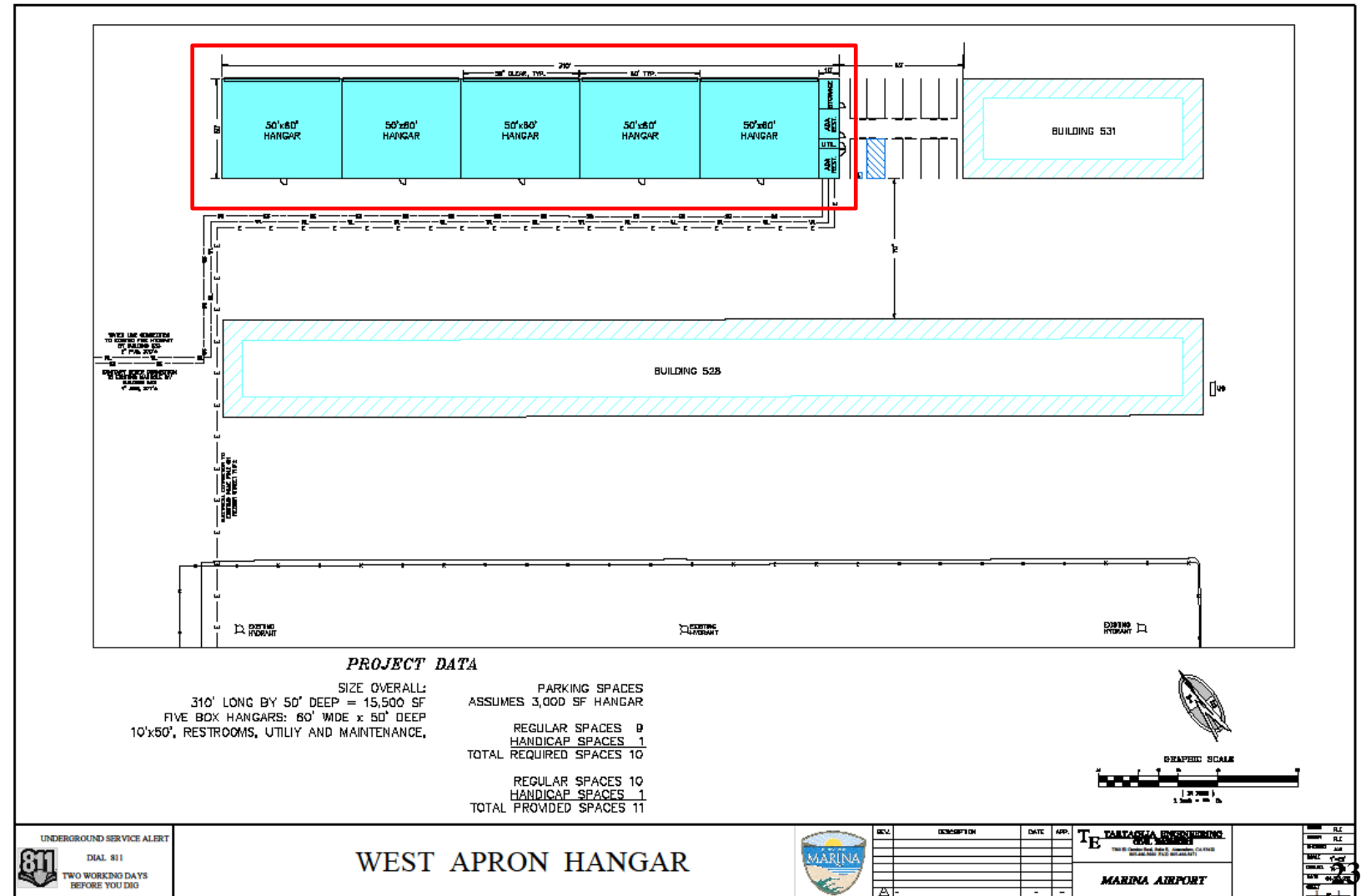
PHASE 1 – PRIORITY 5

	Bldg A	Total
Total Units	11	11
Unit Size	60' x 50'	
Estimated Cost	\$5,449,497	
Annual Revenue	\$79,200	



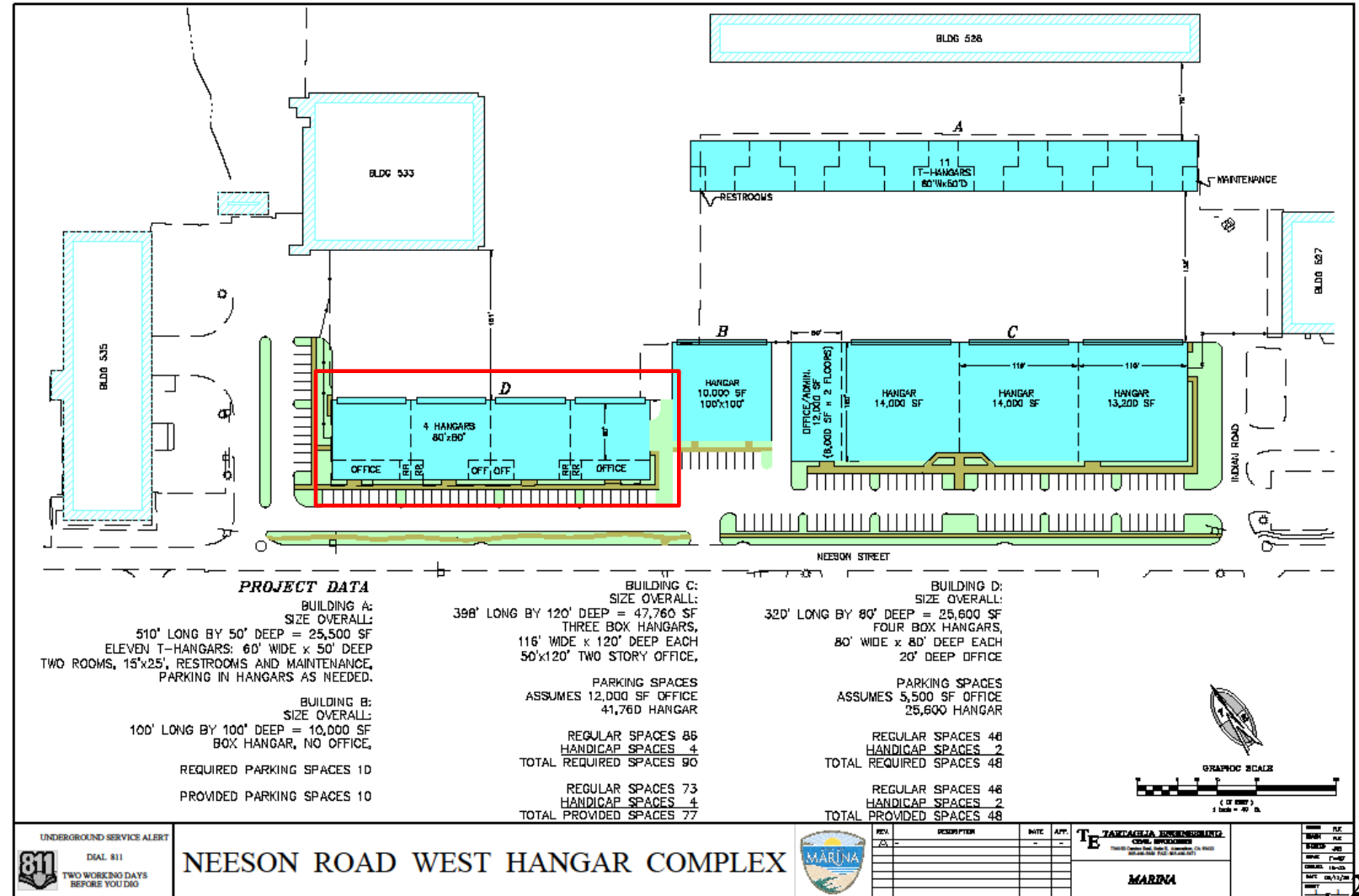
PHASE 1 – PRIORITY 6

	Bldg	Total
Total Units	5	5
Unit Size	60' x 50'	
Estimated Cost	\$6,044,465	
Annual Revenue	\$50,400	



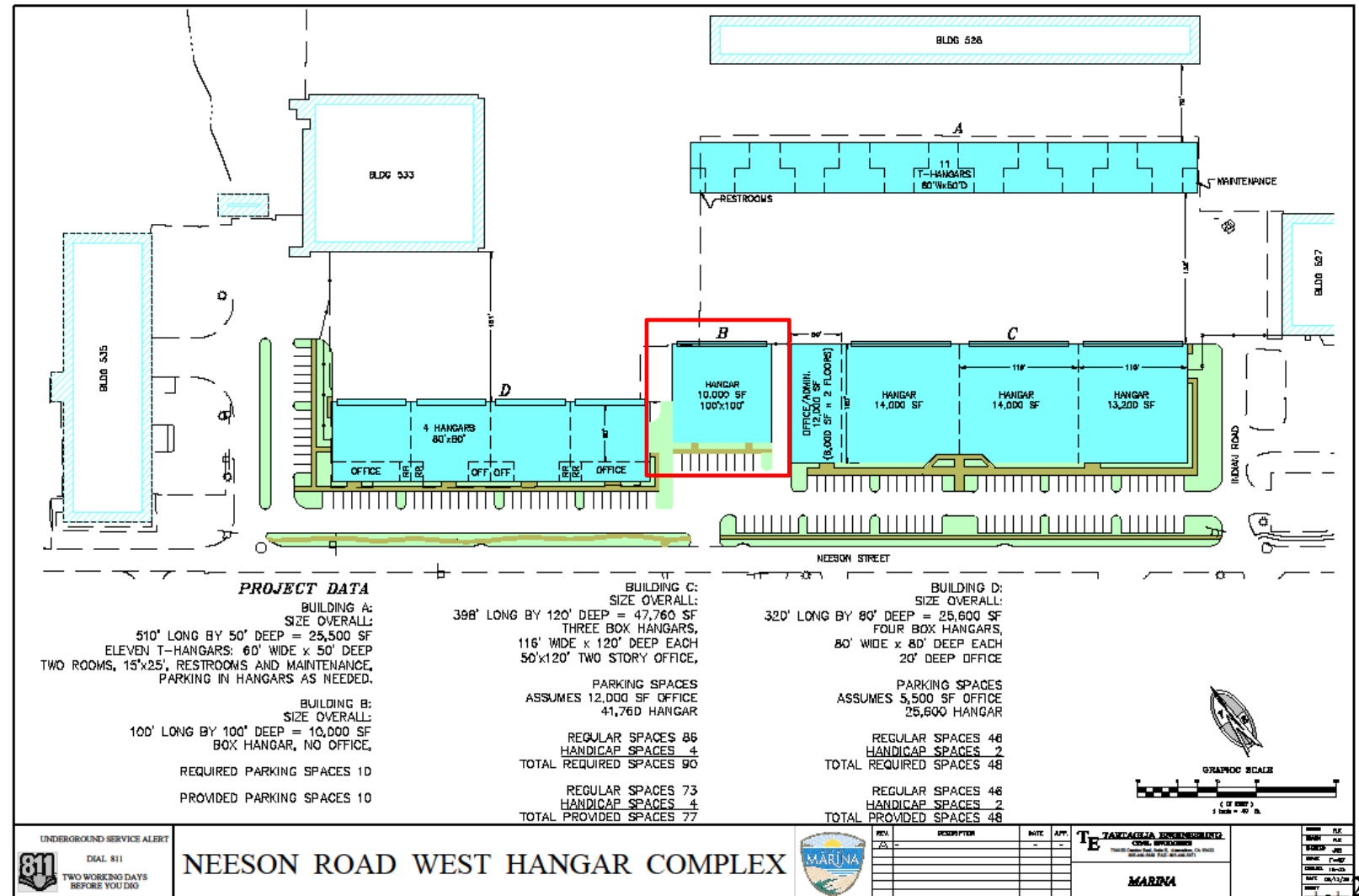
PHASE 1 – PRIORITY 7

	Bldg D	Total
Total Units	4	4
Unit Size	80' x 100'	
Estimated Cost	\$7,317,050	
Annual Revenue	\$86,016	



PHASE 1 – PRIORITY 8

	Bldg B	Total
Total Units	1	1
Unit Size	100' x 100'	
Estimated Cost	\$3,130,248	
Annual Revenue	\$33,600	

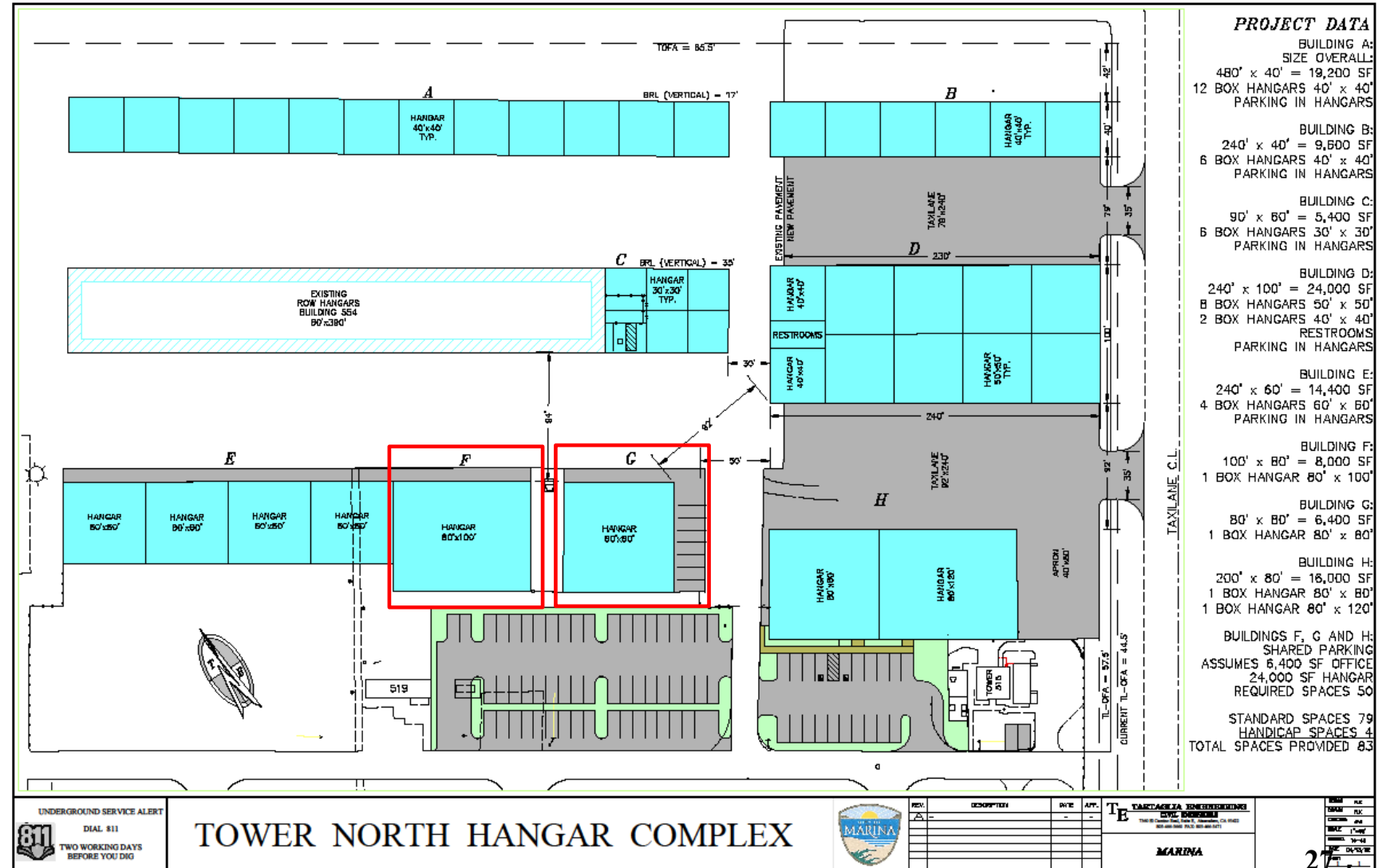


PHASE 1 TOTAL COSTS

Priority	PHASE 1 (YEARS 1-15)				
		Engineer Estimated Cost	Principle with Interest	Cash/Grant	Total Project Cost (D + E)
1	Tower North Hangar Complex Buildings A, B, C	\$ 6,102,479	\$ 4,583,152	\$ 3,850,000	\$ 8,433,152
2	Tower North Hangar Complex Buildings D	\$ 4,423,056	\$ 2,132,495	\$ 3,375,000	\$ 5,507,495
3	Tower North Hangar Complex Buildings H	\$ 6,073,848	\$ 1,574,560	\$ 5,300,000	\$ 6,874,560
4	Tower North Hangar Complex Buildings E	\$ 3,520,968	\$ 1,263,493	\$ 2,900,000	\$ 4,163,493
5	Neesen Road West Hangar Complex Building A	\$ 6,044,465	\$ 2,328,659	\$ 4,900,000	\$ 7,228,659
6	West Apron Hangar	\$ 6,044,465	\$ 1,209,566	\$ 5,450,000	\$ 6,659,566
7	Neesen Road West Hangar Complex Building D	\$ 7,317,050	\$ 2,578,086	\$ 6,050,000	\$ 8,628,086
8	Neesen Road West Hangar Complex Building B	\$ 3,130,248	\$ 773,696	\$ 2,750,000	\$ 3,523,696
Total Phase I		\$ 42,656,579		\$ 34,575,000	\$ 51,018,707

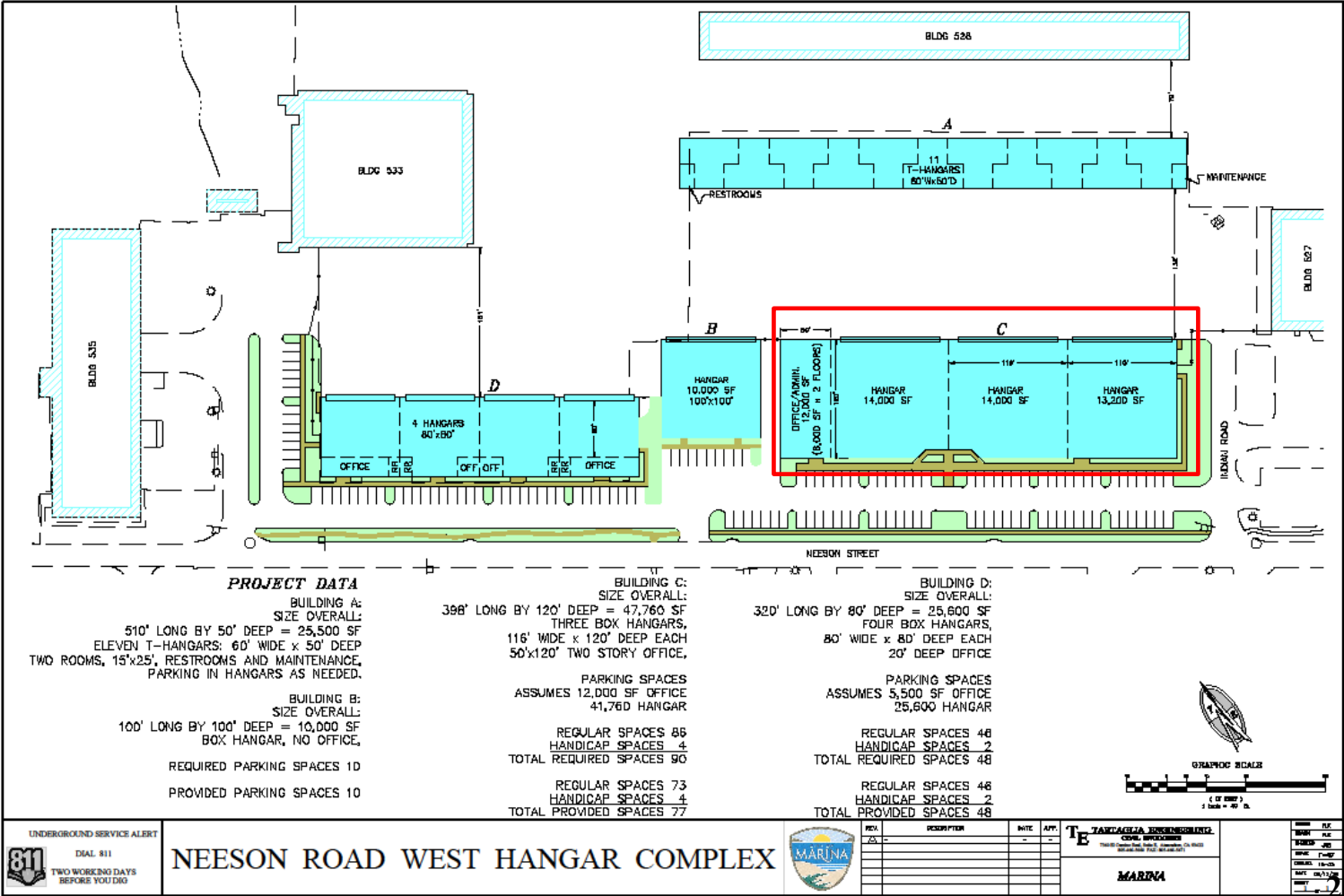
PHASE 2

	Bldg F	Bldg G	Total
Total Units	1	1	2
Unit Size	80' x 100'	80' x 80'	
Estimated Cost	\$12,990,641		
Annual Revenue	\$48,384		



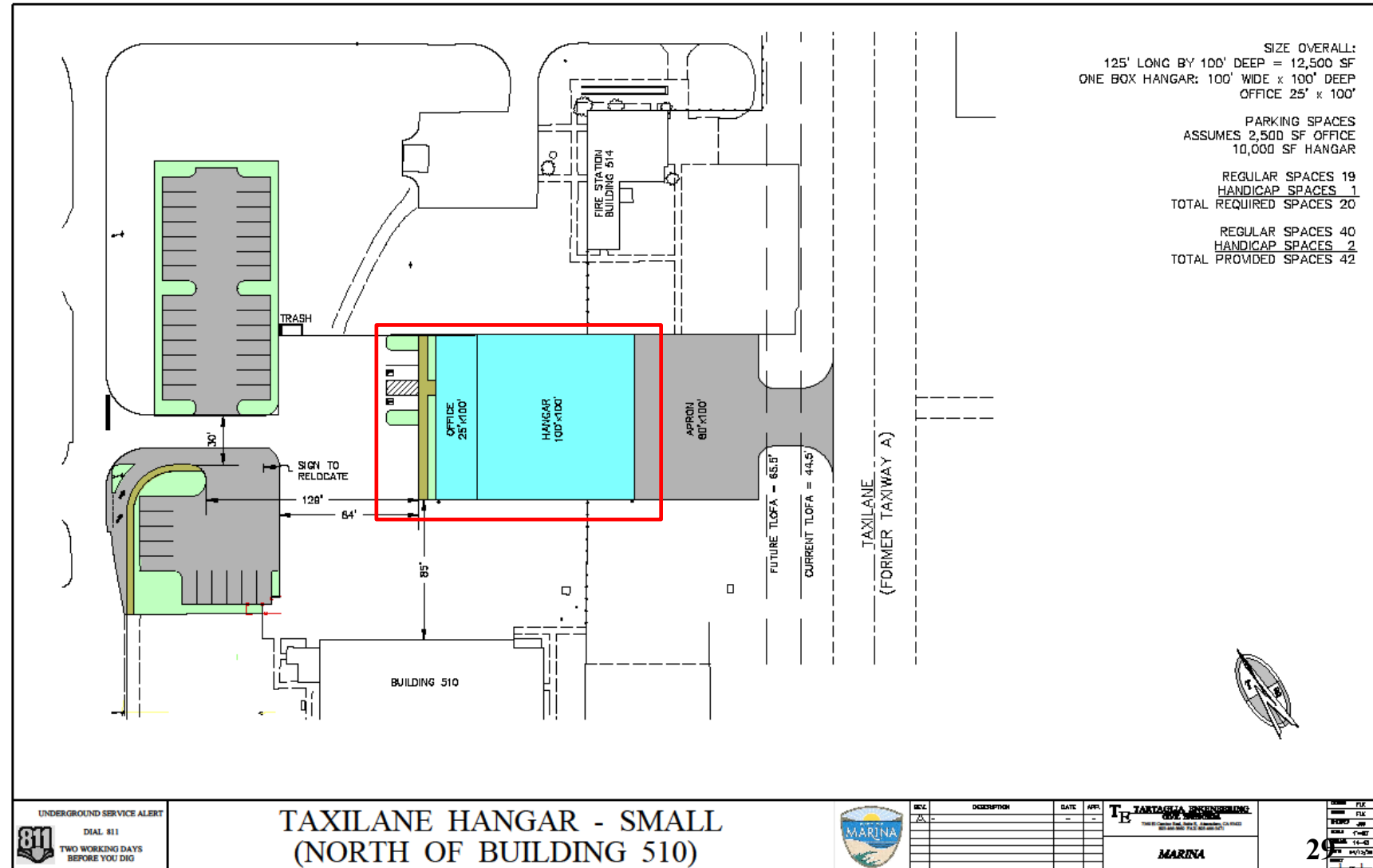
PHASE 2

	Bldng C	Total
Total Units	3	3
Unit Size	116' x 120'	
Estimated Cost	\$13,412,274	
Annual Revenue	\$141,120	



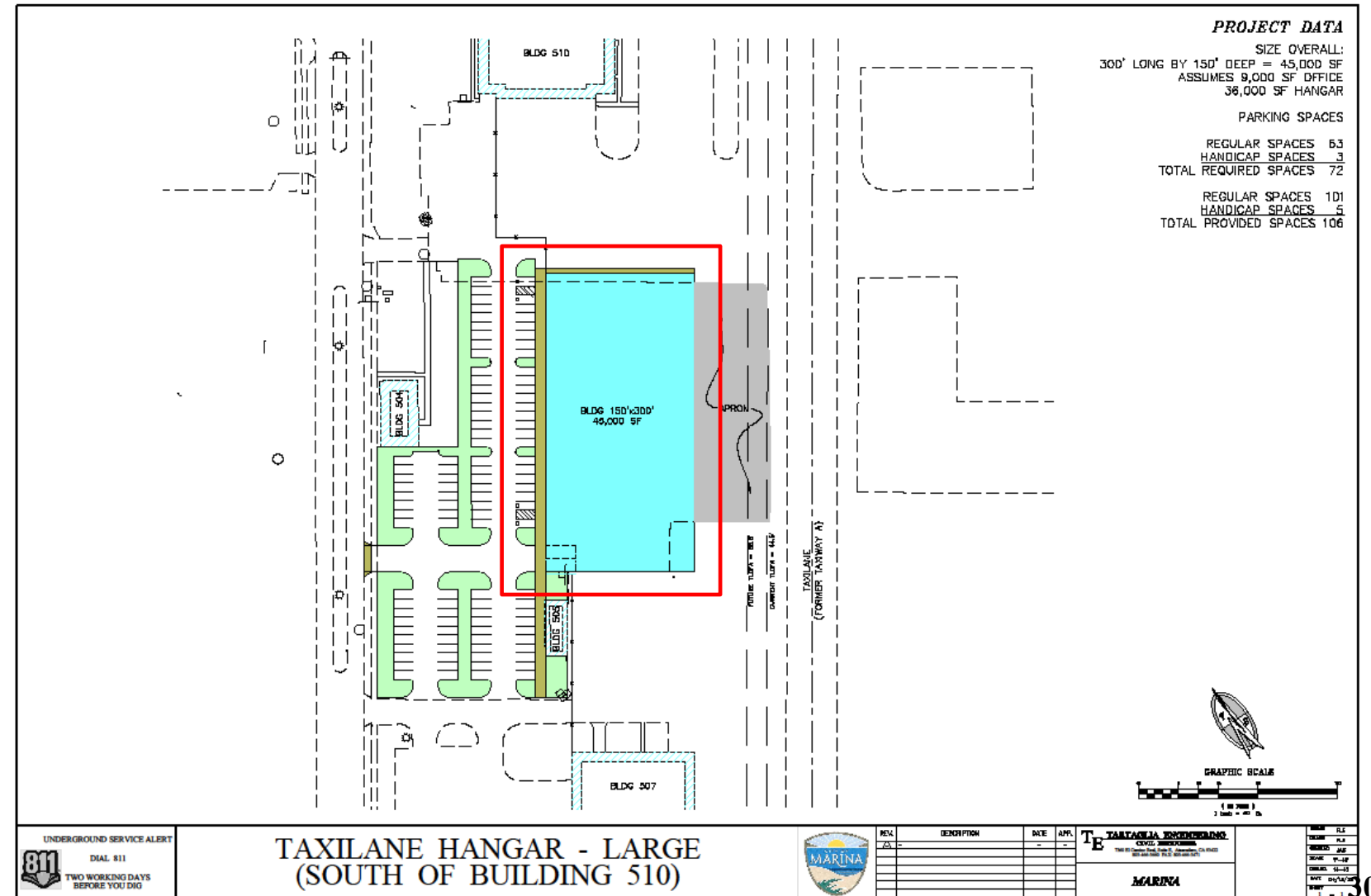
PHASE 2

	Bldg	Total
Total Units	1	1
Unit Size	100' x 100'	
Estimated Cost	\$4,230,863	
Annual Revenue	\$42,000	



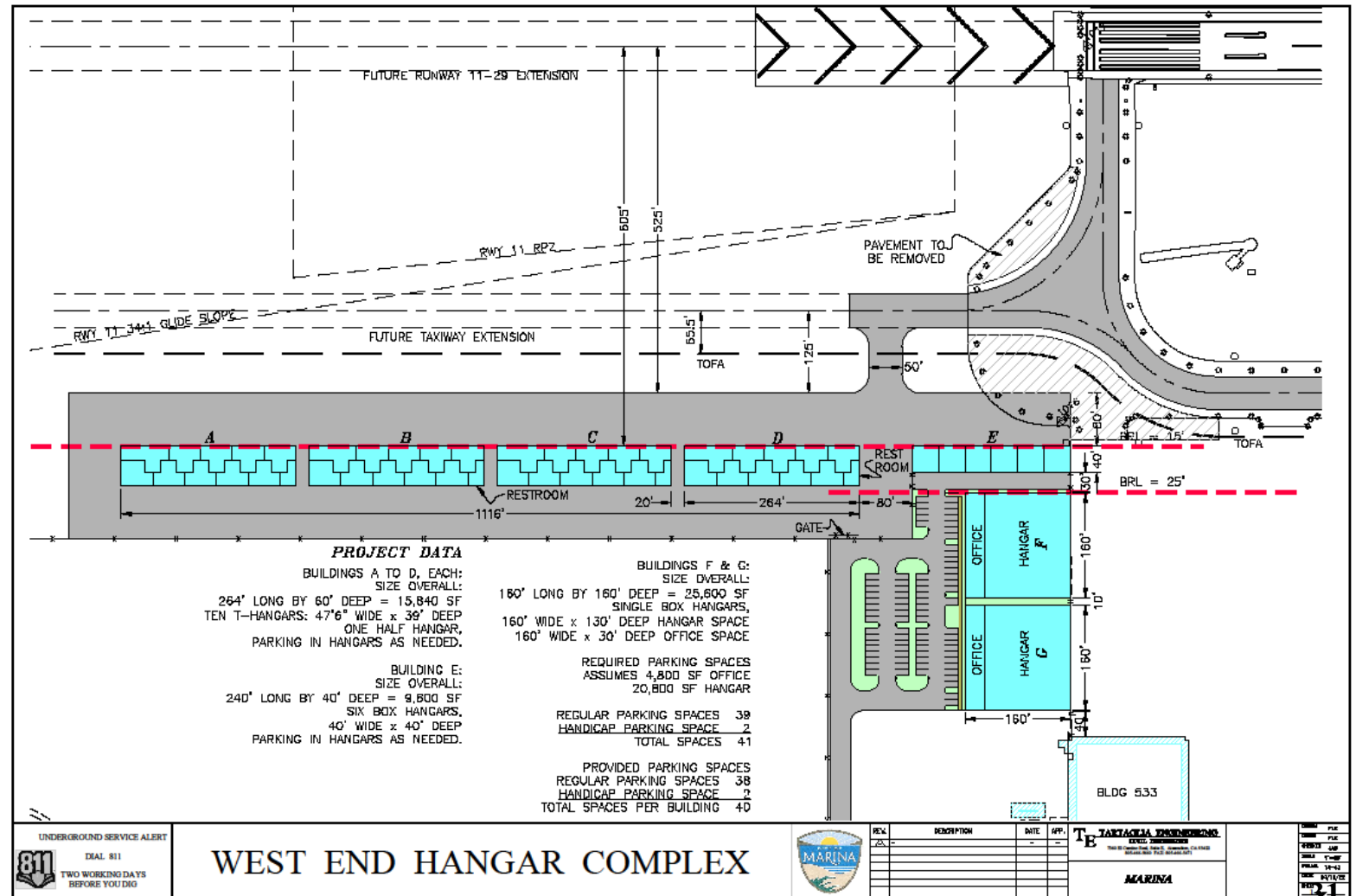
PHASE 2

	Bldg	Total
Total Units	1	1
Unit Size	300' x 150'	
Estimated Cost	\$15,654,732	
Annual Revenue	\$151,200	



PHASE 2

	Bldg A - D	Bldng E	Bldng F - G	Total
Total Units	40	6	2	48
Unit Size	47'6" x 39'	40' x 40'	160' x 130'	
Estimated Cost	\$35,425,870			
Annual Revenue	\$461,232			



PHASE 2 TOTAL COSTS

Priority	PHASE 2 (YEARS 15-30)				
none set yet		Engineer Estimated Cost	Principle with Interest	Cash/Grant	Total Project Cost (D + E)
	Tower North Hangar Complex Buildings F and G	\$ 12,990,641	\$ 26,432,248	\$ -	\$ 26,432,248
	Neesen Road West Hangar Complex Building C	\$ 13,412,274	\$ 27,290,149	\$ -	\$ 27,290,149
	Taxilane Hangar - Small	\$ 4,320,863	\$ 8,791,723	\$ -	\$ 8,791,723
	Taxilane Hangar - Large	\$ 15,654,732	\$ 31,852,912	\$ -	\$ 31,852,912
	West End Hangar Complex Buildings A - F	\$ 35,425,870	\$ 72,081,535	\$ -	\$ 72,081,535
		\$ 81,804,380	\$ 177,545,139		\$ 166,448,568

