



AGENDA

Tuesday, July 19, 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 2022-78, 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. Labor Negotiations
 - i. Marina Employee Association
 - ii. Marina Professional Fire Fighters Association

City Negotiators: Layne P. Long, City Manager and Employee Relations Officer

- b. Conference with Legal Counsel, Potential litigation, exposure to litigation per: "Conference with Legal Counsel – anticipated litigation, significant exposure to litigation pursuant to paragraph (2)(d) of CA Govt. Code sec. 54956.9 – One potential case

- c. Real Property Negotiation
 - i. Property: Commercial property at southeast corner of Del Monte Blvd. and Palm Avenue (APN 032-303-038) and residential property at Hayes Circle and 3rd Avenue (APN 032-303-039, a portion)
Negotiating Party: George Powell
Negotiator(s): City Manager
Terms: Price and Terms

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 National Night Out Proclamation
 - b Tahra Goraya, Monterey Bay Economic Partnership
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 EFT's & Check Numbers 100268-100348, totaling \$1,454,575.26
Accounts Payable for Successor Agency Check Number 90, totaling \$2,380.00
 - b. MINUTES:
 - (1) June 21, 2022, Regular City Council Meeting
 - (2) July 6, 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 July 22, 2022, through August 20, 2022.

g. APPROVAL OF AGREEMENTS:

- (1) City Council consider adopting Resolution No. 2022-, approving Public Improvement Agreements for the Terracina Project at the Dunes – Sites 1 & 2 between the City of Marina and USA Properties Fund, Inc., and; authorizing the City Manager to execute the Public Improvement Agreements on behalf of the City subject to final review and approval by the City Attorney.
- (2) City Council consider adopting Resolution No. 2022-, approving a contract with Rincon Consulting and Veronica Tam to provide urban planning services to complete the Sixth Cycle Housing Element for an amount not to exceed \$300,000; and authorize the Finance Director to make necessary accounting and budgetary entries, and authorize the City Manager to execute a contract amendment on behalf of City with Rincon Consulting subject to final review by the City Attorney.
- (3) City Council consider adopting Resolution No. 2022-, approving the Animal Services Agreement between the City of Marina and the County of Monterey; and authorize Animal Services Agreement with the County of Monterey effective 07/01/2022 through 06/30/2024.

h. ACCEPTANCE OF PUBLIC IMPROVEMENTS: None

i. MAPS:

j. REPORTS: (RECEIVE AND FILE): None

k. FUNDING & BUDGET MATTERS: None

l. APPROVE ORDINANCES (WAIVE SECOND READING):

- (1) City Council consider adopting Ordinance No. 2022-, approving Amendments to Title 17 of the Municipal Code by adding Sections 17.45.
- (2) City Council consider adopting Ordinance No. 2022-, approving Amending Chapter 17, Article 5, by adding a new section 17.49, “Low-barrier Navigation Center”, to the Marina Municipal Code.

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. ***Continued from June 21, 2022***

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).

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, July 15, 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.cityofmarina.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

Tuesday, August 2, 2022
Tuesday, August 16, 2022

Tuesday, November 1, 2022
Tuesday, November 15, 2022

***Wednesday, September 7, 2022**
****Thursday, October 6, 2022**
Tuesday, October 18, 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)**

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.

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

National Night Out

Tuesday, August 2, 2022

-o0o-

WHEREAS, National Night Out, "America's Night Out Against Crime", was introduced by the National Association of Town Watch (NATW) in 1984, as a unique crime/drug prevention event, and;

WHEREAS, NATW is a nationwide, non-profit, crime prevention organization, which works to promote police-community partnerships in an effort to develop and maintain crime and drug prevention programs throughout the country, and;

WHEREAS, National Night Out is a high-impact type of crime prevention event that has been developed in an effort to heighten awareness and strengthen participation within local communities, and;

WHEREAS, National Night Out has proven to be an effective, inexpensive and enjoyable program which strengthens neighborhood spirit and police-community partnerships in our fight for a safer nation, and;

WHEREAS, While the traditional 'lights on' and front porch vigils remain a part of National Night Out, activities have grown considerably over the years to include community block parties, cookouts, parades, visits from police, festivals, neighborhood walks, safety fairs, contests, rallies and meetings, and;

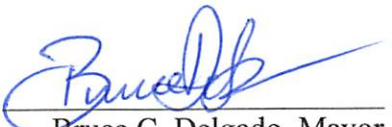
WHEREAS, Marina Police Department's Annual National Night Out festivals involve citizens, law enforcement agencies, civic groups, nonprofit organizations, service organizations, businesses, and local officials from the City, and;

WHEREAS, Citizens of Marina are encouraged to learn about crime prevention, community group participation and neighborhood watch.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Marina does hereby Proclaim, "The 2022 Annual National Night Out" for the 2nd day of August 2022.

Dated this 19th day of July 2022




Bruce C. Delgado, Mayor

AP Check Register 07.08.2022

Bank Account: 905 - Chase - Checking

Batch Date: 07/08/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Bank Account: 905 - Chase - Checking						
Check	07/08/2022	100268	Accounts Payable	Ace Hardware		8.72
	Invoice		Date	Description		Amount
	082372		06/24/2022	Peak Mini Lamp		8.72
Check	07/08/2022	100269	Accounts Payable	Ace Hardware		284.97
	Invoice		Date	Description		Amount
	082402		06/28/2022	PD Charges		50.21
	082401		06/28/2022	PD Charges		203.10
	082381		06/25/2022	PD Charges		31.66
Check	07/08/2022	100270	Accounts Payable	Ace Hardware		57.05
	Invoice		Date	Description		Amount
	082349		06/22/2022	Paint Supplies		27.49
	082386		06/27/2022	V.D. Park		9.91
	082391		06/27/2022	Shop Supplies		19.65
Check	07/08/2022	100271	Accounts Payable	American Supply Co.		2,103.17
	Invoice		Date	Description		Amount
	0169750		06/27/2022	Shop Supplies		2,103.17
Check	07/08/2022	100272	Accounts Payable	AMBAG		4,566.00
	Invoice		Date	Description		Amount
	4237		07/01/2022	FY 2022-2023 Member Jurisdiction Dues		4,566.00
Check	07/08/2022	100273	Accounts Payable	AT & T		355.61
	Invoice		Date	Description		Amount
	000018399041		06/28/2022	CALNET3-9391023441 (384-0888)		43.18
	000018399047		06/28/2022	AWOS		24.54
	000018399042		06/28/2022	Fire Alarm Hgr 524/533		43.18
	000018399035		06/30/2022	CALNET3-9391023437 (384-0425)		41.80
	000018399038		06/30/2022	CALNET3-9391023440 (384-0860)		22.44
	000018399039		06/30/2022	CALNET3-9391023441 (384-0888)		22.43
	000018399063		06/30/2022	CALNET3-9391023463 (384-7854)		22.43
	000018399066		06/30/2022	CALNET3-9391023466 (384-8477)		43.18
	000018399068		06/30/2022	CALNET3-9391023468 (384-9148)		22.48

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AP Check Register 07.08.2022

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Batch Date: 07/08/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Check	000018394299	06/30/2022		CALNET3-9391023471 (582-0100)		47.52
	000018394305	06/30/2022		CALNET3-9391023477 (582-9803)		22.43
	07/08/2022	100274	Accounts Payable	CALED		570.00
	Invoice	Date		Description		Amount
Check	300004023	05/24/2022		Membership Renewal - July 2022-June 2023		570.00
	07/08/2022	100275	Accounts Payable	Carmel Fire Protection Associates		200.00
	Invoice	Date		Description		Amount
Check	122258	06/27/2022		Plan review and inspection for Aurengzeb Project, 3007 Tyndall		200.00
	07/08/2022	100276	Accounts Payable	Certified Folder Display Service, Inc.		662.14
	Invoice	Date		Description		Amount
Check	595176	06/22/2022		Distribution of Restaurant Guides		331.07
	595750	07/01/2022		Distribution of Restaurant Guides - August 2022		331.07
	07/08/2022	100277	Accounts Payable	Coast Counties Glass, Inc		520.00
	Invoice	Date		Description		Amount
	05568	06/22/2022		Comm Center Window		520.00
Check	07/08/2022	100278	Accounts Payable	Code Publishing Inc.		318.75
	Invoice	Date		Description		Amount
	GC0007936	06/30/2022		MMC - Web Update		318.75
Check	07/08/2022	100279	Accounts Payable	Consolidated Electrical Distributors, Inc.		886.31
	Invoice	Date		Description		Amount
	4914-1013454	04/28/2022		LED Roadside Fixture		886.31
Check	07/08/2022	100280	Accounts Payable	Custom Marine Covers		755.33
	Invoice	Date		Description		Amount
	6164	06/28/2022		Engine Hose Bed Cover		755.33
Check	07/08/2022	100281	Accounts Payable	Dell Computers - c/o Dell USA LP		1,998.96
	Invoice	Date		Description		Amount
	10589691414	06/07/2022		Server Warranty Renewal - July 2022-June 2023		1,998.96
Check	07/08/2022	100282	Accounts Payable	Dry Gear Solutions		8,438.41

User: Accounts Payable

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AP Check Register 07.08.2022

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Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Check	Invoice			Description		Amount
	2022-20		06/29/2022	Turnout Dryer with Anti Microbial Finish.		8,438.41
	07/08/2022	100283	Accounts Payable	Emergency Vehicle Specialists		1,920.84
Check	Invoice			Description		Amount
	PP22H0323-02		06/29/2022	Side rail and panel for 2022 Ford F-150 & 2020 Beach Rescue		1,920.84
	07/08/2022	100284	Accounts Payable	Fastenal Company		270.20
Check	Invoice			Description		Amount
	CASAL153258		06/10/2022	Shop Supplies		90.07
	CASAL153444		06/21/2022	Shop Supplies		180.13
Check	Invoice			Description		Amount
	07/08/2022	100285	Accounts Payable	First Alarm		889.71
Check	Invoice			Description		Amount
	687017		06/15/2022	Alarm Monitoring - Council Chambers - July-Sept. 2022		118.02
	687018		06/15/2022	Alarm Monitoring - 209 Cypress Ave - July-Sept 2022		131.43
Check	Invoice			Description		Amount
	07/08/2022	100286	Accounts Payable	Alarm Monitoring - 304 Hillcrest Ave - July-Sept 2022		640.26
	07/08/2022	100286	Accounts Payable	Gavilan Pest Control		1,565.00
Check	Invoice			Description		Amount
	0146577		06/10/2022	Locke Paddon Park		80.00
	0146646		06/10/2022	Preston Park/Squirrels		180.00
Check	Invoice			Description		Amount
	0146578		06/10/2022	Shoemaker Pond		80.00
	0146313		06/14/2022	781 Neeson Road/Airport Bldg 520 Squirrels		1,150.00
Check	Invoice			Description		Amount
	0146314		06/14/2022	781 Neeson Road/Airport Bldg 520 Rodents		75.00
	07/08/2022	100287	Accounts Payable	Goldfarb & Lipman		11,232.00
Check	Invoice			Description		Amount
	145612		06/28/2022	General File - May 2022		2,304.00
	145613		06/28/2022	The Dunes - May 2022		8,928.00
Check	Invoice			Description		Amount
	07/08/2022	100288	Accounts Payable	Tina Glass		1,900.00
	07/08/2022	100288	Accounts Payable	CPR Instructor Class - for Goncalves, Alvarenga, Smith & Suich		1,900.00
Check	Invoice			Description		Amount
	337		06/17/2022	Interstate Battery		154.90
	07/08/2022	100289	Accounts Payable	Interstate Battery		154.90

User: Accounts Payable

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AP Check Register 07.08.2022

Bank Account: 905 - Chase - Checking
Batch Date: 07/08/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Check	120122303			Unit 596 Battery		154.90
	07/08/2022	100290	Accounts Payable	Kelly-Moore Paint Co.,Inc		13.65
	Invoice			Description		Amount
Check	802-00000829583			Paint Supplies		13.65
	07/08/2022	100291	Accounts Payable	Kimley-Horn & Associates		3,353.85
	Invoice			Description		Amount
Check	097789008-0222			Injin Parkway Widening Project PS&E		3,353.85
	07/08/2022	100292	Accounts Payable	Liebert Cassidy Whitmore		10,543.00
	Invoice			Description		Amount
	220043			LCW - Professional Services		981.00
	220040			LCW - Professional Services		1,349.00
	220044			LCW - Professional Services		651.00
	220045			LCW - Professional Services		1,394.00
	220047			LCW - Professional Services		4,980.00
	220048			LCW - Professional Services		1,188.00
	07/08/2022	100293	Accounts Payable	Mandell Municipal Counseling		87.00
	Invoice			Description		Amount
Check	06-01-22			Professional Services - Revenue Advice		87.00
	07/08/2022	100294	Accounts Payable	Marina Coast Water District		7,554.10
	Invoice			Description		Amount
	000056016 061722			Reserv Rd & Seacrest Ave-Next to Fire Hyd		36.77
	000056019 061722			211 Hillcrest Ave		1,022.98
	000056020 061722			304 Hillcrest Ave		118.32
	000056024 061722			Del Monte/Palm		89.02
	000056021 061722			Reservation Rd/By 290-308 Reservation		36.77
	000056017 061722			208-A Palm Ave		80.86
	000056018 061722			208 Palm Ave		264.77
	000056001 061722			209-13 Cypress Ave		102.85
	000056045 062322			3100 Preston Drive		4,436.43
	000056046 062322			3100 Preston Drive		150.82
	000056094 062322			2660 5th Ave		426.66

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Batch Date: 07/08/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Check	000056022	061722		06/17/2022	Reservation/Marina Auto Stereo/Irrigation	36.77
	012016000	062322		06/23/2022	199 A Paddon Place	36.77
	000056028	062322		06/23/2022	California at Jerry Court	36.77
	000056006	062322		06/23/2022	188 Seaside Circle	123.40
	000056090	062322		06/23/2022	Locke Paddon Park	60.52
	000056040	062322		06/23/2022	Hilo Ave	27.26
	000056042	062322		06/23/2022	3040 Lake Drive	89.02
	000056061	062322		06/23/2022	Reservation/Locke Paddon Park	93.37
	000056007	061722		06/17/2022	Calif Ave/North of 3rd	89.02
	000056005	061722		06/17/2022	Calif & North Patton Parkway	89.02
	000056027	061722		06/17/2022	Calif Ave at Reindollar	36.77
	000056025	061722		06/17/2022	327 Reindollar Ave	69.16
	07/08/2022	100295	Accounts Payable	Martin's Irrigation Supply		2,958.27
	Invoice		Date	Description		Amount
	613686		06/21/2022	VD Backflow		1,740.96
	613777		06/22/2022	VD Backflow		1,217.31
Check	07/08/2022	100296	Accounts Payable	Monterey Bay Economic Partnership		5,000.00
	Invoice		Date	Description		Amount
Check	2227		07/01/2022	2022-2023 MBEP Membership		5,000.00
	07/08/2022	100297	Accounts Payable	Monterey County Auditor-Controller		25,988.24
	Invoice		Date	Description		Amount
Check	22-116/FY 22-23		06/13/2022	LAFCO Budget Allocation - FY 2022-2023		25,988.24
	07/08/2022	100298	Accounts Payable	Monterey County Department of Public Works		1,286.26
	Invoice		Date	Description		Amount
Check	19-MARINA Q3		05/31/2022	Blanco & Reservation Maint & Electric Cost		317.85
	19-MARINA Q4		05/31/2022	Blanco & Reservation Maint & Electric Cost		275.41
	20-MARINA Q1		06/29/2022	Blanco & Reservation Maint & Electric Cost		265.98
	20-MARINA Q2		06/29/2022	Blanco & Reservation Maint & Electric Cost		427.02
	07/08/2022	100299	Accounts Payable	Monterey P. Regional Special Response Unit		5,000.00
	Invoice		Date	Description		Amount



Marina, CA LIVE

AP Check Register 07.08.2022

Bank Account: 905 - Chase - Checking
Batch Date: 07/08/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Check	43			SRU Yearly Contribution (FY 2022 - 2023)		5,000.00
	07/08/2022	100300	Accounts Payable	Monterey Regional Waste Management District		73.08
	Invoice		Date	Description		Amount
Check	3630864		06/30/2022	Perc Ponds		44.10
	3631224		06/30/2022	City Perc Ponds		28.98
	07/08/2022	100301	Accounts Payable	Monterey Tire Service		166.88
Check	Invoice		Date	Description		Amount
	1-106983		06/27/2022	17 Chevy Caprice PD		166.88
	07/08/2022	100302	Accounts Payable	Motorola Solutions, Inc.		22,093.90
Check	Invoice		Date	Description		Amount
	16183884		06/29/2022	Charger Kit with Multiplexer		2,109.38
	16183881		06/23/2022	Radio #1 - APX8500 All Band HP Mobile		9,992.26
Check	16183903		06/24/2022	Radio #2 - APX8500 All Band HP Mobile		9,992.26
	07/08/2022	100303	Accounts Payable	Myers Stevens & Toohey Co		1,826.00
	Invoice		Date	Description		Amount
Check	1379614		04/08/2022	Insurance coverage for Reserve Firefighters		1,826.00
	07/08/2022	100304	Accounts Payable	MyFleetCenter - Wisconsin Quick Lube		96.21
	Invoice		Date	Description		Amount
Check	36763038		06/27/2022	CSO Vehicle Maint 878		96.21
	07/08/2022	100305	Accounts Payable	Newton Bros. Tire & Auto		2,700.63
	Invoice		Date	Description		Amount
Check	433774		06/30/2022	15 Chevrolet/Caprice Police Unit 896		2,700.63
	07/08/2022	100306	Accounts Payable	Office Depot		1,675.03
	Invoice		Date	Description		Amount
	247204865001		06/14/2022	Office Supplies		10.34
	247204865002		06/17/2022	Office Supplies		25.70
	248765631001		06/16/2022	Office Supplies		42.59
	248766542001		06/16/2022	Office Supplies		44.64
	239210571001		04/22/2022	Office Supplies		473.66

Marina, CA LIVE

AP Check Register 07.08.2022

Bank Account: 905 - Chase - Checking

Batch Date: 07/08/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Check	25142741	2001	06/24/2022	Office Supplies		947.33
	25201539	1001	06/23/2022	Office Supplies		113.61
	25201561	4001	06/22/2022	Office Supplies		17.16
	07/08/2022	100307	Accounts Payable	Online Solutions LLC		30,000.00
	Invoice		Date	Description		Amount
Check	4683		06/10/2022	Annual billing (25 user subscriptions)		30,000.00
	07/08/2022	100308	Accounts Payable	Pacific Gas & Electric		907.94
	Invoice		Date	Description		Amount
	06-10-22		06/10/2022	Acct #2652040767-2		72.68
Check	683-2	June2022	06/30/2022	PG&E 6217294683-2		835.26
	07/08/2022	100309	Accounts Payable	Pinnacle Healthcare		202.00
	Invoice		Date	Description		Amount
	368120		06/24/2022	Pinnacle Healthcare - Pre Emp Px		202.00
Check	07/08/2022	100310	Accounts Payable	Save The Whales		65,907.54
	Invoice		Date	Description		Amount
	1A/Year 9		06/30/2022	Storm Water Program NPDES (11/1/21-5/30/22)		65,907.54
	07/08/2022	100311	Accounts Payable	Sierra Springs & Alhambra		64.40
	Invoice		Date	Description		Amount
Check	9696351	060422	06/04/2022	2660 5th Ave Corp Yard		64.40
	07/08/2022	100312	Accounts Payable	South Coast Emergency Vehicle Service		21.94
	Invoice		Date	Description		Amount
	508494-1		06/13/2022	Fire Department Turn Signal		21.94
Check	07/08/2022	100313	Accounts Payable	Taygeta Scientific, Inc.		9,988.82
	Invoice		Date	Description		Amount
	000503-R-0003		06/08/2022	Avast Endpoint 1 year renewal		4,938.06
	000891		06/14/2022	SonicWall NSA 3600 Renewal - FY 2022-2023		2,574.96
Check	000708-R-0016		07/01/2022	Barracuda Spam Firewall - July 2022		475.80
	000423-R-0043		07/01/2022	Computer Network Defense - July 2022		2,000.00
	07/08/2022	100314	Accounts Payable	TechRx Technology Services		14,635.37

User: Accounts Payable

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7/7/2022 1:39:58 PM

Marina, CA LIVE

AP Check Register 07.08.2022

Bank Account: 905 - Chase - Checking
Batch Date: 07/08/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
	Invoice			Description		Amount
	10231			06/01/2022 Veeam Virtual Backup Monthly Subscription - July 2022		380.00
	10224			07/01/2022 Ninite Monthly Subscription - July 2022		112.50
	10249			06/30/2022 IT Support - June 2022		8,160.00
	10191			06/01/2022 HP Elite Desk Mini-PC & Display port to HDMI		4,482.42
	10061			04/27/2022 USB over Ethernet		43.70
	10206			06/30/2022 Brian's new computer		1,456.75
Check	07/08/2022	100315	Accounts Payable	Tri County Fire Protection		157.00
	Invoice			Description		Amount
	HP 58687			06/23/2022 Serviced fire extinguishers at Station 2		157.00
Check	07/08/2022	100316	Accounts Payable	U.S. Bank Equipment Finance		236.12
	Invoice			Description		Amount
	476025655			06/28/2022 CDD Copier Lease Payment + Later Charges		236.12
Check	07/08/2022	100317	Accounts Payable	Verizon Wireless		2,586.27
	Invoice			Description		Amount
	9909083358			06/18/2022 June Charges - Acct 272493672-00001		1,545.65
	9909159172			06/18/2022 PW Verizon phone bill 051922-061822		636.64
	9909672421			06/25/2022 FD Mobile Charges - May 26 - June 25, 2022		403.98
Check	07/08/2022	100318	Accounts Payable	Wallace Group, Inc.		14,663.72
	Invoice			Description		Amount
	56534			06/27/2022 Glorya Jean Tate Park Pump, Track & Restroom Improvements		5,919.34
	56524			06/27/2022 Annual Resurfacing		936.00
	56554			06/27/2022 MLK Sculpture CDs		5,550.38
	56553			06/27/2022 Sea Haven City Park		2,127.50
	56632			06/30/2022 Hayes Circle Two Lot Transfer		130.50
Check	07/08/2022	100319	Accounts Payable	Premier Access Insurance		6,858.80
	Invoice			Description		Amount
	07-01-22			07/01/2022 101 - Dental EE+1*		5,669.36
	07-01-22.			07/01/2022 Dental Claim (07/2022)		1,189.44
Check	07/08/2022	100320	Accounts Payable	Vision Service Plan		1,847.61

Marina, CA LIVE

AP Check Register 07.08.2022

Bank Account: 905 - Chase - Checking
Batch Date: 07/08/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
	Invoice		Date	Description		Amount
	07-01-22		07/01/2022	103 - Vision EE*		1,848.42
	07-01-22.		07/01/2022	VSP Adjustment (07/2022)		(0.81)
EFT	07/08/2022	2396	Accounts Payable	Richard B. Standridge	121042882 / 8312012522	3,420.00
	Invoice		Date	Description		Amount
	22-13		07/05/2022	R. Standridge Invoice #22-13		3,420.00
905 Chase - Checking Totals:						\$281,571.70
Checks: 53						\$278,151.70
EFTs: 1						\$3,420.00

Transactions: 54

Marina, CA LIVE

AP Check Register 07/15/2022

Bank Account: 905 - Chase - Checking

Batch Date: 07/15/2022

Bank Account: 905 - Chase - Checking

Type	Check #	Invoice Number	Payee Name	InvoiceDate	Description	Sum of Sum of NetAmount
Check	100321 Accounts Payables	82452	Vendor 10927 - Ace Hardware - Fire Dept. Total	7/6/2022	Supplies	24.00 24.00
Check	100322 Accounts Payables	82435	Vendor 10728 - Ace Hardware-Public Works Total	7/5/2022	PD Restroom	21.81
	100322 Accounts Payables	82442		7/6/2022	City Hall Restroom	13.08
Check	100323 Accounts Payables	55215-1	Vendor 10018 - Advantage Gear Total	7/6/2022	Uniform for RFF J. Dowining	8.73
	100323 Accounts Payables	55216-1		7/6/2022	Uniform for RFF J. Dowining	1,127.20 950.98
Check	100324 Accounts Payables	1960921	Vendor 10027 - Alliant Insurance Services Total	5/16/2022	Alliant Pollution Liability Insurance	176.22
	100324 Accounts Payables	1974055		5/30/2022	Alliant - Crime Insurance (FY 22/23)	50,722.00
	100324 Accounts Payables	1997638		6/22/2022	Alliant Property Insurance	1,504.00
	100324 Accounts Payables	2003513		6/27/2022	Physical Damage Program (22/23 Premium)	9,750.00
Check	100325 Accounts Payables	2971891	Vendor 10034 - American Supply Co. Total	7/5/2022	Airport Supplies	5,506.00
						33,962.00
Check	100326 Accounts Payables	122270	Vendor 10841 - Carmel Fire Protection Associates - Art Black Total	7/4/2022	Plan review and inspection at Home 2 Suites, 225 10th Street	711.38
Check	100327 Accounts Payables	2022-85	Vendor 11477 - Cheryl Kent - DBA Fastrac Total	7/1/2022	Code Enforcement Investigations	200.00
Check	100328 Accounts Payables	7012022	Vendor 10253 - George T. Powell Total	7/1/2022	Parking for Police & Fire	1,230.00
Check	100329 Accounts Payables	53342	Vendor 10268 - Harris & Associates Total	7/1/2022		2,400.00
	100329 Accounts Payables	53399		7/7/2022	Imjin Parkway Improvement Project	2,400.00
				7/8/2022	Harris & Associates	9,503.43
Check	100330 Accounts Payables	220701-7	Vendor 10375 - MBASIA-Monterey Bay Area Self Insurance Authority Total	7/1/2022	EAP/Worker's Comp/Prop/Liab. Premium Allocation	1,800.93
						7,702.50
Check	100331 Accounts Payables	423461	Vendor 10406 - Monterey Bay Systems Total	7/12/2022	Maintenance on a printer	15,502,325.72
	100331 Accounts Payables	428113		7/11/2022	City Hall Copier Maintenance Contract	727.23
Check	100332 Accounts Payables	7/6/2022	Vendor 10411 - Monterey County - Emergency Communications Total	7/6/2022	Monterey County Emergency Communication Quarter 1 Invoice 22/23	1,275,197.00
						1,275,197.00
Check	100333 Accounts Payables	5/17/2022	Vendor 10899 - Monterey County Animal Services Total	5/17/2022	3rd Qtr FY 2021-22	9,300.00
Check	100334 Accounts Payables	26201A-IN	Vendor 10416 - Monterey County Petroleum-Sturdy Oil Co. Total	6/14/2022	Regular/Diesel Costs	9,300.00
	100334 Accounts Payables	26275A-IN		6/29/2022	Regular Ethanol	194,542.24
Check	100335 Accounts Payables	3631613	Vendor 10427 - Monterey Regional Waste Management District Total	7/1/2022	Perc Ponds	114,516.00
	100335 Accounts Payables	3634923		7/7/2022	Perc Ponds	80,026.24
	100335 Accounts Payables	3635006		7/7/2022	Perc Ponds	112.95
Check	100336 Accounts Payables	8281413028	Vendor 11171 - Motorola Solutions, Inc. Total	7/8/2022	Antenna Stubby with WIFI/GNSS	28.80
Check	100337 Accounts Payables	CVCS249721	Vendor 10437 - My Chevrolet Total	7/1/2022	15 Chevrolet/Caprise Police 4 DR sdn	40.50
Check	100338 Accounts Payables	313-6.June22	Vendor 10463 - Pacific Gas & Electric Total	7/12/2022	PG&E 6793435313-6	43.65
Check	100339 Accounts Payables	229857	Vendor 10470 - Peninsula Welding & Medical Supply Total	7/1/2022	Oxygen Refill	302.64
Check	100340 Accounts Payables	805	Vendor 11721 - Ross Ladder Service - Michael A Ross Total	7/6/2022	Ladder Testing	302.64
Check	100341 Accounts Payables	6/1/2022	Vendor 11033 - Sara Steck Myers Total	6/1/2022	Professional Services - MPWSP - May 2022	2,185.09
	100341 Accounts Payables	7/1/2022		7/1/2022	Professional Services - MPWSP - June 2022	2,185.09
Check	100342 Accounts Payables	7266038 061022	Vendor 10540 - Sierra Springs & Alhambra Total	6/10/2022	Water Cooler Rental and Replacement Water	34,625.20
	100342 Accounts Payables	7266038 070822		7/8/2022	Water Cooler Rental and Replacement Water	102.50
	100342 Accounts Payables	9696351 070222		7/2/2022	2660 5th Ave Corp Yard	102.50
Check	100343 Accounts Payables	10189	Vendor 10897 - TechRx Technology Services Total	6/30/2022	G. Persicone printer	234.65
	100343 Accounts Payables	10209		6/30/2022	Chief, Det. Ball, Briefing and SFO PC Upgrades	16,320.00
Check	100344 Accounts Payables	#INV903813	Vendor 10824 - Traffic Safety Store - W.L. Snook & Associates Total	6/29/2022	Traffic Cones	9,870.00
						6,450.00
						227.57
						68.36
						55.87
						103.34
						8,177.39
						505.61
						7,671.78
						9,483.20
						9,483.20

Check	100345	Accounts Payables	2.02206E+11	Vendor 11717 - Universal Background Screening - Pluto Acquisition Total	6/30/2022	Background - Credit Check	12.00
Check	100346	Accounts Payables	56620	Vendor 11489 - Wallace Group, Inc. Total	6/28/2022	Program Management	444,810.54
Check	100346	Accounts Payables	56677	Vendor 10350 - Marina Employees Association Total	7/1/2022	Airport Project Management	403,017.42
Check	100347	Accounts Payables	7/8/2022	Vendor 10359 - Marina Professional Fire Fighters Association Total	7/8/2022	24 - MEA Dues	41,793.12
Check	100348	Accounts Payables	7/8/2022	Vendor 10315 - Keyser Marston Associates Total	7/8/2022	35 - MPFFA Dues	390.00
Check	90	Accounts Payables	36992	Vendor 10357 - Marina Police Association-MPOA Total	7/12/2022	Professional Services from June 1, 2022 to June 30, 2022	300.00
EFT	EFT #2412	Accounts Payables	7/8/2022	Vendor 10484 - Police Officers Association - POA Total	7/8/2022	23 - MPOA Dues	2,380.00
EFT	EFT #2413	Accounts Payables	7/8/2022		7/8/2022	25 - POA Dues	250.00
							1,350.00
							1,350.00

905 - Chase - Checking Totals:

Transactions: 30

Checks: 28 \$1,171,403.56
EFTs: 2 \$1,600.00

Marina, CA LIVE

EFT Bank/Account

EFT Bank/Account

90 Accounts Payable

als:

1

1

Pages: 1 of 1



DRAFT

Agenda Item: **8b(1)**
City Council Meeting of
July 19, 2022

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/>

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

Robert Wellington, City Attorney reported out Closed Session: The matter that was taken up was a single item that's on the agenda of a performance evaluation of an unrepresented public employee, namely, the city manager the Council discussed that matter at length. There was substantial discussion, but no reportable action was taken

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.*
- Layne Long, City Manager – Provided two recreation announcements related to July 4th events. Spoke about the city issued a Certificate of Participation which essentially, is a bond for our 2022 Traffic Transportation Infrastructure here in the city for \$11.5 million dollar that we will pledge our measure X money. We're getting a lump sum of cash up front that we're moving forward with a massive reconstruction of failing roads and getting all our roads up to the condition we want that process will happen over the next couple of years. Announced that our August 2nd Council meeting will be cancelled and rescheduled due to Public Safety Night Out taking place on August 2nd. Announced that the city has hired independent public opinion research firm will be sending out surveys to on a random basis to our citizens that to get feedback on key issues and identify priorities of the city and the community.
 - Doug McCoun, Fire Chief – Announced Safe and Sane Fireworks will begin to be sold starting June 28th and took a moment to talk about the differences between Safe and Sane and Illegal fireworks. Asked if somebody observes illegal fireworks being used and there's no injuries to call the non-emergency dispatch number 831-384-7575 and they will send out the appropriate response for right non-emergency call. Spoke about the fines: the first offenses \$333.92 cents. The second offense, which is \$533 dollars, and a third is over a \$1,000.

- Council Member Medina Dirksen – Commented on that Friends of the Marina Library had a wonderful event the Dad's Read featuring Nick Kite. Spoke about the Marina Teen Center membership and summer activities. Commented on Monterey County Gives program. Attended Seaside's Juneteenth celebration. Spoke about Veterans Standdown event at the Monterey Fairground. Attended the Hospitality Associations luncheon on June 10th.
- Council Member Berkley – Spoke about the warm weather and the effects it has on our pets. Announced that at 4:00pm tomorrow will be an official Pride Flag raising ceremony at the flagpole at City Hall
- Mayor Delgado – Commented on the Police Chief Nieto's November Sheriff runoff. Commented on the youth summer programs and Junior Giants and Marina Youth Soccer. Commented on the Pump Track groundbreaking and asked when the Pump track might be opened. Spoke about the Handcars that have started to show up for the summer and asked for an update on the lease with TAMC. Announced there will be cleanup events happening in July. On July 3rd from 9:30 to 1230 along Salinas Avenue & Carmel Ave Road; on July 10th at Salinas Avenue & Reservation Road from 9:30-12:30. Commented on graffiti removal by retired Marina Police Commander Robert Nolan along some residential areas along Patton Parkway and our downtown area.
- Mayor Pro Tem Biala – Asked City Manager to provide an update/memo on all the construction projects going throughout the city in the meeting packet just to let the public know what's going on.
- Mike Owen – Spoke re-engagement of city commissions and asked if the City Manager could place this on a future agenda in August.
- Brian McCarthy – Commented on the need for tobacco control and the Blue Zone project and noted other cities banning flavored tobacco and vapes. Played a short video clip on "the filter" and smoker safety.
- Jeff Markham – Commented on the police department apprehending an individual who had stolen a bicycle and returning it to the owner; spoke about a fire at Patton and how quick our fire department put it out.
- Tommy Bolea – Commented on buying locally but also having to travel outside of Marina due to items not being sold here or certain businesses not being here. Spoke about a virtual city and purchasing online. Commented on the developments taking place throughout the city.

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. 2022-78**, 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. 2022-79**, 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. 2022-80**, 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. 2022-81**, 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. 2022-82**, 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. 2022-83**, 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. 2022-84**, 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

Karen Andersen questioned if items 8g(1) and 8i(1) considered Sand Gilia?

Council Member Medina Dirksen had questions for 8f(2). Asked how long do General Plans last? Are there plans for annexation of East Garrison?

Mayor Pro Tem Biala had a comment for 8f(2).

DELGADO/BIALA: TO APPROVE THE CONSENT AGENDA. 5-0-0-0 Motion Passes by Roll Call Vote

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. ***Continued to July 19, 2022***

Council Questions: Clarification on “project has the capacity”? did you mean water? Clarification, when you mentioned the vernal Ponds testing, did you say it was limited to the city? Will city be notified if testing will be done on the vernal ponds? Are the developers frozen in time with 2008 our rules and standards and are they exempt also from State laws, such as SB 9 or any others? If we were to pass our General Plan before this goes into effect would the developer still be in the 2008 mode to would they be exempt for the new standards? Will a traffic study be completed, and will it be done by the developer? Unlike The Dunes and Sea Haven, this property was never under FORA and had never been Government property, this was a pretty private land sale to now another private owner, correct? The affordable housing agreements are part of our general plan, and that's our only in on this project that it's within the city's spirit influence, so they have to develop this according to this development agreement in our existing general plan, correct? Under the recitals of Exhibit A, #11, this development agreement there will be no other circumstances that would allow for modification outside of these recitals, correct? With a possible recession coming giving them an extension to 2036 would be sufficient buffer given what's happened in the past, correct? This development agreement reads pretty much like the agreements we've had with the Dune and Sa Haven projects, can we anticipate similar outcomes/issues that we've had with the other two? What is the open-space acreage for the entire project? It is all open to the public? The conservation and easements would be part of the Sierra Club lawsuit that generated this outcome, correct? Can we ask in the amendment that the city receive copies of any monitoring and reports on the vernal ponds? If we do not grant an extension does this this project come to a halt? Does a tentative map have an expiration date, or does it go forever? If we didn't approve the amendment, what would they do regarding the final tentative map? How many maps version are there? Why is it called Marine Station? Where was this transit station to be located in the project? So, if we wanted that area that's going to be redesigned as far as the uses residential

commercial retail and we approve everything tonight it seems like we lose a lot of leverage because we can't drastically alter what they propose to do there, correct? So, what we're seeing now has not been approved it hasn't been publicly digested, it's a change from the marine station plan is that correct? Can we see a digestible easy to understand map of the approved park locations and distribution versus the current proposed post Sierra Club settlement distribution and locations of parks? What what's say will we have in the mix of for sale versus rental below market-rate? Has the planning Commission or the City Council ever digested and understood how the Sierra Club settlement agreement with the developers or the property owners back in 2008 impacted our vernal pools and what our give and take was? Have we ever, as a city understood and digested, how that settlement affected changed this project? When can we address evasive grass/weeds and the sand dunes? Coastal access, with the plans today before us now, how do people get from Marina Station development, let's say residential to the coast to the road that goes under the highway across Lapis Road to the beach? Exhibit B, Section 2.4.7 Rent and Price Controls, last paragraph; if the city should pass a rent stabilization, or some form of rent control, it could never apply to this property, correct? Is the wording in that last paragraph negotiable? Are we limited to how many meetings we can have between the Council and Planning Commission to approve this? Is there any rush that we have to address this, this evening? Is it possible to have the inclusionary homes built first?

Mayor opened the Public Hearing for Public Comments:

- Karen Andersen – Commented on the developers accidentally grading away environmentally sensitive plants and asked what are all of your plans to prevent this from happening with the vernal pools and anything else that's environmentally sensitive in this development?
- Tommy Bolea – Asked if this was a Council meeting or a Planning Commission meeting due to the topics being discussed. Asked what is the percentage of renters in Marina? How many rentals will be included in this project? Low income, low market housing agreements were mentioned and asked how do those terms exactly work? Asked about the phasing of the development.
- PK Diffenbaugh – Appreciates the level of scrutiny and review of that council is doing to ensure that this development is the right decision for the city of Marina. Shared perspective from the school perspective how difficult it is for our families and for our teachers to live on the Peninsula. Shared the number of current students who are homeless and the need to have affordable low-income housing. Spoke about the closing of 3 schools.
- Denise Turley – Asked to hear from Karen Tiedemann on the RHNA numbers and how this project will affect them.
- Jeffrey Markham – Asked Council to take time to review this project and not take any action tonight. There's a lot of stuff grandfathered into this and has been on the back burner for a long time and it's a complicated issue. Did not appreciate the tone the developer took with our City Council and our staff tonight.
- Paula Pelot – Commented on the different developments that have taken place over the last 25-years and the fact that new residents would like to have an input into future changes. Noted that with this amendment that now is the time to make changes and see if it conforms to the vision and the values of this city. You are within your rights, and it is your responsibility to ask these questions and to evaluate this project.
- Brian McCarthy – Would like to hear a more candid conversation from both the developer and the financial experts that might educate us on likely outcomes depending on if the economy does right or if the bottom falls out again like it did in 2008. Asked for clarification on rent control provisions, little confusing. Questions council brought up are valid and should be discussed.

9:58 PM

DELGADO/MEDINA DIRKSEN: TO CONTINUE TO THIS ITEM AND AGENDA ITEM 11b.
5-0-0-0 Motion Passes by Roll Call Vote

Delgado/Burnett: that we continue this discussion and let staff decide on what they want to propose as far as the next step, whether it be a workshop or something like that where the public and the council can relax a little bit and discuss these items and questions that have come up; and that council will be given a chance to provide questions for that subsequent discussion format.

Council discussed on whether this item can be continued to a subsequent meeting date and the Mayor modified his motion to continue this item to July 19, 2022.

Modified Motion

DELGADO/BURNETT: WE CONTINUE THIS MEETING AND THE PUBLIC HEARING TO JULY 19, 2022, AND ALLOW STAFF TO PROPOSE UNTIL THEN, AND AT THAT POINT, HOW WE'RE GOING TO ADDRESS THE VARIOUS QUESTIONS AND IDEAS THAT CAME UP TONIGHT, AND THAT COUNCIL WILL BE ENCOURAGED TO SEND THEIR QUESTIONS INTO TO BE ABLE TO BE ADDRESSED BY THE DEVELOPER AND OUR STAFF. 5-0-0-0 Motion Passes by Roll Call Vote

10:35

BURNETT/BERKLEY: THAT WE CONTINUE TONIGHT UNTIL WE COVER THE PRIDE FLAG ISSUE (11b) AND THE POTENTIAL FUTURE CITY ATTORNEY ISSUE (11a). 5-0-0-0 Motion Passes by Roll Call Vote

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. 2022-87**, 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.

Council Questions: Given what you've seen in our city council meetings, are they fairly typical of other city council meetings?

BIALA/BERKLEY: TO ADOPT RESOLUTION NO. 2022-87, 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. 5-0-0-0 Motion Passes by Roll Call Vote

Public Comments:

- Denise Turley – Spoke about Rob Wellington at one of the city’s past council meetings. Indicated that the new interim city attorney, Heidi shouldn’t have to state what district she lives in.
- Paula Pelot – Expressed her gratitude to Rob Wellington for all the work that he’s done over the years. Had a question about the waiver of the conflict of interest with this firm representing Marina and Cal-Am Desal? How would that be handled in closed session with the attorneys of this new firm, who may be also representing the water district or the district?

- b. City Council consider adopting **Resolution No. 2022-85**, adopting the City of Marina Flagpole Policy; and consider adopting **Resolution No. 2022-86**, 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 (LGBTQ+) Pride Month in the City of Marina.

Council Questions: Can we add into the policy “consistent, commemorative flag shall be displayed at city facilities”? Can we add to the motion the Pride Flag to be flown not just for the remainder of the June 2022, but to include that in it will be at and every year after that, for the duration of gay pride month? Can we include in motion to fly flag from June 22-July22, since we’re starting late on raising this flag? Can we add additional language to the policy says and or when council deems appropriate?

BERKLEY/MEDINA DIRKSEN: TO APPROVE RESOLUTION NO. 2022-85, ADOPTING THE CITY OF MARINA FLAGPOLE POLICY WITH ADDING THE WORD “CONSISTENT” TO THE THIRD PARAGRAPH OF EXHIBIT A TO NOW READ “CONSISTENT COMMEMORATIVE FLAGS SHALL BE DISPLAYED AT CITY FACILITIES”. 5-0-0-0 Motion Passes by Roll Call Vote

BERKLEY/BURNETT: TO APPROVE RESOLUTION NO. 2022-86, APPROVING THE FLYING OF THE RAINBOW PRIDE FLAG AT CITY HALL THROUGHOUT THE REMAINDER OF THE MONTH OF JUNE 2022 THROUGH JULY 22, 2022; AND EVERY MONTH OF JUNE EACH YEAR THEREAFTER. 5-0-0-0 Motion Passes by Roll Call Vote

Public Comments:

- Liesbeth Visscher – Thanked everyone for working and this and looks forward to seeing those flags here in Marina.
- Brian McCarthy – This is a great step to show the rest of the city that we're an incredibly diverse city. Thinks this is a great start.

- 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: The meeting adjourned at 11:23 P.M.

Anita Sharp, Deputy City Clerk

ATTEST:

Bruce C. Delgado, Mayor



DRAFT

Agenda Item: **8b(2)**
City Council Meeting of
July 19, 2022

MINUTES

Wednesday, July 6, 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 2022-78, 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: Cristina Medina Dirksen, David Burnett, Lisa Berkley, Mayor/Chair Bruce C. Delgado

MEMBERS ABSENT: Mayor Pro-Tem/Vice Chair Kathy Biala (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. Conference with Legal Counsel – Potential litigation, exposure to litigation per: “Conference with Legal Counsel – anticipated litigation, significant exposure to litigation pursuant to paragraph (2)(d) of CA Govt. Code sec. 54956.9 – Four potential cases

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

Heidi Quinn, Interim City Attorney reported out Closed Session: The Council met in closed session. On 4 items of potential litigation. As to all matters, a status report was provided. Direction was given, but there was no reportable action was taken.

4. **MOMENT OF SILENCE & PLEDGE OF ALLEGIANCE** (Please stand)
5. **SPECIAL PRESENTATIONS:**
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.*
 - Frank Calamia – Spoke about wanting to expand the Marina Card Room over the last few years but was told there is no place that is zoned for another cardroom and suggested out at the airport. Heard a rumor now that there's an outside agency coming in and to open up another card room and now concerned. Noted the amount of tax revenue the cardroom brings into the city and the donation made to local organizations. Stated the Gambling Control Commission and Bureau Gambling Control allowed Mortimer's card room license to be sold and does not think it's fair that an outside agency will come here and basically open up a card room and just start taking business away from all of us.
 - Michael La Pier, Executive Director Monterey Regional Airport – Wanted to provide Council with an update of things happening at the Monterey Regional Airport. Added two non-stop flights to Dallas Fort Worth (American Airlines) and Denver (United Airlines). Were now exceeding our pre-pandemic levels, which means people are out traveling and our traffic levels are at are above 3 pandemic levels of 2019 and continue to grow. Spoke about their current budget and reserve budget. Invited Council and staff out to the airport and its restaurant.
 - Mike Owen – Commented about the possible reengagement of the commissions. Commented on SB330 and its correct title.
 - Council Member Medina Dirksen – Thanked Michael La Pier for his announcements. Commented on the 4th of July and how both the police chief stepped up police presence. Spoke about her meeting with the Sea Haven residents and hosting a table at the Farmer’s Market to share information and fines associated with illegal fireworks. Noted a local business, Element 7 purchased over \$900 worth of the safe-n-sane fireworks and passed them out to the kids. Announced Friends of the Marina Library event this Saturday, from 10:00am-Noon. On Saturday, June 16th we'll have a Hawaiian reggae concert, also at the Marina Library.

- Mayor Delgado – Commented on the community meeting put together by Council Member Medina Dirksen to discuss July 4th. Thanked Marina Police for being present in the Sea Haven area.
- Police Chief Nieto – Spoke about police office being on bicycles and patrol car on the 4th. Wrote 14 citations for illegal fireworks between 8:00pm-10:00pm. My recommendation for next year is that we get an earlier start working with our communities, no matter what direction the city of Marina moves in. Thanked her staff and the Council Members who went out and talked to the community ahead of time to explain just how the process worked.
- Fire Chief McCoun – Noted that the 4th of July was fortunately really quiet, and I appreciate all the efforts by Everybody here. Thanked Council Member Medina Dirksen for inviting us to the community meeting. Glad we were able to answer the questions of the community. Indicated that there was one fire on the 5th that was not association with fireworks.
- Public Works Director McMinn – Thanked Ocean Rock church for displaying the flags once again on the 4th. Commented on the engineers moving forward with the designs on the sports center, aquatic center and outdoor sports pavilion out at the Dunes Park; and they progress to the point where they're ready to reach out for public input on those facilities. Announced an Open House on July 19th from 2:00pm-5:00pm at our city Council Chambers and then another session from 5:00pm-6:00pm on July 20th for those that can't make the day meeting and then we'll continue on July 20th after at starting at 6 o'clock we're going to get together as many of members of the Recreation and Cultural Services Commission and Public Risk Commission for a presentation from the consultant and get input on those projects themselves and then carrying that forward to City Council sometime in August.
- Council Member Berkley – Commented on the Pride Flag flying at City Hall from June 22-July 22 and the good turnout that came to raise the flag.

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 100165-100267; and EFT's, totaling \$731,366.65

b. MINUTES: None

c. CLAIMS AGAINST THE CITY:

- (1) City Council Rejection of Claim - staff recommends that the City Council reject the following claim and direct sending appropriate notice of rejection to claimant: Jennifer Geertsen for a claim received on June 22, 2022.

d. AWARD OF BID: None

e. CALL FOR BIDS: None

f. ADOPTION OF RESOLUTIONS:

- (1) City Council consider adopting **Resolution No. 2022-88**, confirming levy of the special tax for the City of Marina Community Facilities District No. 2015-1 (The Dunes) for fiscal year 2022-23 as authorized by Ordinance No. 2015-03; and **Resolution No. 2022-89**, certifying City of Marina compliance with State Law (Proposition 218) with respect to a special tax for the City of Marina Community Facilities District No. 2015-1 as authorized by Ordinance No. 2015-03 for fiscal year 2022-23.
- (2) City Council consider adopting **Resolution No. 2022-90**, approving the appointment of Council Member Cristina Medina Dirksen, as an alternate to the Monterey County Airport Land Use Commission (ALUC).

g. APPROVAL OF AGREEMENTS:

- (1) City Council consider adopting **Resolution No. 2022-91**, authorizing the City Manager, or his designee, to enter into a Standard Voluntary Agreement (SVA) with the California Department of Toxic Substance Control (DTSC) and pay associated fees for the City Park Barracks and Cypress Knolls Buildings Blight Removal 2022 Project.
- (2) City Council consider adopting **Resolution No. 2022-92**, approving professional services agreements between the City of Marina and BKF Engineers for program management services and on-call design services; and; approving a professional services agreement between the City of Marina and Ghirardelli Associates for on-call construction management and construction inspection services for the pavement resurfacing and rehabilitation program, and; authorizing the City Manager to execute the agreements on behalf of the City subject to final review and approval by the City Attorney.

h. ACCEPTANCE OF PUBLIC IMPROVEMENTS: None

i. MAPS: None

j. REPORTS: (RECEIVE AND FILE): None

k. FUNDING & BUDGET MATTERS: None

l. APPROVE ORDINANCES (WAIVE SECOND READING): None

m. APPROVE APPOINTMENTS: None

Mayor Delgado requested to pull agenda item 8f(2) so that a Council Member could be properly appointed to this board as an alternate.

DELGADO/BERKLEY: THAT WE APPROVE THE CONSENT AGENDA MINUS 8f(2). 4-0-0-1(Biala)

8f(2)

DELGADO/MEDINA DIRKSEN: THAT APPROVE APPOINTING COUNCIL MEMBER CRISTINA MEDINA DIRKSEN AS AN ALTERNATE. 4-0-0-1(Biala)

9. **PUBLIC HEARINGS:**

- a. City Council open public hearing, taking testimony from the public and consider reading by title only and waive further reading and approve Ordinance 2022-, approving Amendments to Title 17 of the Municipal Code by adding Sections 17.45; and Ordinance 2022- 17.49 pertaining to Reasonable Accommodation for Persons with Disabilities and Low-Barrier Navigation Centers, respectively.

Council Questions: In the initial ordinance language if someone does the reasonable accommodation Are they entitled, or do we offer any kind of offsets in terms of any zoning, or any kind of taxing or any help in paying for these? or if they're building a new project, is there anything in the ordinance that would allow the city to help with defraying the cost of things like that, or can file these in their in your Federal returns? With the low barrier, I would assume that the ordinance doesn't require any kind of residency requirement or establishment of any kind, correct? We've outlined a number of where this would be zoned in how it would work in with the surrounding commercial non-commercial uses. Would this be the place where we would ask for location to schools or school programs, access to transportation, health care? Would that be appropriate in this kind of an ordinance?

Mayor Delgado opened up the public hearing for public comments: No public comments were made, and Mayor Delgado closed the public hearing.

DELGADO/BERKLEY: THAT WE APPROVE THE FIRST READING OF ORDINANCE 2022-, APPROVING AMENDMENTS TO TITLE 17 OF THE MUNICIPAL CODE BY ADDING SECTIONS 17.45; AND ASK STAFF TO CONSIDER POLICY DEVELOPMENT RELATED TO OFFSETS. FOR PARTICIPANTS IN THIS PROJECT, AND THOSE WANTING TO ADD THESE ACCOMMODATIONS, THAT WOULD AID IN MOVING THESE PROJECTS ALONG. 4-0-0-1(Biala)

DELGADO/BERKLEY: THAT WE APPROVE THE FIRST READING OF ORDINANCE 2022- 17.49 PERTAINING TO REASONABLE ACCOMMODATION FOR PERSONS WITH DISABILITIES AND LOW-BARRIER NAVIGATION CENTERS, RESPECTIVELY; AND ASKING STAFF TO RETURN A PROPOSAL, OR AT LEAST IDEAS RELATED TO CITING THESE PROJECTS A ALONG SCHOOL ROUTES, TRANSPORTATION, ACCESS HEALTHCARE. 4-0-0-1(Biala)

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. 2022-93**, memorializing adjustments previously approved to the City's Salary Schedule and Compensation Plan for Marina Directors and receiving an oral report on the changes.

Council Questions: Do the positions of our directors accrue over time for being on call? If not, why? Do we have numbers that show us how much time they put in extra? Is this extra time part of their job description? What is the comparative market we used for the salaries? So when we do the comparable, do we plan to be on top, middle or bottom of the comparable? Have we've done the research to figure out how much it cost to live in our area? Do you find it a bit of a challenge, or challenging at all to attract people, to move to a work for our city?

MEDINA DIRKSEN/BERKLEY: THAT WE ADOPT RESOLUTION NO. 2022-, MEMORIALIZING ADJUSTMENTS PREVIOUSLY APPROVED TO THE CITY'S SALARY SCHEDULE AND COMPENSATION PLAN FOR MARINA DIRECTORS AND RECEIVING AN ORAL REPORT ON THE CHANGES. 4-0-0-1(Biala)

Public Comments: None received

- b. 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.***

Council Questions: The overall plan for our airport, is it to be expansion into Joby Manufacturing support? Is it to be transportation? Increased services to get into commercial carrier? What is the ultimate goal here? How do they feel or what's the temperature of expanding our runway? what's defined as general aviation? Are we working with anybody to let her cause be known? Has anybody successfully that we know of navigated this situation to Its benefit to get an expanded runway. Had we already received some fundings to extend the runway back in 2019-2022? Seems a lot of our pitch to the Faa and part of our vision is centered around our relationship with Joby, do we have things in writing and a guarantee from them about the proposed construction hangars? Basically, we currently do not have any kind of guarantee or any kind of agreement for these buildings or other future visions for Joby, correct? When we seek funding through the map program, are we going to see 35 million over 5 years or some other number? UCMBEST put a lot of money in the streets, curb gutter lighting Curb gutter lighting? Can you describe tomorrow's meeting with UCMBEST and how that relates what their plans are for this area, and how their plans relate or link up with our plans? If UCMBEST develop their property, would it be for business park and be in competition with our plans to develop our property? New residents or businesses complain about the airport that's been there longer than they have but if you start to make changes and increase the use it might cause problems so my question is, what does staff think about the order airport development and Marina Station development? Is it better that we develop our airport before Marina Station, or vice versa?

Public Comments:

- Denise Turley – Asked if Joby was not going to only developing the planes here, but would possibly actually use the airport to start taking off and flying to other helipads then would they then be considered an airport proper use? Would that also possibly engender other things like businesses support businesses whatever?

- Brian McCarthy – Supportive of continuing development of aviation uses at the Marina Airport but concerned about the level of maybe public input and industry involvement in the discussion. Feels like direction is kind of being given as to the future of land uses at the airport and not enough public involvement in the discussion. Would love to see more community input and workshops on this.
- c. City Council continue discussion from April 19, 2022, City Council meeting regarding unmet community facilities, infrastructure, public safety & staffing needs and possible funding options and strategies to address these needs and provide direction to city staff.

Council Questions: Slide 3, property values – where did this data information come from? What other type of outreach will we do once we've received the information and have to make a decision? Has there been instances in the past where surveys have told us voters/citizen have thought one way but we've been successful in passing things despite what the polls or surveys have told us? So, the presentation that you've put forward we've seen these slides before and we had a discussion about maybe combining, would that save us money if we put the police and fire price into one building or put the community center police and the one building, could we reduce that 53 down to something smaller?

Public Comments:

- Les Martin – Seems like a really important need and would support a bond even though it's an increase to the property tax bill.
- Brian McCarthy – Commented on a proposed state bill that would provide funding for a municipal water truck for a city kind of like ours that couldn't adequately protect some of this new housing stock that was coming online especially with the requirement to streamline. Asked if staff has looked into this and if not, can they? Commented on the survey and how it was conducted. Asked if staff is aware if the survey folks intentionally excluded anyone such as sitting Council members?
- Denise Turley – Indicated that this was important thing for the city as it continues to grow and stretched thinner. Need to be able to provide better response times for emergency calls. Commented on how the survey was conducted and be transparent.
- Branson Kelsey – Agrees with previous speaker about the survey being completely transparent. Asked who is funding this survey and who is doing the survey and was told it was classified. Suggested that if any surveys are to be done full disclosure of “who, what, where and when” should be done. Better communication from the city if the form of leaflets, or mailers should be done for items like these.
- Liesbeth Visscher – Think it's very important for Marina residents to know what the response times are currently for the firefighters and a second fire station and good response times it's can be a matter of life, or death.

Berkley/Delgado: that we bring this discussion back with a full recommendation on our next meeting which is the twelfth with a written-out bond measure, along with a draft bond measure along with survey results for us to review and decide upon.

Mayor Delgado asked for a friendly amendment, that we direct staff to bring us back some options. Council Member Berkley accepted the friendly amendment.

Final Motion

BERKLEY/DELGADO: THAT WE BRING THIS DISCUSSION BACK WITH A FULL RECOMMENDATION ON OUR NEXT MEETING WHICH IS THE TWELFTH WITH A WRITTEN-OUT BOND MEASURE, ALONG WITH A DRAFT BOND MEASURE ALONG WITH SURVEY RESULTS FOR US TO REVIEW AND DECIDE UPON; AND THAT WE DIRECT STAFF TO BRING US BACK SOME OPTIONS

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 10:10 P.M.

Anita Sharp, Deputy City Clerk

ATTEST:

Bruce C. Delgado, Mayor

July 7, 2022

Item No. **8f(1)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of July 19, 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 JULY 22, 2022,
THROUGH AUGUST 20, 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 July 22, 2022, through August 20, 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; on June 21, 2022 Resolution No. 2022-78 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 July 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 July 22, 2022, through August 20, 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 JULY 22, 2022, THROUGH AUGUST 20, 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; on June 21, 2022 Resolution No. 2022-78 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 July 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) August 20, 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 19th day of July 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 July 19, 2022

RECOMMENDATION TO CONSIDER ADOPTING RESOLUTION NO. 2022-, APPROVING PUBLIC IMPROVEMENT AGREEMENTS FOR THE TERRACINA PROJECT AT THE DUNES – SITES 1 & 2 BETWEEN THE CITY OF MARINA AND USA PROPERTIES FUND, INC., AND; AUTHORIZING CITY MANAGER TO EXECUTE THE PUBLIC IMPROVEMENT AGREEMENTS 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 Public Improvement Agreements for the Terracina Project at the Dunes – Sites 1 & 2 between the City of Marina and USA Properties Fund, Inc., and;
2. Authorizing the City Manager to execute the Public Improvement Agreements on behalf of the City subject to final review and approval by the City Attorney.

BACKGROUND:

At the regularly scheduled meeting of May 31, 2005, the City Council adopted Resolution No. 2005-127, certifying the Final Environmental Impact Report for the University Village Development Project.

At the regularly scheduled meeting of May 31, 2005, the City Council adopted Resolution No. 2005-128, approving the General Plan Amendments, Resolution No. 2005-130, for the Specific Plan, Resolution No. 2005-131, for the Tentative Map and Resolution No. 2005-132, Design Review for the regional retail, the Village Promenade and all residential phases for the former University Village Development Project.

At the regularly scheduled meeting of December 17, 2019, the City Council adopted Resolution No. 2019-140, approving an Operating Agreement as an administrative amendment of the Development Agreement clarifying and modifying certain project approvals for Specific Plan for The Dunes on Monterey Bay including to the Conforming Clarifications to the Schedule of Performance.

Pursuant to the Disposition and Development Agreement (DDA) executed in 2005, USA Properties Fund, Inc. (Affordable Housing Developer) has an agreement with Community Partners (MCP) and the City to provide 142 below market rate apartment units within Phase 3 of the University Village Specific Plan (currently The Dunes). Site 1 with 93 apartment units has been approved and under construction at the northeast intersection of 4th Avenue and Beacon Street. Site 2 with 49 apartment units has been approved and starting construction at the southwest corner of 2nd Avenue and 6th Street.

ANALYSIS:

USA Properties has submitted the on-site and off-site Improvement Plans for approval. Marina Municipal Code (MMC) section 16.06.090 sets the requirements for the off-site improvements. MMC section 16.16.100 requires an improvement security, such as a bonds, for all proposed improvements within the City right of way to ensure the timely construction of such improvements. Public Improvement Agreements for each Site must be executed prior to start of construction within the City right-of-way. USA Properties will provide labor and materials and faithful performance bonds as required by the Agreements (**“EXHIBIT A”**).

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 cost to perform the work. In the event of default on the part of the Developer, the City would utilize the bond funding to complete the improvements.

For the construction of off-site improvements for Sites 1 and 2, the Developer will post bonds in the amount of One Hundred and Fifty-Three Thousand Six Hundred Fourteen Dollars (\$153,614.00, Site 1) and One Hundred Sixty-Seven Thousand Two Hundred Fifty-Six Dollars (\$167,256, Site 2) for completion of the public improvements. Bonds to secure payment for labor and materials for each site will also be posted in the amount of One Hundred and Fifty-Three Thousand Six Hundred Fourteen Dollars (\$153,614.00, Site 1) and One Hundred Sixty-Seven Thousand Two Hundred Fifty-Six Dollars (\$167,256, Site 2). The Developer will also be required to apply for an encroachment permit for the construction inspection of the right-of-way improvements.

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 PUBLIC
IMPROVEMENT AGREEMENTS FOR THE TERRACINA PROJECT AT THE
DUNES – SITES 1 & 2 BETWEEN THE CITY OF MARINA AND USA
PROPERTIES FUND, INC., AND; AUTHORIZING CITY MANAGER TO
EXECUTE THE PUBLIC IMPROVEMENT AGREEMENTS ON BEHALF OF
THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY
ATTORNEY

WHEREAS, at the regularly scheduled meeting of May 31, 2005, the City Council adopted Resolution No. 2005-127, certifying the Final Environmental Impact Report for the University Village Development Project, and;

WHEREAS, at the regularly scheduled meeting of May 31, 2005, the City Council adopted Resolution No. 2005-128, approving the General Plan Amendments, Resolution No. 2005-130, for the Specific Plan, Resolution No. 2005-131, for the Tentative Map and Resolution No. 2005-132, Design Review for the regional retail, the Village Promenade and all residential phases for the former University Village Development Project, and;

WHEREAS, at the regularly scheduled meeting of December 17, 2019, the City Council adopted Resolution No. 2019-140, approving an Operating Agreement as an administrative amendment of the Development Agreement clarifying and modifying certain project approvals for Specific Plan for The Dunes on Monterey Bay including to the Conforming Clarifications to the Schedule of Performance, and;

WHEREAS, pursuant to the Disposition and Development Agreement (DDA) executed in 2005, USA Properties Fund, Inc. (Affordable Housing Developer) has an agreement with Community Partners (MCP) and the City to provide 142 below market rate apartment units within Phase 3 of the University Village Specific Plan (currently The Dunes). Site 1 with 93 apartment units has been approved and under construction at the northeast intersection of 4th Avenue and Beacon Street. Site 2 with 49 apartment units has been approved and starting construction at the southwest corner of 2nd Avenue and 6th Street, and;

WHEREAS, USA Properties has submitted the on-site and off-site Improvement Plans for approval. Marina Municipal Code (MMC) section 16.06.090 sets the requirements for the off-site improvements. MMC section 16.16.100 requires an improvement security, such as a bonds, for all proposed improvements within the City right of way to ensure the timely construction of such improvements. Public Improvement Agreements for each Site must be executed prior to start of construction within the City right-of-way. USA Properties will provide labor and materials and faithful performance bonds as required by the Agreements (**Exhibit A**), 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 cost to perform the work. In the event of default on the part of the Developer, the City would utilize the bond funding to complete the improvements, and;

WHEREAS, for the construction of off-site improvements for Sites 1 and 2, the Developer will post bonds in the amount of One Hundred and Fifty-Three Thousand Six Hundred Fourteen Dollars (\$153,614.00, Site 1) and One Hundred Sixty-Seven Thousand Two Hundred Fifty-Six Dollars (\$167,256, Site 2) for completion of the public improvements. Bonds to secure payment for labor and materials for each site will also be posted in the amount of One Hundred and Fifty-Three Thousand Six Hundred Fourteen Dollars (\$153,614.00, Site 1) and One Hundred Sixty-Seven Thousand Two Hundred Fifty-Six Dollars (\$167,256, Site 2). The Developer will also be required to apply for an encroachment permit for the construction inspection of the right-of-way improvements.

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

1. Approve Public Improvement Agreements for the Terracina Project at the Dunes – Sites 1 & 2 between the City of Marina and USA Properties Fund, Inc., and;
2. Authorize the City Manager to execute the Public Improvement Agreements 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 19th day of July 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

Recording requested by and when
when recorded, return to:

City of Marina
211 Hillcrest Avenue
Marina, CA 93933
Attn: Public Works Director

Exempt from recording fee, per
Government Code Section 6103

APN: _____

PUBLIC IMPROVEMENT AGREEMENT
FOR IMPROVEMENT OF STREETS, INSTALLATION OF SIDEWALKS,
LANDSCAPING, STREET LIGHTS AND OTHER PUBLIC WORKS FACILITIES

– [ADDRESS OF DEVELOPMENT] –

This Public Agreement for Improvement of Streets, Installation of Sidewalks, Landscaping, Street Lights and Other Public Works Facilities (the “Agreement”) is made and entered into this _____ day of _____, 20____, by and between the City of Marina, herein called the “City,” a municipal corporation, and _____, a real property owner and developer, herein called the “Developer.” City and Developer are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties.”

Recitals

- A. Developer has presented to CITY for approval a plan of development (the “Development”) located at _____, Marina, California (the “Property”) within the City, pursuant to provisions of the CITY’s ordinances and regulations relating to development approval.
- B. Marina City Code Section 16.06.090 sets forth that improvements may include paving; gutter; curb; sidewalks; raised medians; street lights; street trees; landscaping; street signs; street barricades, walls and fences (the “Improvements”) necessary along the frontage of the Property as described and shown on Off-Improvement Plan Sheet(s) (the “Improvement Plans”). Completion of all improvements in accordance with the Improvement Plans shall be completed prior to final inspection.
- C. The Development has been approved, subject to the requirements and conditions on file in the Office of the Director of Public Works and incorporated into this Agreement by reference.
- D. The City has certain responsibilities for maintenance and operation of certain Improvements, utilities and public service facilities after acceptance by City, and the City agrees to discharge those responsibilities following its acceptance of the Improvements.

E. In consideration of the approval of the Development, Developer desires to enter into this Agreement, whereby Developer promises to install and complete, at Developer's own expense, all the public improvement work required by City in connection with the Development. Developer has secured this Agreement by improvement security required by the City and approved by the City Attorney

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 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. Performance by Developer of this Agreement shall not be construed to vest Developer's rights with respect to any change in any zoning or building law or ordinance.

Developer has been alerted to the requirements of California Labor Code section 1770 et seq. which require the payment of prevailing wage rates and the performance of other requirements if it is determined that this Agreement constitutes a public works contract. It shall be the sole responsibility of Developer to determine whether to pay prevailing wages for any or all work required by this Agreement. As a material part of this Agreement, Developer agrees to assume all risk of liability arising from any decision not to pay prevailing wages for the work required by this Agreement.

SECTION 2

The Developer agrees:

- a. To perform each and every provision required by the City to be performed by the Developer 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, 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 street improvements to said real property may be extended; however, City shall not be obligated to accept any such easement or right-of-way.
- c. Prior to acceptance of the Improvements by the City, 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 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 Developer or any contractor or subcontractor of the Developer, or any employee of the foregoing, grading or working upon said real estate; or (ii) any act or omission of Developer or Developer's 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 negligence or intentional acts of the City or any of its officials, boards or commissions or members thereof, agents or employees. City shall not be responsible for the design or construction of the Property or 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 Developer 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, Developer shall remain obligated for routine maintenance of the Improvements. After acceptance, City shall be obligated for the routine maintenance of all Improvements but Developer shall remain obligated to eliminate any defect in design or dangerous condition caused by any design or construction defect. Provisions of this Section shall remain in full force and effect for ten years following acceptance by City of the Improvements. The Improvement security shall not be required to cover the provisions of this Section. Developer 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.

d. To construct and improve, or have constructed and improved at its own cost, expense and liability, all public works facilities and other improvements described in the Improvement Plans submitted to the City in furtherance of this Agreement on file with the City. To obtain, prior to commencing work all necessary permits and licenses and to give all incidental notices required for the lawful construction of the I If during the course of construction and installation of the Improvements, it is determined that the public interest requires alterations to the Improvements, Developer shall undertake such design and construction changes as may be reasonably required by 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. Developer 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 Developer's 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 contractor of its obligations and the terms and conditions on which the City may obtain the proceeds of the bond. Alternatively, the Developer 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 Developer's 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 Developer or its contractors or their inability or refusal to perform this contract, 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 by Developer and acceptance of the Improvements by the City, provided that after completion of the Improvements by the Developer and acceptance of the Improvements by the City, Developer may substitute for the performance bond securing the warranty described above with a separate warranty bond issued by an admitted surety 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.

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 Developer may become legally indebted for labor, materials, tools, equipment or services of any kind used or employed by the contractor or subcontractor 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 Developer, or its contractor or subcontractors 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 California Civil Code Sections 8520, 8530 and 9100; (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 Developer, its 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 Civil Code Sections 8520, 8530 and 9100 so as to give a right of action to those persons or their assigns in any suit brought upon the bond.

Developer shall file with the Recorder's Office of the County of Monterey a notice of completion of the Improvements in accordance with California Civil Code section 3093.

The Developer 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, than renewed authority has been granted.

e. Any use by any person of the Improvements or any portion thereof, shall be at the sole and exclusive risk of Developer prior to City's acceptance of the Improvements. At all times during the term of this Agreement and until the Improvements constructed by Developer are accepted by City, Developer shall, at no cost to City obtain and maintain (1) 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; (2) workers' compensation insurance as required by law; and (3) 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 Developer 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).

Developer shall provide thirty (30) days written notice to City prior to termination, cancellation or modification. The insurance specified in (e) above shall (i) name City as additional insured, (ii) name City as a loss payee, and (iii) provide that City, although an additional insured or loss payee, may recover for any loss suffered by reason of the acts or omissions of Developer or Developer's contractors or subcontractors and shall be endorsed 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 acceptable to City. Prior to commencing any work pursuant this Agreement, Developer shall deliver to City the insurance company's certificate evidencing the required coverage, or if required by City a copy of the policies obtained. Not later than 30 days prior to policy expiration date on the current certificate of insurance, the Developer shall deliver to the City a new and updated certificate of insurance evidencing all required coverage remains in place.

Developer or its contractor(s) shall procure and maintain workers' compensation insurance with limits required by the California Labor Code and employer's liability insurance with limits of not less than \$1,000,000 per occurrence at all times during which the insured retains employees.

f. Developer shall pay to the City all fees, taxes and assessment imposed in connection with the Development and inspection of the Improvements including, but not limited to, plan check, design review, engineering, inspection, and other service fees and any impact of connection fees. These fees must be paid in full prior to the City's acceptance of the Improvements. The fees referred to above are not necessarily the only City fees, charges or other costs that have been, or will be, imposed on the Project and its development, and this Agreement shall in no way exonerate or relive the Developer from paying such other applicable fees, charges and/or costs.

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 (\$). 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

Developer will commence construction of the Improvements required by this Agreement within the time period set forth in the Schedule of Performance attached hereto as **Schedule 1** and incorporated herein by this reference (the "Schedule of Performance") between City and Developer, as the Schedule of Performance may be subsequently amended in writing. All the

provisions of this Agreement and all work to be done pursuant to the terms of this Agreement are to be completed within the time periods set forth in such Schedule of Performance. Developer shall maintain such public works facilities and other improvements described in this Agreement at Developer's 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. City agrees if it becomes necessary to allow Developer, by a prior writing signed by the Public Works Director, to keep streets closed to public traffic until the Improvements are accepted by the City and the bonds are released.

Improvement security may be released or reduced in the following manner:

- a. Improvement security given for faithful performance of the agreement may be released upon final completion and acceptance of the work; partial release of cash deposit improvement security as the work progresses shall be as established hereinabove.
- b. Improvement security securing the payment to the contractor, his subcontractors, and to persons renting equipment or furnishing labor or materials may, six months after the completion and acceptance of the work, be reduced to an amount not less than the total of all claims on which an action has been filed and notice thereof given in writing to the City Council, and if there are no actions filed, the improvement security may be released in full. City expressly may require the surety not to release the amount of security deemed necessary by the City to assure payment of reasonable expenses and fees, including reasonable attorney's fees.

SECTION 5

City shall not be responsible or liable for the maintenance or care of the Improvements until City approves and accepts them. City shall exercise no control over the Improvements until accepted by City. Any use by any person of the Improvements, or any portion thereof, shall be at the sole and exclusive risk of the Developer at all times prior to City's acceptance of the improvements. Developer shall maintain all the improvements in a state of good repair until they are completed by Developer and approved and accepted by the City, and until the security for the performance of this Agreement is released. Maintenance shall include, but shall not be limited to, repair of pavement, curbs, gutters, sidewalks, signals, parkways, water mains, and sewers; maintaining all landscaping in a vigorous and thriving condition reasonably acceptable to City; removal of debris from sewers and storm drains; and sweeping, repairing and maintaining in a good and safe condition all streets and street improvements. It shall be Developer's responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by City. If Developer fails to properly prosecute its maintenance obligation under this section, City may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. City shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the Improvements or their condition prior to acceptance.

SECTION 6

- a) Default of Developer shall include, but not be limited to: (1) failure to timely commence construction of the Improvements; (2) failure to complete construction of the Improvements within the time limitations set forth in the Schedule of Performance; (3) failure to timely cure any defect of the Improvements; (4) failure to perform substantial construction work for a period of

sixty calendar days after commencement of the work; (5) Developer's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy either voluntary or involuntary which Developer fails to discharge within thirty days; (6) commencement of a foreclosure action against the project or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure; or (7) failure to perform any other obligation under this Agreement. Notwithstanding the foregoing, Developer shall not be in default under this Agreement if it cures any default within thirty 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 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 Developer'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 the Developer. 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 Developer's 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 Developer's default under this Agreement, Developer authorizes City to perform such obligation sixty days after mailing written notice of default to Developer and to Developer's 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 Developer, and Developer's surety shall be liable to the City for any excess cost or damages occasioned 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, plants and other property belonging to Developer 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 Developer.

SECTION 7

That the following General Stipulations and any attached stipulations shall be completed, subject to the approval of the Public Works Director.

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 complete with a minimum interruption of traffic.

3. All work within the public right-of-way shall be subject to the approval of the Public Works Director or his or her designee.
4. All construction work shall be coordinated so that the existing residents and/or businesses have access to their properties.
5. All improvements shall be installed per the approved Improvement Plans.
6. The Developer shall provide to the City of Marina electronic copy of the "as built" and Improvement Plans as an AutoCAD drawing file (DWG format, latest AutoCAD edition).
7. Any reimbursements due the Developer, unless specified otherwise in writing in this Agreement, will expire ten (10) years after the date of execution of this Agreement.
8. Until the roads on the Property are open to the public, Developer shall 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.
9. Prior to the acceptance of any dedications or Improvements by City, Developer shall certify and warrant that neither the property to be dedicated nor Developer is in violation of any environmental law and neither the property to be dedicated nor the Developer is subject to any existing, pending or threatened investigation by any federal, state or local governmental authority under or in connection with environmental law. Neither Developer nor any third party will use, generate, manufacture, produce, or release, on, under, or about the property to be dedicated, any hazardous substance except in compliance with all applicable environmental laws. Developer has not caused or permitted the release of, and has no knowledge of the release or presence of, any hazardous substance on the property to be dedicated or the migration of any hazardous substance from or to any other property adjacent to, or in the vicinity of, the property to be dedicated. Developer's prior and present use of the property to be dedicated has not resulted in the release of any hazardous substance on the property to be dedicated. Developer shall give prompt written notice to City at the address set forth herein of: (i) Any proceeding or investigation by any federal, state or local governmental authority with respect to the presence of any hazardous substance on the property to be dedicated or the migration thereof from or to any other property adjacent to, or in the vicinity of, the property to be dedicated; (ii) Any claims made or threatened by any third party against City or the property to be dedicated relating to any loss or injury resulting from any hazardous substance; and, (iii) Developer's discovery of any occurrence or condition on any property adjoining in the vicinity of the property to be dedicated that could cause the property to be dedicated or any part thereof to be subject to any restrictions on its ownership, occupancy, use for the purpose for which it is intended, transferability or suit under any environmental law.

10. Nothing contained in this Agreement shall preclude City from expending monies pursuant to agreements concurrently or previously executed between the parties, 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 ordinances providing therefore, nor shall anything in this Agreement commit City to any such apportionment.

SECTION 8

Developer shall, at Developer's 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.

SECTION 9

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

SECTION 10

Nothing contained in this Agreement shall preclude City from expending monies pursuant to agreements concurrently or previously executed between the parties, 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 11

Developer shall not be entitled to assign its obligations under this Agreement to any transferee of all or any part of the property within the Project or to any other third party without the express written consent of City.

SECTION 12

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 and payment to the City by the Developer for the cost of all inspections. Such acceptance shall not constitute a waiver of defects by City. The City shall recover all inspection costs.

SECTION 13

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 the mutual consent of the parties.

SECTION 14

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 15

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 16

Time is of the essence of this Agreement.

SECTION 17

This Agreement constitutes 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 parties.

SECTION 18

In the event the Schedule of Performance (including any Conforming Clarifications thereto) 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. Any such extension may be granted without notice to Developer's surety and shall not affect the validity of this Agreement or release the surety on any security given for this Agreement.

SECTION 19

The Parties hereby mutually agree that neither this Agreement, nor any other related entitlement, permit or approval issued by the City for the Development shall operate to create the relationship of partnership, joint venture, or agency between City and Developer. Developers contractors and subcontractors are exclusively and solely under the control and dominion of Developer. Nothing herein shall be deemed to make Developer or its contractors an agent or contractor of the City.

SECTION 20

All notices, demands, invoices and written determinations shall be in writing and delivered to the following addresses, or such other addresses as the Parties may designate by written notice:

City of Marina
Attn: Public Works Director
211 Hillcrest Avenue
Marina, CA 93901

Developer

SECTION 21

This Agreement shall be construed with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate State court in the County of Monterey, California.

SECTION 22

This Agreement may be executed in counterpart originals, which taken together shall constitute one and the same instrument.

(Signatures contained on following page)

IN WITNESS WHEREOF, City and Developer have executed this Public Improvement Agreement as of the date first written above.

ATTEST:

CITY OF MARINA

Anita Shepherd-Sharp
Deputy City Clerk

Layne Long
City Manager
Date: _____

APPROVED AS TO FORM:

City Attorney

[DEVELOPER NAME]

Developer

By: _____

Name: _____

Title: _____

Date: _____

DRAFT

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 the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, 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 _____

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 the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20__9, 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 _____

SCHEDULE 1
SCHEDULE OF PERFORMANCE

(See attached Schedule)

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of July 19, 2022

CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-, APPROVING A CONTRACT WITH RINCON CONSULTING AND VERONICA TAM CONSULTING TO PROVIDE URBAN PLANNING SERVICES TO COMPLETE THE SIXTH CYCLE HOUSING ELEMENT FOR AN AMOUNT NOT TO EXCEED \$300,000; AND AUTHORIZE THE FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES, AND AUTHORIZE THE CITY MANAGER TO EXECUTE A CONTRACT AMENDMENT ON BEHALF OF CITY WITH RINCON CONSULTING AND VERONICA TAM CONSULTING SUBJECT TO FINAL REVIEW BY THE CITY ATTORNEY.

RECOMMENDATION: City Council consider

1. Adopt a Resolution No. 2022-, approving a contract with Rincon Consulting and Veronica Tam to provide urban planning services to complete the Sixth Cycle Housing Element for an amount not to exceed \$300,000 (**“EXHIBIT A”**); and
2. Authorize the Finance Director to make necessary accounting and budgetary entries, and
3. Authorize the City Manager to execute a contract amendment on behalf of City with Rincon Consulting subject to final review by the City Attorney.

BACKGROUND:

Affordable Housing Overlay-Fourth and Fifth Cycle Housing Elements

The Housing Element is the only chapter of the General Plan that is mandated by the State of California to be updated frequently. The update to the Housing Element is done based on cycles as determined by the California Department of Housing and Community Development (State HCD) and depending on which Council of Government (COG) a city is located in. The City of Marina is in the Association of Bay Area Governments (AMBAG COG). The Fourth Housing Element Cycle for the Association of Monterey Bay Area Governments (4th Cycle) ran from 2007-2014 and the Fifth Cycle ran from 2014-2023. As the Council is aware, the City of Marina is several years past due in getting its Fifth Cycle (5th) Housing Element certified by State HCD. The city agreed to increase the zoning within the Downtown Specific Plan to accommodate the Fifth Cycle housing allocation given to it by AMBAG.

On February 15, 2022 the City Council awarded a contract with Rincon Consulting to modify the Downtown Specific Plan to reduce the subjective elements of the plan per recent changes to state law and to create an affordable housing overlay zone in order for the City to meet its’ regional housing needs allocation for the Fifth (5th) Cycle. Rincon Consultant and city staff have been working on the affordable housing overlay zone and will be bringing this policy before the City Council in the next thirty to forty-five (30-45) days.¹ In meetings with State HCD staff, they generally seemed supportive of the idea, so if the City Council were to adopt the policy in the near-term, Marina could be made whole for previous Housing Element cycles.

¹ See the February 15, 2022 staff report for additional details about the Affordable Housing Overlay:
<https://www.cityofmarina.org/AgendaCenter>

Sixth Cycle Housing Element.

On a parallel track, while the city is seeking compliance with the previous RHNA cycles, work needs to begin in earnest on the Sixth Cycle Housing Element which all Monterey County cities must finish by December 15, 2023. This is a timely proposal because of recent changes to State law that mandate extended review periods including State HCD comment periods that total approximately one half of a year.² If the City Council were to authorize award of the contract on July 19, 2022 and city staff executes said contract by August 1st, city staff are fairly confident the process can be completed by December of 2023. Below is Table 1 (Sixth Cycle Housing Element Cycle) which shows the major milestones that must be met in order for the City to meet the project deadline.

Table 1 (Major 2031 Housing Element Milestones)		
Schedule	Major Milestones	Dates
Contract awarded	8/1/2022	Aug-22
Outreach, Prepare Draft HE, Workshop #1	12/1/2022	Aug-Nov 2022
Mandated Public Comment Period (30 days)/10 days to response in writing prior to review by the PC or CC	1/2/2023	30 days
Planning Commission review of draft HE	2/1/2023	Feb 2023 (Two Meetings)
Council Review of draft Housing Element (HE)	3/1/2023	March 2023 (Two Meetings)
State HCD first round of review (90 days)	6/1/2023	90 Days
City responses to HCD comments (60 days)/Workshop #2	8/1/2023	60 days
City resubmits draft HE back to State HCD and seeks letter of compliance (60 days)	10/2/2023	60 days
Planning Commission review of draft HE (second round)	10/12/2023	Oct 2023 (Two Meetings)
City Council review of Final HE (second round)	11/7/2023 11/21/2023	Nov 2023 (Two Meetings)
Submittal of the Final Housing Element to State HCD	12/5/2023	
AMBAG Deadline to submit to the State	12/15/2023	

In addition to the state review times identified in Table 1 above, this housing element cycle also mandates additional comment period from the public prior to Planning Commission and City Council review (see AB 215), and an extensive amount of outreach to all economic segments of the community to ensure future housing policies affirm fair housing per AB 686. All told, these additional regulatory requirements mandate immediate action by the City of Marina.

FISCAL IMPACT:

The contract amount shall not exceed \$300,000. This is proposed to be funded from the Unallocated General Fund Balance. It should be noted that lack of Housing Element compliance with the State of California has far greater fiscal implications for the City of Marina:

This is proposed to be funded from Unallocated General Fund Balance

² The first time we submit the Housing Element to the State, HCD has 90 days to review the document. The second time we submit the document they have 60 days to review so 150 days of the project schedule is already set and needs to be accounted for.

- *Active Transportation Program (ATP) Funds*-Recently, the Marina Public Works Department was ineligible to file for two million dollars in ATP funds to upgrade Imjin Parkway because the City does not have a certified Housing Element.
- *Safe Routes to School Funds*-The City did not file for one million dollars in Safe Routes to School funds in 2021 due to not having a Housing Element.
- *State Law Compliance*-As part of AB 72 (2017-2018) the California Office of the Attorney General may be notified that the City's Housing Element is out of compliance with Housing Element law, and the City may be subject to enforcement actions.
- *Loss of Local Land Use Controls*-The courts may suspend the locality's authority to issue building permits or grant zoning changes, variances, or subdivision map approvals.
- *Fees*-If a jurisdiction faces a court action stemming from its lack of compliance and either loses or settles the case, it often must pay substantial attorney fees to the plaintiff's attorneys in addition to the fees paid to its own attorneys. These fees can easily exceed \$100,000.

CONCLUSION

In conclusion, city staff are recommending approval of this contract to meet the City's long term Regional Housing Needs Allocation (RHNA) obligations

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
APPROVING A CONTRACT WITH RINCON CONSULTING AND VERONICA TAM
CONSULTING TO PROVIDE URBAN PLANNING SERVICES TO COMPLETE THE
DOWNTOWN SPECIFIC PLAN FOR A CONTRACT AMOUNT NOT TO EXCEED \$300,000

WHEREAS, the City of Marina desires to complete the Sixth Cycle Housing Element, and

WHEREAS, completion of the Sixth Cycle Housing Element will ensure the City's Regional Housing Needs Allocation (RHNA) obligations as identified by the California Department of Housing and Community Development (State HCD) and the Association of Monterey Bay Area Governments (AMBAG) are met by December 2023, and

WHEREAS, completion of the Housing Element requires an agreement with Rincon Consulting and Veronica Tam Consulting for urban planning services, and

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

1. Approve a contract with Rincon Consulting and Veronica Tam Consulting to provide Urban Planning Services to complete the Downtown Specific Plan for an amount not to exceed \$300,000; and
2. Authorize the Finance Director to make necessary accounting and budgetary entries, and
3. Authorize the City Manager to execute a contract amendment on behalf of City with Rincon Consulting subject to final review by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 19th of July 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

**CITY OF MARINA
AGREEMENT FOR PROFESSIONAL
CONSULTANT SERVICES**

THIS AGREEMENT is made and entered into on _____, 2022, by and between the City of Marina, a California charter city, hereinafter referred to as the "City," and, Rincon Consulting of San Luis Obispo hereinafter referred to as the "Contractor." City and Contractor are sometimes individually referred to as "party" and collectively as "parties" in this Agreement.

Recitals

- A. City desires to retain Contractor to provide ongoing housing element support.
- B. Contractor represents and warrants that it has the qualifications, experience and personnel necessary to properly perform the services as set forth herein.
- C. City desires to retain Contractor to provide such services.

Terms and Conditions

For of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and in consideration of the mutual promises contained herein, City and Contractor agree to the following terms and conditions:

1. Scope of Work.

(a) Contractor is hereby hired and retained by the City to work in a cooperative manner with the City to fully and adequately perform those services set forth in Exhibit "A" attached hereto ("Scope of Work") and by this reference made a part hereof. With prior written notice to Contractor, City may elect to delete certain tasks of the Scope of Work at its sole discretion.

(b) Contractor shall perform all such work with skill and diligence and pursuant to generally accepted standards of practice in effect at the time of performance. Contractor shall provide corrective services without charge to the City for work which fails to meet these standards and which is reported to Contractor in writing within sixty days of discovery. Should Contractor fail or refuse to perform promptly its obligations under this Agreement, the City may render or undertake the performance thereof and the Contractor shall be liable for any expenses thereby incurred.

(c) If services under this Agreement are to be performed by a design professional, as that term is defined in California Civil Code §2782.8(b)(2), design professional certifies that all design professional services shall be provided by a person or persons duly licensed by the State of California to provide the type of services described in Section 1(a). By delivery of completed work, design professional certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws, and the professional standard of care in California.

(d) Contractor is responsible for making an independent evaluation and judgment of all relevant conditions affecting performance of the work, including without limitation site conditions, existing facilities, seismic, geologic, soils, hydrologic, geographic, climatic conditions, applicable federal, state and local laws and regulations and all other contingencies or considerations.

(e) City shall cooperate with Contractor and will furnish all information data, records and reports existing and available to City to enable Contractor to carry out work outlined in Exhibit "A." Contractor shall be entitled to reasonably rely on information, data, records and reports furnished by the City, however, the City makes no warranty as to the accuracy or completeness of any such information, data, records or reports available to it and provided to Contractor which were furnished to the City by a third party. Contractor shall have a duty to bring to the City's attention any deficiency or error it may discover in any information provided to the Contractor by the City or a third party.

2. Term of Agreement & Commencement of Work.

(a) Unless otherwise provided, the term of this Agreement shall begin on the date of its full execution and shall expire on 2025 and will automatically be extended unless terminated by either party as provided herein. The date of full execution is defined as the date when all of the following events have occurred:

(i) This Agreement has been approved by the City's Council or by the board, officer or employee authorized to give such approval; and

(ii) The office of the City Attorney has indicated in writing its approval of this Agreement as to form; and

(iii) This Agreement has been signed on behalf of Contractor by the person or persons authorized to bind the Contractor hereto; and.

(iv) This Agreement has been signed on behalf of the City by the person designated to so sign by the City's Council or by the officer or employee authorized to enter into this Contract and is attested to by the Marina City Clerk.

(b) Contractor shall commence work on the Project on or by July 1, 2022. This Agreement may be extended upon written agreement of both parties. Contractor may be required to prepare a written schedule for the work to be performed, which schedule shall be approved by the City and made a part of Exhibit A, and to perform the work in accordance with the approved schedule.

3. Compensation.

(a) City liability for compensation to Contractor under this Agreement shall only be to the extent of the present appropriation to fund this Agreement. For services to be provided under this Agreement City shall compensate Contractor in an amount not to exceed \$300,000 Dollars [three hundred thousand dollars] in accordance with the provisions of this Section and the Fee Schedule attached hereto as Exhibit B and incorporated herein by this reference.

(b) Invoice(s) in a format and on a schedule acceptable to the City shall be submitted to and be reviewed and verified by the Project Administrator (see Section 5(a)) and forwarded to the City's Finance Department for payment. City shall notify Contractor of exceptions or disputed items and their dollar value within fifteen days of receipt. Payment of the undisputed amount of the invoice will typically be made approximately thirty days after the invoice is submitted to the Finance Department.

(c) Contractor will maintain clearly identifiable, complete and accurate records with respect to all costs incurred under this Agreement on an industry recognized accounting basis.

Contractor shall make available to the representative of City all such books and records related to this Agreement, and the right to examine, copy and audit the same during regular business hours upon 24-hour's notice for a period of four years from the date of final payment under this Agreement.

(d) Contractor shall not receive any compensation for Extra Work without the prior written authorization of City. As used herein, "Extra Work" means any work that is determined by the City to be necessary for the proper completion of the Project but which is not included within the Scope of Work and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with Exhibit B.

(e) Expenses not otherwise addressed in the Scope of Services or the Fee Schedule incurred by Contractor in performing services under this Agreement shall be reviewed and approved in advance by the Project Administrator (Section 5(a)), be charged at cost and reimbursed to Contractor.

(f) There shall be no charge for transportation within Monterey, Santa Cruz and San Benito Counties required for the performance of the services under this Agreement; travel to other locations must be approved in writing and in advance by the City, mileage will be charged at the then current standard rate for business travel as set by the U.S. Internal Revenue Service for such approved travel.

4. Termination or Suspension.

(a) This Agreement may be terminated in whole or in part in writing by either party in the event of a substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten days written notice of intent to terminate, and (2) provided an opportunity for consultation with the terminating party prior to termination.

(b) If termination for default is effected by the City, an equitable adjustment in the price provided for in this Agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due the Contractor at the time of termination may be adjusted to cover any additional costs to the City because of the Contractor's default. If after the termination for failure of Contractor to fulfill its contractual obligations, it is determined that the Contractor had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the City.

(c) The City may terminate or suspend this Agreement at any time for its convenience upon not less than thirty days prior written notice to Contractor. Not later than the effective date of such termination or suspension, Contractor shall discontinue all affected work and deliver all work product and other documents, whether completed or in progress, to the City.

(d) If termination for default is effected by the Contractor or if termination for convenience is effected by the City, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for termination shall provide for payment to the Contractor for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by Contractor relating to written commitments that were executed prior to the termination.

5. Project Administrator, Project Manager & Key Personnel.

(a) City designates as its Project Administrator Guido F. Persicone, Community Development Director or his designee who shall have the authority to act for the City under this Agreement. The Project Administrator or his/her authorized representative shall represent the City in all matters pertaining to the work to be performed pursuant to this Agreement.

(b) Contractor designates Kimiko Lizardi as its Project Manager who shall coordinate all phases of the Project. The Project manager shall be available to City at all reasonable times during the Agreement term.

(c) Contractor warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement. Contractor, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of services upon written request of City. Contractor has represented to City that certain key personnel will perform and coordinate the work under this Agreement. Should one or more of such personnel become unavailable, Contractor may substitute other personnel of at least equal competence upon written approval of the City. In the event that City and Contractor cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. The key personnel for performance of this Agreement are as follows: Kimiko Lizardi Jon Montgomery, Erik Holtz, Kat Castanon, Bryce Hane and other Rincon personnel of their choosing

6. Delegation of Work.

(a) If Contractor utilizes any subcontractors, consultants, persons, employees or firms having applicable expertise to assist Contractor in performing the services under this Agreement, Contractor shall obtain City's prior written approval to such employment. Contractor's contract with any subcontractor shall contain a provision making the subcontract subject to all provisions of this Agreement. Contractor will be fully responsible and liable for the administration, completion, presentation, and quality of all work performed. If such persons are utilized, they shall be charged at cost. City reserves its right to employ other contractors in connection with this Project.

(b) If the work hereunder is performed by a design professional, design professional shall be directly involved with performing the work or shall work through his, her or its employees. The design professional's responsibilities under this Agreement shall not be delegated. The design professional shall be responsible to the City for acts, errors or omissions of his, her or its subcontractors. Negligence of subcontractors or agents retained by the design professional is conclusively deemed to be the negligence of the design professional if not adequately corrected by the design professional. Use of the term subcontractor in any other provision of this Agreement shall not be construed to imply authorization for a design professional to use subcontractors for performance of any professional service under this Agreement.

(c) The City is an intended beneficiary of any work performed by a subcontractor for purposes of establishing a duty of care between the subcontractor and the City.

7. Skill of Employees. Contractor shall ensure that any employees or agents providing services under this Agreement possess the requisite skill, training and experience to properly perform such services.

8. Confidential and Proprietary Information. In the course of performing services under this Agreement Contractor may obtain, receive, and review confidential or proprietary documents, information or materials that are and shall remain the exclusive property of the City. Should Contractor undertake the work on behalf of other agencies, entities, firms or persons relating to the matters described in the Scope of Work, it is expressly agreed by Contractor that any such confidential or proprietary information or materials shall not be provided or disclosed in any manner to any of Contractor's other clients, or to any other third party, without the City's prior express written consent.

9. Ownership of Data. Unless otherwise provided for herein, all documents, material, data, drawings, plans, specifications, computer data files, basis for design calculations, engineering notes, and reports originated and prepared by Contractor, or any subcontractor of any tier, under this Agreement shall be and remain the property of the City for its use in any manner it deems appropriate. Contractor agrees that all copyrights which arise from creation of the work pursuant to this Agreement shall be vested in the City and waives and relinquishes all claims to copyright or intellectual property rights in favor of the City. Contractor shall provide two (2) sets of reproducible of the above-cited items, except for the computer data files which shall consist of one (1) set. Contractor shall use all reasonable efforts to ensure that any electronic files provided to the City will be compatible with the City's computer hardware and software. Contractor makes no representation as to long-term compatibility, usability or readability of the format resulting from the use of software application packages, operating systems or computer hardware differing from those in use by the City at the commencement of this Agreement. Contractor shall be permitted to maintain copies of all such data for its files. City acknowledges that its use of the work product is limited to the purposes contemplated by the Scope of Work and, should City use these products or data in connection with additions to the work required under this Agreement or for new work without consultation with and without additional compensation to Contractor, Contractor makes no representation as to the suitability of the work product for use in or application to circumstances not contemplated by the Scope of Work and shall have no liability or responsibility whatsoever in connection with such use which shall be at the City's sole risk. Any and all liability arising out of changes made by the City to Contractor's deliverables is waived against Contractor unless City has given Contractor prior written notice of the changes and has received Contractor's written consent to such changes.

10. Conflict of Interest.

(a) Contractor covenants that neither it, nor any officer or principal of its firm has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of the City or which would in any way hinder Contractor's performance of services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City Manager. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of the City in the performance of this Agreement.

(b) City understands and acknowledges that Contractor may be, as of the date of commencement of services under this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Contractor is unaware of any stated position of the City relative to such projects. Any future position of the City on such projects may result in a conflict of interest for purposes of this section.

(c) No official or employee of the City who is authorized in such capacity on behalf of the City to negotiate, make, accept, or approve, or take part in negotiating, making accepting or approving this contract, shall become directly or indirectly interested in this contract or in any part thereof. No officer or employee of the City who is authorized in such capacity and on behalf of the City to exercise any executive, supervisory, or similar function in connection with the performance of this contract shall become directly or indirectly interested personally in this contract or any part thereof.

11. Disclosure. Contractor may be subject to the appropriate disclosure requirements of the California Fair Political Practices Act, as determined by the City Manager.

12. Non-Discrimination.

(a) During the performance of this Agreement the Contractor shall comply with the applicable nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California and the City. In performing this Agreement, Contractor shall not discriminate, harass, or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), medical condition (including cancer), age, marital status, denial of family and medical care leave and denial of pregnancy disability leave. Contractor shall give written notice of its obligations under this clause to labor organizations with which it has a collective bargaining or other agreement.

(b) Contractor shall include the nondiscrimination and compliance provisions of this Section in all subcontracts.

13. Indemnification.

(a) Other than in the performance of professional services by a design professional, which shall be solely as addressed by subsection (b) below, and to the full extent permitted by law, Contractor shall (1) immediately defend (with independent counsel reasonably acceptable to the City) and (2) indemnify the City, its Council, boards, commissions, employees, officials and agents ("Indemnified Parties" or in the singular "Indemnified Party") from and against all liabilities regardless of nature or type arising out of or resulting from Contractor's performance of services under this contract, or any negligent or wrongful act or omission of the Contractor or Contractor's officers, employees, agents or subcontractors. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines and judgments, associated investigation and administrative expenses; defense costs including but not limited to reasonable attorney's fees; court costs; expert witness fees; and costs of alternate dispute resolution ("Liabilities"). The Contractor's obligation to indemnify applies unless it is adjudicated that its liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an Indemnified Party, the Contractor's indemnification obligation shall be reduced in proportion to the established comparative liability of the Indemnified Party.

(b) To the fullest extent permitted by law (including without limitation California Civil Code Sections 2782.8), when the services to be provided under this Agreement by Contractor are design professional services to be performed by a design professional, as that term is defined under said section 2782.8, the design professional shall (1) immediately defend (with independent counsel reasonably acceptable to the City) and (2) indemnify the City and any Indemnified Party for all Liabilities regardless of nature or type that arise out of, pertain to, or relate to the

negligence, recklessness, or willful misconduct of design professional, or the acts or omissions of an officer, employee, agent or subcontractor of the design professional. The design professional's obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an Indemnified Party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an Indemnified Party, then design professional's indemnification obligation shall be reduced in proportion to the established comparative liability of the Indemnified Party.

(c) All obligations under this section are to be paid by Contractor as incurred by City. The provisions of this Section are not limited by the provisions of sections relating to insurance including provisions of any worker's compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to City, its employees and officials. An allegation or determination of comparative active negligence or willful misconduct by an Indemnified Party does not relieve the Contractor from its separate and distinct obligation to defend the City. Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subcontractor, sub tier contractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance or subject matter of this Agreement. In the event Contractor fails to obtain such indemnity obligations from others as required here, Contractor agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder.

(d) If any action or proceeding is brought against any Indemnified Party by reason of any of the matters against which the Contractor has agreed to defend the Indemnified Party, as provided above, Contractor, upon notice from the City, shall immediately defend any Indemnified Party at Contractor's expense by counsel reasonably acceptable to the City. An Indemnified Party need not have first paid for any of the matters to which it is entitled to indemnification in order to be so defended.

(e) The review, acceptance or approval of the Contractor's work or work product by any Indemnified Party shall not affect, relieve or reduce the Contractor's indemnification or defense obligations. This obligation to indemnify and defend City, as set forth herein, is binding on the successors, assigns, or heirs of Contractor and shall survive the completion of the services or the termination of this Agreement or this Section.

14. Insurance.

(a) As a condition precedent to the effectiveness of this Agreement and without limiting Contractor's indemnification of the City, Contractor agrees to obtain and maintain in full force and effect at its own expense the insurance policies set forth in Exhibit "C" "Insurance" attached hereto and made a part hereof. Contractor shall furnish the City with original certificates of insurance, manually autographed in ink by a person authorized by that insurer to bind coverage on its behalf, along with copies of all required endorsements. All certificates and endorsements must be received and approved by the City before any work commences. All insurance policies shall be subject to approval by the City Attorney and Risk Manager as to form and content. Specifically, such insurance shall: (1) protect City as an additional insured for commercial general and business auto liability; (2) provide City at least thirty days written notice of cancellation, material reduction in coverage or reduction in limits and ten days written notice for non-payment of premium; and (3) be primary with respect to City's insurance program. Contractor's insurance is not expected to respond to claims that may arise from the acts or omissions of the City.

(b) City reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required herein by giving Contractor ninety days advance written notice of such change. If such change should result in substantial additional cost of the Contractor, City agrees to negotiate additional compensation proportional to the increased benefit to City.

(c) All required insurance must be submitted and approved the City Attorney and Risk Manager prior to the inception of any operations by Contractor.

(d) The required coverage and limits are subject to availability on the open market at reasonable cost as determined by the City. Non availability or non affordability must be documented by a letter from Contractor's insurance broker or agency indicating a good faith effort to place the required insurance and showing as a minimum the names of the insurance carriers and the declinations or quotations received from each. Within the foregoing constraints, Contractor's failure to procure or maintain required insurance during the entire term of this Agreement shall constitute a material breach of this Agreement under which City may immediately suspend or terminate this Agreement or, at its discretion, procure or renew such insurance to protect City's interests and pay any and all premium in connection therewith and recover all monies so paid from Contractor.

(e) By signing this Agreement, Contractor hereby certifies that it is aware of the provisions of Section 3700 *et seq.*, of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provision of that Code, and that it will comply with such provisions at all such times as they may apply during the performance of the work pursuant to this Contract. Unless otherwise agreed, a waiver of subrogation in favor of the City is required.

15. Independent Contractor. The parties agree that Contractor, its officers, employees and agents, if any, shall be independent contractors with regard to the providing of services under this Agreement, and that Contractor's employees or agents shall not be considered to be employees or agents of the City for any purpose and will not be entitled to any of the benefits City provides for its employees. City shall make no deductions for payroll taxes or Social Security from amounts due Contractor for work or services provided under this Agreement.

16. Claims for Labor and Materials. Contractor shall promptly pay when due all amounts payable for labor and materials furnished in the performance of this Agreement, so as to prevent any lien or other claim under any provision of law from arising against any City property (including reports, documents, and other tangible matter produced by the Contractor hereunder), against the Contractor's rights to payments hereunder, or against the City, and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

17. Discounts. Contractor agrees to offer the City any discount terms that are offered to its best customers for the goods and services to be provided herein, and apply such discounts to payment made under this Agreement which meet the discount terms.

18. Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

19. Dispute Resolution. If any dispute arises between the parties as to proper interpretation or application of this Agreement, the parties shall first meet and confer in a good faith attempt to resolve the matter between themselves. If the dispute is not resolved by meeting and conferring, the matter shall be submitted for formal mediation to a mediator selected mutually by the parties.

The expenses of such mediation shall be shared equally between the parties. If the dispute is not or cannot be resolved by mediation, the parties may mutually agree (but only as to those issues of the matter not resolved by mediation) to submit their dispute to arbitration. Before commencement of the arbitration, the parties may elect to have the arbitration proceed on an informal basis; however, if the parties are unable so to agree, then the arbitration shall be conducted in accordance with the rules of the American Arbitration Association. The decision of the arbitrator shall be binding, unless within thirty days after issuance of the arbitrator's written decision, any party files an action in court. Venue and jurisdiction for any such action between the parties shall lie in the Superior Court for the County of Monterey.

20. Compliance with Laws.

(a) Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California and the City including but not limited to laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees. This Agreement shall be governed by, enforced and interpreted under the laws of the State of California. Contractor shall comply with new, amended or revised laws, regulations or procedures that apply to the performance of this Agreement.

(b) If the Project is a "public work," or prevailing wages are otherwise required, Contractor shall comply with all provision of California Labor Code section 1720 *et seq.*, as applicable, and laws dealing with prevailing wages, apprentices and hours of work.

(c) Contractor represents that it has obtained and presently holds all permits and licenses necessary for performance hereunder, including a Business License required by the City's Business License Ordinance. For the term covered by this Agreement, the Contractor shall maintain or obtain as necessary, such permits and licenses and shall not allow them to lapse, be revoked or suspended.

21. Assignment or Transfer. This Agreement or any interest herein may not be assigned, hypothecated or transferred, either directly or by operation of law, without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

22. Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, sent by or certified mail, postage prepaid with return receipt requested, addressed as follows:

To City:	City Manager City of Marina City Hall 211 Hillcrest Avenue Marina, California 93933
To Contractor:	Megan Jones, Principal 2969, 1530 Monterey St STE D, San Luis Obispo, CA 93401

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three days after deposit in the custody of the U.S. Postal Service. A copy of any notice sent as provided herein shall also be delivered to the Project Administrator and Project Manager.

23. **Amendments, Changes or Modifications.** This Agreement is not subject to amendment, change or modification except by a writing signed by the authorized representatives of City and Contractor.
24. **Force Majeure.** Notwithstanding any other provisions hereof, neither Contractor nor City shall be held responsible or liable for failure to meet their respective obligations under this Agreement if such failure shall be due to causes beyond Contractor's or the City's control. Such causes include but are not limited to: strike, fire, flood, civil disorder, act of God or of the public enemy, act of the federal government, or any unit of state or local government in either sovereign or contractual capacity, epidemic, quarantine restriction, or delay in transportation to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.
25. **Attorney's Fees.** In the event of any controversy, claim or dispute relating to this Agreement, or the breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorney's fees and costs.
26. **Successors and Assigns.** All of the terms, conditions and provisions of this Agreement shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the parties. Nothing in this paragraph is intended to affect the limitation on assignment.
27. **Authority to Enter Agreement.** Contractor has all requisite power and authority to conduct its business and to execute, deliver and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right and authority to make this Agreement and bind each respective party.
28. **Waiver.** A waiver of a default of any term of this Agreement shall not be construed as a waiver of any succeeding default or as a waiver of the provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.
29. **Severability.** Should any portion of this Agreement be determined to be void or unenforceable, such shall be severed from the whole and the Agreement will continue as modified.
30. **Construction, References, Captions.** Since the parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. The captions of the various sections are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, content or intent of this Agreement.
31. **Advice of Counsel.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor or against either party by reason of the extent to which each party participated in the drafting of this Agreement.
32. **Counterparts.** This Agreement may be signed in counterparts, each of which shall constitute an original.
33. **Time.** Time is of the essence in this contract.

34. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters as set forth in this Agreement, and no other agreement, statement or promise made by or to any party or by or to any employee, officer or agent of any party, which is not contained in this Agreement shall be binding or valid.

IN WITNESS WHEREOF, Contractor and the City by their duly authorized representatives, have executed this Agreement, on the date first set forth above, at Marina, California.

CITY OF MARINA

CONTRACTOR

By: Layne Long, City Manager

Date: _____, 2022

By: Megan Jones, Principal

Date: _____, 2022

Approved as to

form:

By: _____
City Attorney

Section 1 (a) SCOPE OF WORK -

[Include Work Schedule if required.]



RINCON CONSULTANTS, INC.

2511 Garden Road, Suite C-250 • Monterey, California 93940 • 831-333-0310

July 13, 2022

Guido Persicone, Community Development Director
 City of Marina Community Development Department
 211 Hillcrest Avenue
 Marina, California 93933

Subject: Proposal to prepare City of Marina Housing Element Update

Dear Mr. Persicone:

Rincon Consultants, Inc. (Rincon) is enthusiastic about the opportunity to partner with Veronica Tam & Associates and work with the City of Marina to develop the 6th Cycle Housing Element. We have assembled a team of highly skilled planning and housing professionals who combine extensive experience with both the technical and policy aspects of Housing Element updates, public engagement, extensive knowledge of the California Environmental Quality Act (CEQA) and many years of experience working on Housing Element and General Plan updates. Rincon has completed or is currently preparing 6th Cycle Housing Element updates for over 20 jurisdictions in the SANDAG, SCAG, ABAG, and StanCOG regions. We are proud of our team's ability to work effectively with City staff, decision-makers, and community groups to develop and implement innovative approaches and solutions.

In this submittal you will find a comprehensive approach to preparing the Housing Element update that includes dedicated project management, inclusive community engagement, integrated planning strategies and effective implementation tools to support the planning process. Our approach includes:

- **Experienced and Responsive Project Leadership.** Rincon will provide a project management team that is committed to continuous and consistent communication, responsiveness and is adaptable to unforeseen circumstances. Project Manager **Ryan Russell's** local knowledge and in-depth understanding of and experience leading 6th Cycle housing element updates and corresponding CEQA documentation will support the complex needs of this project. **Kimiko Lizardi** as a hands-on Principal-in-Charge brings over 20 years of experience in long-range and environmental consulting and provides strategic oversight for a wide variety of projects statewide including housing elements updates, general plan updates, specific plans and municipal code amendments. In addition, Kimiko is currently serving as Principal-In-Charge for the Downtown Vitalization Specific Plan and Housing Overlay project. **Megan Jones**, as QA/QC and CEQA technical advisor, brings a depth of experience on projects in Marina as well as highly controversial planning and CEQA projects across the Monterey Bay area. She will support strategic guidance and ensure that the right Rincon resources are available when needed.
- **Collaborative Partnership.** In addition to our experience, we are partnered with **Veronica Tam and Associates, Inc. (VTA)**, a well-recognized consulting firm with unparalleled experience in housing planning and community development. VTA has worked on more than 30 6th Cycle housing elements, providing valuable experience with the California Department of Housing and Community Development's (HCD's) interpretation of new state laws and supported the update of the City of Marina's 4th and 5th Cycle housing element updates.

- **Housing Element and Affirmatively Furthering Fair Housing.** We will characterize the major challenges that the City of Marina's special needs populations, including low income and disadvantaged communities, face and will carefully examine social-equity solutions and community benefit when exploring housing opportunities. This will be informed by community engagement and will support policies aimed at improving housing diversity and access.
- **Efficient Tools.** We will support the City's review of housing sites and existing land uses through an interactive web-based tool, creating efficiencies in the review process and supporting data visualization.

We are confident that the Rincon team will continue to meet the needs of the City, and we welcome an opportunity to meet with you to further discuss our proposal. Please do not hesitate to contact us if you have questions about this proposal or need additional information.

Sincerely,

Rincon Consultants, Inc.



Kimiko Lizardi, Director of Environmental and
Long-Range Planning

klizardi@rinconconsultants.com

Contact for Clarification



Megan Jones, MPP, Principal

mjones@rinconconsultants.com

Authorized to contractually obligate and negotiate
on behalf of Rincon <mailto:mjones@rinconconsultants.com>

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1 Workplan Overview

Our team's approach to the City of Marina Housing Element is based on our knowledge of Marina through our local and regional work, including work on Marina's 4th and 5th Cycle Housing Element Updates, the preparation of a Housing Overlay Zone to implement the City's 5th Cycle Housing Element RHNA obligation as well as the update of the City's Downtown Vitalization Specific Plan. Rincon is also working with the City on a public parcel viewer and digitization of the City's general plan land use and zoning maps. Through our current and past work with the City, we have a clear understanding of the 5th Cycle RHNA obligation, the City's existing General Plan and Zoning Code, familiarity with the City's Annual Progress Report and housing sites that have been identified through previous housing element efforts. We also understand that the City is navigating a number of parallel planning efforts and has differing needs relative to Housing Element compliance, the Downtown Vitalization Specific Plan and upcoming general plan and zoning code updates. We are also cognizant that Marina has limited staffing resources and therefore requires a consultant partner that can respond to multiple, concurrent tasks and has the experience and technical expertise to support the City in developing the best strategies to meet the City's immediate and longer term objectives.

Robust and Compliant Sites Inventory Analysis

Local jurisdictions are facing significant and challenging decisions to meet the new 6th Cycle Housing Element requirements including new State laws on adequate sites, non-governmental constraints, fair housing, and housing element update processes as well as increased scrutiny and standards of review from the California Department of Housing and Community Development (HCD).

This cycle has also seen dramatic increases in Regional Housing Needs Allocation (RHNA) requirements while available land and sites identification requirements become more stringent. While the City of Marina's 6th Cycle RHNA allocation (685 units) is a decrease from the 5th Cycle RHNA (1,308 units), site adequacy must still be reviewed. In the past, housing elements were focused on demonstrating that zoning could accommodate additional housing to meet the RHNA, but this cycle requires a detailed demonstration through local and regional trends and more robust site adequacy analysis that proposed RHNA sites will likely be developed within the next eight-year planning period. This sites adequacy analysis must take into consideration:

- No net loss of capacity when sites are developed
- Continued ability to meet the RHNA by income group
- Stringent standards for assessing feasibility when reusing vacant and underutilized sites that have been previously included in the 5th Cycle Housing Element
- Demonstrated trends of development

To support this more robust sites inventory analysis, Rincon's scope includes the creation of a web-based, GIS application to prepare and support interactive review of the 6th Cycle housing sites inventory. We constantly strive to improve the efficiency of our work effort and the quality of our products and we understand the benefits, including cost savings, that technology can play. To that end, this cutting-edge tool will enhance collaboration between the City and the Rincon team as we work together to identify the 6th Cycle housing sites inventory and will provide the City with a tool that can be used post Housing Element adoption to support ongoing management of the City's sites inventory.

AFFH Compliance

In addition, the 6th Cycle Housing Element update requires greater emphasis and commitment to significant and meaningful change and correction of fair housing issues. California Government Code Section 8899.50 requires local agencies to affirmatively further fair housing (AFFH). Under California law, AFFH means “taking meaningful actions, in addition to combatting discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.” Government Code Section 8899.50 stipulates that an assessment of fair housing (AFH) includes the following components:

- A summary of fair housing issues in the jurisdiction and an assessment of the jurisdiction’s fair housing enforcement and fair housing outreach capacity
- An analysis of available federal, state, and local data and knowledge to identify integration and segregation patterns and trends, racially or ethnically concentrated areas of poverty, disparities in access to opportunity, and disproportionate housing needs within the jurisdiction, including displacement risk
- An assessment of the contributing factors for the fair housing issues identified under the Government Code
- An identification of the jurisdiction’s fair housing priorities and goals, giving highest priority to those factors that limit or deny fair housing choice or access to opportunity, or negatively impact fair housing or civil rights compliance, and identifying the metrics and milestones for determining what fair housing results will be achieved
- Strategies and actions to implement those priorities and goals, which may include, but are not limited to, enhancing mobility strategies, and encouraging development of new affordable housing in areas of opportunity, as well as place-based strategies to encourage community revitalization, including preservation of existing affordable housing, and protecting existing residents from displacement

Through our experience in other regions preparing AFFH analyses consistent with HCD’s Affirmatively Furthering Fair Housing Guidance for All Public Entities and for Housing Elements (AFFH Guidance Memo), we have learned the importance of gaining local area knowledge to support a more thorough understanding of fair housing issues including why the problems exist and why they persist. In addition, the process of housing sites identification needs to also include an analysis of whether the sites identified serve the purpose of replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity. The AFFH analysis must also include meaningful actions that demonstrate how each jurisdiction is doing its part to combat fair housing issues at the local level. Ensuring community engagement reaches priority populations who are often underrepresented and most negatively affected by fair housing issues will be a critical element of our community engagement approach.

Inclusive and Meaningful Community Engagement

The Rincon team will work closely with the City to develop a systematic and inclusive outreach and engagement plan that outlines a transparent process and identifies key stakeholders and underrepresented populations throughout the City. The engagement will be clear and visual allowing complex concepts to be understood by all members of the community, and feedback will be recognized by clearly documenting and illustrating how community input shaped the proposed Housing Element goals, policies and programs. We will work closely with City staff to ensure that we develop and employ engagement methods that include – and elevate – traditionally underrepresented voices and low- income communities.

2 Scope of Work

Task 1 Project Initiation

Subtask 1.1 Initial Sites Review

The Rincon team and City staff will meet to discuss and review the sites inventory. The City is in the process of identifying and developing a Housing Overlay to implement the 5th Cycle RHNA obligation. Due to the decrease in the City's 6th Cycle RHNA, it is anticipated that the City would be able to use the Housing Overlay sites to support the lower income RHNA requirements for the 6th Cycle. However, additional review is needed to determine if there is still sufficient capacity remaining in previously identified sites to support the moderate and above-moderate income RHNA. During the sites review process, the City may also want to consider if there are other logical sites to support the RHNA. In addition, the team will want to review the sites in the context of AFFH requirements. The Rincon team will walk the City through a preliminary review of the sites and discuss any additional opportunities sites. During this meeting, the Rincon team will provide an overview of the site identification methodology and requirements ensuring City staff has an understanding of HCD's guidance and requirements.

Deliverables

- Sites Inventory Presentation
- Agenda and Meeting Notes

Task 2 6th Cycle Housing Element Update

Subtask 2.1 Evaluation of Past Accomplishments

Veronica Tam and Associates (VTA) will lead the preparation of the Evaluation of Past Accomplishments. VTA will evaluate the City's progress in implementing the 2015-2023 Housing Element. VTA will review the City's Housing Element Annual Progress Reports as a starting point for this evaluation and will provide an assessment of the effectiveness of the prior housing element's goals and programs. VTA will also interview staff to discuss the initial findings and obtain additional insight regarding the effectiveness of the programs. VTA will compile the evaluation in a matrix format, including a brief discussion of the policy/program, an evaluation of progress and an initial recommendation on the appropriateness of the goal/program to carry forward into the updated 6th Cycle Housing Element.

What's New in 6th Cycle

The review of past accomplishments must include a discussion of the City's cumulative impact on addressing the housing needs of special populations.

Deliverables

- Draft Memorandum Evaluation of Past Accomplishments of the 2015-2023 Housing Element (word)
- Final Memorandum Evaluation of Past Accomplishments of the 2015-2023 Housing Element (word and PDF)

Subtask 2.2 Housing Needs Assessment and Housing Constraints

A. Housing Needs Assessment

VTa will lead the preparation of the Housing Needs Assessment. The Housing Needs Assessment will contain the following topics to satisfy Government Code Section 65583(a) requirements:

a) demographics, income, and employment trends; b) household characteristics; c) housing stock characteristics; d) at-risk housing analysis; and analysis of special housing needs. We will utilize a variety of data sources to update the City's Housing Element needs assessment. These include ACS, 2020 Census, Department of Finance population and housing estimates, State Employment Development Department labor statistics, and housing market data, among others.

What's New in 6th Cycle

HCD requires specific information on farmworker populations (including seasonal and migrant farmworkers). American Community Survey (ACS) data is not adequate to address this requirement. If local farmworker population is not available, HCD will accept county-level, USDA Agricultural Census data. HCD also requires specific information on the jurisdictions housing stock conditions based on local knowledge. ACS data on age of structure and availability of plumbing and heating facilities is not considered adequate.

B. Housing Constraints

VTa will lead the preparation of the Housing Constraints section. The Housing Constraints section will identify potential governmental and non-governmental constraints to housing production, including environmental and infrastructural constraints. This analysis must contain a review of factors that may potentially constrain the development, improvement, and preservation of housing in City of Marina. Factors to be reviewed include market, governmental, environmental, and infrastructural constraints.

The City's 6th Cycle Housing Element will be updated to meet new state law requirements. Additional impediments may be identified based on discussions with staff and community stakeholders.

What's New in 6th Cycle

- State Legislation:
 - Assembly Bill (AB) 101 – Low Barrier Navigation Centers
 - AB 139 – Parking standards for emergency shelters
 - AB 2162 – Supportive housing meeting specific criteria and located within 0.5 miles from transit
 - AB 1762, SB 1227, and AB 2345 – Density Bonus
 - SB 35 and objective development standards
- Compliance with transparency in development regulations
- Non-governmental constraints – assessment of NIMBYism, lending practices, shortage of labor, and other economic factors
- HCD new policy direction to address the provision of large residential care for seven or more persons

Assumptions

- City staff will provide one set of consolidated comments on the Screencheck Draft Housing Needs Assessment and Housing Constraints sections
- The Administrative Draft Housing Needs Assessment and Housing Constraints sections will be incorporated into the Administrative Draft Housing Element in Task 2.6.

Deliverables

- Screencheck Draft Housing Needs Assessment and Housing Constraints sections (word)

- Administrative Draft Housing Needs Assessment and Housing Constraints sections incorporated into the Administrative Draft Housing Element

Subtask 2.3 Housing Sites and Housing Resources

The City of Marina was assigned a RHNA of 685 housing units (94 very low income, 62 low income, 173 moderate-income, and 356 above moderate). This RHNA is a 48 percent decrease from the City's 5th Cycle RHNA of 1,308 housing units.

Rincon will lead the housing resources and housing sites opportunities analysis which will include the following key components:

What's New in 6th Cycle

State law pertaining to adequate site requirements (AB 1397 and SB 166) has changed. AB 1397 places higher standards on the reuse of sites, reliance on nonvacant sites and extreme sizes of sites (too small and too large). SB 166 requires a no-net loss accounting that necessitates a sites inventory with a comfortable buffer (typically 15-30 percent).

A. Housing Sites Opportunities

Rincon will use the City's current housing sites inventory as a starting point and will work with City staff to determine which sites are still viable RHNA sites based on new state law requirements. Working with City staff, Rincon will update the site selection criteria to identify new opportunities sites and to reevaluate sites previously identified in the 5th Cycle Housing Element Land Inventory. As part of the site selection process, we will consider General Plan policies and land use densities, zoning, available infrastructure and opportunities within approved plans, and major hazards (such as sea-level rise and wildfires). Rincon has also proposed an optional task that would support a more thorough understanding of the City's existing land use condition and underutilized sites. It is not required to support Housing Element compliance, but could offer additional insight into areas of opportunity, not only for housing site identification but for redevelopment potential throughout the City that might be realized and supported under future planning efforts including the Downtown Vitalization specific Plan and General Plan update (see Optional Task A).

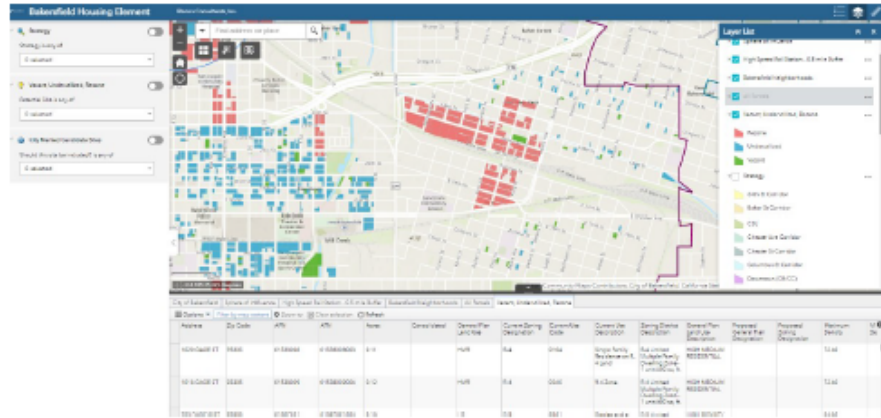
This task requires collaboration with City staff to identify and evaluate individual sites and essential development criteria and likelihood of development based on local knowledge such as ownership status and interest, tenant status, stability and turnover, and particular opportunities and constraints. The Housing Sites Inventory analysis will include the steps further described below.

B. Site Inventory Selection Tool

To support collaboration between the Rincon team and City staff, Rincon will prepare a Site Inventory Selection tool. This is a web-based, GIS application that will allow the team to review the site inventory in an interactive GIS format. The tool will allow the City to comment on individual sites identified and to propose modifications to selections.

C. Document Potential Sites

Rincon will use the Site Inventory Selection tool to identify sites and support the sites inventory analysis. Rincon will document the realistic development capacity of each site based on local development trends and/or proposed programs. The potential sites will be visualized in the



D. Review Sites for Affirmatively Furthering Fair Housing (AFFH)

Rincon will prepare an evaluation of the sites to determine how they meet AFFH requirements and will work with City staff to determine if the sites identified in the inventory are located throughout the community in a manner that has the ability to affirmatively further an increase in fair housing.

E. Non-Vacant Sites Analysis

Rincon will complete an analysis of non-vacant sites to address a portion of the RHNA. As part of this task, we will analyze realistic development potential within the planning period by considering the extent that a non-vacant site's existing use impedes additional residential development, the jurisdiction's past experience converting existing uses to higher density residential development, market trends and conditions.

F. Local Housing Trends

Anticipated and actual project densities will be used to project and substantiate assumed future development yields of proposed RHNA sites. This step assumes that City staff will provide documentation to compare the maximum zoning density to the actual project yield, including percentage and types of affordable units from development projects built, approved or under review during the 5th Cycle period. This step will also be informed by input from residential developers obtained during focus group meetings in Task 3.2 to support estimated residential capacities on proposed RHNA sites.

G. Infrastructure Constraints

We will work with City staff and the Marina Coast Water District and appropriate utility providers to determine if parcels included in the sites inventory have sufficient access to water, sewer and dry utilities and adequate capacity to support housing development. This step assumes that GIS supporting data will be provided, if available to support the analysis conducted by Rincon. This step also assumes that City staff will support the review of existing plans and programs and support Rincon in the identification of potential limitations or constraints and improvements necessary to support housing development on the identified sites. This task does not include technical infrastructure analyses.

Assumptions

- Rincon will use an internal web-app to support City staff review of housing sites selection

- City staff will provide comments on the housing sites through the web-app, including up to two rounds of review (screencheck and administrative draft)

Deliverables

- Screencheck Draft Site Inventory (Web-App)
- Administrative Draft Site Inventory (Web-App)
- Site Inventory excel tables and GIS shapefiles

H. Housing Resources

This task includes preparation of the Housing Resources section. The Housing Resources section will include a discussion of the following:

- Future housing needs, including a discussion of the RHNA requirement and planned or approved units and Accessory Dwelling Units (RHNA credit);
- Residential sites inventory, including methodology, site suitability, realistic development capacity and adequacy in meeting RHNA;
- Availability of infrastructure and services; and
- Financial resources for affordable housing.

Assumptions

- City staff will provide one set of consolidated comments provided on the Screencheck Draft Housing Resources section
- The Administrative Draft Housing Resources section will be incorporated into the Administrative Draft Housing Element in Task 2.6.

Deliverables

- Screencheck Draft Housing Resources section (word)
- Administrative Draft Housing Resources section incorporated into the Administrative Draft Housing Element

Subtask 2.4 Affirmatively Further Fair Housing

Rincon will prepare the AFFH analysis and will incorporate it as a new appendix. The AFFH analysis will address fair housing issues, identify contributing factors, develop goals and actions, and review prior goals and actions. Fair housing issues to be assessed include review of

fair housing enforcement and capacity, segregation and integration, racially/ ethnically concentrated areas of poverty, access to opportunity, and disproportionate housing needs and displacement risk. Analysis will consider local and regional patterns and trends, and local data and knowledge gathered through effective community engagement, as further described in Task 3.2. The Project Team has worked closely with HCD to fulfill the new and extensive AFFH guidance and HCD requirements.

What's New in 6th Cycle

The federal AFFH rule requires the jurisdiction to take "deliberate action to explicitly address, combat, and relieve disparities resulting from past and current patterns of segregation to foster more inclusive communities." AB 686 extended this AFFH requirement to cities and counties in California. Cities must incorporate fair housing issues, analysis, goals, and actions when updating their housing element.

Assumptions

- City staff will provide one set of consolidated comments provided on the Screencheck Draft AFFH section

- The Administrative Draft AFFH section will be incorporated into the Administrative Draft Housing Element in Task 2.6.

Deliverables

- Screencheck Draft AFFH section (word)
- Administrative Draft AFFH section incorporated into the Administrative Draft Housing Element

Subtask 2.5 Update Marina's Housing Goals, Quantified Objectives, and Policies

VTA will lead preparation of the housing goals, policies, and quantified objectives. Based upon the analyses and research conducted in the previous tasks, VTA will update the housing programs. For each program included in the Housing Element, VTA will establish the timeframe for implementation, specific objectives, funding sources, and responsible agencies. The programs will satisfy requirements of Government Code Sections 65583(b) and (c).

What's New in 6th Cycle

State laws require the Housing Plan include specific programs:

- By-right approval of reuse sites if 20 percent is set aside for affordable housing
- Replacement housing for development on sites with existing uses
- Monitoring of no net loss
- Incentives to facilitate ADU development
- SB 35 and objective development standards
- AFFH meaningful actions to promote housing mobility, access to opportunity, reduce displacement, provide fair housing outreach and enforcement, and implement place-based neighborhood improvements.

Assumptions

- City staff will provide one set of consolidated comments provided on the Screencheck Draft Housing Plan
- The Administrative Draft Housing Plan will be incorporated into the Administrative Draft Housing Element in Task 2.6.

Deliverables

- Screencheck Draft Housing Plan section (word)
- Administrative Draft Housing Plan section incorporated into the Administrative Draft Housing Element

Subtask 2.6 Draft Housing Element 2023–2031

Rincon will compile the sections from previous tasks and prepare the following versions of the Draft Housing Element 2023–2031

- Administrative Draft Housing Element for staff review
- Public Review Draft for public and City Council review
- HCD Review Draft

What's New in 6th Cycle

AB 215 passed in 2021 (effective January 1, 2022) changes the public review process for the Housing Element.

- Draft Housing Element must be available for a 30-day review period prior to submitting for HCD review
- If comments are received, the City must take at least 10 business days to address the comments prior to submitting to HCD for review
- HCD review of the Draft Housing Element is extended to 90 days (from the 60-day review under old law)

Since individual sections of the Screencheck Draft Housing Element will be reviewed under previous tasks, this task assumes minimal revisions to the Administrative Draft Housing Element to prepare the public review version of the document.

During HCD's review the Rincon team will work to address all HCD comments. We will communicate with HCD and facilitate review of the revisions via revised pages. All revisions made to the Draft Housing Element will be shown as tracked changes. The goal is to secure a Finding of Substantial Compliance on the Draft Element before proceeding to adoption. This task includes two rounds of HCD review.

Deliverables

- Administrative Draft Housing Element (word)
- Public Review Draft Housing Element (word and PDF)
- HCD Review Draft (word and PDF)

Subtask 2.7 Land Use Element Consistency Review

Rincon will conduct a consistency review of the City of Marina's General Plan Land Use Element and Land Use Map to determine consistency with the draft Housing Element. Rincon will prepare a memo identifying amendments found to be necessary for consistency with the Housing Element. Rincon will also identify land use map amendments as required to implement the policies and programs set forth in the Housing Element update.

Deliverables

- Land Use Element consistency memo

Optional Task A: Existing Land Use Map and Inventory

Rincon will lead the preparation of an existing land use inventory for the City of Marina. The inventory will be prepared using GIS and will rely on existing data sources. This task also assumes that City staff will support data verification, including any necessary windshield surveys or google map photo interpretations as further described below.

To support collaboration between the Rincon team and City staff during this process, Rincon will prepare a web-based, GIS application (Web-App) that will allow City staff to review and verify the existing land use data in an interactive GIS format. The Web-App will allow City staff to comment on individual parcels and propose modifications. It will also be used for housing sites selection as further described in Task 2.3.

Existing Land Use

The first step of the existing land use inventory will be to establish the existing land use baseline. This task assumes that County of Monterey Assessor Parcel Data will be used to prepare an existing land use database. Rincon will work with the City to prepare an existing land use classification list. This list will identify the land use category and provide a brief description of the use. This may require the consolidation or clarification of land use classifications used in the County of Monterey Assessor Parcel Data. Rincon will reclassify the existing uses based on the approved existing use classification list, as needed.

Rincon will perform a comparative analysis of existing use categories to existing general plan land use categories to identify any discrepancies or nonconformities. Prior to initiating this analysis, Rincon will prepare an existing/general plan land use cross walk table for City staff review and approval. This task assumes that existing general plan land use data is readily available and does not require additional update or cleanup.

Rincon will add the existing land use data layer and the nonconforming data layer to the Web-App for City staff review and data verification. This task assumes that City staff will support data verification, as needed through local knowledge, windshield surveys or google map interpretations. This task assumes that City staff will provide one round of consolidated comments through the Web-App.

Existing Intensity/Density

Rincon will prepare an analysis of existing land use intensity for non-residential uses and dwelling unit density for residential uses. For non-residential use categories, Rincon will rely on County of Monterey Assessor Parcel data to provide parcel sizes and Open Street Map data to provide building footprints to estimate existing built areas. Rincon will rely on building height data provided by the Association of Marina Bay Area Governments (AMBAG) to estimate existing Floor Area Ratio. The Floor Area Ratio estimates will be spot checked at a neighborhood level to verify number of stories using Google Street View. For residential use categories, Rincon will rely on parcel size and unit count data provided in the County of Monterey Assessor Parcel data. Rincon will work with City staff to define intensity and density ranges to display the data.

Inventory Report and Maps

Rincon will prepare a brief inventory report containing the following:

- Brief description of the existing land use inventory methodology
- Existing Land Use map and Existing Land Use summary table that calculates the amount of land within each use category
- Nonconforming Use map and table organized by assessor parcel number, identifying those parcels where the existing use does not match the general plan land use designation
- Existing FAR and Existing Density maps

Rincon will also provide all GIS shapefiles and excel tables used to support the inventory and analysis.

Assumptions

- Existing land use and existing density data will be based on readily available assessor parcel data from the County of Monterey
- Existing intensity data will be based on an FAR calculation using readily available assessor parcel data from the County of Monterey, readily available building heights from AMBAG, readily available building footprint data from Open Street Map, and google map photo checks at a neighborhood level
- Mapping and analyses will be based on geospatial data provided by the City or readily available online
- City staff will provide any necessary field verification across all data sets

- City staff will provide all parcel-level comments for the existing land use inventory within the Web-App

Deliverables

- Up to two virtual meetings with City staff to discuss the existing land use map(s) and inventory
- Inventory Report, including Maps (word and PDF)
- GIS shapefiles
- Data tables (excel)

Optional Task B: Post Adoption Revisions

After adoption, the Housing Element must be submitted to HCD for its final review (60 days) and certification. This task includes additional support to the City to achieve State certification of the Housing Element, if HCD returns with an additional round of comments post-adoption.

What's New in 6th Cycle

AB 1398, passed in 2021, changes the requirements of the Housing Element regarding the timeline for rezoning. Housing Elements are due within 120-days from the statutory deadline. This 120-day period is commonly known as the "grace period". Prior to AB 1398, the Housing Element must be adopted within the grace period or jurisdictions would be subject to a four-year mid-term update requirement. AB 1398 eliminated the four-year, mid-term penalty and instead focuses on the need for jurisdictions to complete their necessary rezonings to accommodate the RHNA as soon as possible. Under AB 1398, a jurisdiction must achieve substantial compliance status within the grace period to have three years to complete the rezoning. If the City is unable to achieve compliance status within the grace period, it only gets one year to complete the necessary rezoning for RHNA.

Task 3 Community Engagement Strategy and Participation

Subtask 3.1 Community Engagement Strategy

Rincon understands that public engagement will be critical for the success of the Housing Element update. Rincon will kick off the community engagement effort by developing a Community Engagement Plan that will educate, inform, and gain meaningful input from a broad and diverse range of groups and populations in Marina. Community engagement will focus on the community at-large, directly affected stakeholders including property owners, businesses, residents and interest groups, civic decision-makers, and disenfranchised communities. The community engagement plan will be consistent with best practices and guidelines referenced in OPR's latest Technical Advisory, as well as HCD housing element update guidance. The engagement effort will be designed to effectively build collaborative interest, identify common values and goals in the project direction given the diverse group of local stakeholders, and to bring new participants into the conversation. To best accomplish this, our team will provide options for community engagement as a part of the Community Engagement Plan. A final Community Engagement Plan will be prepared in response to comments received from City staff.

Deliverable

- Draft and Final Community Engagement Plan (electronic format)

Subtask 3.2 Community Engagement

One of the most critical aspects of the Housing Update Element process is the public participation process. The Housing Element, and the newly added AFFH analysis in particular, relies heavily upon local knowledge to supplement and better understand the data and housing issues at hand, as well as, creating the programs that work best to serve local and regional needs.

The Rincon team also recognizes the importance and significance of involving those hard-to-reach groups and special needs populations, such as persons experiencing homelessness, elderly residents, single-parent households, non-English speaking individuals, persons with disabilities, and racial/ethnic minority families.

What's New in 6th Cycle?

AB 686 (Affirmatively Furthering Fair Housing) passed in 2017 requires that the outreach activities be informed by AFFH characteristics.

Our strategy for public participation includes using multiple forms of outreach and offering a variety of options for community members to engage and share information about their neighborhoods and experiences. We have outlined a general approach for Community Engagement below, which will be further refined with key City staff.

A. Virtual Focus Group Meetings/Stakeholder Interviews

Engagement of and input from local advocacy groups, minority and special needs populations, and housing developers are important to the Housing Element update (and required by HCD). We recommend engaging them early in the update process to receive feedback that can be incorporated into the Housing Element. The Rincon team will work with the City to conduct up to 15 separate interviews or 4-5 virtual focused group meetings to discuss the element update and receive feedback on constraints, resources, and opportunities in Marina, disadvantaged communities, and populations most vulnerable to climate change. We will work closely with City staff to identify stakeholders that represent a broad cross-section of the community so that the consultation list includes market rate developers, affordable housing developers and fair housing advocates, and community-based organizations.

B. Community Workshops

We propose one in-person workshop and one online/virtual (live) community workshops to engage with community residents, agencies, and key stakeholders. At the first workshop, to be held during initial preparation of the Housing Element update, we will provide a brief presentation summarizing the update process, background and contextual information including purpose, goals, objectives, contents and key issue and concerns. During the second workshop, we will present the public review draft Housing Element update.

A key advantage of online engagement is that it makes the meetings more convenient for individuals to attend from their homes or remotely; and it can be more easily accessible to some residents who would otherwise have to find transportation or have mobility issues. Another advantage of the online platform is the ability to record the workshop for later viewing, sharing, and summarizing.

C. Virtual Study Session

The Rincon team will facilitate one virtual study session with the Planning Commission or City Council to be organized as a "Housing Element 101" presentation, including details on the structure and importance of a Housing Element, HCD and AMBAG RHNA allocation methodologies, current housing characteristics and site selection strategies.

Deliverable

- Website Content and Email/Social Media Blasts (up to six)
- One Housing Survey
- Stakeholder Interviews/Focused Group Meetings
- Workshops (one in person, one virtual)
- Study Session (one virtual)

Optional Task C: Spanish Language Support Services

The Rincon team can support up to eight hours of document translation services for materials such as fliers, an online survey, and website content. These services can also include non-certified translation services for up to two virtual focus group meetings and up to four in-person meetings to include two workshops and two study sessions. Interpretation services would include an in-person translator who will simultaneously translate the English speaker(s) words and phrases into Spanish and for virtual meetings, a translator who will simultaneously translate the English speaker(s) words and phrases into Spanish via Zoom.

Optional Task D: Participatory Mapping Exercises and Tools

Participatory mapping exercises are a type of survey that allows participants to view, comment, and prioritize specific topics. Marina's sites inventory is anticipated to largely rely on sites previously used during the 5th Cycle Housing Element. However, if there is a need for a different site strategy, participatory mapping exercises are useful in supporting engagement around the sites inventory. Rincon can develop online maps that can be utilized as part of the online survey, or separately, when the site inventory is ready for public review. This participatory mapping exercise would allow community members to identify and rank current housing conditions, identify and rank potential opportunity sites, and rate potential methods for implementing affordable housing, design standards, and policy changes to reduce barriers to housing. The tool would show locations where housing should be avoided (i.e., safety hazard zones: airport safety zones, flood zones, sea level rise zones, fire hazard zones, etc.), should be carefully planned (i.e., historic districts), and then identify potential locations to be considered where RHNA housing needs could be met. Public feedback will be summarized in the Public Participation section and incorporated throughout the Housing Element update.

Optional Task E: Online Survey and Website Content

As part of the community engagement strategy, the Rincon team can collaborate with the City to develop content for the City of Marina webpage including:

- **Outreach Language.** Rincon will prepare language for the City of Marina website, City-generated newsletter, email blasts, social media, and informational fliers to keep the community engaged and informed at key point in the process. Rincon will prepare content to announce up to six project milestones in English and Spanish, which the City can repurpose for its various platforms. This task does not include development of a stand-alone website for the Housing Element.

- **Online Survey.** Knowing that many residents lead busy lives and may not be able to set aside time or have the ability to attend a virtual workshop, Rincon will design and disseminate a survey that will allow people to participate on their own time and in their own way. Rincon will draft the survey and revise questions based on staff feedback. Staff will be responsible for advertising the survey's availability through the City's other communication channels. Following its closing, an accompanying summary report will be created with numerical breakdowns of responses, charts, and graphs where applicable, and narrative descriptions of the qualitative results. Public feedback will be summarized in the Public Participation section and incorporated throughout the Housing Element update.

Task 4 CEQA Analysis

As discussed previously, the City has a number of parallel planning efforts in process. The timing of the adoption of the Housing Element update and the potential impacts resulting from the identified housing sites will drive the appropriate CEQA strategy.

The City is currently preparing the Housing Overlay Zone and a separate IS-MND and anticipates preparation of an EIR to support the Downtown Vitalization Specific Plan. The team will strategize with City staff to explore opportunities for streamlining CEQA while also considering legal defensibility, project timelines and costs. For the purposes of this scope of work, an IS-MND is outlined below and included in the cost estimate.

Subtask 4.1 Preparation of Project Description

Rincon will prepare a preliminary Project Description and assume City staff will conduct one round of review of the Project Description and provide one set of consolidated comments and edits.

Deliverables

- Preliminary Project Description (electronic delivery)

Subtask 4.2 Administrative Draft IS-MND

After City staff review and approval of the project description, Rincon will prepare an internal review (Administrative) Draft IS-MND, which will document existing conditions, project impacts, programmatic mitigation measures, and resulting level of significance for each of the topical areas required under CEQA. The 2015-2023 Housing Element IS-MND will be utilized to the extent practical to streamline this review. Rincon will perform basic modeling/quantification for such issues as transportation, air quality, greenhouse gas emissions (GHGs), noise, and utilities, and will develop programmatic mitigation that could be applied to future housing projects under the Housing Element. Each of the environmental issue areas included in the CEQA Environmental Checklist Form will be addressed at a level of detail sufficient to allow Rincon to make determinations of significance.

Rincon assumes that the City will draft and handle all noticing of letters for Assembly Bill (AB) 52 and Senate Bill (SB 18) compliance. However, Rincon can assist with these activities for an additional fee.

Assumptions

- This scope relies on screening level analysis and existing documentation. It does not include any technical studies. Should technical studies be required, Rincon will work with the City to obtain or prepare a separate scope and fee.

Deliverables

- Administrative Draft IS-MND (electronic delivery)

Subtask 4.3 Public Review Draft IS-MND

Rincon will respond to one round of consolidated City comments on the Administrative Draft IS-MND and prepare the Public Review Draft IS-MND. We assume comments on the Administrative Draft IS-MND will be provided in an electronic and editable format and will not be substantive or require additional analysis. Rincon will address one round of consolidated comments from City staff on the Public Review IS-MND prior to release to the public.

Rincon will provide an electronic copy (PDF) of the Public Review Draft IS-MND and Notice of Intent (NOI) to the City and will submit both documents digitally to the State Clearinghouse. The City will be responsible for posting the Public Review Draft IS-MND on the City's website, posting the NOI with the City Clerk, and other noticing required under CEQA, including coordination and payment for any newspaper notices. Rincon can assist with these tasks for an additional fee on a time and materials basis.

Deliverables

- Public Review Draft IS-MND (electronic delivery)

Subtask 4.4 Final IS-MND

Upon receipt of public comments on the Draft IS-MND, Rincon will prepare draft response to comments and an Administrative Final IS-MND for review by City staff. For the purposes of cost estimating, this scope of work assumes that up to four comment letters will be received, including one lengthy (over three pages) and/or substantive letter, that can be adequately responded to in a maximum of 18 professional staff hours. The actual level of effort required to respond will depend on the length, detail, and sophistication of the comments, in addition to the number of letters received. We reserve the right to reevaluate the effort level and request a scope amendment upon close of the public comment period.

Upon receipt of comments on the Administrative Final IS-MND, we will incorporate changes and prepare the Final IS-MND. This task will also include preparation of the Mitigation Monitoring and Reporting Program (MMRP), which will include a list of mitigation measures, monitoring timing, and responsibility.

If the project is approved, Rincon will prepare a Notice of Determination (NOD) for the City to file with the County Clerk. The City will be responsible for payment of County Clerk and California Department of Fish & Wildlife (CDFW) fees.

Deliverables

- Final IS-MND (electronic delivery)
- MMRP (electronic delivery)
- Notice of Determination

Task 5 Public Hearings

This task includes a budgeted allowance for up to two in-person public hearings to support staff, one before the Planning Commission, and one before City Council for the adoption of the Housing Element update. We will present the element update and respond to questions as directed by City staff. This budget assumes that Rincon's PM and CEQA lead will be in attendance and that either VTA or Rincon's PIC will attend.

Additional public hearing attendance will be billed on a time and materials basis, per Rincon's and/or VTA's billing rates in effect at the time the service is provided.

Deliverable

- In-person presentation support for two public hearings

Task 6 Project Management

At the onset of the project, Rincon will refine the scope and develop a schedule to show where the project is tracking with other work efforts in the City. Throughout the project, Rincon will proactively identify issues, immediately bring those issues to the attention of City staff, identify potential solutions, and coordinate with City staff as to the best course of action. The Rincon project manager and PIC will participate in 30-minute project management conference calls every other week (approximately 44 calls) with the project team. Rincon will use email communications and have telephone/videoconference conversations with City staff, as needed, during the course of the project to ensure clear communication. Rincon will prepare monthly invoices with status reports documenting the progress made each month on completing the project, and review and update the schedule when necessary.

Deliverables

- Project schedule
- Agendas and meeting notes for biweekly Project Status calls (electronic format)
- Monthly invoices

3 Organization

Team Organization

Illustrated below is the composition of our team.

Staff	Position/Role
Kimiko Lizardi	Principal-in-charge
Ryan Russell	Project Manager
Megan Jones	CEQA Technical Lead
Veronica Tam & Associates	Housing Technical Lead

4 Project Schedule

The Rincon team is prepared to begin the work program described in this proposal immediately upon authorization to proceed. Due to the City's anticipated start date for the project, which is late in the current housing cycle, achieving adoption by the statutory deadline of December 31, 2023 may not be possible. However, it is still possible to adopt within the 120-day grace period following the statutory deadline. AB 1398 requires that certification be achieved within the grace period in order to have three years to complete any required rezonings for RHNA. If certification is not achieved by the grace period, the City will have one year to complete the rezonings for RHNA, if necessary. During the kick off meeting, Rincon will work with the City to establish a clear and detailed schedule, including deliverables and key milestones. Rincon will coordinate with City staff to explore streamlining opportunities and refine the schedule as detailed in Task 1.2. Ensuring sufficient time for meaningful engagement and applying realistic timeframes to support the full scope of the project will be important for the program's overall success.

5 Cost

Cost Assumptions

Rincon has provided an itemized budget inclusive of anticipated costs associated with the project, broken down by task and person-hour, including labor categories, hourly rate, estimated hours per task and total number of hours and costs, along with subconsultant labor and direct costs. This budget has been prepared with the objective of providing an honest assessment of fees and expenses, and we have identified assumptions aimed at ensuring clear expectations. Our approach includes estimating costs for optional tasks understanding that the City may request additional assistance.

Rincon can work with City staff to strategize and adjust the approach to best meet the City's needs. In addition, Rincon can also help the City identify potential cost savings measures. In particular, there are ways to leverage City staff resources for certain aspects of the project (such as community engagement) to create a more cost-effective program. Rincon assumed the following in developing our scope of work and cost estimate.

- All deliverables will be provided electronically in PDF and/or Word format. Comments from the City will be provided as a consolidated set of comments in editable electronic format (i.e., as track changes in MS Word). Following review, each deliverable will be finalized and submitted in electronic (PDF) format. PDFs will not be provided in ADA compliant format. With the exception of the final adopted Housing Element that Rincon will ship to HCD as an optional task, the City would be responsible for printing all other hard copy documents.
- Costs have been allocated to tasks based upon Rincon's proposed approach. Rincon may re-allocate costs among tasks and/or direct costs as circumstances warrant so long as the adjustments maintain the total price within its authorized amount.
- With the exception of those public hearings and meetings identified as in-person, all other community outreach will be conducted virtually.

Cost Estimate

The following table summarizes the total costs, by task for Rincon and VTA. The total cost including optional tasks is **\$299,698.67**, without optional tasks is **\$249,339**.



RINCON CONSULTANTS, INC.

22-13167 Marina Housing Element Update

Cost Estimate

	Rate	Hours	Labor Budget	Direct Expenses	Total Budget
Task 1: Project Initiation		18.00	3,088.00	736.00	3,824.00
1.1 Initial Sites Review Strategy		18.00	3,088.00	736.00	3,824.00
Task 2: Housing Element Update		399.00	65,593.00	51,658.00	117,251.00
2.1 Evaluation of Past Accomplishments		3.00	674.00	3,450.00	4,124.00
2.2 Housing Needs Assessment and Housing Constraints		20.00	3,856.00	28,750.00	32,606.00
2.3 Housing Sites and Housing Resources		152.00	24,452.00	1,472.00	25,924.00
2.4 Affirmatively Furthering Fair Housing		115.00	17,385.00	736.00	18,121.00
2.5 Update Marina's Housing Goals, Objectives and Policies		10.00	2,302.00	13,800.00	16,102.00
2.6 Draft Housing Element 2023-2031		78.00	13,536.00	3,450.00	16,986.00
2.7 Land Use Element Consistency Review		21.00	3,388.00	0.00	3,388.00
Task 3: Community Engagement		217.00	39,060.00	1,104.00	40,164.00
3.1 Community Engagement Plan		13.00	2,228.00	0.00	2,228.00
3.2 Community Engagement		204.00	36,832.00	1,104.00	37,936.00
Task 4: Environmental Review		218.00	35,720.00	0.00	35,720.00
4.1 Project Description		16.00	2,992.00	0.00	2,992.00
4.2 Administrative Draft IS/MND		134.00	21,510.00	0.00	21,510.00
4.3 Public Draft IS/MND		42.00	6,696.00	0.00	6,696.00
4.4 Response to Comments/Final IS/MND and MMRP		26.00	4,522.00	0.00	4,522.00
Task 5: Public Hearings		64.00	16,592.00	0.00	16,592.00
		64.00	16,592.00	0.00	16,592.00
Task 6 Project Management		138.00	29,780.00	2,208.00	31,988.00
		138.00	29,780.00	2,208.00	31,988.00
Reimbursable Expense		0.00	0.00	3,800.00	3,800.00
		0.00	0.00	3,800.00	3,800.00
Optional Tasks		283.00	48,893.00	1,466.67	50,359.67
Optional A Existing Land Use Map and Inventory		73.00	12,269.00	0.00	12,269.00
Optional B Post Adoption Revisions		58.00	9,880.00	0.00	9,880.00
Optional C Spanish Language Support Services		44.00	8,668.00	1,466.67	10,134.67
Optional D Participatory Mapping Exercises and Tools		68.00	11,112.00	0.00	11,112.00
Optional E Online Survey and Website Content		40.00	6,964.00	0.00	6,964.00
Project Total		1,337.00	238,726.00	60,972.67	299,698.67

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Section 3 (a)

FEE SCHEDULE



Rincon Consultants, Inc.

Standard Fee Schedule for Environmental Sciences and Planning Services

Professional, Technical and Support Personnel*	Hourly Rate
Principal II	\$295
Director II	\$295
Principal I	\$280
Director I	\$280
Senior Supervisor II	\$245
Supervisor I	\$228
Senior Professional II	\$212
Senior Professional I	\$197
Professional IV	\$174
Professional III	\$161
Professional II	\$145
Professional I	\$128
Associate III	\$117
Associate II	\$102
Associate I	\$95
Senior GIS Specialist	\$160
GIS/CADD Specialist II	\$140
GIS/CADD Specialist I	\$125
Technical Editor	\$130
Project Accountant	\$110
Billing Specialist	\$95
Production Specialist	\$105
Clerical	\$95

*Professional classifications include environmental scientists, urban planners, biologists, geologists, marine scientists, GHG verifiers, sustainability experts, cultural resources experts, and other professionals. Expert witness services consisting of depositions or in-court testimony are charged at the hourly rate of \$375.

Reimbursable Expenses

Direct Cost	Rates
Photocopies – Black and White	\$0.20 (single-sided) & \$0.40 (double-sided)
Photocopies – Color	\$1.50 (single-sided) & \$3.00 (double-sided)
Photocopies – 11 x 17	\$0.50 (B&W) & \$3.30 (color)
Oversized Maps	\$8.00/square foot
Digital Production	\$15/disc and \$20/flash drive
Light-Duty and Passenger Vehicles*	\$88/day
4WD and Off-Road Vehicles*	\$140/day

* \$0.65/mile for mileage over 50 and for all miles incurred in employee-owned vehicles.

Other direct costs associated with the execution of a project, that are not included in the hourly rates above, are billed at cost plus 15%. These may include, but are not limited to, laboratory and drilling services, subcontractor services, authorized travel expenses, permit charges and filing fees, mailings and postage, performance bonds, sample handling and shipment, rental equipment, and vehicles other than covered by the above charges.

Annual Escalation. Standard rates subject to annual escalation. **Payment Terms.** All fees will be billed to Client monthly and shall be due and payable upon receipt or as indicated in the contract provisions for the assignment. Invoices are delinquent if not paid within ten (10) days from receipt or per the contractually required payment terms.

Exhibit C - Insurance

Contractor agrees to provide insurance in accordance with the requirements set forth herein. If Contractor uses existing coverage to comply with these requirements and that coverage does not meet the requirements set forth herein, Contractor agrees to amend, supplement or endorse the existing coverage to do so. Contractor shall furnish the City with original certificates of insurance, manually autographed in ink by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by the City before any work commences. The City reserves its right to require complete, certified copies of all required insurance policies at any time. The following coverage will be provided by Contractor and maintained on behalf of the City and in accordance with the requirements set forth herein.

Commercial General Liability (primary). Commercial general liability insurance covering Contractor's operations (and products where applicable) is required whenever the City is at risk of third party claims which may arise out of Contractor's work or presence on City premises. Contractual liability coverage is a required inclusion in this insurance.

General liability insurance coverage shall be at least as broad as ISO form CG 00 01 10 01 and approved in advance by the City Attorney and Risk Manager. Total limits shall be no less than one million dollars (\$1,000,000) combined single limit per occurrence for general liability, bodily injury, personal injury and property damage. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project or the general aggregate limit shall be two million dollars (\$2,000,000). Contractor must give written notice to the City of any pending claim, action or lawsuit which has or may diminish the aggregate. If any such claim or lawsuit exists, Contractor shall be required, prior to commencing work under this Agreement, to restore the impaired aggregate or prove it has replacement insurance protection to the satisfaction of the City Attorney and Risk Manager.

City, its Council, boards and commissions, officers, employees, agents and volunteers shall be added as additional insured, and the policy shall be endorsed with a form equivalent to ISO form CG 20 10 10 93, that contains the provisions required by this contract. Coverage shall apply on a primary, non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to the City or any agent of City. Coverage is not expected to respond to the claims which may arise from the acts or omissions of the City. Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. Coverage shall contain no contractors' limitation endorsement. There shall be no endorsement or modification limiting the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage or employment-related practices.

Umbrella Liability Insurance. Umbrella liability insurance (over primary) shall apply to bodily injury/property damage, personal injury/advertising injury, at a minimum, and shall include a "drop down" provision providing primary coverage above a maximum \$25,000.00 self-insured retention for liability not covered by primary policies but covered by the umbrella policy. Coverage shall be following form to any underlying coverage.

Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion and no contractor's limitation endorsement. Policies limits shall be not less than one million dollars (\$1,000,000) per occurrence and in the aggregate, above any limits required in the underlying policies shall have starting and ending dates concurrent with the underlying coverage.

Business Auto. Automobile liability insurance is required where vehicles are used in performing the work under this Agreement or where vehicles are driven off-road on City premises, it is not required for simple commuting unless City is paying mileage. However, compliance with California law requiring auto liability insurance is a contractual requirement.

If automobile insurance is required for work under this Agreement coverage shall be at least as broad as ISO form CG 00 01 10 01 including symbol 1 (Any Auto) approved by the City Attorney and Risk Manager. Coverage shall be endorsed to stated that the City, its Council, boards and commissions, officers, employees, agents and volunteers shall be added as additional insured with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Contractor or for which the Contractor is responsible with a form equivalent to ISO form CG 20 10 10 93. Limits shall be no less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage. Starting and ending dates shall be concurrent. If Contractor owns no autos, a non-owned auto endorsement to the commercial general liability policy described above is acceptable.

Workers' Compensation/Employers' Liability. Workers' Compensation and Employer's Liability insurance are not required for single-person contractors. However, under California law these coverages (or a copy of the State's Consent to Self-Insure) must be provided if Contractor has any employees at any time during the period of this Agreement. Policy(s) shall be written on a policy form providing workers' compensation statutory benefits as required by law. Employers' liability limits shall be no less than one million dollars (\$1,000,000) per accident or disease and shall be scheduled under any umbrella policy described above. Unless otherwise agreed, policy(s) shall be endorsed to waive any right of subrogation as respects the City, its Council, boards and commissions, officers, employees, agents and volunteers.

Property Insurance. Property insurance, in a form and amount approved by the City Attorney and Risk Manager, is required for Contractors having exclusive use of premises or equipment owned or controlled by the City. City is to be named a Loss Payee "As Its Interest May Appear" in property insurance in which the City has an interest, e.g., as a lien holder. Fire damage legal liability is required for persons occupying a portion of City premises.

Errors and Omissions/Professional Liability. Errors and Omissions or professional liability coverage appropriate to Contractor's profession, in a form and amount approved by the City Attorney and Risk Manager, will be specified on a project-by-project basis if Contractor is working as a licensed professional. Contractor shall maintain such insurance for a period of five years following completion of the project. Such insurance shall be in an amount of not less than one million dollars (\$1,000,000) per claim and in annual aggregate. Design professionals shall maintain such insurance in place until the expiration of the warranty period of the Project.

Contractor and City further agree as follows:

a) This Exhibit supersedes all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Exhibit.

b) Nothing contained in this Exhibit is to be construed as affecting or altering the legal status of the parties to this Agreement. The insurance requirements set forth in this Exhibit are intended to be separate and distinct from any other provision in this Agreement and shall be interpreted as such.

c) All insurance coverage and limits provided pursuant to this Agreement shall apply to the full extent of the policies involved, available or applicable. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.

d) Requirements of specific coverage features or limits contained in this Exhibit are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any party to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

e) For purposes of insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or toward performance of this Agreement.

f) All general or auto liability insurance coverage provided pursuant to this Agreement, or any other agreements pertaining to the performance of this Agreement, shall not prohibit Contractor, Contractor's employees, or agents from waiving the right of subrogation prior to a loss. Contractor hereby waives all rights of subrogation against the City.

g) Contractor's insurance shall be written by an acceptable insurance provided, as determined by the City, which satisfies the following minimum requirements: An insurance carried authorized and admitted to do business in the State of California and maintaining an agent for service of process within the state. Such insurance carrier shall maintain a current "A.M. Best" rating classification of "A-" or better and a financial size of \$10 million to \$24 million (Class V) or better, or a Lloyds of London program provided by syndicates of Lloyds of London and other London insurance carriers, providing all participants are qualified to do business in California and the policy provides for an agent for process in the state. Self-insurance will not be considered to comply with these insurance specifications. Workers Compensation and Employer's Liability shall be provided by an A-V rated carrier or by the California State Compensation Fund. If provided by a carrier other than California State Compensation Fund, Contractor shall provide proof of the carrier's A-V rating to the City.

h) In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Contractor.

i) Contractor agrees to provide evidence of the insurance required herein, satisfactory to City Attorney and Risk Manager, consisting of certificate(s) of insurance evidencing all of the coverages required and an additional endorsement to Contractor's general liability and umbrella liability policies. Certificate(s) are to reflect that the insurer will provide at least thirty days written notice of cancellation, material reduction in coverage or reduction in limits and ten days written notice for non-payment of premium. Contractor agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions. Contractor agrees to provide complete copies of policies to City within ten days of City's request for said copies.

j) Contractor shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages. Any actual or alleged failure on the part of the City or any other additional insured under these requirements to obtain proof of insurance required under this Agreement in no way waives any right or remedy of City or any additional insured, in this or any other regard.

k) Contractor agrees to require all subcontractors or other parties hired for this Project to provide workers' compensation insurance as required herein and general liability insurance naming as additional insureds all parties to this Agreement. Contractor agrees to obtain certificates evidencing such coverage and make reasonable efforts to ensure that such coverage is provided as required here. Contractor agrees to require that no contract used by any subcontractor, or contracts Contractor enters into on behalf of City, will reserve the right to charge back to City the cost of insurance required by this Agreement. Contractor agrees that upon request, all agreements with subcontractors or others with whom Contractor contracts with on behalf of City will be submitted to City for review. Contractor acknowledges that such contracts or agreements may require modification if the insurance requirements do not reflect the requirements herein. Failure of City to request copies of such agreements will not impose any liability on City, its Council, boards and commissions, officers, employees, agents and volunteers.

l) If Contractor is a Limited Liability Company, general liability coverage must be amended so that the Limited Liability Company and its Managers, Affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

m) Contractor agrees to provide immediate notice to City of any claim or loss against Contractor that includes City as a defendant. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the City.

n) Coverage will not be limited to the specific location or individual entity designated as the address of the Project. Contractor agrees to have its coverage endorsed so that all coverage limits required pursuant to this requirement are available separately for each and every location at which Contractor conducts operations of any type on behalf of City. Contractor warrants that these limits will not be reduced or exhausted except for losses attributable to those specific locations and not by losses attributable to any other operations of Contractor.

o) Contractor agrees not to attempt to avoid its defense and indemnity obligations to City, its Council, boards and commissions, officers, employees, agents and volunteers by using as a defense Contractor's statutory immunity under workers' compensation or similar statutes.

r) Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and that there will be no cross liability exclusions that preclude coverage for suits between Contractor and City or between City and any other insured or Named Insured under the policy, or between City and any party associated with City or its employees.

s) Contractor shall maintain commercial general liability, and if necessary, commercial umbrella liability insurance, with a limit of not less than one million dollars (\$1,000,000) each occurrence for at least three years following substantial completion of the work.

July 11, 2022

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

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of July 19, 2022

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-,
AUTHORIZING AN AGREEMENT BETWEEN THE CITY OF MARINA
AND THE COUNTY OF MONTEREY FOR THE USE OF THE COUNTY
OF MONTEREY ANIMAL SERVICES CENTER AND THE PROVISION
OF OTHER ANIMAL SERVICES.**

REQUEST:

It is requested that the City Council:

1. Consider adopting Resolution No. 2022-, approving the Animal Services Agreement between the City of Marina and the County of Monterey.
2. Authorize Animal Services Agreement with the County of Monterey effective 07/01/2022 through 06/30/2024

BACKGROUND:

The City of Marina has a duty and responsibility to protect and maintain the health, safety, and welfare of our residents, including the duty and the responsibility to provide animal sheltering services pursuant to California and local law. To provide animal services to the residents of Marina, the City of Marina must enter into an agreement with the County of Monterey, utilizing the services provided by the County Animal Shelter.

ANALYSIS:

The original Agreement for Animal Shelter Services between the City of Marina and the County of Monterey expired 12/31/2021, as it was extended from its original expiration date of 07/01/2021.

FISCAL IMPACT:

Sufficient funding for this agreement has been included in the FY 2022-23 Police Department General Fund Budget. This funding is based on actual services provided, at rates contained in Exhibit A of the agreement. This agreement previously called for a flat monthly rate of \$3,100, for up to 20 sheltered animals. Sufficient funding will be included in the Police Department budget for FY 2023-24 as part of the City of Marina's next biennial budget cycle.

Additional fees may apply to the City of Marina on a case-by-case basis including veterinary exams and/or treatment as required, immediate euthanasia of underaged or critically injured animals, owner notification letters, bite reports or any other costs that the County of Monterey incurs that are due to the City of Marina animals as indicated in the County of Monterey's current fee schedule. Animals that need to be held over 10 days per direction from the City of Marina will be billed for each additional day over the 10 days, at the rate listed on the County of Monterey current fee schedule. Feral cats with kittens and puppies: If a feral cat is brought in by the City of Marina and has a litter of kittens while in the stray holding time, the City of Marina will not be billed additionally for those new animals. Where an animal is released to the owner and owner pays all fees related to the care of the animal, the City of Marina shall not be charged additionally for services provided to the animal. The City of Marina shall not be billed for the disposal of domestic animal carcasses. The County of Monterey will not accept, for disposal any large animals, wildlife, small wildlife, exotic animals, and livestock.

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

Respectfully submitted,

Eddie Anderson
Patrol Operations Commander
City of Marina

REVIEWED/CONCUR:

Tina Nieto
Chief of Police
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 ANIMAL SERVICES AGREEMENT BETWEEN THE CITY OF MARINA AND THE COUNTY OF MONTEREY. AUTHORIZE ANIMAL SERVICES AGREEMENT WITH THE COUNTY OF MONTEREY EFFECTIVE 07/01/2022 THROUGH 06/30/2024,

WHEREAS, the City of Marina has a duty and responsibility to protect and maintain the health, safety, and welfare of our residents, including the duty and the responsibility to provide animal sheltering services pursuant to California and local law; and

WHEREAS, the City of Salinas and the County of Monterey have consolidated animal services and with the onset of COVID, merged staff and animals into the County shelter at 160 Hitchcock Road, Salinas; the City of Salinas Animal Shelter is no longer being used for animal sheltering services.; and

WHEREAS, the original Agreement for Animal Shelter Services between the City of Marina and the County of Monterey expired 12/31/2021; and

WHEREAS, funding for this agreement is available within the FY 2022-23 budget General Fund, Police Department Budget, Animal Sheltering Account No.100.210.000.6370.020 for a rate based only on services that are provided and not at a flat rate of \$3,100 per month for up to 20 sheltered animals as in previous years.

WHEREAS, funding for this agreement for FY 2023-24 will be included in the General Fund, Police Department Budget, Animal Sheltering Account No.100.210.000.6370.020

WHEREAS, the CITY desires to contract with the COUNTY for the provision of services at the Animal Services Center as described in Exhibit A.

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

1. Resolution No. 2022-, approving the Animal Services Agreement between the City of Marina and the County of Monterey.
2. Authorize Animal Services Agreement with the County of Monterey effective 07/01/2022 through 06/30/2024

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on this 19th day of July 2022 by the following vote:

AYES, COUNCIL MEMBERS:

NOES, COUNCIL MEMBERS:

ABSTAIN, COUNCIL MEMBERS:

ABSENT, COUNCIL MEMBERS:

ATTEST:

Bruce, C. Delgado, Mayor

Anita Sharp, Deputy City Clerk

THIS AGREEMENT (“AGREEMENT”) FOR THE USE OF THE ANIMAL SERVICES CENTER AND THE PROVISION OF OTHER ANIMAL SERVICES IS BETWEEN THE COUNTY OF MONTEREY, A POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA (“COUNTY”), DOING BUSINESS AS THE ANIMAL SERVICES DIVISION OF THE DEPARTMENT OF HEALTH, AND THE CITY OF MARINA (“CITY”). IT IS EFFECTIVE BETWEEN JULY 1, 2022, AND JUNE 30, 2024. COUNTY AND CITY ARE SOMETIMES REFERRED TO IN THIS AGREEMENT AS A “PARTY” OR, COLLECTIVELY, AS “THE PARTIES.”

RECITALS

WHEREAS, the COUNTY has established the Health Department Animal Services Center, located at 160 Hitchcock Road, Salinas, to shelter animals within the unincorporated areas of the county; and

WHEREAS, the CITY desires to contract with the COUNTY for the provision of services at the Animal Services Center as described below; and

WHEREAS, the COUNTY agrees to provide such services in accordance with the provisions of this Agreement, Title 8 of the Monterey County Code and applicable law.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. DEFINITIONS

Stray holding period, is the averaged minimum stray holding period of 5 days that COUNTY will hold an animal with no known owner information before determining final disposition.

Extended holding period is the 10-day hold that COUNTY will hold an animal for either bite quarantine or official owner notification before determining final disposition.

Domestic Animals include cats, dogs, rabbits, guinea pigs, hamsters, pot-bellied pigs, birds, lizards, snakes, turtles or tortoises, and other similar animals customarily kept as household pets. This definition shall not be construed to include exotic animals, livestock, large animals, or wildlife.

Exotic Animals are any animals that are not indigenous to Monterey County, are not livestock, and are not a household pet, whether domesticated or not, or protected or not. Exotic animals include nondomestic animals, animals native to a foreign country or of foreign origin or character, or animals that are not commonly kept as pets.

Large Animals are all animals exceeding 200 pounds in weight.

Livestock includes every horse, ass, burro, donkey, mule, equine creature, cow, bull, steer, heifer, ox, bovine creature, llama, sheep, goat, hog, and domesticated bird not customarily kept as household pets.

Wildlife includes any animal that is indigenous to Monterey County, and not domesticated, protected or not. Wildlife does not include, among other animals, feral livestock, household pets or exotic animals.

2. ANIMAL SERVICES TO BE PROVIDED BY COUNTY

County's responsibilities for shelter and veterinary services under this Agreement do not apply to exotic animals, large animals, livestock, or wildlife.

A. Program Management and Administration

COUNTY shall manage and administer the Animal Services Center to provide appropriate facilities, staffing, and record maintenance for the services set forth below.

B. Shelter Services and Disposition of Animals

COUNTY shall provide shelter at the Animal Services Center for stray domestic animals found within the incorporated boundaries of the CITY. Shelter services shall include the administrative tasks necessary for housing of such animals at the Animal Services Center, the care of animals during the holding period, and final disposal of animals through redemption, adoption, or humane euthanasia and disposal. COUNTY shall shelter such animals received at the Animal Service Center in accordance with applicable state regulations, local ordinances, and policies governing humane treatment of animals.

C. Disposal of Domestic Animal Carcasses

Upon request from CITY, County shall arrange for the proper disposal of domestic animal carcasses.

D. Emergency Medical Treatment

1. Request: Upon prior written request and approval from CITY, COUNTY may arrange for emergency medical treatment of CITY domestic animals either at COUNTY's veterinary clinic or with an outside veterinary clinic with which COUNTY has a current contract for the provision of medical services. Where, due to the exigent nature of circumstances, prior written request is not possible without endangering the well-being of the animal, COUNTY will make every effort to confirm an oral request for veterinary treatment made by a CITY, in writing, as soon as possible.
2. Payment/Rates: COUNTY shall bill CITY for the emergency medical services provided at (1) the current Board-approved rates in **Exhibit A** for care provided by COUNTY's veterinary clinic or (2) contract rates for care provided by contract veterinary clinics. Where treatment is needed, in the judgment of the COUNTY's contract veterinary clinics, which exceeds \$150.00, CITY shall provide written authorization to the COUNTY to provide those services before they are rendered, as long as it does not endanger the well-being of the animal.

3. Transportation to COUNTY contract veterinary clinics:
 - a. Where an animal requiring emergency medical treatment is in COUNTY's custody at the Animal Services Center, COUNTY staff shall transport the animal to the veterinary clinic. Selection of the veterinary clinic to provide emergency medical treatment shall be in the sole discretion of COUNTY. CITY may be responsible for that transport fee (**Exhibit A**)
 - b. Where an animal requiring emergency medical treatment is not in COUNTY's custody at the Animal Services Center, CITY staff shall request COUNTY for emergency medical services to be provided to animal and CITY staff shall pick up and transport the animal directly to the COUNTY's contract veterinary clinic. Selection of the veterinary clinic to provide emergency medical treatment shall be in the sole discretion of COUNTY. COUNTY shall notify the contract veterinary clinic that an animal is being delivered for the provision of medical services pursuant to COUNTY contract. CITY will be responsible for reimbursement of that fee to COUNTY.
4. Alternatively, CITY may independently procure its own arrangements for emergency medical treatment for animals needing such care in its jurisdiction. After an animal is treated and in stable condition, CITY may deliver the animal to the COUNTY for shelter services at the Animal Services Center. CITY must provide a written medical report and care instructions to COUNTY staff prior to leaving the animal at shelter to determine that the animal can be humanely housed for required holding time.
5. During evenings, holidays and weekends, COUNTY shall contact the CITY at a designated, after-hours telephone number to receive verbal authorization for emergency treatment, if warranted.

E. Rabid Animals

COUNTY shall perform the following rabid animal services for all types of animals:

1. Transport tissue to the County Health Department or contract lab for testing;
2. Dispose remains of rabid animals;
3. Report rabid animal incidents to appropriate agencies.
4. When required, COUNTY shall de-brain the animal, or shall coordinate de-braining of the animal, for testing by the County Health Department;
5. CITY shall be responsible for the cost of decapitation, de-braining and transfer to testing facility as required for laboratory testing, at a rate identified in Exhibit A per animal for animals found within the incorporated boundaries of the CITY.

F. Quarantine

COUNTY shall manage the quarantine of biting domestic animals within the incorporated boundaries of the CITY pursuant to state regulations and local ordinances. COUNTY shall manage the suspected rabies quarantine of domestic

animals brought in by the CITY up to the ten-day holding period required by Monterey Code section 8.32.010B(1) (rabies/suspected rabies quarantine). In addition, COUNTY shall be responsible for keeping required records and reporting of information to the State Department of Health.

1. CITY shall be responsible for extended holding period fees for animals that are required to be housed up to 10 days for purposes of quarantine

G. Reports

COUNTY shall provide CITY with quarterly report accompanying invoices that include:

1. Total number of animals provided with shelter services and veterinary services.
2. Disposition or outcome of each animal.
3. Credit given for animals returned to their owners.

H. Field Services

Field Services—such as picking up domestic animals running at large, conducting investigations of potentially dangerous and vicious dogs, conducting bite investigations, responding to nuisance complaints (e.g., barking dogs), or checking on possible instances of neglect or inhumane treatment of animals when they occur within CITY limits—shall not be provided to CITY by COUNTY.

I. "Good Samaritan"

When domestic animals are found within the incorporated boundaries of the CITY and are brought to the COUNTY by "Good Samaritans," (citizens who do not own the stray animal but have delivered it for care and medical treatment), COUNTY shall obtain the following information and notify the City of Marina Animal Control Officer relative to;

- a. Where the animal was found
- b. If animal is injured, how the animal was injured (if known)
- c. Whether the animal has any identification
- d. Whether the owner is known.
- e. Current contact information for Good Samaritan.

If the animal is determined by COUNTY to come from within the incorporated boundaries of the CITY, CITY shall be responsible for shelter, care and veterinary treatment, if any, provided by COUNTY pursuant to the terms of this Agreement.

J. Animals Surrendered by Owner

When CITY accepts an animal from its owner as surrendered, it shall provide to COUNTY at the time of impound a copy of signed release form, with complete owner information, along with reason for surrender. Surrendered animals brought to COUNTY facility by CITY will be charged at same rate as stray animals with no known owner.

3. CITY RESPONSIBILITIES FOR ANIMAL SERVICES

A. Prosecution of Case Violations

The CITY Attorney may exercise the discretion vested in his or her office to prosecute violations of the City Animal Ordinance and may take appropriate legal

action with respect to the abatement of violations of the City Animal Ordinance involving animals occurring within City's corporate limits. COUNTY shall not bear responsibility for prosecuting violations of the City Animal Ordinance occurring within the incorporated boundaries of the CITY.

1. CITY will notify COUNTY in the event that animals brought in for sheltering are part of legal action that may require extended holding due to legal action and CITY will be responsible for extended holding.

B. Exotic Animals, Large Animal, Wildlife, and Livestock Services

1. CITY shall provide all services related to large animals, wildlife, small wildlife, exotic animals, and livestock.
2. COUNTY shall provide services related to rabies per Section 2.E of this Agreement both within CITY limits and in unincorporated areas of the COUNTY.

C. Cooperate with and Assist COUNTY

To facilitate the performance of the foregoing functions, it is hereby agreed that the COUNTY shall have the full cooperation and assistance from the CITY, its officers, agents and employees.

4. COOPERATION

- A. CITY and COUNTY staff shall meet once per year to discuss program needs.
- B. Upon request from CITY, COUNTY may provide training to CITY staff on topics of interest to CITY. CITY may be responsible for any costs associated with training.

5. TERM AND TERMINATION

A. Term

This Agreement shall be effective on July 1, 2022 and shall terminate on June 30, 2024, unless sooner terminated pursuant to the terms of this Agreement.

B. Termination

During the term of this Agreement, either party may terminate the Agreement by giving written notice of termination to the other party at least sixty (60) days before the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be based on the services rendered by the COUNTY before the termination date.

6. PAYMENT

- A. The CITY shall pay fees for services according to “**Exhibit A**”, attached.

7. MUTUAL INDEMNIFICATION

- A. CITY hereby agrees to indemnify, defend, and save harmless COUNTY and its officers, agents, and employees, to the extent permitted by applicable law, from and against all claims and/or losses whatsoever accruing or resulting to any person, firm,

or corporation for damages, injury, or death occurred by reason of any act or failure to act by CITY or CITY's officers, agents, and employees in connection with the performance of this Agreement.

- B. COUNTY hereby agrees to indemnify, defend, and save harmless CITY and its officers, agents, and employees, to the extent permitted by applicable law, from and against all claims and/or losses whatsoever accruing or resulting to any person, firm, or corporation for damages, injury, or death occurred by reason of any act or failure to act by COUNTY or COUNTY's officers, agents, and employees in connection with the performance of this Agreement.

8. INSURANCE

- A. Without limiting COUNTY's or CITY's duty to indemnify each other, each party shall have a program of self-insurance or policies of insurance in effect during the term of this Agreement with the following minimum limits of liability:
 - 1. Commercial general liability, including but not limited to premises, personal injuries, products, and completed operations, with a combined single limit of not less than \$1,000,000 per occurrence; and
 - 2. Comprehensive automobile liability covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit of not less than \$500,000 per occurrence; and
 - 3. Workers' compensation insurance in accordance with California Labor Code, Section 3700, and with a minimum of \$100,000 per occurrence for employer's liability.
- B. In the event that a party maintains insurance as required by this Agreement, such insurance shall be with the company acceptable to the parties to this Agreement and authorized by law to conduct 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 a coverage required herein shall continue in effect for a period of two (2) years following the date any party to this Agreement completes its performance of services under this Agreement.

Each liability policy shall provide that the COUNTY and CITY shall be given notice in writing at least thirty (30) days in advance of any change, cancellation, or non-renewal thereof. Each policy shall provide identical coverage for each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance showing each subcontractor has identical coverage.

Prior to the execution of the Agreement by the COUNTY, the CITY shall file certificates of insurance or self-insurance with Monterey County Risk Management Officer, showing that all parties have in effect the insurance required by this Agreement. The CITY shall file a new or amended certificate of insurance or self-insurance promptly after any change is made to any insurance policy or program of self-insurance, which would alter the information of the certificate then on file.

Acceptance or approval of insurance or program of self-insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

9. EQUAL OPPORTUNITY

During the performance of this Agreement, the parties shall not unlawfully discriminate against any person because of race, color, religion, sex, national origin, ancestry, physical disability, medical condition, marital status, age (over 40), or sexual preference, either in the parties' employment practices or in the furnishing of services to recipients. The parties shall ensure that the evaluation and treatment of its employees and applicants for employment and all person receiving and requesting services are free of such discrimination. The parties shall, during the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination.

10. EMPLOYEE STATUS

- A. All persons employed in the performance of services to be provided by COUNTY as described in this Agreement shall be COUNTY employees. No current CITY employee shall become COUNTY employee by reason of this Agreement and no COUNTY employee performing services hereunder shall have CITY pension or CITY civil service status or rights.

11. RECORDS AND AUDITING REQUIREMENTS

The parties shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulation and shall maintain such records for a period of at least three (3) years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three (3) year period, then the parties shall retain said records until such violation is resolved.

12. GENERAL PROVISIONS

A. Amendment

This Agreement may be amended or modified only by an instrument in writing and signed by all parties hereto.

B. Governing Law

This agreement shall be governed by and interpreted under the laws of the State of California. Venue of litigation arising under this Agreement, if any, shall be in the Superior Court of California, Monterey County.

C. Compliance with Applicable Law

The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.

D. Construction of Agreement

The parties agree that each party has fully participated in the review and revision of this Agreement that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment thereto.

E. Waiver

Any waiver of any terms and conditions of this Agreement must be in writing and signed by the COUNTY and CITY. Any waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions of this Agreement.

F. Integration

This Agreement, including the exhibits hereto, shall represent the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the parties as of the effective date hereof. This Agreement may only be amended in writing, executed by both parties.

G. Notices

Any notices required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent by certified or registered mail to the COUNTY and CITY at:

UNTY		CITY
Director of Health or Designee		Chief of Police
1270 Natividad Road		211 Hillcrest Avenue
Salinas, CA 93906		Marina, CA 93933

****Signature page to follow****

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

MONTEREY COUNTY

Contracts/Purchasing Officer

Dated: _____

Department Head (if applicable)

Dated: _____

Approved as to Fiscal Provisions:

Deputy Auditor/Controller

Dated: _____

Approved as to Liability Provisions:

Risk Management

Dated: _____

Approved as to Form:

Deputy County Counsel

Dated: _____

CONTRACTOR – **CITY OF MARINA**

By: _____

Signature of Chair, President, or
Vice-President

Printed Name and Title

Dated: _____

By: _____

(Signature of Secretary, Asst. Secretary, CFO,
Treasurer or Asst. Treasurer)*

Printed Name and Title

Dated: _____

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

**AGREEMENT FOR USE OF THE ANIMAL SERVICES CENTER
AND OTHER ANIMAL SERVICES BY MONTEREY COUNTY AND THE CITY OF
MARINA
Fiscal Year 2022-2023**

Exhibit A

1. Fees for Services

The CITY shall be billed the fees listed below for stray or surrendered animals found within the incorporated boundaries of the CITY and admitted to the Animal Services Center.

Where an animal is returned to the owner and owner pays fees related to the board/care of the animal, CITY shall not be charged for duplicate fees collected for services provided to the animal and will be issued a credit for the fees paid by owner to reduce overall invoice.

Fees for Services

Stray/Surrendered animal holding (up to 5 days)	\$239.00
per animal * Extended holding (up to 10 days)	\$439.00
per animal	
Additional holding over 10 days	\$40.00 per day

*In the event that a pregnant stray animal admitted to the shelter subsequently deliver its litter while in custody of the COUNTY, CITY will be billed only the rate of \$239.00 and COUNTY will assume responsibility of the litter at no additional cost to CITY. However, in the event that a stray animal is brought in with its live litter, CITY will be billed \$239.00 for each live stray animal brought in.

Domestic Animal Carcass disposal	\$25.00
per animal	
Emergency Medical Treatment Transportation	\$112/officer/hour

Rabies testing:

1. Head Removal		
i. Small Dog/Cat	\$ 80.00	each
ii. Medium Dog	\$ 117.00	each
iii. Large Dog	\$ 155.00	each
iv. X-Large Dog	\$ 303.00	each
2. Rabies testing (not including head removal)		
i. Bats, wildlife, human exposure, rush test @ MCHD	\$ 165.00	each
ii. Non-human exposure @ Santa Clara + shipping	\$ 105.00	each

**AGREEMENT FOR USE OF THE ANIMAL SERVICES CENTER
AND OTHER ANIMAL SERVICES BY MONTEREY COUNTY AND THE CITY OF
MARINA
Fiscal Year 2022-2023**

AC. Clinic Fees:

1. Cat spay	\$ 100.00	each
2. Cat neuter	\$ 90.00	each
3. Additional fee if animal is in heat	\$ 50.00	each
4. Additional fee if animal is pregnant	\$ 60.00	each
5. Dewclaw removal (attached)	\$ 110.00	each
6. Dewclaw removal (pair-attached)	\$ 155.00	each
7. Dewclaw removal (unattached)	\$ 50.00	each
8. Dewclaw removal (pair-unattached)	\$ 80.00	each
9. Umbilical hernia	\$ 49.00	each
10. FIV/FELV test	\$ 26.00	each
11. Pain medication	\$ 8.00	per dose
12. Obese animal fee	\$ 60.00	min.
13. Fvrpcp	\$ 10.00	each
14. Da2pp	\$ 12.00	each
15. Tooth extraction	\$ 41.00	each
16. Heartworm testing	\$ 23.00	each
17. Grooming/shaving	\$ 2.00	per minute
18. Unilateral retained testicle removal	\$ 60.00	each
19. Unilateral retained monorchid crypt	\$ 95.00	each
20. Bilateral crypt	\$ 140.00	each
21. Miscellaneous surgery (e.g., biopsy, bump removal), to be determined at time of surgery based on time and extent, in addition to actual lab fees.	\$ 5.00	per minute plus actual lab fees
22. Feral Cat Spay	\$ 75.00	each
23. Feral Cat Neuter	\$ 46.00	each
24. Rabbit Spay	\$ 110.00	each
25. Rabbit Neuter	\$ 76.00	each
26. Dog Neuters		
i. Small up to 15 lbs	\$ 134.00	each
ii. Medium 16-40 lbs	\$ 143.00	each
iii. Large 41 lbs and over	\$ 160.00	each
27. Dog Spays		
i. Small up to 15 lbs	\$ 155.00	each
ii. Medium 16-40 lbs	\$ 162.00	each
iii. Large 41 lbs and over	\$ 181.00	each
28. Bordatella	\$ 18.00	each
29. Flea Treatment		
i. Cat	\$ 4.00	each
ii. Dog up to 25 lbs	\$ 5.00	each
iii. Dog 26-100 lbs	\$ 14.00	each
30. Felv only test	\$ 28.00	each
31. Antibiotics		
i. Convenia	\$ 54.00	per mL
ii. Penicilin	\$ 17.00	per mL
iii. Enrofloxacin	\$ 19.00	per mL

**AGREEMENT FOR USE OF THE ANIMAL SERVICES CENTER
AND OTHER ANIMAL SERVICES BY MONTEREY COUNTY AND THE CITY OF
MARINA
Fiscal Year 2022-2023**

32. Pain Medication (specific)		
i. Meloxicam	\$ 23.00	per mL
ii. Buprenorphine	\$ 25.00	per mL
iii. Butorphanol	\$ 21.00	per mL
iv. Onisor	\$ 24.00	per mL
33. Health Certificate	\$ 40.00	per animal
34. Foreign Body (foxtail)Probe (with sedation)		
i. Cat	\$ 75.00	
ii. Dog up to 25 lbs	\$ 68.00	
iii. Dog up to 50 lbs	\$ 85.00	
iv. Dog up to 100 lbs	\$114.00	
35. Sedation		
i. Cat	\$ 52.00	
ii. Dog up to 22 lbs	\$ 62.00	
iii. Dog 23-45 lbs	\$ 75.00	
iv. Dog 46-100 lbs	\$ 98.00	
36. Abscess Treatment		
i. Cat	\$ 79.00	
ii. Dog up to 25 lbs	\$ 73.00	
iii. Dog 26-50 lbs	\$ 89.00	
iv. Dog 51-100 lbs	\$ 118.00	
37. Wound Care (Sedation excluded)		
i. Cat	\$ 67.00	
ii. Dog up to 25 lbs	\$ 51.00	
iii. Dog 26-50 lbs	\$ 54.00	
iv. Dog 51-100 lbs	\$ 60.00	
38. Laceration Repair (Sedation included)		
i. Cat	\$ 85.00	
ii. Dog up to 25 lbs	\$ 79.00	
iii. Dog 26-50 lbs	\$ 95.00	
iv. Dog 51-100 lbs	\$ 124.00	
39. Enucleation (Eye Removal) (Excludes e-collar and species specific pain medication)		
i. Up to 15 lbs	\$ 255.00	
ii. 16 lbs and over	\$ 264.00	
40. Mass Removal (Excludes e-collar and species specific pain medication)		
i. Up to 15 lbs	\$ 239.00	
ii. 16 lbs and over	\$ 248.00	
41. Tail Amputation (Excludes e-collar and species specific pain medication)		
i. Up to 15 lbs	\$ 211.00	
ii. 16 lbs and over	\$ 220.00	
42. Parvo Test	\$ 42.00	
43. Ear mite treatment (Cats)	\$ 52.00	
44. Ear cleaning and treatment (dogs) (sedation excluded)	\$ 26.00	
45. Bandage/Splint Application (sedation excluded)	\$ 109.00	
46. E-Collar	\$ 13.00	

ORDINANCE NO. 2022-__

AN ORDINANCE AMENDING CHAPTER 17, ARTICLE 4, BY ADDING A
NEW SECTION 17.45, “REASONABLE ACCOMMODATIONS FOR
PERSONS WITH DISABILITIES”, TO THE MARINA MUNICIPAL CODE

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

1. To follow the Fair Employment and Housing Act (Cal. Gov. Code § 12900 et seq.) and to implement Program 8.1 of the City’s Housing Element, the City shall adopt an ordinance that provides a procedure to request reasonable accommodation for persons with disabilities seeking equal access to housing under the Fair Housing Laws in the application of zoning laws, building codes, and other land use regulations, policies and procedures.

2. An amendment to the City of Marina’s Municipal Code is needed to ensure compliance with State law.

3. Chapter 17, Article 4. Chapter 17, Article 4, entitled “Regulations and Standards Applicable to All Zones” is hereby amended by adding a new Section, Section 17.45 “Reasonable Accommodations for Persons with Disabilities”, to the Municipal Code to read as set forth on the attached Exhibit “A,” and incorporated herein by this reference thereto.

4. Environmental. In accordance with the California Environmental Quality Act (CEQA), staff finds that this ordinance is not subject to California Environmental Quality Act (CEQA) pursuant to the State CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, Sections: 15060(c)(2), because the proposed ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment; and 15061(b)(3), because the proposed ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Therefore, the adoption of this ordinance is exempt from CEQA and no further environmental review is necessary.

5. Effective Date. This Ordinance shall be in full force and effect on thirty (30) days after its final passage and adoption.

6. Severability. If any portion of this Ordinance is found to be unconstitutional or invalid the City Council hereby declares that it would have enacted the remainder of this Ordinance regardless of the absence of any such invalid part.

7. Posting of Ordinance. Within fifteen (15) days after the passage of this Ordinance, the City Clerk shall cause it to be posted in the three (3) public places designated by resolution of the City Council.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Marina duly held on July 6, 2022, and was passed and adopted at a regular meeting duly held on July 19, 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

Chapter 17.45
REASONABLE ACCOMMODATION FOR PERSONS WITH DISABILITIES

Sections:

- 17.45.010 Purpose and applicability.
- 17.45.020 Application submittal.
- 17.45.030 Review authority.
- 17.45.040 Findings.
- 17.45.050 Decision.
- 17.45.060 Appeals.
- 17.45.070 Waiver of time periods.
- 17.45.080 Notice of public availability of accommodation process.
- 17.45.090 Expiration, time extension, violation, discontinuance, and revocation.
- 17.45.110 Amendments.

17.45.010 Purpose and applicability.

- A. This chapter provides a procedure to request reasonable accommodation for persons with disabilities seeking equal access to housing under the Fair Housing Laws in the application of zoning laws, building codes, and other land use regulations, policies and procedures. Fair Housing Laws means “Fair Housing Amendments Act of 1988” ([42 U.S.C. § 3601](#) et seq.), including reasonable accommodation required by [42 U.S.C. § 3604\(f\)\(3\)\(B\)](#), and the “California Fair Employment and Housing Act” (California Government Code Section [12900](#) et seq.), including reasonable accommodation required specifically by California Government Code Sections [12927\(c\)\(1\)](#) and [12955\(l\)](#), as any of these statutory provisions now exist or may be amended from time to time.
- B. A request for reasonable accommodation may be made by any person with a disability, his/her representative, or any business or property owner when the application of a zoning law, building code provision or other land use regulation, policy or practice acts as a barrier to fair housing opportunities. A person with a disability is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities, anyone who is regarded as having such impairment or anyone who has a record of such impairment, as those terms are defined in the Fair Housing Laws.
- C. A request for reasonable accommodation may include a request for modification or exception to the rules, standards and practices for the siting, development and use of housing or housing related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to housing of their choice. Requests for reasonable accommodation shall be made in the manner prescribed by this chapter.
- D. It is the intent of this chapter that, notwithstanding time limits provided to perform specific functions, application review, decision making and appeals proceed expeditiously, especially where the request is time sensitive, so as to reduce impediments to equal access to housing.

17.45.020 Application submittal.

- A. Any person with a disability, or his or her representative, may request reasonable accommodation on a form supplied by the community development department. The request shall include the following information, and be accompanied by a fee established by resolution of the city council:
1. The applicant's or representative's name, mailing address and daytime phone number.
 2. The address of the property for which the request is being made.
 3. The specific code section, regulation, procedure or policy of the city from which relief is sought.
 4. A site plan or illustrative drawing showing the proposed accommodation.
 5. An explanation of why the specified code section, regulation, procedure or policy is preventing, or will prevent, the applicant's use and enjoyment of the subject property.
 6. The basis for the claim that Fair Housing Laws apply to the individual(s) and evidence satisfactory to the city supporting the claim. Evidence may include a letter from a medical doctor or other licensed health care professional, a disabled license, or any other relevant evidence.
 7. A detailed explanation as to why the accommodation is reasonable and necessary to afford the applicant an equal opportunity to use and enjoy a dwelling in the city.
 8. Verification by the applicant that the property is the primary residence of the person(s) for whom reasonable accommodation is requested.
 9. Other information required by the city to make the findings required by subsection (17.47.040) of this section consistent with the Fair Housing Laws.
- B. A request for reasonable accommodation may be filed at any time the accommodation may be necessary to ensure equal access to housing. If the project for which the request for reasonable accommodation is being made also requires discretionary approval, the applicant shall provide required submittal information to the city together with the application for discretionary approval and shall pay all applicable fees. These materials shall enable the city to concurrently review the accommodation request and the discretionary approval request. Processing procedures for the discretionary approval request shall govern joint processing of both the reasonable accommodation and the discretionary permit.
- C. Reasonable accommodation does not affect or negate an individual's obligations to comply with other applicable regulations not at issue or related to the requested accommodation.
- D. If an individual needs assistance in making the request for reasonable accommodation, the city shall provide assistance to ensure the process is accessible.

- E. Should the request for reasonable accommodation be made concurrently with a discretionary permit, the fee for a reasonable accommodation application may be waived; provided, that the prescribed fee shall be paid for all other discretionary permits.

17.45.030 Review authority.

- A. Applications for reasonable accommodation shall be reviewed by the community development director (director) when no approval is sought other than the request for reasonable accommodation.
- B. Applications for reasonable accommodation submitted for concurrent review with any discretionary land use application shall be reviewed by the authority governing the discretionary land use application.

17.45.040 Findings. The review authority shall approve the request for a reasonable accommodation if, based upon all of the evidence presented, the following findings can be made:

- A. The housing, which is the subject of the request for reasonable accommodation, will be occupied by an individual with disabilities protected under Fair Housing Laws.
- B. The requested accommodation is reasonable and necessary to make housing available to an individual with disabilities protected under the Fair Housing Laws.
- C. The requested accommodation will not impose an undue financial or administrative burden on the city, as defined in the Fair Housing Laws and interpretive case law.
- D. The requested accommodation will not require fundamental alteration or frustrate application of the city's zoning or building laws, policies and/or procedures, as defined in the Fair Housing Laws and interpretive case law. The city may consider, but is not limited to, the following factors to determine whether the requested accommodation would fundamentally alter or frustrate application of the city's zoning or building program:
 - 1. Whether granting the accommodation would fundamentally alter the character of the neighborhood.
 - 2. Whether granting the accommodation would result in a substantial increase in traffic or insufficient parking.
 - 3. Whether granting the accommodation would substantially undermine any express purpose of either the city's general plan or an applicable specific plan.

17.45.050 Decision.

- A. The review authority shall consider the application, and issue a written determination within 40 calendar days of the date of receipt of a completed application. At least 10 calendar days before issuing a written determination on the application, the city shall mail notice to the applicant and adjacent property owners that the city is considering the application and invite written comments as to the requested accommodation.

- B. If necessary to reach a determination on any request for reasonable accommodation, the review authority may request further information from the applicant or others consistent with this chapter, specifying in detail what information is required. If a request for further information is made of the applicant, the time period to issue a written determination shall be stayed until the applicant responds to the request.
- C. The review authority's written decision shall include findings and conditions of approval. The applicant shall be given notice of the right to appeal, and the right to request reasonable accommodation related to the appeal process. The review authority's decision shall be mailed to the applicant, to any person who provided written or verbal comment on the application, and to any other person who requests notice.
- D. Any approved reasonable accommodation shall be subject to any conditions imposed on the approval consistent with the purposes of this section.
- E. The review authority may approve alternative accommodations that provide equivalent and reasonable levels of benefit to the applicant.
- F. The written decision of the reviewing authority shall be final, unless appealed as set forth below.
- G. While a request for reasonable accommodation is pending, all laws and regulations otherwise applicable to the property subject to the request shall remain in full force and effect.
- H. Where improvements or modifications approved through a reasonable accommodation would generally require a variance, a variance shall not be required.

17.45.060 Appeals.

- A. Any decision on a reasonable accommodation request may be appealed to the city council, which appeal must be received by the city within 10 calendar days of the issuance of a written decision.
- B. The appeal shall be in writing and shall include a statement of the grounds for appeal, and be accompanied by a fee established by resolution of the city council. If an individual needs assistance in filing an appeal, the city shall provide assistance to ensure the appeals process is accessible.
- C. The city council shall hear the matter de novo, and shall render a determination as soon as reasonably practicable, but in no event later than 60 calendar days after an appeal has been filed. All determinations shall address and be based upon the same findings required to be made in the original determination from which the appeal is taken.
- D. The city shall provide notice of an appeal hearing to the applicant, adjacent property owners, and any other person requesting notification at least 10 calendar days prior to the hearing. The council shall announce its findings within 40 calendar days of the hearing, unless good cause exists for an extension. The decision shall be mailed to the applicant and to any other person who requests notice at the time of the hearing. The council's action shall be final.

17.45.070 Waiver of time periods. Notwithstanding any provisions in this chapter regarding the occurrence of any action within a specified period of time, an applicant may request additional time beyond that provided for in this chapter or may request a continuance regarding any decision or consideration by the city of a pending appeal. The city may, in its sole discretion, grant or deny any such request for extension or continuance. The granting of an extension of time or continuance shall not be deemed delay on the part of the city, shall not constitute failure by the city to provide prompt decisions on applications and shall not be a violation of any required time period set forth in this chapter.

17.45.080 Notice to the Public of Availability of Accommodation Process. The city shall prominently display in the public areas of the community development department at City Hall a notice advising those with disabilities or their representatives that reasonable accommodations are available in accord with this chapter. City employees shall direct individuals to the display whenever requested to do so or if they reasonably believe individuals with disabilities or their representatives may be entitled to reasonable accommodation.

17.45.090 Expiration, Time Extension, Violation, Discontinuance, and Revocation.

- A. Any reasonable accommodation approved in accordance with the terms of this chapter shall expire within 24 months from the effective date of approval or at an alternative time specified as a condition of approval unless:
 - 1. A building permit has been issued and construction has commenced;
 - 2. A certificate of occupancy has been issued;
 - 3. The use is established; or
 - 4. A time extension has been granted.
- B. The director may approve a time extension for reasonable accommodation for good cause for a period or periods not to exceed three years. Application for a time extension shall be made in writing to the community development department no less than 30 days or more than 90 days prior to the expiration date.
- C. Notice of the director's decision on a time extension shall be mailed to the applicant.
- D. Any reasonable accommodation approved in accordance with the terms of this chapter may be revoked if any condition or term of the reasonable accommodation is violated, or if any law or ordinance is violated in connection therewith. Notice of revocation shall be mailed to the applicant and to the owner of any property affected by the accommodation. Upon revocation, the director may require any physical alteration associated with the reasonable accommodation to be removed or substantially conform to the code, as may be reasonably feasible.
- E. An accommodation is granted only to an individual. The accommodation shall not run with the land unless the director expressly finds the modification is physically integrated on the property and cannot feasibly be removed or altered. Any change in use or circumstances that negates the basis for the grant of approval may render the reasonable accommodation null and void and/or revocable by the city. Thereafter the director may require the reasonable accommodation to be removed or substantially conformed to the code if reasonably feasible.

17.45.110 Amendments. A request for changes in conditions of approval of a reasonable accommodation, or a change to plans that affects a condition of approval shall be treated as a new application and shall be processed in accordance with the requirements of this chapter. The director may waive the requirement for a new application and approve the changes if the changes are minor, do not involve substantial alterations or addition to the plan or the conditions of approval, and are consistent with the intent of the original approval.

ORDINANCE NO. 2022-__

AN ORDINANCE AMENDING CHAPTER 17, ARTICLE 5, BY ADDING A NEW SECTION 17.49, “LOW-BARRIER NAVIGATION CENTER”, TO THE MARINA MUNICIPAL CODE

-oOo-

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

1. In 2019, the State legislature adopted Assembly Bill (AB) 101 creating a path for local jurisdictions to allow Low-Barrier Navigation Centers by right in certain zoning districts. This legislation is intended to provide for a service-enriched shelter focused on moving people into permanent housing that provides temporary living facilities while case managers connect individuals experiencing homelessness to income, public benefits, health services, shelter, and housing. This legislation is codified in Ca. Gov. Code §§65660 – 65668.

2. An amendment to the City of Marina’s Municipal Code is needed to ensure compliance with State law.

3. Chapter 17, Article 5. Chapter 17, Article 5, entitled “Regulations for Specific Land Uses” is hereby amended by adding a new Section, Section 17.49 “Low-Barrier Navigation Center”, to the Municipal Code to read as set forth on the attached Exhibit “A,” and incorporated herein by this reference thereto.

4. Environmental. In accordance with the California Environmental Quality Act (CEQA), staff finds that this ordinance is not subject to California Environmental Quality Act (CEQA) pursuant to the State CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, Sections: 15060(c)(2), because the proposed ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment; 15061(b)(3), because the proposed ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Therefore, the adoption of this ordinance is exempt from CEQA and no further environmental review is necessary.

5. Effective Date. This Ordinance shall be in full force and effect on thirty (30) days after its final passage and adoption.

6. Severability. If any portion of this Ordinance is found to be unconstitutional or invalid the City Council hereby declares that it would have enacted the remainder of this Ordinance regardless of the absence of any such invalid part.

7. Posting of Ordinance. Within fifteen (15) days after the passage of this Ordinance, the City Clerk shall cause it to be posted in the three (3) public places designated by resolution of the City Council.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Marina duly held on July 6, 2022, and was passed and adopted at a regular meeting duly held on July 19, 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

Chapter 17.49
LOW-BARRIER NAVIGATION CENTER

Sections:

- 17.49.010 Purpose and intent.
- 17.49.020 Definition.
- 17.49.030 Applicability.
- 17.49.040 Permit required.
- 17.49.050 Development and Operational Standards.

17.49.010 Purpose and intent.

The purpose of this chapter is to establish development standards for low-barrier navigation centers (LBNC) and to ensure this use is constructed and operated in a manner that is consistent with the requirements and allowances of state law, specifically Article 12 of Chapter 3 of Division 1 of Planning and Zoning Law commencing with California Government Code Section 65660.

17.49.020 Definitions.

1. “Low-Barrier Navigation Center” (LBNC) is a housing-first, low-barrier, service-enriched shelter focused on moving people into permanent housing that provides temporary living facilities while case managers connect individuals experiencing homelessness to income, public benefits, health services, shelter, and housing. “Low barrier” means best practices to reduce barriers to entry, and may include, but is not limited to, the following:
 - A. The presence of partners if it is not a population-specific site, such as for survivors of domestic violence or sexual assault, women, or youth.
 - B. Pets.
 - C. The storage of possessions.
 - D. Privacy, such as partitions around beds in a dormitory setting or in larger rooms containing more than two beds, or private rooms.
2. “Use, by right” has the meaning defined in subdivision (i) of Section 65583.2. Division 13 (commencing with Section 21000) of the California Public Resources Code shall not apply to actions taken by a public agency to lease, convey, or encumber land owned by a public agency, or to facilitate the lease, conveyance, or encumbrance of land owned by a public agency, or to provide financial assistance to, or otherwise approve, a Low-Barrier Navigation Center constructed or allowed by this section.

17.49.030 Applicability.

The provisions of this chapter shall apply to all low-barrier navigation center projects proposed in mixed-use and nonresidential zoning districts that allow multi-family uses (C-R, C-1, and C-2).

17.49.040 Permit required.

Zoning clearance approval is required prior to establishment of any LBNC project meeting the criteria in Sec. 17.49.050. The permit shall be a ministerial action without discretionary review or a hearing. The City shall notify a developer whether the developer’s application is complete within 30 days, pursuant to California Government Code Section 65943. Action shall be taken within 60 days of a complete application being filed.

17.49.050 Development and Operational Standards.

A low-barrier navigation center development is a use by-right in areas zoned for mixed-use and nonresidential zones permitting multifamily uses, if it meets the following requirements:

- A. Connected Services. It offers services to connect people to permanent housing through a services plan that identifies services staffing.
- B. Coordinated Entry System. It is linked to a coordinated entry system, so that staff in the interim facility or staff who co-locate in the facility may conduct assessments and provide services to connect people to permanent housing. "Coordinated entry system" means a centralized or coordinated assessment system developed pursuant to Section 576.400(d) or Section 578.7(a)(8), as applicable, of Title 24 of the Code of Federal Regulations, as those sections read on January 1, 2020, and any related requirements, designed to coordinate program participant intake, assessment, and referrals.
- C. Code Compliant. It complies with Chapter 6.5 (commencing with Section 8255) of Division 8 of the Welfare and Institutions Code.
- D. Homeless Management Information System. It has a system for entering information regarding client stays, client demographics, client income, and exit destination through the local Homeless Management Information System, as defined by Section 578.3 of Title 24 of the Code of Federal Regulations.

June 14, 2022

Item No. **9a**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of July 19, 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 19th day of July 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**

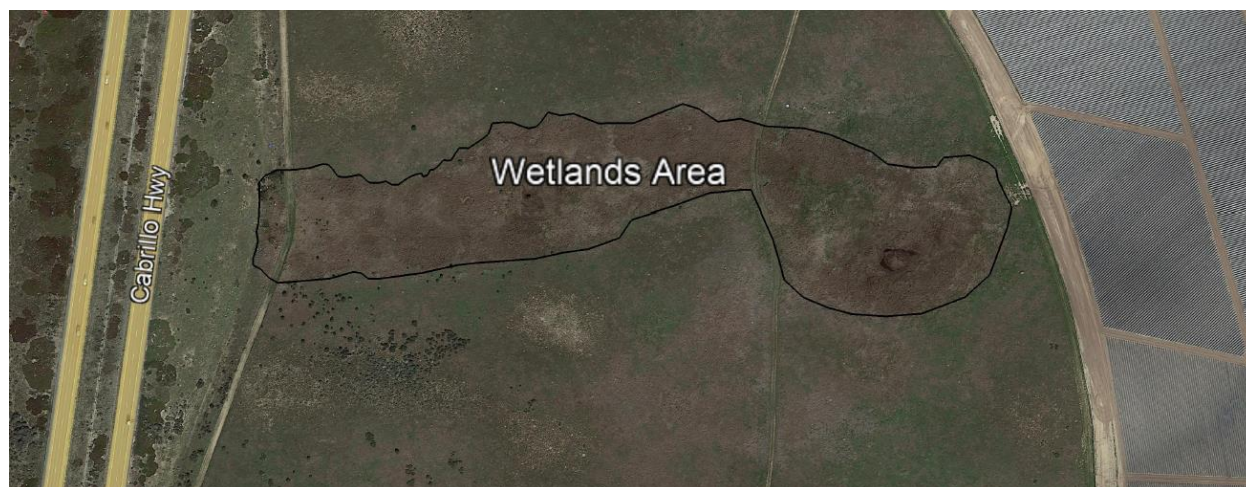
EXHIBIT C
PARK FACILITIES TO BE PROVIDED
(Replaces Exhibit E to the Marina Station Specific Plan)

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.

* * * * *

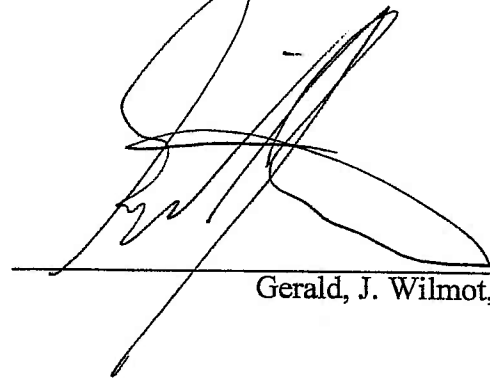
THE FOREGOING ORDINANCE was first read at a regular meeting of the Marina City Council on the 4th day of March, 2008, and was passed and adopted at a regular meeting of the Marina City Council on the 20th day of May 2008.

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

NOES, COUNCIL MEMBERS: None

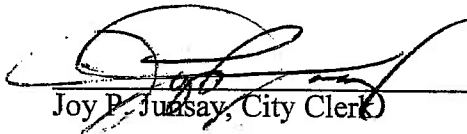
ABSTAIN, COUNCIL MEMBERS: Ford

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

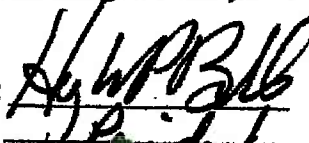
By: 
Its: President

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 #I-16	Widen & Restripe NB as 1-L, 1-T, 3-R Add 2 nd NB and 2 nd Through Lanes	City Council Approval ** City Council Approval **	City of Marina	Marina TIF University Village	Yes No	Yes 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:

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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=>