

RESOLUTION NO. 2015-07

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING REQUEST BY MARINA COMMUNITY PARTNERS LLC, TO RELEASE A PORTION OF PERFORMANCE SECURITY FOR PUBLIC IMPROVEMENTS IN THE DUNES PHASE 1C AREA IN AMOUNT OF \$988,434.97, ACCEPT A SUBSTITUTE PERFORMANCE BOND SECURITY OF \$109,826.11 FOR REMAINING STREET LIGHTS AND ELECTRICAL FACILITIES, AND AUTHORIZING CITY MANAGER TO EXECUTE RELEASE AGREEMENT ON BEHALF OF CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY

WHEREAS, at the regular meeting of August 5, 2008, the City Council adopted Resolution No. 2008-173, approving Public Improvement Agreement between City of Marina (City) and Marina Community Partners LLC (MCP), of Marina, California, to construct public improvements in the Dunes Phase 1C area. MCP, as required by the Public Improvement Agreement, filed with the City Clerk a performance bond in the amount of \$1,098,261.08 to guarantee completion of public improvements for a portion of Phase 1C as described in the Agreement (“EXHIBIT A”); and

WHEREAS, On December 16, 2014, the City Council took action to continue the request from MCP to reduce the performance bond to 91% and accept a substitute performance bond of 9% of the original bond amount for remaining street lights and electrical facilities. The direction given by the City Council was for staff to determine if the improvements have been substantially performed and provide information regarding the warranty: and

WHEREAS, the City has not accepted the improvements and will not consider doing so until completion of all the work. California Government Code §66499.7 permits MCP to seek a partial release of its performance bond following verified satisfactory completion of not less than 80% of the work. A partial release of performance security does not operate as an acceptance of the completed improvements and the risk of loss and responsibility for maintenance remains with MCP until that acceptance; and

WHEREAS, the Public Improvement Agreement with MCP provides for security in the form of a performance bond in the total amount of the contract price of \$1,098,261.08. There is a one-year warranty period following acceptance for which the performance bond may serve as security or, alternatively, the developer may substitute a warranty bond in the amount of 10% of the total contract price; and

WHEREAS, in view of the Council’s direction, MCP has modified their original reduction request of 91% of the performance bond to 90% (\$988,434.97). Thereafter, not less than 10% of the total contract price will be available to secure the completion of the work for the one-year warranty period (either in the form of the performance bond or a warranty bond) when the public improvements are accepted; and

WHEREAS, the Acting City Engineer has confirmed that a substantial portion representing 91% of the public improvements have been completed in accordance documentation submitted by MCP and in conformance with the approved Improvement Plans and will be ready for acceptance by the City upon completion of all the subdivision improvements; and

WHEREAS, MCP shall provide substitute security in the amount of \$109,826.11 in place of the original \$1,098,261.08 in performance security. MCP has provided an updated Title Report that shows that the bonds to be released are unencumbered by mechanics lien claims.

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

1. Approve request by Marina Community Partners LLC, to release a portion of performance security for public improvements in the Dunes Phase 1C area in the amount of \$988,434.97.
2. Accept a substitute performance bond security of \$109,826.11 for remaining street lights and electrical facilities.
3. Authorize the City Manager to execute the release agreement on behalf of the City subject to final review and approval by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 21st day of January, 2015, by the following vote:

AYES, COUNCIL MEMBERS: Amadeo, Brown, Morton, O'Connell, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

PUBLIC IMPROVEMENT AGREEMENT

**AGREEMENT FOR IMPROVEMENT OF STREETS, INSTALLATION OF
STORM DRAINS AND OTHER PUBLIC WORKS FACILITIES
“The Dunes on Monterey Bay” Project – A Portion of Phase 1-C**

This Agreement is made and entered into this 12th day of August, 2008, by and between the City of Marina, herein called the “City,” a municipal corporation, and Marina Community Partners LLC, a real property owner, developer, or subdivider, herein called the “Developer.”

WHEREAS, street improvement plans entitled “Street Improvement Plans for The Dunes on Monterey Bay Phase 1C,” herein referred to as “Improvement Plans,” signed by the City Engineer on January 8, 2008, and incorporated herein by this reference, have been submitted to the City for approval and acceptance, including certain streets constituting a portion of Phase 1-C of The Dunes on Monterey Bay Project, herein the “Project,” known as Eighth Street from Second Avenue to Third Avenue, Third Avenue from Imjin Parkway to Tenth Street and Tenth Street from Second Avenue to Third Avenue, herein the “Property.” Improvements are to include new storm drain system, curb, gutter, asphalt concrete pavement, street lights and electrical facilities, sidewalk on the north side of Tenth Street and on the west side of Third Avenue, striping, traffic signs, and survey monuments, as shown on Exhibit A, herein the “Improvements.” Improvements will not include landscaping, any sidewalk on Eighth Street, any improvements on Second Avenue or Imjin Parkway or any storm drain facilities outside the limits of surface improvements. Temporary above-ground infiltration facilities may be utilized in lieu of final infiltration galleries where feasible; and

WHEREAS, the Developer conducted deconstruction and demolition activities affecting the Property under the terms of a Right of Entry Agreement from the City dated September 30, 2005; and

WHEREAS, the Developer requires certain utilities and public works facilities in order to service the Project under the minimum standards established by the City; and

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

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

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

SECTION 1

The recitals to this Agreement are hereby incorporated into the terms of this Agreement. All 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 International Building Code.

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 said Codes, Ordinances, Resolutions, Rules and other Regulations and to comply with the foregoing and all applicable laws.
- b. To grant to the City or other entities entitled thereto, from property owned by the Developer, without charge and free and clear of liens and encumbrances, any and all public, private, utility, drainage, construction or access easements and rights of way (herein "easements") in and to the Property necessary for the City, in order that the storm drain and street improvements to said real property may be extended. At no cost to the Developer, City and Developer will work cooperatively with the owners of other real property to acquire all easements necessary to construct the Improvements. City agrees to support Developer in acquisition of easements necessary to construct the Improvements and to accept said easements upon execution of easement grant deeds to the City by grantors. City also agrees to issue Developer and/or Developer's contractors encroachment permits necessary to accomplish said work.
- 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 active negligence of the City or any of its officials, boards and commissions and members thereof, agents and employees. After acceptance, Developer shall remain obligated to eliminate any defect in design or dangerous condition caused by the design or construction defect, however, Developer shall not be responsible for routine maintenance. Provisions of this Section shall remain in full force and effect for ten years following acceptance by City of the Improvements. Nothing contained in this Section is intended to or shall be deemed to limit or waive any protections or immunities afforded by law to the City, its officials, agents and employees, including without limitation the protections and immunities afforded by Government Code 830.6, for any design or construction defect in the work subsequently discovered by the City. City shall not be liable for any negligence, nonfeasance, misfeasance or malfeasance in approving, reviewing, checking or inspecting any work or construction. 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 all public works facilities and other improvements described in this Agreement and the Improvement Plans submitted to the City in furtherance of this Agreement on file with the City. All construction and improvements shall be completed in accordance with all standards established in the 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 cost of the Improvements, as provided by the Developer's engineer's estimate, as approved by the City Engineer or his or her designee, 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.

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 Developer may reduce the performance bond or 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 of the persons named in California Civil Code Section 3181; (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 of the persons named in Civil Code Section 3181 so as to give a right of action to those persons or their assigns in any suit brought upon the bond.

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 Insurances 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. 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 (a) a policy of general liability and property damage insurance in the minimum amount of Two Million Dollars (\$2,000,000), combined single limit for both bodily injury and property damage; (b) workers' compensation insurance as required by law; and (c) broad form "Builder's Risk" property damage insurance limits of not less than 100% of the estimated value of the Improvements to be constructed by 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).

All such policies shall provide that thirty (30) days written notice must be given in advance to City prior to termination or cancellation. Developer will provide City with timely notice in the event of a material reduction in coverage. The insurance specified in (a) above shall be endorsed to name the City as additional insured. All policies shall include a waiver 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.

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 One Million Ninety-eight Thousand Two Hundred and Sixty-one Dollars and Eight Cents (\$1,098,261.08). 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 substantial construction of the Improvements required by this Agreement within the time period set forth in the Conforming clarifications to the Schedule of Performance in the Second Implementation Agreement between City and Developer. All the provisions of this Agreement and all work to be done pursuant to the terms of this Agreement are to be commenced and completed to City's satisfaction 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 to allow Developer to keep streets closed to public traffic until the Improvements are accepted by the City and the Faithful Performance and Payment Bonds are released, except for 10% of the Performance Bond or substituted warranty bond as provided above (Sec. 2.d). In the event good cause exists, as determined by the City's Development Services Director acting in accordance with the Second Implementation Agreement, the time for commencement of construction or completion of the Improvements hereunder may be extended. 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. The Development Services Director shall be the sole and final judge as to whether or not good cause has been shown to entitle Developer to an extension.

SECTION 5

a) Default of Developer shall include, but not be limited to: (1) failure to timely commence construction of the Improvements; (2) failure to timely complete construction of the Improvements; (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 notice of such default, or if the default may not reasonably be curing 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 or 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 6

The following General Stipulations and the attached stipulations shall be completed, subject to the approval of the Development Services Director:

1. Locate and properly dispose of any wells, septic tanks and underground fuel storage facilities. NOTE: The capping of any well will require inspection by the Marina Coast Water District.
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 City Engineer 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 Improvement Plans as an AutoCAD drawing file (DWG format, AutoCAD 2002 maximum).
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.

SECTION 7

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 8

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 9

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 therefore, nor shall anything in this Agreement commit the City to any such apportionment.

SECTION 10

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 11

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

SECTION 12

The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

SECTION 13

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

SECTION 14

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

SECTION 15

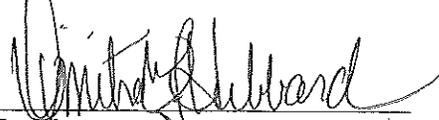
Time is of the essence of this Agreement.

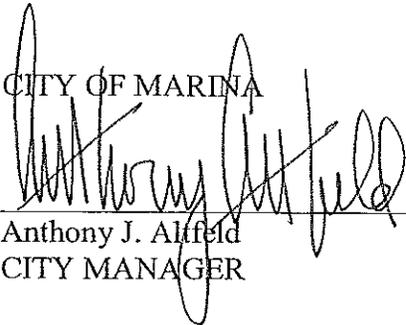
SECTION 16

This Agreement 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.

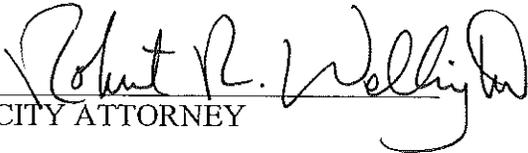
IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first written above.

ATTEST:


Joy Junsay *Dimitra M. Hubbard*
CITY CLERK

CITY OF MARINA

Anthony J. Alfeld 09.05.08
CITY MANAGER

APPROVED AS TO FORM:


CITY ATTORNEY

MARINA COMMUNITY PARTNERS, LLC
By Shea Homes Limited Partnership,
Its Managing Member

BY:



BY:


Robert V. Claffin

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

State of California
County of Alameda

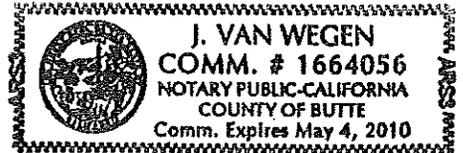
On September 3, 2008 before me, Van Wegen, Notary Public (here insert name and title of the officer), personally appeared Layne Marceau and Robert V. Craftin

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 Van Wegen (Seal)



State of California
County of Monterey

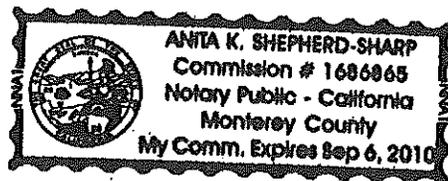
On Aug 9-5-08 before me, Anita Shepherd-Sharp, Notary Public (here insert name and title of the officer), personally appeared Anthony Aitfeld

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 Anita Shepherd-Sharp (Seal)



Per GC Sec. 40814; CC Sec. 1181

State of California
County of _____

On _____ before me, (here insert
name and title of the officer), 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 _____ (Seal)

State of California
County of _____

On _____ before me, (here insert
name and title of the officer), 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 _____ (Seal)

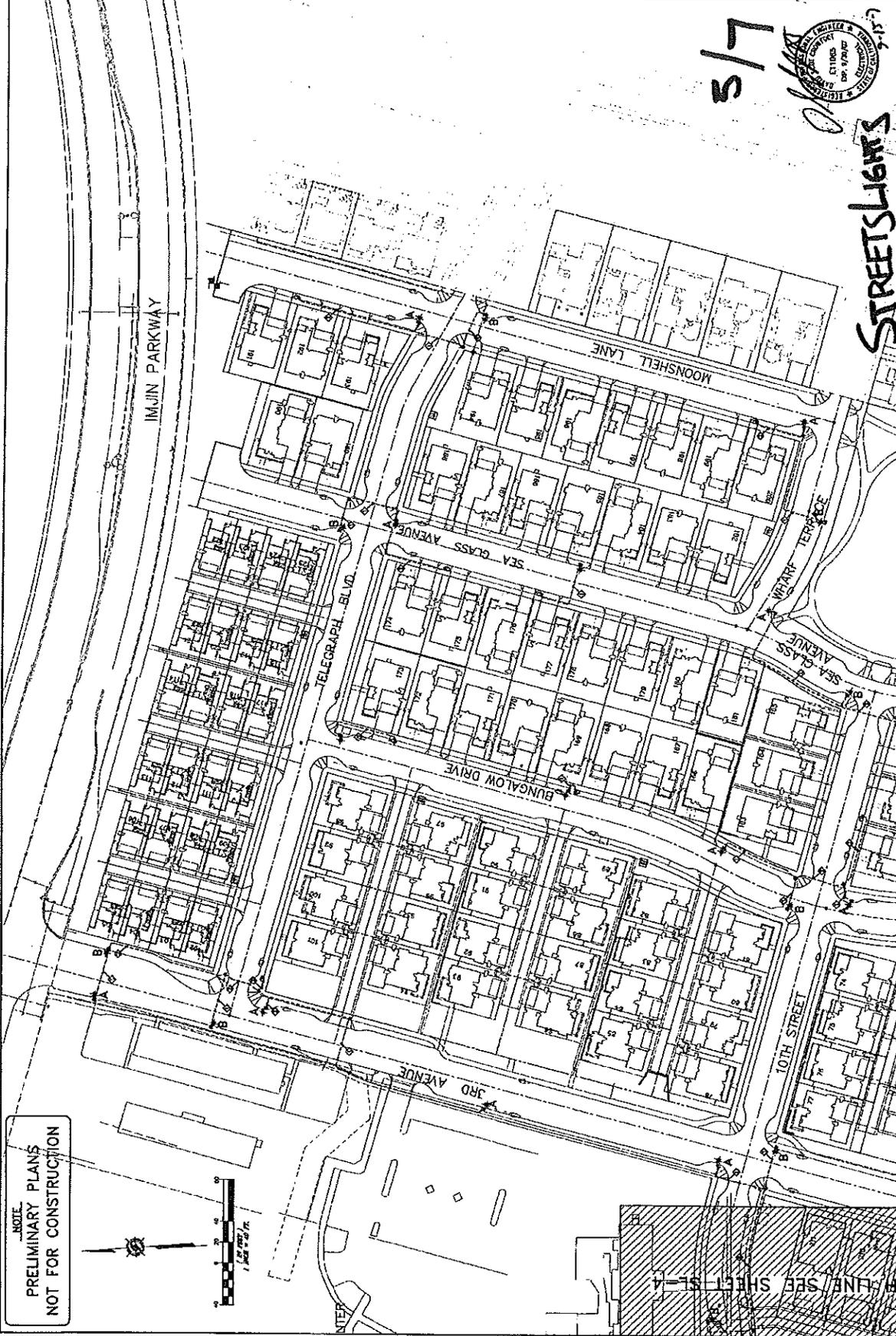
Per GC Sec. 40814; CC Sec. 1181

DATE	DESCRIPTION

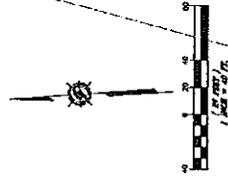
Swanone
 DESIGN SERVICES, INC.
 JOINT TRENCH UTILITY DESIGN • STREET LIGHTING • UTILITY CONSULTING
 2625 GARDEN COURT, ANTIPOCA, CA 94503
 PHONE (925) 754-0000 • FAX (925) 754-0000

STREET LIGHTING PLAN
 "THE DUNES" PHASE 1C
 SHEA HOMES
 (549 TOTAL UNITS)
 MARINA
 CALIFORNIA

SHEET
 PUBLIC
 SL-2
 OF 6 SHEETS



NOTE:
 PRELIMINARY PLANS
 NOT FOR CONSTRUCTION



5/7

STREET LIGHTS

MATCH LINE SEE SHEET SU-3

MATCH LINE SEE SHEET SL-1

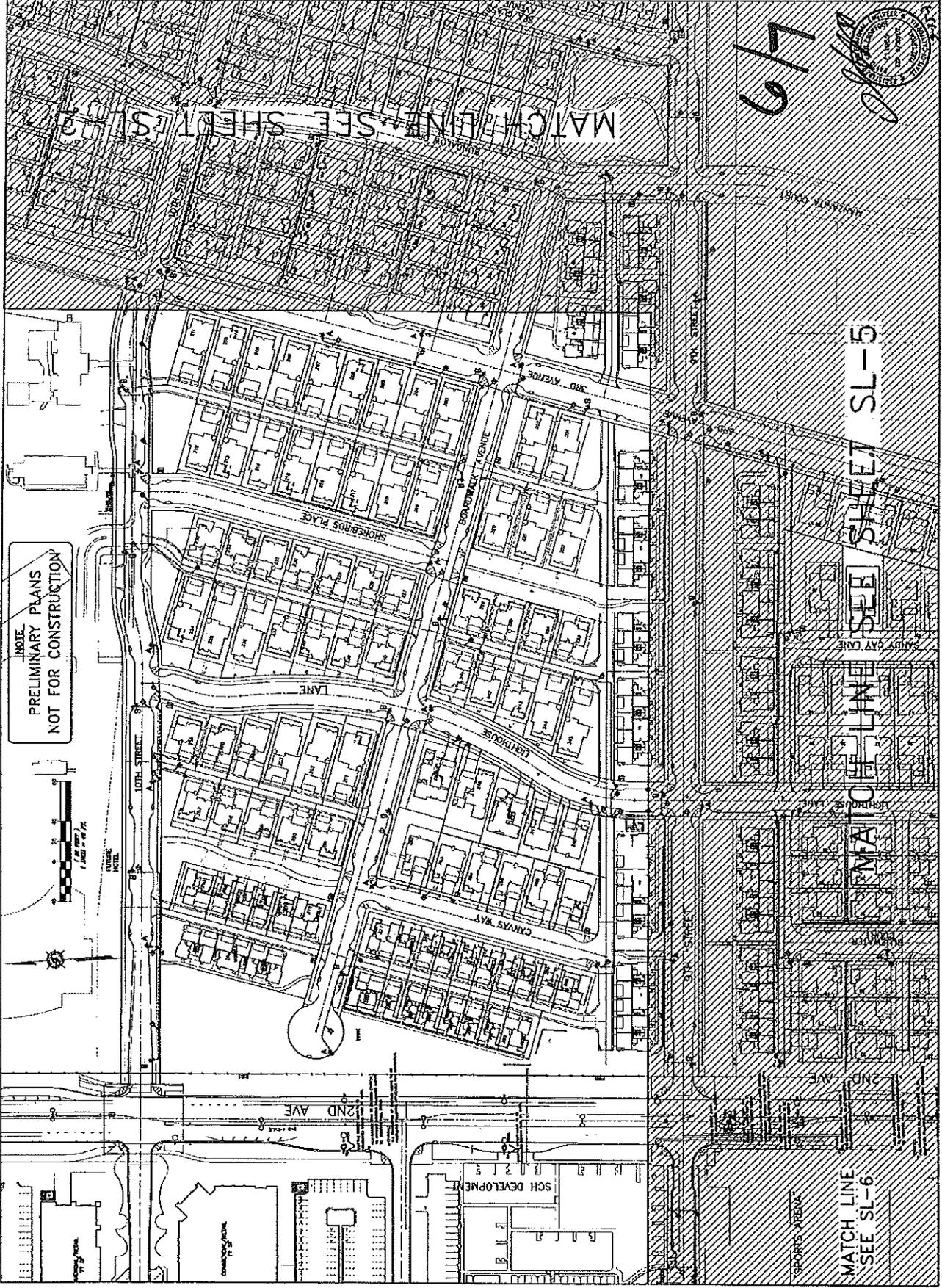
DATE: 11/18/17
 DRAWN BY: [Signature]

DATE	NO.	BY	CHKD.

Spacelane
 DESIGN SERVICES, INC.
 JOINT TRENCH UTILITY DESIGN • STREET LIGHTING • UTILITY CONSULTING
 6700 KILPATRICK AVENUE, SUITE 200, SAN DIEGO, CA 92121
 PHONE (619) 594-9900 • FAX (619) 594-9908

STREET LIGHTING PLAN
 "THE DUNES" PHASE 1C
 SHEA HOMES
 (244 TOTAL UNITS)
 MARINA
 CALIFORNIA

SHEET
 PUBLIC
SL-4
 OF 6 SHEETS



NOTE:
 PRELIMINARY PLANS
 NOT FOR CONSTRUCTION

MATCH LINE
 SEE SL-6

MATCH LINE
 SEE SHEET SL-5

MATCH LINE - SEE SHEET SL-3

DATE: 08/11/10
 DRAWN BY: JLD
 CHECKED BY: JLD
 PROJECT NO: 08-001

DATE	DESCRIPTION

Spacecore
 DESIGN SERVICES, INC.
 JOINT TRENCH UTILITY DESIGN • STREET LIGHTING • UTILITY CONSULTING
 2545 CROWN COURT, ANIMAS CA 94008
 PHONE (925) 755-8608 • FAX (925) 754-0038

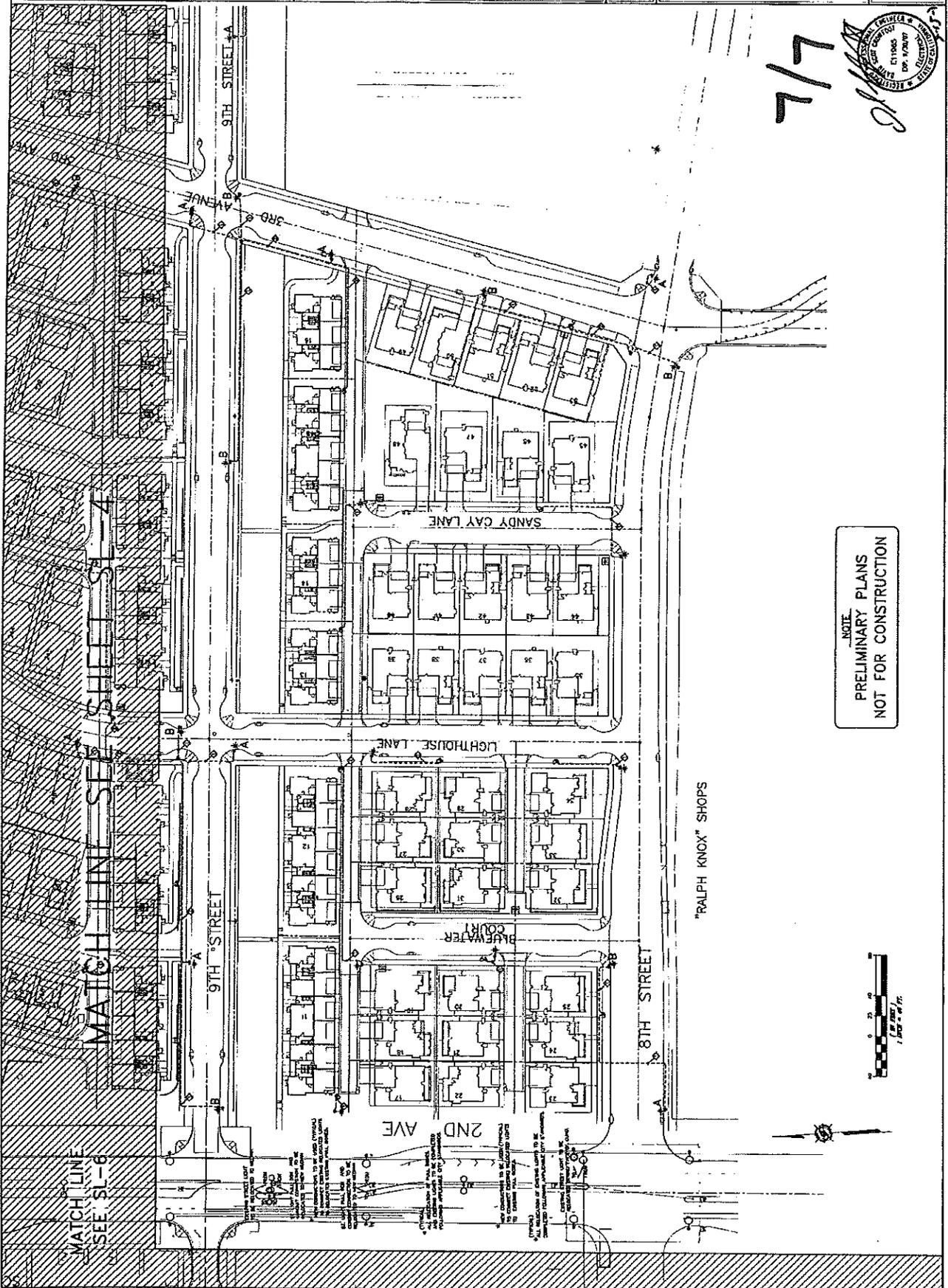
PROJECT NO.	1002001001
DATE	02/20/07
SCALE	1" = 40'

CALIFORNIA
 MARINA
 "THE DUNES" PHASE 1C
 SHELA HOMES
 (215 TOTAL UNITS)
 STREET LIGHTING PLAN

SHEET PUBLIC
SL-5
 OF 6 SHEETS



7/17



NOTE:
 PRELIMINARY PLANS
 NOT FOR CONSTRUCTION

MATCH LINE SEE SL-6

MATCH LINE SEE SL-4

2ND AVE
 BAYWATER COURT
 LIGHTHOUSE LANE
 SANDY CAY LANE
 8TH STREET
 9TH STREET

"RALPH KNOX" SHOPS

ALL UTILITIES SHOWN ARE BASED ON RECORD DRAWINGS AND FIELD SURVEY. THE CONTRACTOR SHALL VERIFY THE LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND COORDINATING WITH ALL UTILITIES OWNERS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL UTILITIES AND STRUCTURES TO REMAIN. THE CONTRACTOR SHALL BE RESPONSIBLE FOR MAINTAINING ACCESS TO ALL ADJACENT PROPERTIES AND PUBLIC AREAS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR RESTORING ALL AREAS TO ORIGINAL OR BETTER CONDITION AFTER CONSTRUCTION IS COMPLETE.

Engineer's Estimate for Interim Improvements at The Dunes on Monterey Bay
City of Marina

(Based on Street Improvement Plans for The Dunes on Monterey Bay Phase 1 dated 1/8/08 and scope from Exhibit A shts 1-7 from Interim Improvement Agreement)

	Street Improvements	Units	Quantity	Unit Cost	Item Cost
1	Finish Grade	SF	169,370.00	\$0.45	\$76,216.50
2	Rock Subgrade (Under Curb & Gutter)	SF	13,190.00	\$1.20	\$15,828.00
3	9" AB	SF	33,000.00	\$1.35	\$44,550.00
4	7" AB	SF	57,710.00	\$1.05	\$60,595.50
5	4.5" AC	SF	33,000.00	\$2.60	\$85,800.00
6	3" AC	SF	57,710.00	\$1.70	\$98,107.00
7	Signage & Striping	LS	1.00	\$10,000.00	\$10,000.00
Total Cost:					\$391,097.00

	Storm Drain	Units	Quantity	Unit Cost	Item Cost
1	12" HDPE	LF	260.00	\$50.00	\$13,000.00
2	15" HDPE	LF	780.00	\$60.00	\$46,800.00
3	18" HDPE	LF	365.00	\$90.00	\$32,850.00
4	36" HDPE	LF	70.00	\$125.00	\$8,750.00
5	Manhole	EA	9.00	\$4,000.00	\$36,000.00
6	Infiltration System	LS	1.00	\$200,000.00	\$200,000.00
Total Cost:					\$337,400.00

	Joint Trench	Units	Quantity	Unit Cost	Item Cost
1	Trenching	LF	4,800.00	\$8.50	\$40,800.00
2	Vaults	EA	29.00	\$2,100.00	\$60,900.00
3	Conduit	LF	8,500.00	\$4.00	\$34,000.00
4	Gas Pipe	LF	3,200.00	\$5.00	\$16,000.00
5	Street Lights	LS	6.00	\$5,000.00	\$30,000.00
Total Cost:					\$181,700.00

	Concrete	Units	Quantity	Unit Cost	Item Cost
1	Curb and Gutter	LF	5,279.00	\$15.82	\$83,513.78
2	Driveways	SF	1,194.00	\$4.95	\$5,910.30
3	Catch Basins	EA	19.00	\$3,200.00	\$60,800.00
4	Sidewalk	SF	8,800.00	\$4.30	\$37,840.00
Total Cost:					\$188,064.08

TOTAL COST FOR INTERIM IMPROVEMENTS: \$1,098,261.08

January 16, 2015

Item No: **11a**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of January 21, 2015

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2015-,
APPROVING REQUEST BY MARINA COMMUNITY PARTNERS LLC, TO
RELEASE A PORTION OF THE PERFORMANCE SECURITY FOR
PUBLIC IMPROVEMENTS IN THE DUNES PHASE 1C AREA IN AMOUNT
OF \$988,434.97, ACCEPTING A SUBSTITUTE PERFORMANCE BOND
SECURITY OF \$109,826.11 FOR REMAINING STREET LIGHTS AND
ELECTRICAL FACILITIES, AND AUTHORIZING CITY MANAGER TO
EXECUTE RELEASE AGREEMENT ON BEHALF OF CITY SUBJECT TO
FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY**

REQUEST:

It is requested that the City Council consider adopting Resolution No. 2015-:

1. Approve request by Marina Community Partners LLC, to release portion of performance security for public improvements in the Dunes Phase 1C area in the amount of \$988,434.97.
2. Accept a substitute performance bond security of \$109,826.11 for remaining street lights and electrical facilities, and;
3. Authorize the City Manager to execute the release agreement on behalf of the City subject to final review and approval by the City Attorney.

BACKGROUND:

At the regular meeting of August 5, 2008, the City Council adopted Resolution No. 2008-173, approving Public Improvement Agreement between City of Marina (City) and Marina Community Partners LLC (MCP), of Marina, California, to construct public improvements in the Dunes Phase 1C area. MCP, as required by the Public Improvement Agreement, filed with the City Clerk a performance bond in the amount of \$1,098,261.08 to guarantee completion of public improvements for a portion of Phase 1C as described in the Agreement (“**EXHIBIT A**”).

On December 16, 2014, the City Council took action to continue the request from MCP to reduce the performance bond to 91% and accept a substitute performance bond of 9% of the original bond amount for remaining street lights and electrical facilities. The direction given by the City Council was for “staff to determine if the improvements have been substantially performed and provide information regarding the warranty.”

Upon request from Mayor Pro Tem O’Connell, the City Attorney has opined as follows:

The City has not accepted the improvements and should not consider doing so until completion of all the work. The Agreement with MCP does not require acceptance prior to 100% completion. Government Code §66499.7 permits MCP to seek a partial release of its performance bond following verified satisfactory completion of at least 80% of the work. A partial release of performance security does not operate as an acceptance of the completed improvements and the risk of loss and responsibility for maintenance remains with MCP until acceptance.

ANALYSIS:

The Public Improvement Agreement with MCP provides for security in the form of a performance bond in the total amount of the contract price (for this agreement, the total price is \$1,098,261.08). There is a one-year warranty period following acceptance for which the performance bond may serve as security or, alternatively, the developer may substitute a warranty bond in the amount of 10% of the total contract price.

In view of the Council's direction, MCP has modified their original reduction request of 91% of the performance bond to 90% (\$988,434.97). Thereafter, not less than 10% of the total contract price will be available to secure the completion of the work for the one-year warranty period (either in the form of the performance bond or a warranty bond) when the public improvements are accepted.

The Acting City Engineer has confirmed that a substantial portion representing 91% of the public improvements have been completed in accordance documentation submitted by MCP and in conformance with the approved Improvement Plans and will be ready for acceptance by the City upon completion of all the subdivision improvements. The improvements to be completed consist of three street lights and some electrical facilities.

MCP shall provide substitute security in the amount of \$109,826.11 in place of the original \$1,098,261.08 in performance security. MCP has provided an updated Title Report that shows that the bonds to be released are unencumbered by mechanics lien claims.

FISCAL IMPACT:

There is no fiscal impact as City inspections have shown approximately \$988,434.97 in improvements has been completed per approved plans and any failure to complete the public improvements are covered by the substitute security in the amount of \$109,826.11.

CONCLUSION:

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

Respectfully submitted,

Edrie Delos Santos, P.E.
Associate Engineer, Engineering Division
Community Development Department
City of Marina

Nourdin Khayata, P.E.
Acting City Engineer
City of Marina

REVIEWED/CONCUR:

Christine di Iorio, AICP
Community Development Director
City of Marina

Layne Long
City Manager
City of Marina