

RESOLUTION NO. 2015-62

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING SERVICES FUNDING AGREEMENT BETWEEN CITY OF MARINA AND MARINA COMMUNITY PARTNERS A LIMITED LIABILITY COMPANY, AUTHORIZE THE CITY MANAGER TO EXECUTE AGREEMENT ON BEHALF OF CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY AND AUTHORIZE THE FINANCE DIRECTOR TO MAKE THE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES

WHEREAS, The City Council had previously approved a Development and Disposition Agreement (“DDA”) with Marina Community Partners (“MCP”) in 2005 for the transfer of property from the City to MCP for a housing development known as “The Dunes Development.” A key component of the DDA required The Dunes Development to be “fiscally neutral” to the City, and to that end, the DDA required MCP to form a special district, such as a landscape maintenance district or Community Facilities District (“CFD”), to pay for the costs of services to maintain the public streets, landscaping and related infrastructure to be owned by the City at The Dunes Development; and

WHEREAS, on April 6th, 2015, the City Council approved the Resolution of Intention, which expressed the intention of the Council to create the Dunes CFD and the Future Annexation Area, and set the time and place for the public hearing; and

WHEREAS, under estimates prepared by Engineering staff, in conjunction with the City Manager and Shea Homes, there could be a shortfall between the actual cost of providing the required Services and the special taxes that may be levied under the Rate and Method on Developed Property and on Undeveloped Property during the period when the property in the CFD is under development (including the periods when property annexed from the Future Annexation Area into the CFD is under development); and

WHEREAS, Shea Homes has indicated it is willing to make up any special tax shortfalls during the build-out period, and in order to memorialize this agreement, staff, working with counsel, have prepared the attached Services Funding Agreement (**EXHIBIT A**).

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

1. Approve Services Funding Agreement between City of Marina and Marina Community Partners Limited Liability Company(“MPC”),
2. Authorize the City Manager to execute agreement on behalf of the City subject to final review and approval by the City Attorney, and
3. Authorize the Finance Director to make the necessary accounting and budgetary entries.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 2<sup>nd</sup> day of June 2015, by the following vote:

AYES: COUNCIL MEMBERS: Amadeo, Brown, Delgado

NOES: COUNCIL MEMBERS: Morton, O’Connell

ABSENT: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

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Bruce C. Delgado, Mayor

ATTEST:

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Anita Sharp, Deputy City Clerk

**SERVICES FUNDING AGREEMENT**

This SERVICES FUNDING AGREEMENT (this "Agreement") is made by and between the City of Marina (the "City") and Shea Homes Limited Partnership (the "Developer").

*RECITALS:*

WHEREAS, the City, pursuant to petition submitted by the Developer, is carrying out proceedings to form a Community Facilities District designated as the "City of Marina Community Facilities District No. 2015-1 (The Dunes)" (the "CFD"), and an area proposed to be annexed into the CFD in the future designated as the "City of Marina Community Facilities District No. 2015-1 (The Dunes) (Future Annexation Area)" (the "Future Annexation Area"), all under Sections 53311 *et seq.* of the California Government Code; and

WHEREAS, the Developer is developing certain property in the City as a mixed-use project (known as "The Dunes") in multiple phases; and

WHEREAS, the first phase of The Dunes, known as Phase 1C ("Phase 1C"), is depicted on the final subdivision map recorded in the office of the Monterey County Recorder's office on \_\_\_\_\_, 2015, as document number \_\_\_\_\_, and is intended to consist of 332 homes, a portion of which is included in the CFD and the remainder of which is within the Future Annexation Area; and

WHEREAS, the special taxes to be levied by the City within the CFD (the "Special Taxes") will be used to pay for certain municipal services serving the property within the CFD, consisting generally of the maintenance of streets, sidewalks, curbs and gutters, decorative lighting and storm drains that have been dedicated to and accepted by the City as public improvements, as more particularly described in the proceedings for the formation of the CFD (collectively, the "Services"); and

WHEREAS, the property within the CFD and the Future Annexation Area are intended for development and sale to end users; and

WHEREAS, the Special Taxes will be levied by the City within the CFD under a special tax formula contained in the rate and method of apportionment of special tax (the "Rate and Method"), which is based on a budget for the Services, accumulation of capital reserves and administrative expenses that has been agreed to by both City and Developer as sufficient to pay for those Services, accumulation of capital reserves and administrative expenses and is attached as Exhibit A (the "Approved Budget"), which includes an annual escalator factor, and which establishes different Special Tax rates for developed property, generally defined as property that has received a building permit for new construction of a residential or non-residential structure ("Developed Property"), and undeveloped property ("Undeveloped Property"); and

WHEREAS, the City will determine, prior to each fiscal year, the amount needed to pay the cost of Services, accumulation of capital reserves and administrative expenses related to

the CFD in conformance with the Approved Budget, and amounts needed to cure any delinquencies in the payment of Special Taxes that have occurred in prior fiscal years (collectively, the "Annual Costs"); and

WHEREAS, because of the phasing of multiple final maps for the property within the CFD and the implementation of the CFD, the City currently anticipates that a shortfall (the "Special Tax Shortfall") may arise in certain fiscal years between (a) the Annual Costs and (b) the maximum special taxes that may be levied under the Rate and Method during the period when the property in the CFD is under development and is classified partially as Developed Property and partially as Undeveloped Property; and

WHEREAS, the Special Tax Shortfall may be eliminated in certain fiscal years depending on the timing of the dedication to and acceptance by the City of the public improvements or the annexation of property from the Future Annexation Area into the CFD, and

WHEREAS, the Developer is willing to pay to the City any Special Tax Shortfall with respect to the Special Taxes levied and collected in Phase 1C in order to ensure that sufficient funds are available to provide the Services to the property in Phase 1C; and

WHEREAS, the City and the Developer now desire to specify the terms of the calculation and payment of the Special Tax Shortfall by the Developer to the City.

#### AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants set forth herein, and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Calculation and Payment of Special Tax Shortfall. Each fiscal year, no later than July 31, the City shall prepare and provide to the Developer a calculation of the Annual Costs and an estimate of the resulting Special Tax Shortfall anticipated to exist for that fiscal year with respect to the Special Taxes levied on the Phase 1C property.

The Developer agrees to pay to the City all Special Tax Shortfalls, by wire transfer or by check made payable to the "City of Marina," no later than August 31 each year. Any late payment of the Special Tax Shortfall shall be subject to a penalty of 1.5% per month.

Section 2. Reconciliation. On July 1 of each year, the Developer or the City may request a true-up accounting to determine the actual amount of the Special Tax Shortfall for the prior fiscal year (each a "Reconciliation"). The cost of the Reconciliation shall be borne by the requesting party. For purposes of preparing the Reconciliation and determining actual Annual Costs for the prior fiscal year, accumulation of reserves for an infrastructure improvement will begin upon the acceptance of that improvement by the City.

If the Reconciliation concludes that the actual amount of the Special Tax Shortfall was higher than the amount originally paid by the Developer, then the Developer shall pay the difference to the City by wire transfer or by check made payable to the "City of Marina" no later than 30 days after the Reconciliation has been completed. If the Reconciliation concludes that the actual amount of the Special Tax Shortfall was lower than the amount originally paid by the Developer, the difference shall be credited against the Special Tax Shortfall amount to be billed

to the Developer for the then-current fiscal year or, if this Agreement has terminated, shall be refunded to the Developer.

Section 3. Use of the Special Tax Shortfall Payments. The City shall apply all Special Tax Shortfall payments to the purposes for which the Special Taxes are levied.

Section 4. Termination. This Agreement shall terminate at the end of the fiscal year during which all of the Phase 1C property has been annexed into the CFD and after any Reconciliation is completed with respect to that fiscal year.

Section 5. Successors and Assigns. The Developer may assign its obligations under this Agreement by written agreement between it and an assignee delivered to the City, subject to the City's prior written consent (which shall not be unreasonably withheld or delayed). This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

Section 6. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

Section 7. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 8. Notices. Unless otherwise mutually agreed upon in writing by the parties, all notifications, notices, demands, requests and other communications herein provided for or made pursuant hereto shall be in writing and shall be personally delivered to either party and shall be deemed received when personally delivered, or sent by (i) registered or certified mail, return receipt requested, and the giving of such communication shall be deemed complete on the third (3<sup>rd</sup>) Business Day after the same is deposited in a United States Post Office with postage charges prepaid, or (ii) reputable overnight delivery service, and the giving of such communication shall be deemed complete on the immediately succeeding Business Day after the same is deposited with such delivery service, addressed as follows:

City	City of Marina Attn: City Manager & Finance Director City Hall 211 Hillcrest Avenue Marina, CA 93933 Tel: 831-884-1278
Developer:	Shea Homes Limited Partnership Attention: Don Hofer, VP of Community Development PO Box 5064 Livermore CA 94551  2630 Shea Center Drive Livermore CA 94551 Fax: 925.245.8831.

\* \* \* \* \*

IN WITNESS THEREOF, the parties hereto have executed this Agreement as of the day and year written alongside their signature line below.

Executed on: \_\_\_\_\_, 2015

DEVELOPER:

SHEA HOMES LIMITED PARTNERSHIP,  
a California limited partnership

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Executed on: \_\_\_\_\_, 2015

CITY:

CITY OF MARINA

By: \_\_\_\_\_

City Manager

DRAFT

**EXHIBIT A**  
**APPROVED SERVICES BUDGET**

DRAFT



## The Dunes Phase 1C, CFD Budget - FY 2015/16

	Sub-Phase Costs <sup>(1)</sup>	Residential Units <sup>(2)</sup>	Collected Tax Revenue <sup>(3)</sup>	Projected Shortfall
Sub-Phases 1-2	\$ 72,922.84	117	\$ 51,155.91	\$ 21,766.93
Sub-Phase 3	\$ 87,500.51	156	\$ 68,207.88	\$ 19,292.63
Sub-Phase 4	\$ 102,631.57	198	\$ 86,571.54	\$ 16,060.03
Sub-Phase 5	\$ 108,343.38	265	\$ 115,865.95	\$ (7,522.57)
Sub-Phase 6	\$ 126,426.65	302	\$ 132,043.46	\$ (5,616.81)
Sub-Phase 7	\$ 145,161.36	332	\$ 145,161.36	\$ -

<sup>(1)</sup> Sub-Phase maintenance costs are cumulative. All costs shown are based on FY 15/16 budget and shall increase annually thereafter based on the Construction Cost Index as published in the Engineering News Record.

<sup>(2)</sup> The number of residential units are cumulative based on total build-out of sub-phases.

<sup>(3)</sup> Sub-Phase Tax Revenue is cumulative based on total build-out of sub-phases.

May 14, 2015

Item No. **9a**

Honorable Mayor and Members  
Of the Marina City Council

City Council Meeting  
of June 2, 2015

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2015-,  
APPROVING SERVICES FUNDING AGREEMENT BETWEEN CITY OF  
MARINA AND SHEA HOMES LIMITED PARTNERSHIP, AUTHORIZE  
THE CITY MANAGER TO EXECUTE AGREEMENT ON BEHALF OF  
CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY  
ATTORNEY AND AUTHORIZE THE FINANCE DIRECTOR TO MAKE  
THE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES**

**REQUEST:**

It is recommended that the City Council approve Resolution No. 2015-,

1. Approving Services Funding Agreement between City of Marina and Shea Homes Limited Partnership (“Shea Homes”),
2. Authorizing the City Manager to execute agreement on behalf of the City subject to final review and approval by the City Attorney, and
3. Authorizing the Finance Director to make the necessary accounting and budgetary entries.

**BACKGROUND:**

The City Council had previously approved a Development and Disposition Agreement (“DDA”) with Marina Community Partners (“MCP”) in 2005 for the transfer of property from the City to MCP for a housing development known as “The Dunes Development.” A key component of the DDA required The Dunes Development to be “fiscally neutral” to the City, and to that end, the DDA required MCP to form a special district, such as a landscape maintenance district or Community Facilities District (“CFD”), to pay for the costs of services to maintain the public streets, landscaping and related infrastructure to be owned by the City at The Dunes Development.

The City received a petition from Shea Homes, the assignee of MCP for certain portions of the Dunes Development, requesting the City to create a Community Facilities District to be designated the “City of Marina Community Facilities District No. 2015-1 (The Dunes)” (the “Dunes CFD”) to levy a special tax to fund all or a part of the public services (the “Services”) required to maintain infrastructure to be owned by the City at The Dunes Development, which will include streets, sidewalks, curbs & gutters, decorative lighting and storm drains. In addition, the petition requested the City to designate a Future Annexation Area, which is an area in which additional parcels can be annexed into the CFD in the future if all owners of the parcels being annexed execute a unanimous consent to annexation.

On April 6th, 2015, the City Council approved the Resolution of Intention, which expressed the intention of the Council to create the Dunes CFD and the Future Annexation Area, and set the time and place for the public hearing, which will be conducted by the City Council later during tonight’s meeting.

On May 19, 2015, the City Council conducted a public hearing and took public comments regarding the Services Funding Agreement and continued the discussion to future council meeting.

**ANALYSIS:**

The special taxes will be levied by the City within the CFD under a special tax formula contained in the rate and method of apportionment of special tax (the “Rate and Method”), which establishes different special tax rates for developed property, generally defined as property that has received a building permit for new construction of a residential or non-residential structure (“Developed Property”), and undeveloped property (“Undeveloped Property”).

Under estimates prepared by Engineering staff, in conjunction with the City Manager and Shea Homes, there could be a shortfall between the actual cost of providing the required Services and the special taxes that may be levied under the Rate and Method on Developed Property and on Undeveloped Property during the period when the property in the CFD is under development (including the periods when property annexed from the Future Annexation Area into the CFD is under development). Shea Homes has indicated it is willing to make up any special tax shortfalls during the build-out period, and in order to memorialize this agreement, staff, working with counsel, have prepared the attached Services Funding Agreement (**EXHIBIT A**), which is submitted tonight for consideration and approval.

**TONIGHT’S ACTIONS:**

**Approve the Services Funding Agreement** - The agreement has been prepared and reviewed by the City’s consultant team, which includes bond counsel (Jones Hall), financial advisor (Fieldman, Rolapp and Associates) and special tax consultant (Goodwin Consulting).

**FISCAL IMPACT:**

There is a projected impact to the City’s General Fund to make up any annual shortfall in special tax revenues during periods of buildout, that would be paid by Shea Homes under Services Funding Agreement.

**CONCLUSION:**

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

**REVIEWED/CONCUR:**

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Layne P. Long  
City Manager  
City of Marina

**Attachments:**

1. Services Funding Agreement