

RESOLUTION NO. 2015-123

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
APPROVING AMENDMENT NO. 9, EXTENDING AGREEMENT FOR PHASE II
SUBDIVISION IMPROVEMENT AGREEMENT FOR MARINA HEIGHTS
DEVELOPMENT PROJECT FOR ONE HUNDRED TWENTY (120) DAYS AND
AUTHORIZING CITY MANAGER TO EXECUTE EXTENSION AGREEMENT ON
BEHALF OF CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY
ATTORNEY

WHEREAS, the City Council adopted Resolution No. 2006-228 approving the Phase II Final Map and Subdivision Improvement Agreement for the Marina Heights project at the regular meeting of September 6, 2006, and;

WHEREAS, the Phase II Subdivision Improvement Agreement was extended for one year to September 21, 2009 by the City Council with the adoption of Resolution 2008-210 at the regular meeting of October 7, 2008, and;

WHEREAS, the Phase II Subdivision Improvement Agreement was extended for one year to September 21, 2010 by the City Council with the adoption of Resolution 2009-141 at the regular meeting of August 18, 2009, and;

WHEREAS, at the regular meeting of August 17, 2010, the City Council adopted Resolution No. 2010-138 receiving a status report on the Phase II Subdivision Improvement Agreement for the Marina Heights Project, and;

WHEREAS, at the regular meeting of August 17, 2010, the City Council after reviewing and discussing the status report, gave direction to staff to schedule a Study Session for September 28, 2010 to discuss information to be provided by staff pertaining to the Phase II Subdivision Improvement Agreement for the Marina Heights Project, and;

WHEREAS, at the special meeting of September 28, 2010, the City Council adopted Resolution 2010-161 receiving a report on the Phase II Subdivision Improvement Agreement for the Marina Heights Project, and;

WHEREAS, at the special meeting of September 28, 2010, the City Council after reviewing and discussing the information provided by staff, gave direction to staff to provide information pertaining to the implications of extending or not extending the Phase II Subdivision Improvement Agreement for the Marina Heights Project, and;

WHEREAS, at the regular meeting of October 19, 2010, the City Council adopted Resolution 2010-179, receiving the information provided staff pertaining the implications of extending or not extending the Phase II Subdivision Improvement Agreement for the Marina Heights Project, and;

WHEREAS, at the regular meeting of October 19, 2010, the City Council after reviewing and discussing the information provided by staff, gave direction to staff to prepare for consideration by the City Council Amendment No. 4 extending the Phase II Subdivision Improvement Agreement for one (1) year to September 21, 2011, and;

WHEREAS, the Phase II Subdivision Improvement Agreement was extended for one year to September 21, 2011 by the City Council with the adoption of Resolution 2010-186 at the regular meeting of November 3, 2010, and;

WHEREAS, the Phase II Subdivision Improvement Agreement was extended for one year to September 21, 2011 by the City Council with the adoption of Resolution 2010-186 at the regular meeting of November 3, 2010, and;

WHEREAS, the Phase II Subdivision Improvement Agreement was extended for one year to September 12, 2012 by the City Council with the adoption of Resolution 211-153 at the regular meeting of September 7, 2011, and;

WHEREAS, the Phase II Subdivision Improvement Agreement was extended for one year to September 21, 2013 by the City Council with the adoption of Resolution 2112-135 at the regular meeting of September 5, 2012.

WHEREAS, the Phase II Subdivision Improvement Agreement was extended for six (6) months to March 21, 2014 by the City Council with adoption of Resolution No. 2013-132 at the regular meeting of September 17, 2013

WHEREAS, at the regular meeting of September 17, 2013, the City Council adopted Resolution No.2013-132, approving Amendment No. 7 to the Agreement providing for a six (6) month extension to March 21, 2014

WHEREAS, At the regular meeting of April 15, 2014, the City Council adopted Resolution No. 2014-51, approving Amendment No. 8 to the Agreement providing for a twelve (12) month extension to March 21, 2015

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

1. Approve Amendment No. 9 approving a 120 day extension of the Phase II Subdivision Improvement Agreement for the Marina Heights Project to February 20, 2016, and;
2. Authorize the City Manager to execution the extension 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 20th day of October 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

ATTEST:

Bruce C. Delgado, Mayor

Anita Sharp Deputy City Clerk

**AMENDMENT NO. 9
TO
PHASE II - SUBDIVISION IMPROVEMENT
AGREEMENT FOR
THE MARINA HEIGHTS SUBDIVISION**

In consideration of the mutual promises contained herein, City and Subdivider agree that the terms and Conditions set forth are incorporated into the Subdivision Improvement Agreement between City and Subdivider dated September 18, 2006, Amendment No. 1. to Subdivision Improvement Agreement between City and Subdivider dated October 7 2008, Amendment No. 2 to Subdivision Improvement Agreement between City and Subdivider dated April 28, 2009, Amendment No. 3 to Subdivision Improvement Agreement between City and Subdivider dated August 28, 2009, and Amendment No. 4 to Subdivision Improvement Agreement between City and Subdivider dated January 25, 2011, Amendment No. 5 to Subdivision Improvement Agreement between City and Subdivider dated November 3, 2011, Amendment No. 6 to Subdivision Improvement Agreement dated October 30, 2012 and Amendment No. 7 to Subdivision Improvement Agreement dated September 2013. Amendment No. 8 dated May 2014. Only the numbered paragraph of said Agreement which is being modified or otherwise revised, is set forth in the Amendment. Only the numbered paragraph of said Agreement which is being modified or otherwise revised, is set forth in the Amendment.

Paragraph E. The Subdivider's Engineer shall deliver corrected, complete and final set of vellum "as-built" plans to the City Engineer before acceptance of public improvements. Delivery of the drawings will not relieve the Subdivider of the responsibility of furnishing and additional required information.

**TIME OF
COMPLETION**

7. In the event the Subdivider fails to complete all aforesaid improvements required to be completed by said Subdivider within two years from the date of this Agreement, as hereinbefore provided, such date may be extended for delays beyond Subdividers control but in no event shall delay exceed twelve additional months. If the improvements have not been completed within the time frame provided in Paragraph 7, then the City may complete the same and recover the full costs and expenses thereof from the Subdivider. As provided for in this Paragraph 7, this Agreement is extended an additional 120 days to February 20, 2016.

IN WITNESS WHEREOF, City and Subdivider, by their duly authorized representatives. Have executed this Amendment on the dates set forth below at Marina, California.

SUBDIVIDER

Cypress Marina Heights, L.L.C.
A California limited partnership

By: Chadmar/Watt Marina Partners LLC
A California limited company

By: Chadmar Inc.
A California corporation, Manager

By: _____
Name: Charles R. Lande
Title: President

Date: _____, 2015

OWNER/SUCCESSOR AGENCY OF THE FORMER MARINA REDEVELOPMENT
AGENCY OF THE CITY OF MARINA.

By: _____
Name: Lane Long
Title: City Manager

Date: _____, 2015

APPROVED AS TO FORM

City Attorney

Date: _____, 2015

CITY OF MARINA
A MUNICIPAL CORPORATION

ATTEST

Anita Sharp, Deputy City Clerk

Date: _____, 2015

October 2, 2015

Item No. **8g(2)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of October 20, 2015

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2015-,
APPROVING AMENDMENT NO. 9 EXTENDING AGREEMENT FOR
PHASE II SUBDIVISION IMPROVEMENT AGREEMENT FOR MARINA
HEIGHTS DEVELOPMENT PROJECT FOR TWELVE (12) MONTHS
AND AUTHORIZING CITY MANAGER TO EXECUTE EXTENSION
AGREEMENT ON BEHALF OF CITY SUBJECT TO FINAL REVIEW
AND APPROVAL BY THE CITY ATTORNEY**

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2015-, approving Amendment No. 9 extending agreement for Phase II Subdivision Improvement Agreement for Marina Heights Development Project for twelve (12) months, and;
2. Authorizing City Manager to execute extension agreement on behalf of City subject to final review and approval by the City Attorney.

BACKGROUND:

The Marina Redevelopment Agency entered into an Option Agreement with Cypress Marina Heights, L.L.C. dated November 14, 2002 providing for the acquisition and development of the Marina Heights Property. The Option Agreement included the price and terms of sale of the property, the conditions under which the Developer could exercise the Option and provisions regarding development of the property. The Option Agreement defines “development” as the completion of the entitlements for the Project Site, the preparation and grading of the project site in accordance with the Schedule of Benchmarks. (Section 1.2.14).

Section 7.1 of the Option Agreement provides that the “Developer intends to proceed with the Development of the Project Site in accordance with the Application and Schedule of Benchmarks, and thereafter use commercially reasonable efforts to construct the Improvements on the Project Site. Section 7.2 provides that “subject to any Unavoidable Delays, the Developer shall begin Development of the Project Site and proceed with construction within the times specified in the Schedule of Benchmarks or such reasonable extension of said dates as may be granted by this Agreement or by the Agency”.

The City and the Developer entered into a Government Code Development Agreement on March 20, 2004, providing the Developer with vested rights to develop the Property until November 2018. The Development Agreement, at Section 2.6 provides that the “Developer shall use all commercially reasonable efforts to develop and construct the Project within the time frames shown in the Benchmarks. Section 2.6 goes on to state that if the Developer fails to perform within the time period set forth in the Schedule of Benchmarks, the City can declare the Developer in default but Developer shall not be in default for as long as the Developer makes all reasonable efforts to diligently, continuously and in good faith work toward such performance.

The following are actions the City Council has taken to approve and extend the Subdivision Improvement Agreement from 2006 up through March 15, 2014.

- At the regular meeting of March 21, 2006, the City Council adopted Resolution No. 2006-56, approving the Phase II Final Map and Subdivision Improvement Agreement for the Marina Heights Project. The Agreement was approved for two (2) years to March 29, 2008
- At the regular meeting of April 4, 2006, the City Council adopted Resolution 2006-77 approving Amendment No. 1 to the Agreement providing for a revised bond amount for Phase II improvements.
- At the regular meeting of July 1, 2008, the City Council adopted Resolution 2008-147, approving Amendment No. 2 to the Agreement providing for a one (1) year extension to March 29, 2009.
- At the regular meeting of March 17, 2009, the City Council adopted Resolution 2009-33, approving Amendment No. 3 to the Agreement providing for a one (1) year extension to March 29, 2010.
- At the regular meeting of March 2, 2010, the City Council adopted Resolution 2010-42, approving Amendment No. 4 to the Agreement providing for a six (6) month extension to September 21, 2010.
- At the regular meeting of August 17, 2010, the City Council adopted resolution 2010-138 receiving a status report on the Phase II Subdivision Improvement Agreement.
- At the special meeting of September 28, 2010, the City Council adopted Resolution 2010-161 receiving a report on the Phase II Subdivision Improvement Agreement.
- At the regular meeting of October 19, 2010, the City Council adopted Resolution 2010-179, receiving a report on the implications of extending or not extending the Phase II Subdivision Improvement Agreement for the Marina Heights Project.
- At the regular meeting of November 3, 2010, the City Council adopted Resolution 2010-185, approving Amendment No. 5 to the Agreement providing for a one (1) year extension to September 21, 2011.
- At the regular meeting of September 7, 2011, the City Council adopted Resolution 2011-152, approving Amendment No. 6 to the Agreement providing for a one (1) year extension to September 21, 2012.
- At the regular meeting of September 17, 2013, the City Council adopted Resolution No. 2013-132, approving Amendment No. 7 to the Agreement providing for a six (6) month extension to March 21, 2014.
- At the regular meeting of April 15, 2014, the City Council adopted Resolution No. 2014-51, approving Amendment No. 8 to the Agreement providing for a twelve (12) month extension to March 21, 2015.

At a Special City Council Meeting on September 28, 2010 the City Council received a report on the Marina Heights development project which included: reviewing the Subdivision Improvement Agreements for Phase I and Phase II; the schedule of benchmarks in Option Agreement and Final Development Agreement; and city permit and impact fees in Option Agreement and Final Development Agreement.

Additionally, at the October 29, 2010 City Council meeting the Council received information on: the Marina Heights project pertaining to implications of extending or not extending the Phase I and Phase II Subdivision Improvement Agreements; how Subdivision Improvement bonds would be impacted by extending or not extending the Phase I and Phase II Subdivision Improvement Agreements; and discussions regarding prevailing wages, blight from old buildings, project fences and through access.

ANALYSIS:

The developer has re-engaged and is moving forward with completion of the project. Infrastructure improvements are expected to be completed within 6 months. The developer anticipates pulling building permits within 120 days.

For consideration by the City Council, staff has prepared Amendment No. 9 extending the Phase II Subdivision Improvement Agreement for one (1) year to October 6, 2016 (“**EXHIBIT A**”).

The Phase II Subdivision Improvement Agreement requires Marina Heights L.L.C., to file performance and labor and materials bonds with the City Clerk of the City of Marina to guarantee completion of the subdivision improvements. Continuation Certificates extending the required bonds continue to be in place.

FISCAL IMPACT:

None

CONCLUSION:

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

Respectfully submitted,

Layne Long
City Manager
City of Marina