

RESOLUTION NO. 2016-07

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING A FEE AGREEMENT BETWEEN THE CITY OF MARINA AND EAH INC. REPRESENTING THE VETERANS TRANSITION CENTER (VTC) FOR PROVISION OF PLANNING, ENGINEERING AND CITY ATTORNEY SERVICES RELATED TO REVIEW AND PROCESSING OF THE VTC PERMANENT SUPPORTIVE HOUSING PROJECT LOCATED ON HAYES CIRCLE, MARINA CALIFORNIA (APN: 031-021-040); AUTHORIZING THE FINANCE DIRECTOR TO MAKE THE APPROPRIATE ACCOUNTING AND BUDGETARY ENTRIES, AND; AUTHORIZING THE CITY MANAGER TO EXECUTE THE FEE AGREEMENT ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY

WHEREAS, the applicant, EAH Inc., representing the Veterans Transition Center (VTC), is proposing to construct a permanent supportive housing project consisting of 64 studio apartments and 8 two-bedroom apartments for veterans and their families for a total of 72 units. The concept plan includes a community garden, tot lot, community room, office, lobby, laundry facility, fitness studio, two lounges, rear private patio area, and a front public patio area leading to a 60 parking space lot with two drive access points to Hayes Circle. Fourteen trees are proposed for removal. The main structure would be three stories and span a length of over 300 feet along Hayes Circle, and;

WHEREAS, the proposed project entails environmental review, an amendment to the General Plan Land Use Map, a Conditional Use Permit to exceed twenty-five units per acre in the R-4 Zoning District, a parking exception to allow reduced parking, Site and Architectural Design Review and a Tree Removal Permit, and;

WHEREAS, pursuant to City Ordinance No. 2007-07 and Resolution No. 2007-153, fees for the review of larger and/or more complex projects are based upon “cost of service” according to an agreement between the applicant and the City, and;

WHEREAS, a draft Fee Agreement has been prepared by the City Attorney (“**EXHIBIT A**”) which allows for recovery of costs for necessary background and project review including preparation of staff reports and environmental documents, including any needed technical analysis; meetings of the Tree Committee and Site and Architectural Design Review Board; public hearings of the Planning Commission and City Council; and time required by the City Attorney and City staff to move the project through the review and decision-making process, and;

WHEREAS, should the City Council approve this request, all costs associated with the review and processing of this project will be borne by the developer and reimbursed through the authority of the Fee Agreement between the parties.

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

1. Approve a Fee Agreement between the City of Marina and EAH Inc., representing the Veterans Transition Center (VTC) for provision of planning, engineering and City Attorney services related to review, and processing of the 72 unit Supportive Housing Project on a 2.38 acre parcel on Hayes Circle, Marina (APN: 031-021-040), and;

2. Authorize the Finance Director to make the appropriate accounting and budgetary entries, and;
3. Authorize the City Manager to execute the Fee Agreement on behalf of 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 20<sup>th</sup> day of January 2016, 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

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Bruce C. Delgado, Mayor

ATTEST:

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Anita Sharp, Deputy City Clerk

**DRAFT FEE AGREEMENT**

FEE AGREEMENT FOR THE PROVISION OF PLANNING, ENGINEERING, AND CITY ATTORNEY SERVICES RELATED FOR THE REVIEW AND PROCESSING OF THE VETERANS TRANSITION CENTER PERMANENT SUPPORTIVE HOUSING PROJECT LOCATED AT HAYES CIRCLE, MARINA (APN: 031-021-040)

THIS AGREEMENT, is made and entered into on January 20, 2016, by and between EAH INC., representing the Veterans Transition Center, hereinafter referred to as "Applicant", and the City of Marina, hereinafter referred to as "City," as follows:

Recitals

A. The Applicant, in September 2015, presented to the City a preliminary proposal for a project to provide 72 units of permanent supportive housing for veterans on Hayes Circle, Marina (APN: 031-021-040).

B. Following discussions between the applicant and City planning staff regarding the Project, it has become apparent that the plan review process includes preparation of an Initial Study and Negative Declaration, an Amendment to the General Plan, a Conditional Use Permit to exceed twenty-five units per acre in the R-4 Zoning District, a Tree Removal Permit, Site and Architectural Design Review, a parking exception to allow reduced parking, and a Consistency Determination from the Fort Ord Reuse Authority which may be lengthy, complex and may require legal costs.

C. The Municipal Code Chapter 3.24 requires recovery of 100% of the cost of service for the project and requires a negotiated fee for cost of services for plan review.

E. It is recognized by the Parties the above-described processing will involve both Planning and Engineering Division staff time and City legal services, potentially including outside legal assistance, and introduces an unknown complexity to the review process.

F. The parties have agreed that the Applicant will reimburse the City for its actual expenses incurred in making the above-described determination.

Terms and Conditions

In consideration of the mutual promises contained herein, City and the Applicant agree to the following terms and conditions:

1. Scope of Services. City shall perform the tasks necessary to review and process the Project, including but not limited to review of plans, preparation of environmental documents, analysis of consistency with the General Plan, preparation of staff reports and resolutions, and a consistency determination with the Fort Ord Base Reuse Plan. In performing these services City shall utilize such staff, consultants and legal services, as it deems appropriate. It is acknowledged that the services of any outside counsel or any other Reimbursable Party (as defined in paragraph 5 below) are being rendered for the City; therefore, any work product is the property of the City. Because the services are being rendered in part for the benefit of Applicant, Applicant shall be

entitled to access to and retention of any copies of all work product, other than that identified as protected by attorney client-privilege, before and subsequent to the term of this agreement.

2. City Retains Discretion. Nothing set forth in this Agreement shall be construed as a limitation on the City's discretion to deny or condition any approval required for the Project, provided such denial or condition is made in good faith. In the event any approval is denied or refused or any approval issued to Applicant shall fail or be cancelled, expire, lapse or is otherwise withdrawn or terminated by the City, such an event shall not constitute a breach of this Agreement, whether or not any such refusal or failure was wrongful. Applicant's sole remedy for a wrongful failure by the City to issue any approval, permit or license sought by Applicant shall be a petition for writ of mandate; and such refusal or failure by the City shall not give rise to an action for money damages by the Applicant.

3. Applicant to Reimburse City. Applicant hereby agrees to reimburse City for its actual expenses incurred assisting Applicant pursuant to this Agreement, including but not limited to City staff time and consultant and legal fees (the "Reimbursable Expenses"). The City shall cease incurring any Reimbursable Expenses promptly upon written notice of termination by either party.

4. Term. This Agreement shall commence upon execution of the Agreement and receipt by City of the Deposit described in paragraph 5 and shall be for an indefinite term subject to termination by either party upon fifteen days prior written notice to the other party or as described elsewhere in this Agreement.

5. Estimated Cost and Initial Payment. It is estimated by City that the cost of providing the services described in this Agreement will be **\$41,488** of which a Deposit of **\$10,000** was made September 22, 2015. A second Deposit of **\$31,588** was made December 14, 2015. **(\$41,588 Deposit paid in full.)** Subsequent to execution of this Agreement, but prior to the City incurring Reimbursable Expenses, the City shall provide the Applicant with written notification, which may be by e-mail, of each staff member, consultant, legal personnel, and any other person or party whose services will be included in Reimbursable Expenses ("Reimbursable Party") and the hourly rate to be charged for each such Reimbursable Party, for the reasonable approval of Applicant. Billings for Reimbursable Expenses with hourly charges itemized, showing application of the Deposit and the remaining amount thereof, shall be rendered monthly.

6. Additional Costs. The parties acknowledge that the amount described in paragraph 5 above is an estimate, arrived at following good faith negotiation, based on the nature and scope of Project and upon the experience of the City in dealing with comparable projects. In the event that the City's costs of providing the services exceed those paid by Applicant pursuant to paragraph 5 above, the City shall promptly notify the Applicant, and Applicant shall either agree to reimburse the City for such additional costs or notify the City to immediately cease work under this Agreement. In the event that the balance of the Deposit either falls or is reasonably estimated will fall below \$1,000.00, City shall notify Applicant of the amount of additional Deposit that is required to continue providing the services contemplated in this Agreement and the date such Deposit is due. City shall provide the Applicant with not less than seven days notice of the date the additional Deposit is due. If the additional Deposit is not received by City, City may, in its sole discretion, elect to cease work under this Agreement and notify the Applicant that the Agreement is terminated.

7. Termination. Following the termination of this Agreement City shall ascertain any balance due from or to Applicant from the amounts previously deposited and either notify Applicant of the amount due or refund the balance of the account to Applicant. Any amount due

either party shall be paid upon the later of thirty (30) days after termination or the receipt of all invoices for work performed by City.

8. Modification. This Agreement is not subject to amendment or modification except by a writing signed by the parties hereto.

9. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters covered by 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.

10. 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.

11. Counterparts. This Agreement may be executed in two counterparts, each of which shall be deemed an original, but both of which shall be deemed to constitute one and the same instrument

IN WITNESS WHEREOF, Applicant and the City of Marina by its duly authorized representative, have executed this Agreement on the date first hereinabove set forth at Marina, California.

CITY OF MARINA

APPLICANT: EAH, Inc. for  
Veterans Transition Center

By: \_\_\_\_\_  
Layne P. Long, City Manager  
Date: \_\_\_\_\_

By \_\_\_\_\_  
Errol Dominguez, Secretary EAH Inc.  
Date: \_\_\_\_\_

:

Attest (per Resolution No. 2016\_\_\_\_\_):

By: \_\_\_\_\_  
Anita Shepherd-Sharp, Deputy City Clerk

Approved as to form:

By: \_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
Risk Manager



January 15, 2016

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

Honorable Mayor and Members  
of the Marina City Council

City Council Meeting  
of January 20, 2016

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2016- ,  
APPROVING A FEE AGREEMENT BETWEEN THE CITY OF MARINA  
AND EAH INC. REPRESENTING THE VETERANS TRANSITION  
CENTER (VTC) FOR PROVISION OF PLANNING, ENGINEERING  
AND CITY ATTORNEY SERVICES RELATED TO REVIEW AND  
PROCESSING OF THE VTC PERMANENT SUPPORTIVE HOUSING  
PROJECT LOCATED ON HAYES CIRCLE, MARINA CALIFORNIA  
(APN: 031-021-040); AUTHORIZING THE FINANCE DIRECTOR TO  
MAKE THE APPROPRIATE ACCOUNTING AND BUDGETARY  
ENTRIES, AND; AUTHORIZING THE CITY MANAGER TO EXECUTE  
THE FEE AGREEMENT ON BEHALF OF THE CITY SUBJECT TO  
FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY**

**REQUEST:**

It is requested that the City Council consider:

1. Adopting Resolution 2016- , approving a Fee Agreement between the City of Marina and EAH Inc. for provision of planning, engineering and City Attorney services related to review, and processing of the VTC Permanent Housing Project located on Hayes Circle, Marina, California (APN:031-021-040), and;
2. Authorizing the Finance Director to make the appropriate accounting and budgetary entries, and;
3. Authorizing the City Manager to execute the Fee Agreement on behalf of the City subject to final review and approval by the City Attorney.

**BACKGROUND:**

Fees for review of smaller and/or less complex project proposals are usually based upon a fixed fee schedule for the provision of a specified list of City review services. Pursuant to City Ordinance No. 2007-07 and Resolution No. 2007-153, fees for the review of larger and/or more complex projects are based upon “cost of service” according to an agreement between the applicant and the City.

The subject property is a 2.38 acre parcel along Hayes Circle. The subject property is adjacent to, but not a part of Cypress Knolls. The proposed project includes demolition of four existing duplex structures, construction of 64 studio apartments and 8 two-bedroom apartments for a total of 72 units of permanent supportive housing for veterans and their families. Fourteen trees are proposed for removal. The concept plan illustrates the inclusion of a community garden, tot lot, community room, office, lobby, laundry facility, fitness studio, two lounges, rear semi-private patio area, and a front entry semi-public patio area leading to a 60 parking space lot with two drive access points to Hayes Circle. The main structure would be three stories and span a length of over 300 feet along Hayes Circle. The preliminary site plan is attached (“**EXHIBIT A**”).

The project site is designated as Single Family Residential on the General Plan Land Use Map and located within the Multiple Family Residential (R-4) Zoning District. The Project will require:

- Preparation of an Initial Study and Negative Declaration;
- An Amendment to the General Plan Land Use Map to change the designation from Single Family Residential to Multiple Family Residential to allow the project density of 30.25 units per acre;
- A Conditional Use Permit to exceed twenty-five units per acre in the R-4 Zoning District;
- A Tree Removal, Preservation and Protection Permit and Site and Architectural Design Review Approval;
- A parking exception to allow reduced parking; and
- A consistency determination from the Fort Ord Reuse Authority

**ANALYSIS:**

Due to the complexity of the project, planning, engineering and attorney costs related to review and processing of the proposed project may differ from the fixed fee that would otherwise be assigned to the project according to the City's fee schedule.

A draft Fee Agreement has been prepared by the City Attorney (**"EXHIBIT A" to the Resolution**). The Fee Agreement allows for recovery of costs for necessary background and project review; preparation of staff reports and environmental documents, including any needed technical analysis; meetings of the Tree Committee and Site and Architectural Design Review Board; public hearings of the Planning Commission and City Council; and time required by the City Attorney and City staff. It will also cover costs associated with determining the project's consistency with the City General Plan, the Fort Ord Base Reuse Plan, and all applicable local, state and federal regulations. Further, the Fee Agreement requires additional deposit(s) as necessary to reimburse the City for any additional costs beyond the deposit amount should they occur. Likewise, should funds remain in the account upon conclusion of the project, these funds will be returned to the applicant.

**FISCAL IMPACT:**

Should the City Council approve this request, all costs associated with the review and processing of this project will be borne by the developer and reimbursed through the authority of the Fee Agreement between the parties.

Specifically, the Fee Agreement provides for an initial deposit of \$41,588, which has already been made by the applicant. Further, the Fee Agreement requires additional deposit(s) as necessary to reimburse additional costs beyond the deposit amount should they occur. Revenues and appropriations would be in the General Fund Planning Fee Agreement accounts.

**CONCLUSION:**

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

Respectfully submitted,

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Taven M. Kinison Brown  
Acting Planning Services Manager  
Community Development Department  
Planning Services Division

**REVIEWED/CONCUR:**

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Theresa Szymanis, AICP, CTP  
Acting Director  
Community Development Department  
City of Marina

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Layne P. Long  
City Manager  
City of Marina