

RESOLUTION NO. 2021-92

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING AN AGREEMENT BETWEEN THE CITY OF MARINA AND SHEA HOMES, LP, FOR THE LANDSCAPE MAINTENANCE OF CITY PARCELS N, OS-2.4 AND OS-2.5 AS SHOWN ON THE PHASE 2 EAST/RESIDENTIAL FINAL MAP, AND; APPROVING AN AGREEMENT BETWEEN THE CITY OF MARINA AND THE DUNES ON MONTEREY BAY ASSOCIATION, A CALIFORNIA NONPROFIT MUTUAL BENEFIT CORPORATION, FOR THE LANDSCAPE MAINTENANCE OF CITY PARCELS L AND M AS SHOWN ON THE PHASE 1C RESIDENTIAL 3RD FINAL MAP, AND; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENTS ON BEHALF OF CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY.

WHEREAS, at the regularly scheduled meeting of March 15, 2016, the City Council adopted Resolution No. 2016-36, approving the Phase 3 Final Map for Phase 1C for The Dunes on Monterey Bay Development Project Subdivision. As part of the approval for the Phase 1C residential 3rd Final Map, open space had been dedicated to the City as “Parcel L, M and N” for the multiuse trail along the 9th Street corridor; and

WHEREAS, at the regularly scheduled meeting of February 2, 2021, the City Council adopted Resolution No. 2021-06, approving the Phase 2 East/Residential Final Map for The Dunes on Monterey Bay Development Project Subdivision. As part of the approval for the Phase 2 East/Residential Final Map, open space had been dedicated to the City as “Parcel OS-2.4 and OS-2.5” for the multiuse trail along the 9th Street corridor; and

WHEREAS, the improvements to the multiuse pathway through Parcels L and M have been completed and accepted by the City. At this time, the City performs maintenance with its limited Public Works staffing on a monthly basis. The Home Owners Association for the Dunes on Monterey Bay (“HOA”) has expressed to the City interest in taking over maintenance of these parcels as well as all future parcels of the multiuse trails within Phase 1C and Phase 2 along 9th Street east of 2nd Avenue; and

WHEREAS, the approval of the Phase 2 East/Residential Final Map and Improvement Plans has established improvements for the remainder of the multiuse trail along 9th Street from 3rd Avenue to California Avenue/5th Avenue. Since those parcels containing the multiuse trail are currently being constructed, Shea Homes (“Developer”) has agreed to the maintenance of these improvements until such improvements are completed and approved by the City. Once the improvements have been approved, maintenance responsibilities will be transferred to the HOA; and

WHEREAS, maintenance responsibilities to be covered by the HOA shall consist of all improvements within the multiuse trail including but not limited to landscaping, fencing and irrigation components. Water charges from irrigation will continue to be paid by the City. Staff has reviewed these agreements with the Developer (**Exhibit A**) and with the HOA (**Exhibit B**) and are recommending them for approval; and

WHEREAS, improvements within Parcels N, OS-2.4 and OS-2.5 shall be funded and constructed by the developer of the Dunes Phase 2 East subdivision. Cost savings to the City from maintenance charges for the entire multiuse trail are estimated to be \$7,500 per month. Irrigation charges shall continue to be funded by the City.

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

1. Approve an agreement between the City of Marina and Shea Homes, LP, for the Landscape Maintenance of City Parcels N, OS-2.4 and OS-2.5 as shown on the Phase 2 East/Residential Final Map; and
2. Approve an agreement between the City of Marina and the Dunes on Monterey Bay Association, a California nonprofit mutual benefit corporation, for the Landscape Maintenance of City Parcels L and M as shown on the Phase 1C Residential 3rd Final Map; and
3. Authorize the City Manager to execute the agreements on behalf of the City subject to final review and approval by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting held on the 17th day of August 2021, by the following vote:

AYES: COUNCIL MEMBERS: Medina Dirksen, Burnett, Berkley, Biala, Delgado

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ATTEST:

Bruce Delgado, Mayor

Anita Sharp, City Clerk

NO FEE DOCUMENTGovernment Code §6103RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:City of Marina
211 Hillcrest Avenue
Marina, CA 93933
Attn: City Clerk

The Above Space For Recorder's Use Only

LANDSCAPE ACCESS AND MAINTENANCE AGREEMENT
(Parcel N, Parcel OS 2.4 and OS 2.5, The Dunes on Monterey Bay – Phase 2 East)

THIS AGREEMENT ("**Agreement**") is made and entered into on this _____ day of _____ 2021, by and between the CITY OF MARINA, a California municipal corporation ("**City**") and SHEA HOMES LIMITED PARTNERSHIP, a California limited partnership ("**Owner**").

1. Owner owns real property in the City of Marina, County of Monterey, State of California, more specifically described in the legal description in **Exhibit A** attached hereto and incorporated herein by this reference ("**Common Area Property**").
2. Owner is developing the Common Area Property as a portion of that certain residential community commonly known as "The Dunes on Monterey Bay". Owner will convey the Common Area Property to THE DUNES ON MONTEREY BAY ASSOCIATION, a California nonprofit mutual benefit corporation ("**Association**").
3. The burdens and benefits of this Agreement are intended to be covenants that run with the land, binding Owner, and any subsequent party with ownership or control of the Common Area Property ("**Responsible Party**"). Owner shall be responsible for its obligations under this Agreement, until the date Owner transfers the Common Area Property to the Association, at which time the Association shall assume all rights and obligations of Owner under this Agreement ("**Association Transfer Date**"). Owner shall have no further rights or obligations under this Agreement for any matters arising after the Association Transfer Date and the Association will be deemed the sole Responsible Party under this Agreement.
4. Owner has or will install landscaping and related irrigation improvements within City owned property (collectively, "**Landscape Improvements**") described on **Exhibit B** attached hereto and incorporated herein ("**City Property**"). The City and Owner desire that the landscaping and related irrigation improvements within the City Property be maintained by the Responsible Party, in the same manner as the Common Area Property. Notwithstanding the foregoing, the obligation for Owner to maintain the City Property shall not commence until: (i) the Owner has confirmed that the landscaping and related irrigation improvements, have been installed within the City Property, , (ii) the Irrigation meter and controller for the Landscape Improvements is active and in working order and accepted by the City, and the City and the Owner have jointly conducted an inspection walk of the City Property (collectively, the "**Maintenance Commencement Date**").
5. As of the Maintenance Commencement Date, the Responsible Party shall, at its sole cost and expense, be responsible for maintaining the Landscape Improvements in accordance with The Dunes on Monterey Bay Master Declaration of Restrictions (CC&Rs) A Master Planned Community" was recorded on July 23, 2015, as Document No. 2015041008 in the records of Monterey County, California, as amended by a First Amendment recorded on August 11, 2015, as Document No. 2015044900, as further amended by a Second Amendment recorded on October 7, 2015, as Document No. 2015057565, as further amended by a Third Amendment recorded on May 27, 2016, as Document No. 2016028749, all recorded in the records of Monterey County, California, and any additional amendments thereto (collectively, the "**Declaration**") and all federal, state or local laws and regulations. The Responsible Party shall provide

an irrigation schedule for prior approval by the City's Engineering Division which schedule shall maintain water service as necessary to adequately irrigate the Landscape Improvements, which approval shall not be unreasonably withheld by the City. In the event of the imposition of any limit on or the curtailment of water service imposed by law or regulation, the City shall have no obligation to continue water service in accordance with the approved irrigation schedule. The City will share water use data for the City Property with the Responsible Party or its designee at the request of the Responsible Party. This obligation to maintain water service to the Property by the City shall exist for as long as the Responsible Party maintains the Landscape Improvements.

6. The Responsible Party shall be responsible for all costs associated with maintenance, repair(s), new installation(s) of all water related apertures beyond the water meter, to include backflows, PVC, sprinkler(s), water line(s), drip irrigation, valves and valve boxes. The City shall notify the Responsible Party of any required backflow testing or any other testing or inspections required to be made by the Responsible Party for the Landscape Improvements, and the Responsible Party will perform such testing or inspections at the Responsible Party's expense and provide the reports of such testing or inspections to the and the City within 30 days of request by the City and/or Marina Coast Water District ("**Water District**"). In addition, the Responsible Party shall adhere to all City, Water District and the County of Monterey Department of Health standards regarding Recycled Water use.

7. If the Responsible Party makes any alterations to the Landscape Improvements (excluding irrigation maintenance and plant replacement), the Responsible Party shall gain the approval from the City prior to completing such alterations and provide as-built plans to the City within 2 weeks of completion of the alternations.

8. The City hereby grants to Owner, for the benefit of the Responsible Party complete access and a right-of-entry onto the City Property to accomplish its obligations under this Agreement.

9. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force without being impaired.

10. This Agreement shall be deemed to be made in, and the rights and liabilities of the parties, and the interpretation and construction of the Agreement governed by and construed in accordance with the laws of the State of California. Any legal action arising out of this Agreement shall be filed in and adjudicated by a court of competent jurisdiction in the County of Monterey, State of California.

11. This Agreement may be executed in counterparts, each of which when taken together will constitute one fully executed original.

IN WITNESS THEREOF, the parties hereto have affixed their signatures as of the date first written above.

CITY OF MARINA,
a Municipal corporation

SHEA HOMES LIMITED PARTNERSHIP,
a California limited partnership

By: _____
Name: Layne Long
Its: City Manager

By: _____
Name: _____
Title: _____

EXHIBIT "A"
Legal Description of Common Area Property

Parcel L2.3 as shown on that certain Map entitled "Tract No. 1550 The Dunes on Monterey Bay Phase 2 East", filed for record June 9, 2021, in Volume 24 of Cities and Towns, at Page 73, filed in the Office of the County Recorder, County of Monterey, State of California.

EXHIBIT "B"
Legal Description of City Property

Parcel N, Parcel OS 2.4, and Parcel O2.5 as shown on that certain Map entitled "Tract No. 1550 The Dunes on Monterey Bay Phase 2 East", filed for record June 9, 2021 in Volume 24 of Cities and Towns, at Page 73, filed in the Office of the County Recorder, County of Monterey, State of California.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(is), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ices), 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 _____

NO FEE DOCUMENT

Government Code §6103
RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Marina
211 Hillcrest Avenue
Marina, CA 93933 _____
Attn: City Clerk

The Above Space For Recorder's Use Only

LANDSCAPE ACCESS AND MAINTENANCE AGREEMENT
(Parcel L and Parcel M, The Dunes on Monterey Bay – Phase 1C)

THIS AGREEMENT ("**Agreement**") is made and entered into on this ____ day of _____ 2021, by and between the CITY OF MARINA, a California municipal corporation ("**City**") and THE DUNES ON MONTEREY BAY ASSOCIATION, a California nonprofit mutual benefit corporation ("**Association**").

1. The City owns real property in the City of Marina, County of Monterey, State of California, more specifically described in the legal description in **Exhibit A** attached hereto and incorporated herein by this reference ("**City Property**").
2. The Association manages and governs the Dunes on Monterey Bay residential community and performs certain maintenance obligations and provides certain services for the benefit of the residential community.
3. As of the date set forth above, the City maintains landscaping and related irrigation improvements within the City Property (collectively, "**Landscape Improvements**"). The City and The Association desire that the Landscape Improvements be maintained by the Association, in the same manner as the maintenance of the common area lots owned by the Association under the Declaration (defined below). Notwithstanding the foregoing, the obligation for the Association to maintain the Landscape Improvements shall not commence until: (i) the City has confirmed that the irrigation system servicing the City Property is in good working order and that the landscaping has been trimmed and maintained by the City, (ii) that the irrigation meter and controller for the Landscape Improvements are active and in good working order, and (iii) the City and the Association have jointly conducted an inspection walk of the City Property (collectively, the "**Maintenance Commencement Date**").
4. As of the Maintenance Commencement Date, the Association shall, at its sole cost and expense, be responsible for maintaining the Landscape Improvements in accordance with The Dunes on Monterey Bay Master Declaration of Restrictions (CC&Rs) A Master Planned Community" was recorded on July 23, 2015, as Document No. 2015041008 in the records of Monterey County, California, as amended by a First Amendment recorded on August 11, 2015, as Document No. 2015044900, as further amended by a Second Amendment recorded on October 7, 2015, as Document No. 2015057565, as further amended by a Third Amendment recorded on May 27, 2016, as Document No. 2016028749, all recorded in the records of Monterey County, California, and any additional amendments thereto (collectively, the "**Declaration**") and all federal, state or local laws and regulations. The City shall be responsible, at its sole cost and expense, for all costs associated with the water meter service at the City Property. The Association shall provide an irrigation schedule for prior approval by the City's Engineering Division which schedule shall maintain water service as necessary to adequately irrigate the Landscape Improvements, which approval shall not be unreasonably withheld by the City. In the event of the imposition of any limit on or the curtailment of water service imposed by law or regulation, the City shall have no obligation to continue water service in accordance with the approved irrigation schedule. The City will share water use data for the City Property with the Association or its designee at the request of the Association. This obligation to maintain water service to the Property by the City shall exist for as long as the Association maintains the Landscape Improvements.



2nd Avenue

9th Street

9th Street

4th Avenue

California Avenue

2nd Avenue

Lighthouse Ln

3rd Avenue

3rd Avenue

Parkview Way

Google Earth

© 2021 Google

Imagery Date: 2/23/2021 36°39'41.33" N 121°48'23.16" W elev 0 ft eye alt 3076 ft

1985

711 ft

5. The City hereby grants to the Association complete access and a right-of-entry onto the City Property to accomplish its obligations under this Agreement.

6. The burdens and benefits of this Agreement are intended to be covenants that run with the land, binding the Association and the City. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force without being impaired.

7. This Agreement shall be deemed to be made in, and the rights and liabilities of the parties, and the interpretation and construction of the Agreement governed by and construed in accordance with the laws of the State of California. Any legal action arising out of this Agreement shall be filed in and adjudicated by a court of competent jurisdiction in the County of Monterey, State of California.

8. This Agreement may be executed in counterparts, each of which when taken together will constitute one fully executed original.

IN WITNESS THEREOF, the parties hereto have affixed their signatures as of the date first written above.

CITY OF MARINA,
a Municipal corporation

THE DUNES ON MONTEREY BAY ASSOCIATION, a
California nonprofit mutual benefit corporation

By: _____
Name: Layne Long
Its: City Manager_

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT "A"
Legal Description of City Property

Parcel L and Parcel M of as shown on that certain Map entitled "Tract No. 1524 Phase 1C, The Dunes on Monterey Bay – Third Phase", filed for record in Volume 24 of Cities and Towns, at Page 46, filed in the Office of the County Recorder, County of Monterey, State of California

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(is), 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 _____

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State of California)
County of)

On _____, before me, _____, a Notary Public,
personally appeared _____, who proved to me on the basis of
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument
and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ices), 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.

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State of California)
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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 _____

August 13, 2021

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

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of August 17, 2021

RECOMMENDATION TO CONSIDER ADOPTING RESOLUTION NO. 2021-, APPROVING AN AGREEMENT BETWEEN THE CITY OF MARINA AND SHEA HOMES, LP, FOR THE LANDSCAPE MAINTENANCE OF CITY PARCELS N, OS-2.4 AND OS-2.5 AS SHOWN ON THE PHASE 2 EAST/RESIDENTIAL FINAL MAP, AND; APPROVING AN AGREEMENT BETWEEN THE CITY OF MARINA AND THE DUNES ON MONTEREY BAY ASSOCIATION, A CALIFORNIA NONPROFIT MUTUAL BENEFIT CORPORATION, FOR THE LANDSCAPE MAINTENANCE OF CITY PARCELS L AND M AS SHOWN ON THE PHASE 1C RESIDENTIAL 3RD FINAL MAP, AND; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENTS ON BEHALF OF CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY.

RECOMMENDATION:

It is recommended that the City Council consider:

1. Approving an agreement between the City of Marina and Shea Homes, LP, for the Landscape Maintenance of City Parcels N, OS-2.4 and OS-2.5 as shown on the Phase 2 East/Residential Final Map; and
2. Approving an agreement between the City of Marina and the Dunes on Monterey Bay Association, a California nonprofit mutual benefit corporation, for the Landscape Maintenance of City Parcels L and M as shown on the Phase 1C Residential 3rd Final Map; and
3. Authorizing the City Manager to execute the agreements on behalf of the City subject to final review and approval by the City Attorney.

BACKGROUND:

At the regularly scheduled meeting of March 15, 2016, the City Council adopted Resolution No. 2016-36, approving the Phase 3 Final Map for Phase 1C for The Dunes on Monterey Bay Development Project Subdivision. As part of the approval for the Phase 1C residential 3rd Final Map, open space had been dedicated to the City as “Parcel L, M and N” for the multiuse trail along the 9th Street corridor.

At the regularly scheduled meeting of February 2, 2021, the City Council adopted Resolution No. 2021-06, approving the Phase 2 East/Residential Final Map for The Dunes on Monterey Bay Development Project Subdivision. As part of the approval for the Phase 2 East/Residential Final Map, open space had been dedicated to the City as “Parcel OS-2.4 and OS-2.5” for the multiuse trail along the 9th Street corridor.

ANALYSIS:

The improvements to the multiuse pathway through Parcels L and M have been completed and accepted by the City. At this time, the City performs maintenance with its limited Public Works staffing on a monthly basis. The Home Owners Association for the Dunes on Monterey Bay (“HOA”) has expressed to the City interest in taking over maintenance of these parcels as well as all future parcels of the multiuse trails within Phase 1C and Phase 2 along 9th Street east of 2nd Avenue.

The approval of the Phase 2 East/Residential Final Map and Improvement Plans has established improvements for the remainder of the multiuse trail along 9th Street from 3rd Avenue to California Avenue/5th Avenue. Since those parcels containing the multiuse trail are currently being constructed, Shea Homes (“Developer”) has agreed to the maintenance of these improvements until such improvements are completed and approved by the City. Once the improvements have been approved, maintenance responsibilities will be transferred to the HOA.

Maintenance responsibilities to be covered by the HOA shall consist of all improvements within the multiuse trail including but not limited to landscaping, fencing and irrigation components. Water charges from irrigation will continue to be paid by the City. Staff has reviewed these agreements with the Developer (“**EXHIBIT A**”) and with the HOA (“**EXHIBIT B**”) and are recommending them for approval.

FISCAL IMPACT:

Improvements within Parcels N, OS-2.4 and OS-2.5 shall be funded and constructed by the developer of the Dunes Phase 2 East subdivision. Cost savings to the City from maintenance charges are estimated to be \$7,500 per month. Irrigation charges shall continue to be funded by the City.

CONCLUSION:

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

Respectfully submitted,

Edrie Delos Santos, P.E.
Senior Engineer
Public Works Department
City of Marina

REVIEWED/CONCUR:

Brian McMinn, P.E., P.L.S.
Public Works Director/City Engineer
City of Marina

Layne P. Long
City Manager
City of Marina