

RESOLUTION NO. 2017-67

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA CONSENTING TO A PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT FOR THE MARINA HEIGHTS DEVELOPMENT AGREEMENT FROM CYPRESS MARINA HEIGHTS LLC TO VALLEY COASTAL DEVELOPMENT LLC AND A PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT FOR THE MARINA HEIGHTS OPTION AGREEMENT FROM CYPRESS MARINA HEIGHTS LLC TO VALLEY COASTAL DEVELOPMENT LLC

WHEREAS, The City of Marina (the “City”), the Redevelopment Agency of the City of Marina and Cypress Marina Heights, L.P. entered into an Option Agreement dated November 14, 2002, and;

WHEREAS, At the regular meeting of March 4, 2004, the City Council adopted Ordinance No. 2004-06 adopting the Final Development Agreement for the Marina Heights Project, and;

WHEREAS, the City and the Successor Agency to the Redevelopment Agency of the City of Marina on February 17, 2016 pursuant to Resolution No. 2016-24 approved adding Valley Coastal Development LLC as a Pre-Approved Builder to the list of Pre-Approved Builders attached to the Option Agreement; and

WHEREAS, Cypress Marina Heights, LLC is preparing to enter into a Partial Assignment and Assumption Agreement with Valley Coastal Development LLC, a wholly owned subsidiary of Valley Coastal Development LLC, assigning to Valley Coastal Development LLC the rights and obligations under the Final Development Agreement relevant to the portion of the project being transferred to Valley Coastal Development LLC; and

WHEREAS, Cypress Marina Heights, LLC is preparing to enter into a Partial Assignment and Assumption Agreement with Valley Coastal Development LLC assigning to Valley Coastal Development LLC the rights and obligations under the Option Agreement relevant to the portion of the project being transferred to Valley Coastal Development LLC; and

WHEREAS, Cypress Marina Heights, LLC and Valley Coastal Development LLC have requested that the City consent to the Partial Assignment and Assumption of the Development Agreement; and

WHEREAS, Cypress Marina Heights, LLC and Valley Coastal Development LLC have requested that the City and the Successor Agency consent to the Partial Assignment and Assumption Agreement of the Option Agreement; and

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

1. Consents to the Partial Assignment and Assumption Agreement between Cypress Marina Heights, LLC and Valley Coastal Development, LLC of the Final Development Agreement substantially in the form on file with the City Clerk and authorizes the City Manager to sign the consent to the Partial Assignment and Assumption Agreement subject to any changes approved by the City Manager and the City Attorney.

2. Consents to the Partial Assignment and Assumption Agreement between Cypress Marina Heights, LLC and Valley Coastal Development, LLC of the Option Agreement substantially in the form on file with the City Clerk and authorizes the City Manager to sign the consent to the Partial Assignment and Assumption Agreement subject to any changes approved by the City Manager and the City Attorney.
3. Authorizes the City Manager to take all actions necessary to implement the Partial Assignment and Assumption Agreements and to execute such documents as are necessary to implement the Partial Assignment and Assumption Agreements.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 5th day of July 2017, by the following vote:

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

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

David W. Brown, Mayor Pro-Temp

ATTEST:

Anita Sharp, Deputy City Clerk

RESOLUTION NO 2017-06 (SA-MRA)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA ACTING AS THE
GOVERNING BOARD OF THE SUCCESSOR AGENCY TO THE MARINA
REDEVELOPMENT AGENCY CONSENTING TO A PARTIAL ASSIGNMENT AND
ASSUMPTION AGREEMENT FOR THE OPTION AGREEMENT FOR THE MARINA
HEIGHTS PROJECT FROM CYPRESS MARINA HEIGHTS LLC TO VALLEY COASTAL
DEVELOPMENT LLC

WHEREAS, The City of Marina and the Redevelopment Agency of the City of Marina and Cypress Marina Heights, L.P. entered into an Option Agreement dated November 14, 2002, and;

WHEREAS, the Redevelopment Agency of the City of Marina was dissolved in accordance with State law effective February 1, 2012 and the Successor Agency succeeded to the former Redevelopment Agency's rights and obligations under the Option Agreement; and

WHEREAS, the City and the Successor Agency to the Redevelopment Agency of the City of Marina on June 6, 2017 pursuant to Resolution No. 2017-54 approved adding Valley Coastal Development LLC as a Pre-Approved Builder to the list of Pre-Approved Builders attached to the Option Agreement; and

WHEREAS, Cypress Marina Heights, LLC is preparing to enter into a Partial Assignment and Assumption Agreement with Valley Coastal Development LLC assigning to Valley Coastal Development LLC the rights and obligations under the Option Agreement relevant to the portion of the project being transferred to Valley Coastal Development LLC; and

WHEREAS, Cypress Marina Heights, LLC and Valley Coastal Development LLC have requested that the Successor Agency consent to the Partial Assignment and Assumption Agreement of the Option Agreement; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Marina acting as the Governing Board of the Successor Agency to the Redevelopment Agency of the City of Marina hereby:

1. Consents to the Partial Assignment and Assumption Agreement between Cypress Marina Heights, LLC and Valley Coastal Development LLC of the Option Agreement substantially in the form on file with the City Clerk and authorizes the City Manager, acting as the Executive Director of the Successor Agency to sign the consent to the Partial Assignment and Assumption Agreement subject to any changes approved by the City Manager and the City Attorney.
2. Authorizes the City Manager, acting as the Executive Director of the Successor Agency to take all actions necessary to implement the Partial Assignment and Assumption Agreements and to execute such documents as are necessary to implement the Partial Assignment and Assumption Agreements.

PASSED AND ADOPTED by the City Council of the City of Marina acting as the Governing Board of the Successor Agency to the Redevelopment Agency of the City of Marina at a regular meeting duly held on the 5th day of July 2017, by the following vote:

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

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

David W. Brown, Mayor Pro-Temp

ATTEST:

Anita Sharp, Deputy City Clerk

June 27, 2017

Item No. **8g(3)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of July 5, 2017

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2017-,
CONSENTING TO A PARTIAL ASSIGNMENT AND ASSUMPTION
AGREEMENT FOR THE MARINA HEIGHTS DEVELOPMENT
AGREEMENT FROM CYPRESS MARINA HEIGHTS LLC TO VALLEY
COASTAL DEVELOPMENT LLC AND A PARTIAL ASSIGNMENT AND
ASSUMPTION AGREEMENT FOR THE MARINA HEIGHTS OPTION
AGREEMENT FROM CYPRESS MARINA HEIGHTS LLC TO VALLEY
COASTAL DEVELOPMENT LLC**

**CITY COUNCIL ACTING AS THE GOVERNING BOARD OF THE
SUCCESSOR AGENCY TO THE MARINA REDEVELOPMENT
AGENCY CONSIDER ADOPTING RESOLUTION NO. 2017- (SA-MRA),
CONSENTING TO A PARTIAL ASSIGNMENT AND ASSUMPTION
AGREEMENT FOR THE OPTION AGREEMENT FOR THE MARINA
HEIGHTS PROJECT FROM CYPRESS MARINA HEIGHTS LLC TO
VALLEY COASTAL DEVELOPMENT LLC**

REQUEST:

It is recommended that the City Council:

1. Consider adopting Resolution No. 2017-, consenting to the Partial Assignment and Assumption Agreement for the Marina Heights Development Agreement from Cypress Marina Heights, LLC to Valley Coastal Development LLC and Partial Assignment and Assumption Agreement for the Marina Heights Option Agreement from Cypress Marina Heights LLC to Valley Coastal Development LLC.
2. Consider adopting Successor Agency Resolution No. 2017- (SA-MRA), consenting to a Partial Assignment and Assumption Agreement of the Option Agreement for the Marina Heights Project from Cypress Marina Heights LLC to Valley Coastal Development LLC.

BACKGROUND:

The City of Marina, the Redevelopment Agency of the City of Marina and Cypress Marina Heights, L.P. ("Developer") entered into an Option Agreement dated November 14, 2002. The Option Agreement provided Cypress Marina Heights with the option to acquire a 248-acre site comprised of a portion of the Abrams Park and Upper Patton Park sections of the former Fort Ord. The Option Agreement stipulated the terms and conditions for development of 1050 residential units on the property, with development contemplated in phases. At the time the Option Agreement was entered into the City of Marina and the Developer entered into an initial statutory development agreement pursuant to Government Code Section 65864. The initial statutory development agreement was replaced by the final development agreement approved by the City Council on March 3, 2004 ("Development Agreement"). At the regular meeting of March 3, 2004, the City Council approved the Final Environmental Impact Report, General Plan Amendments, Zoning Ordinance and Map Amendments, Tentative Map, and Final Development Agreement for the Marina Heights Project.

The former Redevelopment Agency transferred the Property to the Developer in accordance with the Option Agreement terms in 2006. Upon dissolution of the Marina Redevelopment Agency in accordance with State law, the Option Agreement transferred to the Successor Agency to the Marina Redevelopment Agency. The City Council acts as the governing board of the Successor Agency.

The Final Development Agreement establishes the development rights for the Marina Heights project. The Final Development Agreement and the Option Agreement also address project timing and fees. The Final Development Agreement and the Option Agreement include a Schedule of Benchmarks setting out the expected time frames for development of the property. The original Schedule of Benchmarks was amended by the First Implementation Agreement that was approved by the City Council in October 2007.

At the June 6, 2017 meeting the Developer requested that the City and the Successor Agency approve adding Valley Coastal Development LLC to the Pre-Approved Builders list attached to the Option Agreement. The Council, acting both on behalf of the Successor Agency and behalf of the City approved the request to add Valley Coastal Development LLC to the Pre-Approved Builders list and authorized the City Manager to execute a Second Amendment to the Option Agreement to add Valley Coastal Development LLC to the list.

The Developer and Valley Coastal Development LLC have now requested that the City and the Successor Agency consent to Partial Assignment and Assumption Agreements assigning to Valley Coastal Development LLC, a subsidiary of Valley Coastal Development LLC, the obligations under the Development Agreement and the Option Agreement that are relevant to the portion of the property being acquired by Valley Coastal Development LLC. As part of the Consent the City and the Successor Agency are being asked to sign, the City and the Successor Agency are acknowledging that the Option Agreement, the Development Agreement and the Schedule of Benchmarks do not require the developer to complete the construction of the improvements but only to make commercially reasonable efforts to complete construction of the improvements in accordance with the Schedule. Additionally, the City and the Successor Agency are being asked to acknowledge that the right to repurchase the property in the option agreement is not effective as to the property acquired by Valley Coastal Development LLC and that the City and the Successor Agency intend to consider amendments to the Option Agreement and Development Agreement to amend the Schedule of Benchmarks.

ANALYSIS:

The Development Agreement includes the Schedule of Benchmarks for the development of the Project, as amended by the Implementation Agreement. 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, a listing of which is attached as Exhibit D." 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 default for as long as the Developer makes all reasonable efforts to diligently, continuously and in good faith work toward such performance. Thus, the Development Agreement does not require that the Developer complete the Project in accordance with the timing set out in the Schedule of Benchmarks but rather requires that the Developer use commercially reasonable efforts to construct the Project within the timeframes.

The Option Agreement contains similar language that the developer is to use commercially reasonable efforts to construct the improvements but does not actually require the developer to construct the improvements.

The Consents to the Assignment and Assumption Agreements also request that the Successor Agency acknowledge that the right of repurchase included in the Option Agreement is not applicable to the property transferred to Valley Coastal Development LLC. The Option Agreement included a right of repurchase that ran to the former Redevelopment Agency. Under the terms of the Option Agreement, the former Redevelopment Agency could exercise the right of repurchase if the Developer was in default. The former Redevelopment Agency was required to pay fair market value for the property acquired. The Redevelopment Dissolution Law prohibited redevelopment agencies, prior to dissolution, from undertaking certain activities, including the acquisition of property by any means. These prohibitions carry over to the Successor Agency. Based on this, the Successor Agency would not have the authority to acquire the property if the conditions for exercise of the option to acquire were met and also would not have a source of funds to use to acquire the property. Acknowledgement that the right of repurchase does not apply to the property acquired by Valley Coastal Development LLC does not compromise any right that the Successor Agency could actually exercise.

FISCAL IMPACT:

Development of the Project will increase the property tax available to the City thereby increasing general fund revenues.

CONCLUSION:

The staff report is submitted for City Council review and possible direction.

Respectfully submitted,

Layne Long
City Manager
City of Marina