

RESOLUTION NO. 2018-85
RESOLUTION NO. 2018-08 (SA-MRA)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
ACTING ON BEHALF OF THE CITY AND OF THE CITY COUNCIL OF THE
CITY OF MARINA ACTING AS THE GOVERNING BOARD OF THE
SUCCESSOR AGENCY TO THE MARINA REDEVELOPMENT AGENCY
APPROVING THE FOURTH AMENDMENT TO THE OPTION AGREEMENT
AMONG THE CITY OF MARINA, THE SUCCESSOR AGENCY TO THE
MARINA REDEVELOPMENT AGENCY, AND CYPRESS MARINA
HEIGHTS, LLC

WHEREAS, the Redevelopment Agency of the City of Marina approved Resolution No. 2002-167 on October 15, 2002, approving the Option Agreement for the Marina Heights Project and the City Council approved Resolution No. 2002- on October 15, 2002 approving the Option Agreement for the Marina Heights Project, which Option Agreement was amended by that certain Implementation Agreement dated October 11, 2007, the First Amendment to the Option Agreement dated February 11, 2009 and the Second Amendment to Option Agreement dated March 18, 2016 and the Third Amendment to Option Agreement dated June 19, 2018 (collectively, the "Option Agreement"); and,

WHEREAS, the City, the Successor Agency, and Cypress Marina Heights, LLC (collectively, the "Developer") now desire to amend the Option Agreement consistent with the provisions of the Fourth Amendment to Option Agreement on file with the City Clerk; and,

WHEREAS, the amendments proposed in the Fourth Amendment will eliminate certain restrictions on transfer of portions of the project to allow the Developer to proceed with development in expeditious manner; and

WHEREAS, the Fourth Amendment will also eliminate provisions of the Option Agreement that are no longer enforceable as a result of the dissolution of the Marina Redevelopment Agency; and

WHEREAS, the Fourth Amendment is in the best interest of the City and the Successor Agency and will assist with the development of the Project proceeding expeditiously in accordance with the entitlements and other approvals granted by the City for the Project; and

WHEREAS, the City Council and the Successor Agency have determined based on the information provided that no new environmental review for the project is required pursuant to CEQA Guidelines Section 15162 and the Environmental Impact Report certified by the City Council on March 25, 2003 as supplemented by the Supplement approved on March 3, 2004 (State Clearinghouse Number 2003020012) ("EIR") shall serve as the environmental review for the approval of the Fourth Amendment.

NOW, THEREFORE, BE IT RESOLVED that the City of Marina and the Successor Agency to the Marina Redevelopment Agency hereby:

1. Finds that the above recitals are accurate.
2. Approve the Fourth Amendment to the Option Agreement among the City of Marina, the Successor Agency to the Marina Redevelopment Agency as successor in interest to the Redevelopment Agency of the City of Marina, and Cypress Marina Heights, LLC substantially in the form attached hereto subject only to such changes as are approved by the City Manager in consultation with the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina acting on behalf of the City and as the governing board of the Successor Agency to the Marina Redevelopment Agency at a regular meeting held on the 17th day of July 2018 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

Bruce Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

FOURTH AMENDMENT TO OPTION AGREEMENT

THIS FOURTH AMENDMENT TO OPTION AGREEMENT (this "**Amendment**") is made as of this ____ day of February, 2018, by and among the CITY OF MARINA, a California municipal corporation (the "**City**"), the Successor Agency to the Marina Redevelopment Agency, a separate public entity ("**Successor Agency**"), and Cypress Marina Heights, LLC, a California limited liability company (collectively, the "**Developer**"), with reference to the following facts and circumstances (the City and the Developer are sometimes referred to herein collectively as the "**Parties**", and individually as a "**Party**"):

R E C I T A L S :

A. The City, Developer and the former Redevelopment Agency of the City ("**Agency**") entered into that certain Option Agreement dated as of November 14, 2002 (the "**Option Agreement**"), pursuant to which the Agency granted to the Developer the exclusive option (the "**Option**") to acquire fee title to certain real property within the Marina Fort Ord Redevelopment Project Area No. 3 consisting of approximately two hundred forty-eight (248) acres, located between Imjin Road, Abrams Drive, and 12th Street in the City of Marina, and more particularly described in the Option Agreement (the "**Project Site**"), under the terms and conditions set forth in the Option Agreement.

B. The Parties have amended the Option Agreement on three occasions with the: (i) October 11, 2007 Implementation Agreement, (ii) February 11, 2009 First Amendment to the Option Agreement, and (iii) March __, 2016 Second Amendment to Option Agreement (collectively the "**Amended Option Agreement**").

C. Cypress Marina heights, LLC previously exercised the Option, after which time the Amended Option Agreement constituted a Disposition and Development Agreement, and Developer acquired the Project Site.

D. The Agency was dissolved in accordance with State law effective February 1, 2012 and the Successor Agency succeeded to the former Agency's rights and obligations under the Amended Option Agreement.

E. Developer and Wathen Castanos Peterson Homes. Inc. ("Wathen Castanos") entered into that certain Partial Assignment and Assumptions Agreement, whereby, Developer assigned to Wathen Castanos Peterson Homes. Inc. certain rights and obligations under the Amended Option Agreement. Pursuant to the assignment to Wathen Castanos of certain rights and obligations under the Amendment Option Agreement, the City, the Agency and Wathen Castanos entered into the Third Amendment to the Option Agreement. Developer is not a party to the Third Amendment to the Option Agreement.

F. The first phase of the Project consisting of roads and utilities has been substantially completed.

G. Development is underway of the first residential phase of the Project which consists of 300 homes.

G. Each of the City, the Successor Agency and Developer are requesting modifications to the Amended Option Agreement to facilitate the development of the Project which, in turn, will bring financial and other benefits to the City.

H. The Parties now desire to amend the Amended Option Agreement pursuant to the terms of this Amendment.

A G R E E M E N T :

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1. **Defined Terms.** All terms defined in the Amended Option Agreement when used herein shall have their respective meanings as set forth in the Amended Option Agreement unless expressly superseded by the terms of this Amendment. All references in this Amendment to an "Article" or a "Section" shall refer to the applicable Article or Section of the Option Agreement, unless otherwise specifically provided.

2. **Defined Terms Expressly Amended or Superseded by this Amendment.**

(a) Section 1.2.2, which defines "Affiliate" is hereby deleted in its entirety.

(b) Section 1.2.5, which defines "Assignment and Assumption Agreement" is hereby deleted in its entirety.

(c) Section 1.2.13, which defines "Developer" is hereby deleted in its entirety and replaced with the following:

"Developer" for purposes of this Fourth Amendment only and without modification to the Third Amendment, shall mean Cypress Marina Heights, LLC, its successors and assigns.

(d) Section 1.2.14 which defines "Development" is modified as follows:

The last seven words of Section 1.2.14 "in accordance with the Schedule of Benchmarks" are hereby deleted.

(e) Section 1.2.34 which defines "Parcel to be Repurchased" is hereby deleted in its entirety.

(f) Section 1.2.44 which defines "Proposed Transfer" is hereby deleted in its entirety.

- (g) Section 1.2.48 which defines "Repurchase Price" is hereby deleted in its entirety.
- (h) Section 1.2.49 which defines "Repurchase Option" is hereby deleted in its entirety.
- (i) Section 1.2.53 which defines "Schedule of Benchmarks" is hereby deleted in its entirety.
- (j) Section 1.2.57 which defines "Transfer" is hereby deleted in its entirety.
- (k) Section 1.2.58 is modified as follows:

(i). The introductory clause of the first sentence of Section 1.2.58 is hereby deleted and replaced with:

“Unavoidable Delays’ shall mean delays beyond the control of the Party claiming the same due to any of the following reasons or another similar reason:”

3. **Exhibits.** Each of Exhibits D, I and J are hereby each deleted in its entirety. Accordingly, all references to Exhibits D, I and J in Section 1.3 are hereby deleted.

4. **FORA Impact Fees.**

(a) The first sentence of Section 2.3 is hereby deleted in its entirety and replaced with the following:

(i). The Developer shall pay to FORA all impact and mitigation fees adopted by FORA, as such fees may be amended from time to time, with respect to the use and development of former Fort Ord lands which are applicable to the Development of the Project Site, which fees for all of the Improvements are currently \$23,655 per residential unit (the “FORA Impact Fee”).

5. **City Impact Fees.** Section 2.4 is hereby deleted in its entirety and replaced with the following:

“Until 12:01 a.m. on November 30, 2018, the Developer shall pay to the City all City-imposed impact and mitigation fees with respect to the Development of the Project Site, as set forth in Exhibit E. After 12:01 a.m. on November 30, 2018, the Developer shall pay to the City all lawful City-imposed impact, mitigation and other fees with respect to the Development of the Project Site in accordance with the provisions of the Development Agreement between the City and the Developer.”

6. **Representations and Warranties of Developer.** For purposes of this Fourth Amendment only, and without modification to the Third Amendment, Section 5.6.8 is hereby deleted and replaced with the following:

"Developer is Cypress Marina Heights, L.L.C., a California limited liability company."

7. **Development of the Project Site.** Section 7.1 is hereby modified as follows:

(a) "The words 'and Schedule of Benchmarks' are hereby deleted from the first sentence of Section 7.1.

(b) Section 7.2 is hereby deleted in its entirety.

8. **Limitations on Transfer.** Section 8.1 is hereby deleted in its entirety and is replaced with the following:

8.1. Transfers. The Developer is permitted to assign this Agreement or any right herein other than the payment of the Profit Participation Payment set out in Section 6.3 Developer shall not be released from any obligations under this Agreement pursuant to any transfer until the City has received a copy of the final executed assignment and assumption agreement between Developer and the assignee that specifies the obligations being assigned or transferred.

9. **Events of Default.**

(a) 10.4.1 is hereby modified as follows:

(i). Section 10.4.1.(c) is hereby deleted in its entirety.

(ii). Section 10.4.1.(d) is hereby deleted in its entirety.

10. **Repurchase Option.** Section 10.6 is hereby deleted in its entirety.

11. **Miscellaneous Provisions.** Section 11.16 is hereby added at the end of Article 11:

11.16. Administrative Amendments to Agreement. This Agreement may be amended or clarified by an Administrative Amendment upon mutual consent of the City Manager and the Developer, without requirement of notice, hearing or adoption of an ordinance, for minor or clarifying changes or interpretation.

12. **Conflict.** In the event of a conflict between terms and conditions of this Amendment and the terms and conditions of the Amended Option Agreement, the terms and conditions of this Amendment shall control. The Parties acknowledge and agree that the Developer is not a party to the Third Amendment to the Option Agreement and the provisions of the Third Amendment to the Option Agreement shall not be applicable to the Developer.

13. **No Further Modification.** Except as set forth in this Amendment, all other terms and provisions of the Amended Option Agreement shall be and remain unmodified and in full force.

14. **Counterparts.** This Amendment may be executed in any number of counterparts, each of which counterparts shall be deemed to be an original, and all of which counterparts, when taken together, shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have entered into this Amendment as of the day and year first above written.

“DEVELOPER”:

CYPRESS MARINA HEIGHTS, LLC, a
California limited liability company

By:_____

Name:_____

Title:_____

“CITY”:

CITY OF MARINA

By:_____

Name:_____

Title:_____

APPROVED AS TO FORM:

_____,
City Attorney

PURSUANT TO RESOLUTION
NO. _____

ATTEST:

Anita Sharp

City Clerk
City of Marina

SUCCESSOR AGENCY:

SUCCESSOR AGENCY TO THE MARINA
REDEVELOPMENT AGENCY

By: _____

Name: _____

Title: _____

July 17, 2018

Item No. **9b**

Honorable Mayor and City Council Members

Honorable Board Members of the
Successor Agency of the Marina Redevelopment Agency

THE CITY COUNCIL OF THE CITY OF MARINA APPROVE THE FIRST READING OF AN ORDINANCE APPROVING THE SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY AND CYPRESS MARINA HEIGHTS, LLC RELATED TO THE SEA HAVEN PROJECT

THE CITY COUNCIL ACTING ON BEHALF OF THE CITY AND AS THE GOVERNING BOARD OF THE SUCCESSOR AGENCY TO THE MARINA REDEVELOPMENT AGENCY APPROVE THE FOURTH AMENDMENT TO THE OPTION AGREEMENT BY AND AMONG THE CITY, THE SUCCESSOR AGENCY AND CYPRESS MARINA HEIGHTS, LLC

THE CITY COUNCIL ACTING ON BEHALF OF THE CITY AND AS THE GOVERNING BOARD OF THE SUCCESSOR AGENCY TO THE MARINA REDEVELOPMENT AGENCY APPROVE THE TERMINATION OF MEMORANDUM OF AGREEMENT BY AND AMONG THE CITY, THE SUCCESSOR AGENCY AND CYPRESS MARINA HEIGHTS, LLC RELATED TO THE FUNDING OF PHASE 1 OF THE STRATEGIC DEVELOPMENT CENTER

REQUEST

It is requested that the Marina City Council

1. Approve the first reading of an ordinance approving the Second Amendment to the Development Agreement between the City and Cypress Marina Heights LLC.
2. Approve the Fourth Amendment to the Option Agreement by and among the City, the Successor Agency to the Marina Redevelopment Agency and Cypress Marina Heights LLC
3. Approve the Termination of the Memorandum of Agreement by and among the City, the Successor Agency and Cypress Marina Heights LLC related to the Funding of Phase 1 of the Strategic Development Center.

It is requested that the Marina City Council, acting as the Governing Board of the Successor Agency to the Marina Redevelopment Agency

1. Approve the Fourth Amendment to the Option Agreement by and among the City, the Successor Agency to the Marina Redevelopment Agency and Cypress Marina Heights, LLC
2. Approve the Termination of the Memorandum of Agreement by and among the City, the Successor Agency and Cypress Marina Heights, LLC related to the Funding of Phase 1 of the Strategic Development Center.

BACKGROUND:

The City of Marina, the Redevelopment Agency of the City of Marina and Cypress Marina Heights, L.L.C. ("Developer") entered into an Option Agreement dated November 14, 2002. The Option Agreement provided the Developer with the option to acquire from the Redevelopment Agency 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 EIR, General Plan Amendments, the Specific Plan, a Specific Plan Zoning Ordinance and Map Amendments, Tentative Map (collectively the "Project Approvals"), and Final Development Agreement for the Marina Heights Project.

The Option Agreement, the Development Agreement and the Project Approvals call for the development of 1050 homes on the 248-acre site. The site was previously occupied by 828 abandoned former army constructed homes that the Developer demolished. In accordance with the terms of the Specific Plan, the Project will include 102 town homes, 188 cottage units, 336 single family homes on 5,000 square foot lots and 339 single family homes on 6,000 square foot lots. 51 of the town homes will be affordable to below market rate households (households with incomes between 120% and 150% of median income) and 51 of the town homes will be affordable to moderate income households (households with incomes at or below 120% of median income). 23 of the cottage homes will be affordable to below market rate households and 85 of the cottage homes will be Bridge homes, sold at a restricted price.

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.

Development of the Project was delayed as a result of a variety of factors, including litigation and the recession. In late 2016 the Developer, with the approval of the City Council and the Successor Agency, transferred the firsts lots to Wathen Castanos, a homebuilder, and construction commenced on the first phase of homes. The Developer recently sold all of the remaining portions of the project to Wathen Castanos, retaining 63 cottage lots. As part of the sale of the bulk of the remaining portions of the project to Wathen Castanos, the Developer and Wathen Castanos entered into partial assignments of the Development Agreement and the Option Agreement.

In July the City Council approved amendments to the Development Agreement and the Option Agreement as they related to the portions of the project transferred to Wathen Castanos. These amendments:

- Extends the term of the Development Agreement for 12 years with a new expiration date of November 30, 2030
- Updates the list of Project Approvals to include all approvals that have been granted since the approval of the Development Agreement in 2006;
- Unfreezes the City Impact fees when the new extension term begins. The Development Agreement froze the impact and processing fees for the project at the 2004 level and those fees have continued to apply and will continue to apply until November 29, 2018 when the original term of the Development Agreement expires. Starting November 30,

2018, the impact fees charged to the Developer upon submission of permit applications will be the City's currently adopted fees. Additionally the amendment will allow the City to charge the Developer newly adopted fees, taxes or assessments, including any fees that may be adopted to address the City's need to assume obligations of FORA, if FORA dissolves. The Developer is also agreeing to pay to the City a fee equivalent to the FORA Fee if FORA dissolves to cover costs currently paid by the FORA Fee. Finally the amendment to the Development Agreement includes a provision that the Developer agrees to vote in favor of the inclusion of any of the vacant land it holds in an assessment district or special tax district that the City may form to replace the FORA CFD if FORA were to dissolve;

- Removes the Schedule of Benchmarks that limited the number of homes that could be developed in each year. The Schedule of Benchmarks was designed to address the City's growth control measure. Neither the Development Agreement nor the Option Agreement required the Developer to develop the homes within the scheduled times set out in the Schedule of Benchmarks but rather restricted the total number of homes that could be developed in each year. The Development Agreement and Option Agreement allowed the Developer to carry over from year to year the homes that were not constructed in a given year. As a result of the delays in the project, under the existing Schedule of Benchmarks, the Developer can develop an unlimited number of homes in each year.
- Requires that the development of the affordable homes generally proportionally to the development of the market rate homes.
- Requires Wathen Castanos to pay park fees, and the additional \$1.5 million park fee toward the development of the 18 acre park adjacent to the project site, as such amount is increased by the increase in the CPI. The amendment also includes provisions that allow Wathen Castanos to construct the 18-acre park and obligates the homeowners association to pay for maintenance costs of the 18 acre park.

Cypress Marina Heights, LLC is not a party to the First Amendment that was approved by the City Council earlier this month, so the First Amendment only applies to the portions of the project that are owned by Wathen Castanos. Although Cypress Marina Heights, LLC only retained 63 lots in the development and of those 63 lots, building permits have been issued for 42 of the homes, the extension of the Development Agreement and the provisions that require Cypress Marina Heights to pay updated development fees commencing November 30, 2018 and to pay to the City fees equivalent to the FORA Fee will ensure that should development of the remaining 21 homes be delayed, the new fees will apply. The Second Amendment to the Development Agreement is virtually identical to the First Amendment previously approved by the City Council except that the provisions that require Wathen Castanos to pay the \$1.5 million additional park fee as increased by the increase in the CPI as well as other provisions related to the 18 acre park are not included since Wathen Castanos has accepted responsibility for these obligations in the First Amendment.

OPTION AGREEMENT

The Developer is also requesting an amendment to the Option Agreement entered into by and among the City, the former Redevelopment Agency and the Developer in November 2002. The Option Agreement provided the terms for the sale of the property to the Developer as well as provisions related to the construction of the homes and certain ongoing obligations of the Developer. The proposed amendments to the Option Agreement include:

- Removal of provisions that require the Successor Agency and the City to approve transfers of portions of the project to homebuilders. The Option Agreement originally contained provisions that limited the Developer's ability to transfer portions of the property to homebuilders without the City's and Agency's consent unless the homebuilder was on a list of approved homebuilders and prohibited the Developer from transferring

the profit participation payment and the infrastructure construction obligations. The Fourth Amendment to the Option Agreement would remove the restrictions on Cypress Marina Heights transferring the infrastructure improvement obligations in the Option Agreement but would retain the restriction that prohibits transfer of the profit participation payment. When Cypress Marina Heights transferred the bulk of the remaining undeveloped portions of the project to Wathen Castanos, its also expected to transfer the obligation to construct the infrastructure for the portions of the property transferred to Wathen Castanos. Cypress Marina Heights and Wathen Castanos expected that the Third Amendment to the Option Agreement, which removed the restrictions on transfer of the infrastructure obligations from the Option Agreement would allow for the implementation of the parties' intent in the purchase and sale agreement. Because only Wathen Castanos was a party to the Third Amendment to the Option Agreement, without the Fourth Amendment to the Option Agreement, Cypress Marina Heights is still subject to the restrictions that prohibit it from transferring the infrastructure obligations even though it has transferred the property upon which that infrastructure will be built. The Fourth Amendment to the Option Agreement will allow for the appropriate developer, Wathen Castanos, to construct the infrastructure necessary to complete the development.

- Elimination of the Successor Agency option to repurchase the property in the event of a default under the Option Agreement. The Repurchase Option was designed to be a remedy in the event the Developer defaulted under the Agreement after acquisition of the Property. The repurchase option runs to the Successor Agency. Under the laws related to the dissolution of redevelopment agencies, successor agencies have limited powers and are prohibited from acquiring property. Because of the limitation in the dissolution laws, the repurchase option is no longer a valid remedy for the Successor Agency.
- Removal of the Schedule of Benchmarks – as discussed above, the Schedule of Benchmarks were originally designed to address growth control and limited the number of homes that could be developed in any year. However, the Option Agreement and the Development Agreement both provided that any homes not developed in any given year could carry forward to the next year. Because of the delays in developing the project, the Developer is now entitled to develop all of the homes. Removal of the schedule of Benchmarks will clarify that development of the homes will proceed in accordance with the market demand for new homes.
- Impact Fees – the Option Agreement has been modified to clarify that the development impact fees payable by the project will be consistent with the Second Amendment to the Development Agreement, as discussed above.
- Administrative Amendments – the Fourth Amendment to the Option Agreement includes new language consistent with the City's other agreements allowing for administrative amendments to the Agreement without the requirement of a public hearing, notice or meeting.

TERMINATION OF MEMORANDUM OF AGREEMENT

In December 2004, the City and the Redevelopment Agency entered into a Memorandum of Agreement For the Funding of Phase1 of the Strategic Development Center and Strategic Studies ("MOA"). Pursuant to the terms of the MOA, the Developer agreed to provide funds to the City/Agency to fund the Strategic Development Center. The original terms of the agreement called for the Developer to provide payments amounting to \$82,995. The MOA indicates that future costs of the Strategic Development Center would be considered as part of a multi-year business plan that contemplated additional contributions by the Developer. The MOA further provided that the payments made by the Developer would be credited against future impact and processing fees owed by the Developer related to the project.

Subsequent to the MOA, the City requested that the Developer continue to provide advance funds to the City to cover staff and administrative costs associated with the Strategic Development Center. In December 2007, the City requested that the Developer provide approximately \$28,200 per quarter. The 2007 letter to the Developer acknowledges that the Developer had at that point already made advance payments in the amount of \$410,645. Starting in 2008, the Developer made monthly payments to the City in the amount of \$7,226 which payments continued until July 2013, totaling \$476,916. In total the Developer made payments to the City in the amount of \$887,561. Of that amount \$82,995 has been credited toward processing fees for the final map for the project. The Developer currently has a credit of \$804,566 which in accordance with the terms of the MOA is to be credited toward the permit and impact fees owed as the project develops. Cypress Marina Heights, LLC assigned its rights to the fee credits to Wathen Castanos as part of the transfer of the bulk of the project to Wathen Castanos. On June 19, 2018, the City Council on behalf of the City and the Successor Agency approved a termination of the Memorandum of Agreement with Wathen Castanos whereby Wathen Castanos waived any rights to the fee credits. Although Cypress Marina Heights assigned its rights to the fee credits to Wathen Castanos, in an abundance of caution, staff is proposing that the City and the Successor Agency enter into a Termination of the Memorandum of Agreement with Cypress Marina Heights as well to ensure that all rights to the fee credits have been terminated.

Environmental Determination

On November 25, 2003, the City Council of the City of Marina certified the final environmental impact report for the Sea Haven Project (State Clearing House Number 2003021012) and on March 3, 2004 the City Council approved a supplement to the final EIR ("EIR"). The EIR served as the environmental review for the Project and the project approvals and entitlements as well as for the approval of the Development Agreement. Section 15162 of the CEQA Guidelines states that if an EIR or negative declaration has been adopted for a project, no subsequent EIR is to be prepared unless there have been substantial changes to the project, substantial changes with respect to the circumstances under which the project is undertaken or new information of substantial importance shows that the project would have significant effects not discussed in the EIR. Since certification of the EIR there have been:

- (i) no substantial changes to the project which would require revisions to the EIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified effects. The project has not changed from the project approved in the EIR;
- (ii) no substantial changes have occurred with respect to the circumstances under which the project is being undertaken which require revisions to the EIR due to new significant environmental effects or a substantial increase in the severity of a previously identified effect. There have been no significant changes in the areas surrounding the Project since the EIR was approved that involve new significant impacts; and
- (iii) no new information shows that the project will
 - a. have any significant effects that were not discussed in the EIR,
 - b. that significant effects that were previously examined will be more severe
 - c. mitigations measures or alternatives that were found infeasible would in fact be feasible and reduce one or more significant effects; or
 - d. new mitigation measures or alternatives that were not considered in the EIR would substantially reduce one or more significant effects of the Project on the environment.

Based on the above, no additional environmental analysis is required for the approval of the Second Amendment to the Development Agreement, the Fourth Amendment to the Option Agreement and the Termination of the Memorandum of Understanding.

TONIGHT'S ACTION.

Staff is recommending the following actions:

That the Marina City Council

1. Approve the first reading of an ordinance approving the Second Amendment to the Development Agreement between the City and Cypress Marina Heights LLC.
2. Approve the Fourth Amendment to the Option Agreement by and among the City, the Successor Agency to the Marina Redevelopment Agency and Cypress Marina Heights LLC
3. Approve the Termination of the Memorandum of Agreement by and among the City, the Successor Agency and Cypress Marina Heights LLC related to the Funding of Phase 1 of the Strategic Development Center.

That the Marina City Council, acting as the Governing board of the Successor Agency to the Marina Redevelopment Agency

1. Approve the Fourth Amendment to the Option Agreement by and among the City, the Successor Agency to the Marina Redevelopment Agency and Cypress Marine Heights LLC
2. Approve the Termination of the Memorandum of Agreement by and among the City, the Successor Agency and Cypress Marina Heights, LLC related to the Funding of Phase 1 of the Strategic Development Center.

FISCAL IMPACT:

The approval of the Second Amendment to the Development Agreement and the Fourth Amendment to the Option Agreement will result in the following beneficial fiscal impacts to the City:

1. Commencing November 30, 2018, all of the Sea Haven project will be subject to the City's existing development impact fees and processing fees, resulting in increased revenues for the City as building permits are issued for the homes to be built.
2. The Second Amendment to the Development Agreement includes a commitment by the Developer pay fees equivalent to the FORA Fees to the City in the event that FORA dissolves and also a commitment to approve an assessment district on the vacant land owned by the Developer within the Sea Haven project if the City pursues an assessment district to replace the FORA CFD in the event the FORA dissolves. The FORA Fee language will provide the City with funds that may be necessary for the basewide capital improvements and environmental mitigation measures that may become the responsibility of the City in the event of a FORA dissolution.
3. The City will realize an additional \$804,566 in impact and permit fees as a result of the Termination of the MOA that waives the Developer's fee credit.
4. Development of the project as contemplated will result in increased property taxes benefiting the City as well as the other taxing entities.

REVIEW/CONCUR

Layne Long
City Manager
City of Marina