

RESOLUTION NO. 2024-143

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING A DEPOSIT AND REIMBURSEMENT AGREEMENT REGARDING THE PROPOSED COMMUNITY FACILITIES DISTRICT NO. 2025-1 OF THE CITY OF MARINA (MARINA STATION)

THE CITY COUNCIL OF THE CITY OF MARINA DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Marina Station LLC (the “Developer”) has submitted to the City Manager of the City of Marina (the “City”) a check in the amount of \$130,000 (the “Deposit”), to be used by the City to pay costs of the City in connection with proceedings under Section 53311 *et seq.* of the California Government Code (the “Act”) and Chapter 3.35 of the Marina Municipal Code to create a community facilities district to be designated “Community Facilities District No. 2025-1 of the City of Marina (Marina Station)” (the “CFD”).

Section 2. There has also been submitted a Deposit and Reimbursement Agreement (the “Agreement”), to be entered into by the Developer and the City (for itself and on behalf of the CFD), and the City now desires to enter into the Agreement with the Developer in order to assist with the formation of the CFD.

Section 3. The City Council hereby approves and authorizes the City Manager to execute and deliver the Agreement, in the form on file with the City Clerk and to take all actions on his part necessary to implement the Agreement. The City Manager is hereby authorized and directed to accept the Deposit and to use the Deposit (and any subsequent Deposits, as defined in the Agreement) in the manner contemplated by the Agreement.

Section 4. The firm of Goodwin Consulting Group, Inc. is hereby designated as Special Tax Consultant to the City for the CFD, the firm of Fieldman, Rolapp & Associates, Inc. is hereby designated as municipal advisor to the City for the CFD, and the firm of Stradling Yocca Carlson & Rauth LLP is hereby designated as Formation Counsel to the City for the CFD. The City Manager is hereby authorized and directed to execute agreements with said firms for their services in connection with the CFD, in the respective forms filed with the City Manager of the City. In any event, the fees and expenses of such consultants shall be payable solely from Deposits.

Section 5. The Mayor, the City Manager, the Finance Director, City Clerk and all other officers of the City are hereby authorized and directed to take all actions and do all things necessary or desirable hereunder with respect to the implementation of the Agreement, including but not limited to the execution and delivery of any and all agreements, certificates, instruments and other documents, which they, or any of them, may deem necessary or desirable and not inconsistent with the purposes of this Resolution.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 17th day of December 2024 by the following vote:

AYES, COUNCIL MEMBERS: McAdams, McCarthy, Biala, Visscher, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

**DEPOSIT AND REIMBURSEMENT AGREEMENT
REGARDING THE PROPOSED
COMMUNITY FACILITIES DISTRICT NO. 2025-1
OF THE CITY OF MARINA (MARINA STATION)**

THIS DEPOSIT AND REIMBURSEMENT AGREEMENT REGARDING THE PROPOSED COMMUNITY FACILITIES DISTRICT NO. 2025-1 OF THE CITY OF MARINA (MARINA STATION) (the “Agreement”) dated as of December 1, 2024, is entered into by and between the CITY OF MARINA, a chartered municipal corporation organized and existing under the laws and constitution of the State of California (the “City”), and MARINA STATION LLC, a Delaware limited liability company (the “Owner”).

R E C I T A L S:

A. The Owner and affiliates of Owner own approximately 320 acres of land described in Exhibit A attached hereto (the “Property”), which the Owner desires to include within proposed Community Facilities District No. 2025-1 of the City of Marina (Marina Station) (the “District”) to be established by the City pursuant to the Mello-Roos Community Facilities Act of 1982 (Section 53311 *et seq.* of the California Government Code), as incorporated into the Marina Municipal Code, with certain modifications, as Chapter 3.35 of the Marina Municipal Code.

B. It is expected that on or after April 1, 2025, the City Council of the City, acting as the legislative body of the District, will adopt a resolution establishing the District (the “ROF”) and a resolution calling for an election of the qualified electors within the District to authorize the special taxes of the District, issuance of bonds secured by the special taxes, and an annual appropriations limit for the District (the “District Election”).

C. The City and the Owner are desirous of entering into this Agreement in order to provide a mechanism by which the Owner may advance certain costs related to the cost of formation of the District, and to provide that such District, if formed, will reimburse the Owner for the amounts advanced hereunder.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties hereto agree as follows:

1. Recitals. Each of the above recitals is incorporated herein and is true and correct.
2. Potential Formation of the District.

(a) At the request of the Owner, the City will undertake to form the District. The City will retain, at the Owner’s expense, the necessary consultants to analyze the proposed formation of the District, including an engineer, special tax consultant, financial advisor, formation counsel, and other consultants deemed necessary by the City. In addition, City staff time spent in connection with the formation of the District shall be at Owner’s expense.

(b) In order to begin the process of analyzing the potential formation of the District, the Owner has advanced to the City a sum totaling \$130,000. From time to time, the Owner shall make additional advances to the City within 15 business days following receipt from the City of a request for an additional advance to cover the costs of forming the District. In the event the Owner does not deliver the requested amount to the City within such 15-business day period, the City will have no obligation to proceed with the analysis or formation of the District unless and until such additional advance is received (at which time proceedings will be resumed).

The Owner shall have the right to notify the City at any time, in writing, of its intention to abandon the formation of the District. Upon receipt of such notice, the City shall instruct its consultants to cease work as soon as practicable. The Owner shall be responsible to pay (or to reimburse the City) for all costs and expenses incurred by the City or any City consultant or advisor prior to the date on which the City's consultants are notified of the Owner's notice of abandonment. Notwithstanding a decision of the Owner to abandon the formation of the District, the City may, in its sole discretion, elect to proceed with formation of the District with funds other than those of the Owner; provided, however, that, in executing this Agreement, the Owner shall not be deemed to have waived their right to object to the formation of the District.

(c) The City will provide to the Owner on request a summary of how the advances have been spent and the unexpended balance remaining.

(d) When and if the District is formed, the amounts advanced by the Owner will be reimbursable to the Owner, without interest, in one or more installments as required, from the first to be received of (i) proceeds of special taxes of the District and (ii) proceed of bonds issued by the City on behalf of the District.

3. Reimbursement Procedure. Promptly following the formation of the District, the City shall return any funds which have been advanced by the Owner which are not expended on, or reserved for, the purposes set forth in Section 2 above. Such returned funds shall be without interest.

4. Abandonment of District Formation Process. The Owner understands that any formation of the District shall be in the sole discretion of the City. No provision of this Agreement shall be construed as a promise, warranty or agreement by the City to form the District or to annex the Property to any other district or improvement area of the City. The City shall have no liability to Owner for its decision not to form the District.

5. Indemnification and Hold Harmless. To the full extent permitted by law, Owner shall indemnify and defend the City and its elected boards, commissions, officers, agents and employees (collectively, the "Indemnitees") and will hold and save each of the Indemnitees harmless from any and all costs, expenses, fees, and damages (including but not limited to attorneys' fees and costs) relating to or resulting from challenges, including lawsuits or administrative proceedings of any kind, brought by any third party, in connection with or relating to the formation of the District and/or the validity, legality or adequacy of the District Election (collectively referred to herein as a "Challenge"). In the event the City is served with any Challenge, the City shall provide Owner with notice of the Challenge and a copy of documentation relating to the Challenge. The City shall be entitled to select its own legal counsel, which may be the City Attorney, Stradling Yocca Carlson & Rauth LLP, or other legal counsel of its choosing. Owner shall pay or promptly reimburse the City for any necessary legal cost incurred by City in connection with the defense of any Challenge including, without limitation, reasonable costs incurred by the City Attorney to monitor activities of outside legal counsel. Owner's obligation to pay the cost of defending the Challenge, including the cost to pay any settlement or judgment, shall extend until such settlement is finalized or such judgment is entered and the terms of the settlement or judgment, as applicable, are completely satisfied.

Owner shall have the right, in its sole and absolute discretion, to negotiate a financial settlement of the Challenge, or appeal any judgment relating to the Challenge. To the extent the terms of a settlement negotiated by Owner require payment (which shall be paid entirely by Owner) but do not require any action by or on behalf of the City, the City shall allow Owner to settle the litigation on whatever terms Owner determines, in its sole and absolute discretion, but

Owner shall confer with City before finalizing any such settlement and shall not bind the City to take or refrain from any action or make any payment. Owner shall be liable for any and all costs incurred by the City up to the date any settlement or judgment has been finally satisfied by Owner as provided above, including any necessary costs of implementing or enforcing the settlement or judgment. In the event of an appeal, or a settlement offer, the parties shall confer in good faith as to how to proceed. City shall have full discretion to approve or reject any proposed settlement that would require the City to take any action, refrain from taking any action, or make any payment.

Pursuant to Government Code Section 53359, an action challenging the validity of the special taxes of the District must be brought within 30 days of the District Election. Notwithstanding the foregoing, the indemnity provisions set forth in this Agreement shall terminate 120 days following the District Election unless a Challenge is brought within such 120 day period.

6. Notices. Any notice to be provided pursuant to this Agreement shall be delivered to the following addresses:

Owner: Marina Station LLC
5671 Santa Teresa Blvd.
Suite 200
San Jose, CA 95123
Attention: Michael Cady
Telephone: 408-960-8010
Email: mcady@thirdmillenniumpartners.com

City: City of Marina
211 Hillcrest Avenue
Marina, CA 93933
Attn: City Manager
Telephone: (831) 884-1278
Email: llong@cityofmarina.org

With a copy to: Stradling Yocca Carlson & Rauth LLP
660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660
Attention: Brian D. Quint, Esq.
Telephone: (949) 725-4063
Email: bquint@stradlinglaw.com

Each party may change its address for delivery of notice by delivering written notice of such change of address to the other party.

7. Assignment. The Owner may assign its interest in this Agreement at any time provided, however, that the Owner shall provide written evidence of any assignment to the City.

8. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent permitted by law.

9. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the matters provided for herein.

10. Amendments. This Agreement may be amended or modified only by written instrument signed by all parties.

11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

12. Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

13. No Third Party Beneficiaries. No person or entity shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement (either express or implied) is intended to confer upon any person or entity, other than the City and the Owner, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

14. Singular and Plural; Gender. As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

CITY OF MARINA

By _____
Layne Long, City Manager

ATTEST: (Pursuant to Resolution No. 2024-__)

Anita Sharp, Deputy City Clerk

MARINA STATION LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT A

DESCRIPTION OF PROPERTY

Real property in the City of Marina, County of Monterey, State of California, described as follows:

Monterey County Assessor Parcel Nos.:

175-011-038-000

203-011-026-000

December 12, 2024

Item No. **10g(3)**

Honorable Mayor and Members
Of the Marina City Council

City Council Meeting
of December 17, 2024

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2024-
APPROVING A DEPOSIT AND REIMBURSEMENT AGREEMENT
REGARDING THE PROPOSED COMMUNITY FACILITIES DISTRICT
NO. 2025-1 (“MARINA STATION CFD”)**

RECOMMENDATION:

It is recommended that the City Council consider:

1. Adopting Resolution No. 2024-, approving a Deposit and Reimbursement Agreement (“Reimbursement Agreement”) regarding the Community Facilities District No. 2025-1.

BACKGROUND:

In August 2022, the City approved the assignment of the Development Agreement of the Marina Station project to 3rd Millennium Partners and approved the first amendment to the Development Agreement for this project. A key requirement of the project owner in order to maintain “Fiscal Neutrality” for the City, Marina Station LLC (the “Owner”), is to create a new Community Facilities District to be designated City of Marina Community Facilities District No. 2025-1 (Marina Station) (“Marina Station CFD” or “CFD”) to levy a special tax to fund maintenance costs for all landscaping, lighting, parks, and roadways within the project area that are typically the City’s responsibility and will also cover one-half of the City’s costs of operating and maintaining a fire station the will serve the project area and the general community.

ANALYSIS:

The City has received a request from Marina Station LLC to start the process to create the CFD. The Reimbursement Agreement is a mechanism by which the property owner may advance moneys to the City to pay the costs of formation of the Marina Station CFD, and to provide that such CFD, if formed, will reimburse the Owner for the amounts advanced under the Reimbursement Agreement.

The City’s consultant team that will assist with the formation of the CFD consists of Goodwin Consulting (special tax consultant), Fieldman, Rolapp & Associates, Inc. (municipal advisor), Stradling Yocca Carlson & Rauth (bond counsel), Goldfarb & Lipman (special legal counsel), and city staff.

Over the next few months staff will bring back to the City Council a Resolution of Intention to form the CFD; a Resolution of Formation of the CFD; resolutions calling and conducting a special election for the CFD; and an ordinance authorizing the levy of special taxes.

The adoption of the Resolution approving the Reimbursement Agreement under consideration this evening will not commit the City Council to establish the Marina Station CFD nor authorize the levy of special taxes or the issuance of bonds. The City Council may establish the Marina Station CFD only after conducting a public hearing and may levy the special taxes only if the result of the special election results in a 2/3rds approval.

FISCAL IMPACT:

The creation of the Marina Station CFD serves two primary purposes, it will keep the Marina Station development's impact on the City's General Fund fiscally neutral or better and will also assist the Owner in financing the infrastructure needed for the development of the property within the Marina Station CFD.

CONCLUSION:

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

Tori Hannah
Finance Director
City of Marina

REVIEWED/CONCUR:

Layne P. Long
City Manager
City of Marina