

RESOLUTION NO. 2025-42

A RESOLUTION OF THE CITY OF MARINA APPROVING A PUBLIC
IMPROVEMENT AGREEMENT FOR MARINA STATION PHASES 1 AND 2
BETWEEN THE CITY OF MARINA AND MARINA STATION PHASES 1
AND 2 LLC, AND; AUTHORIZING CITY MANAGER TO EXECUTE THE
PUBLIC IMPROVEMENT AGREEMENT ON BEHALF OF THE CITY
SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY
ATTORNEY

WHEREAS, at the regular meeting of March 4, 2008, the City Council adopted Resolution No. 2008-45, approving the Vesting Tentative Map for the Marina Station Development Project Subdivision, located at northern property boundary of the City. The Vesting Tentative Map consisted of 887 residential lots, including 1,360 residential units, constructed over 8 separate phases, and;

WHEREAS, At the regular meeting of March 4, 2008, the City Council adopted Resolution 2008-41, approving and certifying the Marina Station Specific Plan Environmental Impact Report. As part of the Certification of the Final Environmental Impact Report ("FEIR"), the City adopted certain mitigation measures to reduce significant environmental impacts identified in the FEIR and adopted a Mitigation Monitoring and Reporting Program ("MMRP"). The mitigation measures addressed a variety of issues including traffic impacts and measures to address the biological impacts of the Marina Station Project, and;

WHEREAS, the developers have submitted the Phases 1 and 2 Final Map and Improvement Plans for approval. The Public Improvement Agreement (Exhibit A) has also been submitted and will provide labor and materials and faithful performance bonds required for the recordation of the Phases 1 and 2 Final Map. It has been determined that the Vesting Tentative Map Conditions of Approval will be met with the inclusion of the Public Improvement Agreement. The Agreement has been found consistent with the conditions of the Development Agreement, and;

WHEREAS, the Phases 1 and 2 Final Map and Improvement Plans are for 240 residential units in the Marina Station Project. The Phases 1 and 2 Final Map and Improvement Plans include the specific neighborhood improvements such as parks and open space that support 240 residential units including 79 below market rate (BMR) single family residential units, and;

WHEREAS, all required future phased final maps must meet all the appropriate conditions of approval and will be presented to City Council for consideration at a future date, and;

WHEREAS, should the City Council approve this request, the City requires the Developer to provide satisfactory evidence of their ability to complete the public improvements by the posting of labor and material and faithful performance subdivision improvement bonds in an amount of 100% of the City Engineer's estimate of the cost to perform the work, and;

WHEREAS, for the construction of Phases 1 and 2, the Developers will post a bond in the amount of Twelve Million Six Hundred Eleven Thousand Dollars (\$12,611,000) for completion of the public improvements and a bond in the amount of Twelve Million Six Hundred Eleven Thousand Dollars (\$12,611,000) to secure payment for labor and materials prior to the recording of the Phases 1 and 2 Final Map.

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

1. Approve a Public Improvement Agreement for Marina Station Phases 1 and 2 between the City of Marina and Marina Station Phases I and 2 LLC, and;
2. Authorize the City Manager to execute the Public Improvement Agreement 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 duly held on the 20th day of May 2025, by the following vote:

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

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ATTEST:

Liesbeth Visscher, Mayor Pro Tem

Anita Sharp, Deputy City Clerk

Exhibit A

PUBLIC IMPROVEMENT AGREEMENT

CITY OF MARINA

Recording requested by and when
when recorded, return to:

City of Marina
211 Hillcrest Avenue
Marina, CA 93933
Attn: Public Works Director

Exempt from recording fee, per
Government Code Section 6103

APN:175-011-038-000 (PORTION)

PUBLIC IMPROVEMENT AGREEMENT
FOR IMPROVEMENT OF STREETS, INSTALLATION OF SIDEWALKS,
LANDSCAPING, STREET LIGHTS AND OTHER PUBLIC WORKS FACILITIES

–LEGAL DESCRIPTION OF DEVELOPMENT ATTACHED AS EXHIBIT A –

This Public Agreement for Improvement of Streets, Installation of Sidewalks, Landscaping, Street Lights and Other Public Works Facilities (the “Agreement”) is made and entered into this _____ day of _____, 2025, by and between the City of Marina, herein called the “City,” a municipal corporation, and Marina Station Phases I and 2 LLC, a Delaware limited liability company, a real property owner and developer, herein called the “Developer.” City and Developer are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties.”

Recitals

- A. Developer has presented to CITY for approval a plan of development Phases I & II of the Marina Station Specific Plan and Tentative Map (Res. 2008-45)(the “Development”) located at northern property boundary of the City of Marina, Marina, California (the “Property”) within the City, pursuant to provisions of the City’s ordinances and regulations relating to development approval.
- B. Marina City Code Section 16.06.090 sets forth that improvements may include paving; gutter; curb; sidewalks; raised medians; street lights; street trees; landscaping; street signs; street barricades, walls and fences (the “Improvements”) necessary along the frontage of the Property as described and shown on Off-Improvement Plan Sheet(s) (the “Improvement Plans”). Completion of all improvements in accordance with the Improvement Plans shall be completed prior to final inspection.
- C. The Development has been approved, subject to the requirements and conditions on file in the Office of the Director of Public Works and incorporated into this Agreement by reference.

D. The City has certain responsibilities for maintenance and operation of certain Improvements, utilities and public service facilities after acceptance by City, and the City agrees to discharge those responsibilities following its acceptance of the Improvements.

E. In consideration of the approval of the Development, Developer desires to enter into this Agreement, whereby Developer promises to install and complete, at Developer's own expense, all the public improvement work required by City in connection with the Development. Developer has secured this Agreement by improvement security required by the City and approved by the City Attorney

NOW THEREFORE, in consideration of the foregoing and in order to carry on the intent and purpose of said Codes, Ordinances, Resolutions, Rules and Regulations, it is agreed by and between the parties as follows:

SECTION 1

The recitals to this Agreement are hereby incorporated into the terms of this Agreement. All applicable Codes, Ordinances, Resolutions, Rules and Regulations and established policies of the City and the laws of the State of California and the United States of America concerning the subject matter of this Agreement are hereby referred to and incorporated herein to the same effect as if they were set out a length herein. Said Codes, Ordinances, Resolutions, Rules and Regulations include, but are not limited to, the following: The Municipal Code of the City of Marina, including the current Zoning Ordinance, and the currently adopted California Building Code. Performance by Developer of this Agreement shall not be construed to vest Developer's rights with respect to any change in any zoning or building law or ordinance.

Developer has been alerted to the requirements of California Labor Code section 1770 et seq. which require the payment of prevailing wage rates and the performance of other requirements if it is determined that this Agreement constitutes a public works contract. It shall be the sole responsibility of Developer to determine whether to pay prevailing wages for any or all work required by this Agreement. As a material part of this Agreement, Developer agrees to assume all risk of liability arising from any decision not to pay prevailing wages for the work required by this Agreement.

SECTION 2

The Developer agrees:

- a. To perform each and every provision required by the City to be performed by the Developer in each and every one of the applicable Codes, Ordinances, Resolutions, Rules and other Regulations and to comply with the foregoing and all applicable laws.

- b. To grant to the City or other entities entitled thereto, without charge and free and clear of monetary liens and encumbrances, any and all public, private, utility, drainage, construction or access easements and rights of way (herein "easements") in and to the Property necessary for the City, in order that the street improvements to said real property may be extended; however, City shall not be obligated to accept any such easement or right-of-way.
- c. Prior to acceptance of the Improvements by the City, to indemnify, defend with counsel of City's choice and hold the City and any of its officials, boards and commissions and members thereof, agents and employees, free and harmless from all suits, fees, claims, demands, causes of action, costs, losses, damages, liabilities and expenses (including without limitation attorney's fees) because of or arising or resulting directly or indirectly from (i) any damage done to any utility, public facility or other material or installation of the City on said real estate as a result of the Developer or any contractor or subcontractor of the Developer, or any employee of the foregoing, grading or working upon said real estate; or (ii) any act or omission of Developer or Developer's contractors, or subcontractors, or any employee of the foregoing in connection with the design, construction or other work performed by them in connection with this Agreement, including without limitation all claims relating to injury or death of any person or damage to any property, except for such claims, demands, causes of action, liability or loss arising out of the sole negligence or intentional acts of the City or any of its officials, boards or commissions or members thereof, agents or employees. City shall not be responsible for the design or construction of the Property or the Improvements pursuant to the Improvement Plans, regardless of any negligent action or inaction taken by City in approving the Improvement Plans unless the particular improvement design was specifically required by City over written objection by Developer submitted to the City Engineer before construction and acceptance of the Improvements, which objection indicated that the particular improvement design was dangerous or defective and suggested an alternate safe and feasible design. Prior to acceptance, Developer shall remain obligated for routine maintenance of the Improvements. After acceptance, City shall be obligated for the routine maintenance of all Improvements but, Developer shall remain obligated to eliminate any defect in design or dangerous condition caused by any design or construction defect. Provisions of this Section shall remain in full force and effect for ten years following acceptance by City of the Improvements. The Improvement security shall not be required to cover the provisions of this Section. Developer shall reimburse City for all costs and expenses (including but not limited to fees and charges of architects, engineers, attorneys, and other professionals, and court costs) incurred by City in enforcing the provisions of this Section.
- d. To construct and improve, or have constructed and improved at its own cost, expense and liability, all public works facilities and other improvements described in the Improvement Plans submitted to the City in furtherance of this Agreement on file with the City. To obtain, prior to commencing work all necessary permits and licenses and to give all incidental notices required for the lawful construction of the Improvements. If during the course of construction and installation of the Improvements, it is determined that the

public interest requires alterations to the Improvements, Developer shall undertake such design and construction changes as may be reasonably required by the City. All construction and improvements shall be completed in accordance with all standards established in the applicable Codes, Ordinances, Resolutions, Rules and Regulations, all applicable laws and this Agreement, and in accordance with the grades, plans, and specifications approved by the City Engineer or his or her designee. Developer shall furnish two good and sufficient bonds, in an amount of 100% of the City Engineer's, or his or her designee's, estimated cost of the Improvements, guaranteeing Developer's performance of this Agreement: (1) a Payment Bond on a form provided by the City; and (2) a Faithful Performance Bond, both of which must be secured from a surety company admitted to do business in California. Each bond shall set forth a time period for performance by the contractor of its obligations and the terms and conditions on which the City may obtain the proceeds of the bond. Alternatively, the Developer may provide a cash deposit in an amount of 100% of the City Engineer's, or his or her designee's, estimated cost of the Improvements to guarantee Developer's performance of this Agreement.

- e. The Faithful Performance Bond shall be in an amount not less than one hundred percent (100%) of the total estimated amount payable for the Improvements described in this Agreement, and shall secure payment to City of any loss due to the default of the Developer or its contractors or their inability or refusal to perform this contract, and to guarantee or warranty the work done pursuant to this Agreement for a period of one year following acceptance thereof by City against any defective work or labor done or defective materials furnished. The performance bond shall by its terms remain in full force and effect for a period of not less than one year after completion of the Improvements by Developer and acceptance of the Improvements by the City, provided that after completion of the Improvements by the Developer and approval of the Improvements by the City, Developer may substitute for the performance bond securing the warranty described above with a separate warranty bond issued by an admitted surety in the amount of ten percent (10%) of the total contract price of the Improvements (provided that amount of said bond shall not be less than One Thousand Dollars (\$1,000) to cover the one-year warranty period . Government Code §66499.7, and as it may hereinafter be amended, extended, or otherwise modified, shall apply to a request by Developer for release, in whole or in part, of the Faithful Performance Bond.
- f. The Payment Bond shall be in an amount not less than one hundred percent (100%) of the total estimated amount payable for the Improvements described in this Agreement. The Payment Bond shall secure the payment of those persons or entities to whom the Developer may become legally indebted for labor, materials, tools, equipment or services of any kind used or employed by the contractor or subcontractor in performing the work, or taxes or amounts to be withheld thereon. The Payment Bond shall provide that the surety will pay the following amounts should the Developer, or its contractor or subcontractors fail to pay the same, plus reasonable attorneys' fees to be fixed by the court if suit is brought upon the bond: (1) amounts due to any person that has a lien right pursuant to California Civil Code Sections 8520, 8530 and 9100; (2) amounts due under the Unemployment Insurance Code with respect to work or labor performed for the improvements described in this agreement; and (3) any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Developer,

its contractors and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to the work and labor. The Payment Bond shall, by its terms, inure to the benefit of any person that has a lien right pursuant to Civil Code Sections 8520, 8530 and 9100 so as to give a right of action to those persons or their assigns in any suit brought upon the bond.

- g. For purpose of this Agreement, the term “approval of the Improvements by the City” means Developer has complied with Government Code §66499.7(b)-(e).
- h. For purposes of the term “acceptance of the work” or “acceptance of all work” as set forth in Government Code §66499.7, as it relates solely to the performance bond and payment bond (and not as it relates to the general acceptance by the City for purposes of shifting maintenance obligations), shall mean that the Improvements are approved as complete by the City.
- i. Developer shall file with the Recorder’s Office of the County of Monterey a notice of completion of the Improvements in accordance with California Civil Code section 3093.
- j. The Developer shall submit the following for both the surety that furnishes the Payment Bond and the surety that furnishes the Faithful Performance Bond: (1) a current printout from California Department of Insurances website (www.insurance.ca.gov) showing that the surety is admitted to do business in the State; or (2) a certificate from the Clerk of the County of Monterey that the surety’s certificate of authority has not been surrendered, revoked, canceled, annulled, or suspended or in the event that it has, than renewed authority has been granted.
- k. Any use by any person of the Improvements or any portion thereof, shall be at the sole and exclusive risk of Developer prior to City’s acceptance of the Improvements. At all times during the term of this Agreement and until the Improvements constructed by Developer are accepted by City, Developer shall, at no cost to City obtain and maintain (1) a policy of general liability and property damage insurance in the minimum amount of Two Million Dollars (\$2,000,000), combined single limit for both bodily injury and property damage; (2) workers’ compensation insurance as required by law; and (3) broad form “Builder’s Risk” property damage insurance limits of not less than 100% of the estimated value of the Improvements to be constructed by Developer pursuant to this Agreement (Builders Risk Insurance is not required when only mass grading and roadway-related improvements consisting of no structures are to be constructed).
- l. Developer shall provide thirty (30) days written notice to City prior to termination, cancellation or modification. The insurance specified in (e) above shall (i) name City as additional insured, (ii) name City as a loss payee, and (iii) provide that City, although an additional insured or loss payee, may recover for any loss suffered by reason of the acts or omissions of Developer or Developer’s contractors or subcontractors and shall be endorsed to waive all rights to recover against City for any loss or damage arising from a cause covered by the insurance required to be carried pursuant to this Agreement, and will cause each insurer to waive all rights of subrogation against City in connection therewith. All policies shall be written on an occurrence basis and not on a claims made basis and

shall be issued by insurance companies acceptable to City. Prior to commencing any work pursuant this Agreement, Developer shall deliver to City the insurance company's certificate evidencing the required coverage, or if required by City a copy of the policies obtained. Not later than 30 days prior to policy expiration date on the current certificate of insurance, the Developer shall deliver to the City a new and updated certificate of insurance evidencing all required coverage remains in place.

- m. Developer or its contractor(s) shall procure and maintain workers' compensation insurance with limits required by the California Labor Code and employer's liability insurance with limits of not less than \$1,000,000 per occurrence at all times during which the insured retains employees.
- n. Developer shall pay to the City all fees, taxes and assessment imposed in connection with the Development and inspection of the Improvements including, but not limited to, plan check, design review, engineering, inspection, and other service fees and any impact of connection fees. These fees must be paid in full prior to the City's acceptance of the Improvements. The fees referred to above are not necessarily the only City fees, charges or other costs that have been, or will be, imposed on the Project and its development, and this Agreement shall in no way exonerate or relive the Developer from paying such other applicable fees, charges and/or costs.

SECTION 3

An estimate of the cost for construction of the Improvements and performing land development work in connection with the Improvements according to the Improvement Plans has been made and has been approved by the City Engineer or his or her designee. That estimated amount is Twelve Million Six Hundred and Eleven Thousand Dollars (\$12,611,000). The basis for the estimate is on file in the Office of the City Engineer and is incorporated into this Agreement by reference.

SECTION 4

Developer will commence construction of the Improvements required by this Agreement within the time period set forth in the Schedule of Performance attached hereto as **Schedule 1** and incorporated herein by this reference (the "Schedule of Performance") between City and Developer, as the Schedule of Performance may be subsequently amended in writing. All the provisions of this Agreement and all work to be done pursuant to the terms of this Agreement are to be completed within the time periods set forth in such Schedule of Performance. Developer shall maintain such public works facilities and other improvements described in this Agreement at Developer's sole cost and expense at all times prior to acceptance by City in a manner which will preclude any hazard to life or health or damage to property. City agrees if it becomes necessary to allow Developer, by a prior writing signed by the Public Works Director, to keep streets closed to public traffic until the Improvements are accepted by the City and the bonds are released.

Improvement security shall be released or reduced in the following manner:

- a. The performance bond shall by its terms remain in full force and effect for a period of not less than one year after completion of the Improvements by Developer and acceptance of the Improvements by the City, provided that after completion of the Improvements by the Developer and approval of the Improvements by the City, Developer may substitute for the performance bond securing the warranty described above with a separate warranty bond issued by an admitted surety in the amount of ten percent (10%) of the total contract price of the Improvements (provided that amount of said bond shall not be less than One Thousand Dollars (\$1,000) to cover the one-year warranty period . Government Code §66499.7, and as it may hereinafter be amended, extended, or otherwise modified, shall apply to a request by Developer for release, in whole or in part, of the Faithful Performance Bond.

- b. The Payment Bond providing security for payment to the contractor, his subcontractors, and to persons renting equipment or furnishing labor or materials for the Improvements shall, six months after the completion and approval of the Improvements by the City, be reduced to an amount not less than the total of all claims on which an action has been filed and notice thereof given in writing to the City Council, and if there are no actions filed, the improvement security shall be released in full. City expressly may require the surety not to release the amount of security deemed reasonably necessary by the City to assure payment of reasonable expenses and fees, including reasonable attorney's fees

- c. If the Improvements are constructed in phases, then the City agrees to allow partial releases of the performance and payment bonds for each completed phase provided (i) Developer has complied Government Code §66499.7(b)-(e) for each phase for which a partial release is sought, and (ii) Developer delivers to City warranty bonds for the portion of work completed and being released, which warranty bonds shall continue for a period of one year from and after the date which the City accepts the Improvements.

SECTION 5

City shall not be responsible or liable for the maintenance or care of the Improvements until City approves and accepts them. City shall exercise no control over the Improvements until accepted by City. Any use by any person of the Improvements, or any portion thereof, shall be at the sole and exclusive risk of the Developer at all times prior to City's acceptance of the improvements. Developer shall maintain all the improvements in a state of good repair until they are completed by Developer and approved and accepted by the City, and until the security for the performance of this Agreement is released. Maintenance shall include, but shall not be limited to, repair of

pavement, curbs, gutters, sidewalks, signals, parkways,; maintaining all landscaping in a vigorous and thriving condition reasonably acceptable to City; removal of debris from sewers and storm drains; and sweeping, repairing and maintaining in a good and safe condition all streets and street improvements. It shall be Developer's responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by City. If Developer fails to properly prosecute its maintenance obligation under this section, City may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. City shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the Improvements or their condition prior to acceptance.

SECTION 6

- a) Default of Developer shall include, but not be limited to: (1) failure to timely commence construction of the Improvements; (2) failure to complete construction of the Improvements within the time limitations set forth in the Schedule of Performance; (3) failure to timely cure any defect of the Improvements; (4) failure to perform substantial construction work for a period of sixty calendar days after commencement of the work; (5) Developer's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy either voluntary or involuntary which Developer fails to discharge within thirty days; (6) commencement of a foreclosure action against the project or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure; or (7) failure to perform any other obligation under this Agreement. Notwithstanding the foregoing, Developer shall not be in default under this Agreement if it cures any default within thirty days' of City's written notice of such default, or if the default may not reasonably be cured within such time period, if it commences to cure within thirty days and thereafter diligently proceeds to complete the cure.
- b) City reserves to itself all remedies available to it at law or in equity for breach of Developer's obligations under this Agreement. City shall have the right, subject to this Section, to draw upon or utilize the appropriate security to mitigate City's damages in the event of default by the Developer. The right of City to draw upon or utilize the security is additional to, and not in lieu of, any other remedy available to City. It is specifically recognized that the estimated costs and security amounts may not reflect the actual cost of construction or installation of the Improvements and, therefore, City's damages for Developer's default shall not exceed the cost of completing the Improvements. The sums provided by the security for the Improvements may be used by City for the completion of the Improvements in accordance with the Improvement Plans referenced herein.
- c) In the event of Developer's default under this Agreement, Developer authorizes City to perform such obligation sixty days after mailing written notice of default to Developer and to Developer's surety, and agrees to pay the entire cost of such performance by City. City may take over the work and prosecute the same to completion by contract or by any other method City may deem advisable, for the account and at the expense of Developer, and Developer's surety shall be liable to the City for any excess cost or damages occasioned City thereby, including but not limited to fees and charges of architects, engineers, attorneys, other professionals and court costs. In such event, City, without liability for doing so, may take possession of, and utilize in completing the work, such materials, appliances, plants and other property belonging to Developer as may be on

the site of the work and necessary for performance of the work.

d) Failure of City to take an enforcement action with respect to a default, or to declare a breach, shall not be construed as a waiver of that default or breach or any subsequent default or breach of Developer.

SECTION 7

That the following General Stipulations and any attached stipulations shall be completed, subject to the approval of the Public Works Director.

1. Locate and properly dispose of any wells, septic tanks and underground fuel storage facilities.
2. Schedule the construction of improvements along existing public roads so that the work affecting vehicular traffic is complete with a minimum interruption of traffic.
3. All work within the public right-of-way shall be subject to the approval of the Public Works Director or his or her designee.
4. All construction work shall be coordinated so that the existing residents and/or businesses have access to their properties.
5. All improvements shall be installed per the approved Improvement Plans.
6. The Developer shall provide to the City of Marina electronic copy of the "as built" and Improvement Plans as an AutoCAD drawing file (DWG format, latest AutoCAD edition).
7. Any reimbursements due the Developer, unless specified otherwise in writing in this Agreement, will expire ten (10) years after the date of execution of this Agreement.
8. Until the roads on the Property are open to the public, Developer shall give good and adequate warning to the public of each and every dangerous condition on the existing public roads, and will take all reasonable actions to protect the public from such dangerous condition.
9. Prior to the acceptance of any dedications or Improvements by City, Developer shall certify and warrant that neither the property to be dedicated nor Developer is in violation of any environmental law and neither the property to be dedicated nor the Developer is subject to any existing, pending or threatened investigation by any federal, state or local governmental authority under or in connection with environmental law. Neither Developer nor any third party will use, generate, manufacture, produce, or release, on, under, or about the property to be dedicated, any hazardous substance except in compliance with all applicable environmental laws. Developer has not caused or permitted the release of, and has no knowledge of the release or presence of, any hazardous substance on the property to be dedicated or the migration of any hazardous

substance from or to any other property adjacent to, or in the vicinity of, the property to be dedicated. Developer's prior and present use of the property to be dedicated has not resulted in the release of any hazardous substance on the property to be dedicated.

Developer shall give prompt written notice to City at the address set forth herein of: (i) Any proceeding or investigation by any federal, state or local governmental authority with respect to the presence of any hazardous substance on the property to be dedicated or the migration thereof from or to any other property adjacent to, or in the vicinity of, the property to be dedicated; (ii) Any claims made or threatened by any third party against City or the property to be dedicated relating to any loss or injury resulting from any hazardous substance; and, (iii) Developer's discovery of any occurrence or condition on any property adjoining in the vicinity of the property to be dedicated that could cause the property to be dedicated or any part thereof to be subject to any restrictions on its ownership, occupancy, use for the purpose for which it is intended, transferability or suit under any environmental law.

SECTION 8

Developer shall, at Developer's expense, obtain all necessary permits and licenses for the construction and installation of the Improvements, give all necessary notices and pay all fees and taxes required by law.

SECTION 9

Neither Developer nor any of Developer's agents, contractors or subcontractors are or shall be considered to be agents of City in connection with the performance of Developer's obligations under this Agreement.

SECTION 10

Nothing contained in this Agreement shall preclude City from expending monies pursuant to agreements concurrently or previously executed between the parties, or from entering into agreements with other developers for the apportionment of costs of water and sewer mains, or other improvements, pursuant to the provisions of the City ordinance providing therefor, nor shall anything in this Agreement commit the City to any such apportionment.

SECTION 11

Developer shall not be entitled to assign its obligations under this Agreement to any transferee of all or any part of the property within the Project or to any other third party without the express written consent of City.

SECTION 12

Acceptance of the work, or any portion of the work on behalf of the City shall be made by the City Council upon recommendation of the City Engineer after final completion and inspection of Improvements and payment to the City by the Developer for the cost of all inspections. Such acceptance shall not constitute a waiver of defects by City. The City shall recover all inspection

costs.

SECTION 13

The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

SECTION 14

In the event that suit or arbitration is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to litigation costs and reasonable attorney's fees.

SECTION 15

This Agreement shall be interpreted in accordance with the laws of the State of California. Jurisdiction of all disputes of this Agreement shall be in the County of Monterey, State of California.

SECTION 16

Time is of the essence of this Agreement.

SECTION 17

This Agreement constitutes the entire agreement of the parties with respect to the subject matter. All modifications, amendments or waivers of the terms of this Agreement must be in writing and signed by an authorized representative of the parties.

SECTION 18

In the event the Schedule of Performance (including any Conforming Clarifications thereto) is tolled, the time for commencement of construction or completion of the Improvements hereunder shall be extended for the same duration as applies to the Schedule of Performance. Any such extension may be granted without notice to Developer's surety and shall not affect the validity of this Agreement or release the surety on any security given for this Agreement.

SECTION 19

The Parties hereby mutually agree that neither this Agreement, nor any other related entitlement, permit or approval issued by the City for the Development shall operate to create the relationship of partnership, joint venture, or agency between City and Developer. Developers contractors and subcontractors are exclusively and solely under the control and dominion of Developer, Nothing herein shall be deemed to make Developer or its contractors an agent or contractor of the City.

SECTION 20

All notices, demands, invoices and written determinations shall be in writing and delivered to the following addresses, or such other addresses as the Parties may designate by written notice:

City of Marina

Attn: Public Works Director

211 Hillcrest Avenue

Marina, CA 93901

Developer

Marina Station Phases 1 and 2, LLC

Attn: Dustin Bogue

5671 Santa Teresa Blvd., Suite 200

San Jose, Ca 95123

SECTION 21

This Agreement shall be construed with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate State court in the County of Monterey, California.

SECTION 22

This Agreement may be executed in counterpart originals, which taken together shall constitute one and the same instrument.

(signatures contained on following page)

IN WITNESS WHEREOF, City and Developer have executed this Public Improvement Agreement as of the date first written above.

ATTEST:

CITY OF MARINA

Anita Shepherd-Sharp
Deputy City Clerk

Layne Long
City Manager
Date: _____

APPROVED AS TO FORM:

City Attorney

Marina Station Phases I and 2 LLC
Developer

By:

Name: DUSTIN BOGUE

Title: AUTHORIZED SIGNATORY

Date: 4.28.25

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.

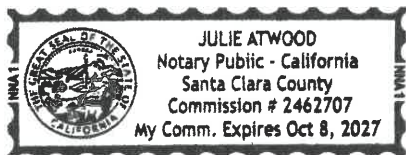
STATE OF CALIFORNIA

COUNTY OF Santa Clara

On April 28, 2025, before me, Julie Atwood, Notary Public, personally appeared Dustin Bogue, 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(ies), 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 handwritten signature in blue ink, appearing to read 'Julie Atwood', written over a horizontal line.

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 _____, 20__9, before me, _____, 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(ies), 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 _____

SCHEDULE 1**SCHEDULE OF PERFORMANCE**

Schedule 1			
Schedule of Performance Marina Station Phases 1 and 2			
Project Milestones	Responsible Party	SOP	Bond
Approval of Final Map	City	July, 2025	
Approval of Park 6 Construction Documents	City	July, 2025	
Completion of Horizontal Improvements Through Pave	Marina Station Phases 1 and 2 LLC	Nov, 2026	Public improvements partial bond release
Completion of Park 6 (City Park)	Marina Station Phases 1 and 2 LLC	July, 2027	Park acceptance and park bond release. To be replaced by warranty bond.
Horizontal Completion Less Sidewalks and Landscape adjacent to homes. Sidewalk and parkway landscape adjacent to homes to be completed with vertical construction.	Marina Station Phases 1 and 2 LLC	July, 2027	Public improvements partial bond release

EXHIBIT A

LEGAL DESCRIPTION – MARINA STATION PHASES 1 & 2

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MARINA, IN THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A AS SHOWN ON THE PARCEL MAP, MARINA STATION PHASE 1 & 2 FILED FOR RECORD ON OCTOBER 21, 2024 IN VOLUME 24 OF CITIES AND TOWNS, AT PAGE 36, OFFICIAL RECORDS OF MONTEREY COUNTY.

EXCEPTING THEREFROM, AN UNDIVIDED 18.933088% INTEREST IN AND TO ALL MINERALS, COALS, OILS, PETROLEUM, GAS AND KINDRED SUBSTANCES UNDER AND IN SAID LAND, BUT WITHOUT THE RIGHT OF ENTRY OF THE SURFACE THEREOF, BUT WITH THE RIGHT HOWEVER, TO DRILL IN, THROUGH OR UNDER SAID LAND OR TO EXPLORE, DEVELOP, OR TAKE ALL MINERALS, COALS, OILS, PETROLEUM, GAS AND OTHER KINDRED SUBSTANCES IN AND FROM SAID LAND, ALL SUCH OPERATIONS TO BE CONDUCTED ONLY BELOW A DEPTH OF FIVE HUNDRED FEET BELOW THE SURFACE THEREOF, AS EXCEPTED IN THE DEED FROM CROCKER NATIONAL BANK, AS TRUSTEE, DATED DECEMBER 8, 1979 AND RECORDED MARCH 21, 1979 IN REEL 1316, PAGE 1165, OF OFFICIAL RECORDS.

APN: 175-011-038-000 (PORTION)

May 14, 2025

Item No. **10g(2)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of May 20, 2025

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2025-,
APPROVING A PUBLIC IMPROVEMENT AGREEMENT FOR MARINA
STATION PHASES 1 AND 2 BETWEEN THE CITY OF MARINA AND
MARINA STATION PHASES 1 AND 2 LLC, AND; AUTHORIZING CITY
MANAGER TO EXECUTE THE PUBLIC IMPROVEMENT
AGREEMENT ON BEHALF OF THE CITY SUBJECT TO FINAL
REVIEW AND APPROVAL BY THE CITY ATTORNEY**

RECOMMENDATION:

It is recommended that the City Council:

1. Consider adopting Resolution No. 2025-, approving a Public Improvement Agreement for Marina Station Phases 1 and 2 between the City of Marina and Marina Station Phases I and 2 LLC, a Delaware limited liability company, and;
2. Authorizing the City Manager to execute the Public Improvement Agreement (Exhibit A) on behalf of the City subject to final review and approval by the City Attorney.

BACKGROUND:

At the regular meeting of March 4, 2008, the City Council adopted Resolution No. 2008-45, approving the Vesting Tentative Map for the Marina Station Development Project Subdivision, located at northern property boundary of the City. The Vesting Tentative Map consisted of 887 residential lots, including 1,360 residential units, constructed over 8 separate phases.

At the regular meeting of March 4, 2008, the City Council adopted Resolution 2008-41, approving and certifying the Marina Station Specific Plan Environmental Impact Report. As part of the Certification of the Final Environmental Impact Report ("FEIR"), the City adopted certain mitigation measures to reduce significant environmental impacts identified in the FEIR and adopted a Mitigation Monitoring and Reporting Program ("MMRP"). The mitigation measures addressed a variety of issues including traffic impacts and measures to address the biological impacts of the Marina Station Project.

ANALYSIS:

The developers have submitted the Phases 1 and 2 Final Map and Improvement Plans for approval. The Public Improvement Agreement has also been submitted and will provide labor and materials and faithful performance bonds required for the recordation of the Phases 1 and 2 Final Map. It has been determined that the Vesting Tentative Map Conditions of Approval will be met with the inclusion of the Public Improvement Agreement (Exhibit A). The Agreement has been found consistent with the conditions of the Development Agreement and previous Public Improvement Agreements.

The Phases 1 and 2 final map and improvement plans are for 240 residential units in the Marina Station Project. The Phases 1 and 2 final map and improvement plans include the specific neighborhood improvements such as parks and open space that support 240 residential units including 79 below market rate (BMR) single family residential units.

All required future phased final maps must meet all the appropriate conditions of approval and will be presented to City Council for consideration at a future date.

FISCAL IMPACT:

Should the City Council approve this request, the City requires the Developer to provide satisfactory evidence of their ability to complete the public improvements by the posting of labor and material and faithful performance subdivision improvement bonds in an amount of 100% of the City Engineer's estimate of the cost to perform the work.

For the construction of Phases 1 and 2, the Developers will post a bond in the amount of Twelve Million Six Hundred Eleven Thousand Dollars (\$12,611,000) for completion of the public improvements and a bond in the amount of Twelve Million Six Hundred Eleven Thousand Dollars (\$12,611,000) to secure payment for labor and materials prior to the recording of the Phases 1 and 2 Final Map.

ENVIRONMENTAL REVIEW:

On March 4, 2008, the City Council of the City of Marina certified the final environmental impact report for the Marina Station Project (SCH No. 2005061056). The FEIR served as the environmental review for the Development and the Project Approvals and entitlements. Section 15162 of the CEQA Guidelines states that if an FEIR or negative declaration has been adopted for a project, no subsequent FEIR 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 FEIR.

CONCLUSION:

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

Respectfully submitted,

Edrie Delos Santos, P.E.
Engineering Division
City of Marina

REVIEWED/CONCUR:

Ismael Hernandez
Public Works Director
City of Marina

Layne P. Long
City Manager
City of Marina