

RESOLUTION NO. 2019-85

A RESOLUTION OF THE CITY OF MARINA APPROVING A PUBLIC
IMPROVEMENT AGREEMENT FOR THE JUNSAY OAKS PROJECT BETWEEN
THE CITY OF MARINA AND COMMUNITY HOUSING IMPROVEMENT
SYSTEMS AND PLANNING ASSOCIATION, INC. (CHISPA), 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 May 15, 2012, the City Council adopted Resolution No. 2012-76, approving the Specific Plan (SP 2012-01) for a ± 1.7 acre project site located at 3098 De Forest Road (APN 032-171-036) The proposed project consists of a three story, $\pm 35,758$ square foot building including 47 affordable age restricted housing units with a $\pm 1,200$ square foot community room, and;

WHEREAS, CHISPA has submitted the on-site and off-site Improvement Plans for approval, which include the dedication of 30 feet of right-of-way that would extend De Forest Road per the City's Official Plan Line. Marina Municipal Code (MMC) section 16.06.090 sets the requirements for the off-site improvements for the proposed right-of-way dedication (also on this meeting's agenda for City Council consideration). MMC section 16.16.100 requires an improvement security, such as bonds, for all proposed improvements within the City right of way to ensure the timely construction of such improvements, and;

WHEREAS, the Junsay Oaks Public Improvement Agreement has been reviewed by CHISPA and the City Attorney. CHISPA will provide labor and materials and faithful performance bonds as required by the Agreement, 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 cost to perform the work. In the event of default on the part of the Developer, the City would utilize the bond funding to complete the improvements, and;

WHEREAS, for the construction of off-site improvements, the Developer will post a bond in the amount of One Hundred and Fifty-Four Thousand Dollars (\$154,000.00) for completion of the public improvements and a bond in the amount of One Hundred and Fifty-Four Thousand Dollars (\$154,000.00) to secure payment for labor and materials. The Developer will also be required to apply for an encroachment permit for the construction inspection of the right-of-way improvements.

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

1. Approve a Public Improvement Agreement for the Junsay Oaks Project between the City of Marina and Community Housing Improvement Systems and Planning Association, Inc. (CHISPA), 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 August 2019, by the following vote:

AYES: COUNCIL MEMBERS: Berkley, Urrutia, O'Connell, Morton, Delgado

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

Bruce Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

PUBLIC IMPROVEMENT AGREEMENT

AGREEMENT FOR IMPROVEMENT OF STREETS, INSTALLATION OF SIDEWALKS, LANDSCAPING, STREET LIGHTS AND OTHER PUBLIC WORKS FACILITIES “JUNSAY OAKS” PROJECT – 3098 De Forest Road, Marina CA –

This Agreement for Improvement of Streets, Installation of Sidewalks, Landscaping, Street Lights and Other Public Works Facilities (“Agreement”) is made and entered into this _____ day of _____, 2019, by and between the City of Marina, herein called the “City,” a municipal corporation, and Community Housing Improvement Systems and Planning Association, Inc. (“CHISPA”), a real property owner and developer, herein called the “Developer;” and

WHEREAS, a Public Improvement Agreement is a condition of the Marina City Code Section 16.16.100, and;

WHEREAS, 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 3098 De Forest Road, owned by the Developer and within a right of way dedicated to the City (the “Property”) as described and shown on Off-Site De Forest Road Improvement Plan Sheet(s) C0.1 – C3.2 (the “Improvement Plans”). Completion of all improvements in accordance with the Improvement Plans shall be completed prior to final inspection; and

WHEREAS, the City has certain responsibilities for maintenance and operation of certain Improvements, utilities and public service facilities after acceptance by City, and for providing the necessary connecting system, and the City agrees to discharge those responsibilities following its acceptance of the Improvements.

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.

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") over that portion of the Property more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference; 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 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. 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.

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 acceptance 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.

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.

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.

e. 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).

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..

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 \$154,000. 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. 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 may be released or reduced in the following manner:

- a. Improvement security given for faithful performance of the agreement may be released upon final completion and acceptance of the work; partial release of cash deposit improvement security as the work progresses shall be as established hereinabove.
- b. Improvement security securing the payment to the contractor, his subcontractors, and to persons renting equipment or furnishing labor or materials may, six months after the completion and acceptance of the work, 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 may be released in full.

SECTION 5

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 6

That the following General Stipulations and the 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 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.

SECTION 7

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 8

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 9

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 10

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 11

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 all 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 12

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 13

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 14

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 15

Time is of the essence of this Agreement.

SECTION 16

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 17

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.

(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 P. Long
City Manager

APPROVED AS TO FORM:

City Attorney

**COMMUNITY HOUSING IMPROVEMENT SYSTEMS AND PLANNING
ASSOCIATION, INC.,**

A California nonprofit public benefit corporation,
Developer

By: _____

Name and

Title: _____

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 _____, 2019, 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 _____

EXHIBIT A

LEGAL DESCRIPTION AND MAP OF EASEMENT

(See attached legal description and map)

LEGAL DESCRIPTION RIGHT-OF-WAY DEDICATION

Certain real property situate in the City of Marina, County of Monterey, State of California, being a portion of Lot 11 as shown on that map titled "Map of Locke-Paddon Subdivision of Monterey City Lands" filed in Volume 2 of "Maps and Grants (Outside Lands)", at Page 10, in the office of the County Recorder of said County, described as follows:

Beginning at a point in the boundary common to Lots 10 and 11 of said Locke-Paddon subdivision as shown on said map, from which point the most northerly corner of said Lot 11 bears North 30°18'20" East, 496.39 feet distant; thence along the boundary common to said Lots 10 and 11

- 1) South 30°18'20" West, 255.54 feet to the corner common to Lots 10, 11, 48 and 49 as shown on said map; thence along the boundary common to said Lots 11 and 48
- 2) South 59°32'30" East, 30.00 feet to a point on a line that is parallel with the boundary common to said Lots 10 and 11 and 30.00 feet distant southeasterly therefrom; thence along said parallel line
- 3) North 30°18'20" East, 255.62 feet; thence departing said parallel line
- 4) North 59°41'40" West, 30.00 feet to the Point of beginning

Containing 7,667 square feet or 0.176 Acres, more or less.

END OF DESCRIPTION

PREPARED BY:
WHITSON ENGINEERS



RICHARD P. WEBER, LS
L.S. No. 8002



DEFOREST
ROAD

REEL 2156 PAGE 474

N59°41'40"W

30.00'

S30°18'20"W 255.54'

N30°18'20"E 255.62'

POINT OF BEGINNING

LOT 11

VOL. 2 OF *MAPS AND GRANTS
(OUTSIDE LANDS)*, AT PAGE 10

30'

30' WIDE RIGHT-OF-WAY
DEDICATION STRIP

LOT 10

CORNER OF LOTS 10,11,48 AND 49

S59°32'30"E

30.00'

LOT 49

LOT 48

50 0 50 100 150 Ft.

SCALE: 1" = 50'



**PLAT TO ACCOMPANY DESCRIPTION
RIGHT-OF-WAY DEDICATION**

CITY OF MARINA, COUNTY OF MONTEREY, STATE OF CALIFORNIA

MAY 8, 2018

WE WHITSON ENGINEERS

6 Harris Court ■ Monterey, CA 93940

831 649-5225 ■ Fax 831 373-5065

CIVIL ENGINEERING ■ LAND SURVEYING ■ PROJECT MANAGEMENT

SCHEDULE 1

SCHEDULE OF PERFORMANCE

(See attached Schedule)

**JUNSAY OAKS SENIOR APARTMENTS
SCHEDULE OF PERFORMANCE
SCHEDULE 1**

City of Marina Public Improvements	Completion Date
Gutter	8/30/19
Curb	8/30/19
Paving (AC)	8/30/19
Sidewalks	8/30/19
Street Lights	9/30/19
Chain Link Gates	9/30/19
Street Signs	9/30/19
DeForest Road Storm Drain (Catch Basin, Manhole, 12" Pipe, Storm Tech Chamber)	11/30/19

August 8, 2019

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

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of August 20, 2019

RECOMMENDATION TO CONSIDER ADOPTING RESOLUTION NO. 2019-, APPROVING A PUBLIC IMPROVEMENT AGREEMENT FOR THE JUNSAY OAKS PROJECT BETWEEN THE CITY OF MARINA AND COMMUNITY HOUSING IMPROVEMENT SYSTEMS AND PLANNING ASSOCIATION, INC. (CHISPA), 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. 2019-, approving a Public Improvement Agreement for the Junsay Oaks Project between the City of Marina and Community Housing Improvement Systems and Planning Association, Inc. (CHISPA), and;
2. Authorizing the City Manager to execute the Public Improvement Agreement on behalf of the City subject to final review and approval by the City Attorney.

BACKGROUND:

At the regular meeting of May 15, 2012, the City Council adopted Resolution No. 2012-76, approving the Specific Plan (SP 2012-01) for a ±1.7 acre project site located at 3098 De Forest Road (APN 032-171-036) The proposed project consists of a three story, ±35,758 square foot building including 47 affordable age restricted housing units with a ±1,200 square foot community room.

ANALYSIS:

CHISPA has submitted the on-site and off-site Improvement Plans for approval, which include the dedication of 30 feet of right-of-way that would extend De Forest Road per the City's Official Plan Line. Marina Municipal Code (MMC) section 16.06.090 sets the requirements for the off-site improvements for the proposed right-of-way dedication (also on this meeting's agenda for City Council consideration). MMC section 16.16.100 requires an improvement security, such as a bonds, for all proposed improvements within the City right of way to ensure the timely construction of such improvements.

The Junsay Oaks Public Improvement Agreement has been reviewed by CHISPA and the City Attorney. CHISPA will provide labor and materials and faithful performance bonds as required by the Agreement.

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 cost to perform the work. In the event of default on the part of the Developer, the City would utilize the bond funding to complete the improvements.

For the construction of off-site improvements, the Developer will post a bond in the amount of One Hundred and Fifty-Four Thousand Dollars (\$154,000.00) for completion of the public improvements and a bond in the amount of One Hundred and Fifty-Four Thousand Dollars (\$154,000.00) to secure payment for labor and materials. The Developer will also be required to apply for an encroachment permit for the construction inspection of the right-of-way improvements.

CONCLUSION:

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

Respectfully submitted,

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

REVIEWED/CONCUR:

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

Layne P. Long
City Manager
City of Marina