

CALL TO ORDER – PLEDGE OF ALLEGIANCE – ROLL CALL

Mayor Schroder called the meeting to order at 7:10 p.m. with all members present.

PUBLIC COMMENT (Comments are limited only to items listed on the agenda)

Mayor Schroder incorporated the public comments with the agenda items.

CITY COUNCIL

1. Adopt resolution authorizing changes to the Marina Term Sheet and authorize the City Manager to sign the completed Marina Sublease agreement with Martinez Marina, LLP (MMLP), subject to a final review by the City Attorney.
2. Review of terms of Sublease by the City Attorney.

City Attorney Jeff Walter reviewed changes to the Term Sheet and Sublease relative to the entitlement period. He noted that this is not the final document but a work in progress. He also stated that June 1<sup>st</sup> is the deadline for approval by the City, Martinez Marina and the Department of Boating and Waterways (DBAW), which might be difficult to meet.

Mr. Walter further explained the structure of the document and the due diligence need on the part of the City, as well as the eventual long-term lease that will be developed later if all the issues are resolved. He discussed the necessary components of the lease, the anticipated timeline, the background of the existing debt (almost \$3 million), deadlines, description of property exclusions, overview of the lease, City costs and MMLP costs.

Community Development Director Richard Pearson gave detailed analysis of the term sheet provisions, with requested changes from MMLP.

Councilmember Wainwright questioned Mr. Pearson's statement that the City Council had agreed to the provisions, noting it was discussed in closed session, but not voted on yet. Mr. Pearson confirmed that was one of the actions being considered tonight.

Mr. Walter said the City's payment of expenses would only apply to certain improvements, which he reviewed. He noted that by the end of the entitlement period, the City and lessee will have a better picture of whether or not the proposal will work, and either party will have the ability to back away with no repercussions, as long as it is within the bounds of the lease.

Vice Mayor DeLaney asked about the discrepancy between the City's obligation of \$275,568 and the total projected cost up to \$519,902. Mr. Walter said he was unsure where the second number came from.

Tom Hogan, MMLP, explained that \$422,000 would be the City's total, but costs through phase 1 would be \$275,000 (based on a contract with Moffett Nichols). Mr. Walter agreed that phase 1 costs for the entitlements would be \$275,000. He added that MMLP would reimburse the City for half of that if they do not go forward after the entitlement period.

Vice Mayor DeLaney asked about the City's improvement obligations, noting some of the exhibits referenced were not included in the packet. Mr. Walter said the exhibits were not finalized yet. Mr. Hogan said drafts of the exhibits related to exceptions were available.

Vice Mayor DeLaney said the document should be clearer as to what the City is committing to do. She also asked the significance of the June 1, DBAW deadline. Mr. Walter said if the agreement is not finalized, DBAW's commitment to loans for the City could evaporate. Vice Mayor DeLaney asked whether the deadline was in writing from DBAW, and she noted that past DBAW deadlines have not been firm. Mr. Pearson acknowledged that past deadlines have been extended, but there is no guarantee that this one will be.

Vice Mayor DeLaney asked about the requirement for East Bay Regional Park District (EBRPD) consent. Mr. Walter explained that when the land was granted for park use in 1975 by State legislation, the memorandum of agreement specified that use of the marina must be consistent with a marina plan approved by EBRPD, as well as the City. Therefore, any changes to the plan must meet EBRPD approval. Mr. Pearson said the last time the lease was reviewed by EBRPD, they indicated it was okay and did not need board approval, as long as it was within the City's 1994 marina plan. Mr. Walter said a letter from EBRPD should be given to the City for that purpose.

Mr. Walter also said there was a City-State committee created in 1974, which is supposed to approve leases and subleases of the property, but it has not met in over 15 years. He indicated research is needed as to whether DBAW will require that approval.

Councilmember Wainwright asked if the agreement would be with the same parties that signed the management agreement. Mr. Walter said no. Mr. Hogan explained that Almar would be the management company, and he explained that Martinez Marina LLP was composed of himself, Jeff Pence and Almar.

Councilmember Wainwright confirmed that the management agreement was one of the exhibits to the lease. He questioned the validity of Almar Marina Management Inc., based on research he did at the Secretary of State's website. Mr. Hogan confirmed it is a California corporation.

Mayor Schroder clarified that there are two Almars listed with the State – Almar Management Inc. and Almar Marinas LLC, which has been suspended.

Councilmember Wainwright asked, and Mayor Schroder confirmed that Almar Management signed the lease. Councilmember Wainwright also said that Pacific Marine Development had been suspended from doing business in California, according to research he had done. He expressed that it is important to know who the City is doing business with. Councilmember Wainwright also questioned why MMLP would not be able to bear the cost of entitlements, since they had indicated they would be putting \$4 million in equity into the marina.

Mr. Hogan explained that after further review, they had decided they were not willing to take the full risk since the City could decide not to go forward with the lease after the entitlement period.

Councilmember Wainwright said a better format would be for the City to directly pay the costs. Mr. Walter explained that the end of phase 1 would be a benchmark, and the City will have the option of retaining consultants itself or to direct Almar Management to hire consultants at City cost. The City will be hiring Moffett & Nichols to handle the entitlements.

Councilmember Wainwright asked about the section regarding MMLP's management fees. Mr. Walter said the section specifies the priority of uses for the income from the marina operation – if the income does not meet the expenses, the City's marina fund will have to find funding from other sources.

In response to a further question from Councilmember Wainwright, Mr. Hogan expressed confidence that the income generated will be sufficient. He also discussed the enterprise fund under which the marina operates. Councilmember Wainwright was concerned about potential costs to the City. He asked whether it would be better for the City to have direct contact with the service providers, rather than through MMLP.

Vice Mayor DeLaney noted that the document says the City will directly contract with Moffett Nichols. Mr. Pearson confirmed that to be true.

Councilmember Wainwright asked if there could be a section added for conditions and precedents to make it easier to understand. Mr. Walter said as the process continues, the parties will continue to negotiate on the final sublease, to be finalized by the end of the 2-year period. Councilmember Wainwright expressed concern that the provision for extension of the entitlement period will not put enough pressure on MMLP to finish the process. Mr. Walter said there are reasonable causes why the work might not be completed within two years, but the extended period cannot be more than 5 years.

Vice Mayor DeLaney asked about the existing DBAW loans and the City's responsibility to make loan payments during the entitlement period. Mr. Walter said it is a central provision, because the lessee does not want DBAW to foreclose on the property. He indicated the City will continue to negotiate terms with DBAW.

Mr. Hogan added that the loans are not against the property, but against the City's marina fund. He confirmed that the City should receive enough in rents to be able to make necessary payments on the loans.

Councilmember Ross all the loans could be structured into one DBAW loan and the provisions of the document will be changing through the entitlement period.

Vice Mayor DeLaney asked why so much was struck out in Section 6, Operation and Management of the Marina. Mr. Walter said it was not struck out in the City draft. Mr. Hogan said MMLP intends to operate the marina as a "first class marina," which is restrictive enough without including specific hours and other details.

Councilmember Ross asked for specifics on what constitutes a “first class marina.” Mr. Hogan said it should be upper tier in its performance and maintenance, similar to South Beach, Marina Village, etc.

Councilmember Wainwright asked about the due diligence section with some points not finalized before the sublease is signed. Mr. Walter said there would be general categories of what the City would be willing to pay for, but it will not commit until the cost is fully known. He confirmed there were some sections that need to be changed to be consistent with the changes to the term sheet.

Councilmember Wainwright noted he had other questions that he will bring up by email to Mr. Walter.

Mayor Schroder opened public comment on the item.

Mike Alford expressed appreciation for the questions raised by Councilmember Wainwright and Vice Mayor DeLaney. He asked for more information on the partnership and confirmed that Almar Management Inc. was the signer of the marina agreement. He questioned whether the City should be negotiating with a company when the make-up of the company is unknown. Staff explained that LLC is a legal term (limited liability corporation), not a separate entity from Martinez Marina. Mr. Alford also asked about the City’s costs for dredging of the basin area. Mr. Pearson explained that it would be determined during the entitlement period.

Paul Wilson commented on the high price the City will be paying, given how little the management company will be providing. He was concerned about the costs and risk to the City, and he asked how much property will be subleased. At the request of Mayor Schroder, Mr. Pearson explained what landside property would be part of the lease.

Councilmember Wainwright commented on inclusion of the parking lots. Mr. Pearson explained that the inclusion or exclusion of the lots was still being negotiated. Mr. Walter noted that there was confusion earlier as to what section would be part of the leased land. He indicated that during the due diligence period, the City will be negotiating shared facility agreements so that the management company will not have control over the full area, but will be responsible for maintenance obligations. Councilmember Ross noted that DBAW has parking standards that must be met as well.

An unidentified speaker asked why a management company is needed if the City is paying for all the improvements. Mayor Schroder stated that the City is paying for some of the improvements and MMLP will pay for others. Councilmember Ross said the State is requiring the City to have a management partner, which will save the City money in the long run.

Brian Walker acknowledged that the agreement has been changing through the negotiation process, and the City seems to be taking on more of the financial obligation, to the point that the lease is different from what was put out in the RFP. He also commented on the demolition of the existing docks at the City’s costs, while before it was part of the contractor’s scope of work. Regarding the State land perimeter, he said any new areas should not be included in the leased area, but should remain under City control.

Dennis Folsom asked if Pacific Marine Management, Moffett Nichol, and Almar were “bundled.” Mayor Schroder said no, Moffett Nichol is a marine engineering firm. He deferred to the City Attorney for further explanation.

Mr. Folsom asked about the extent and timing of the dredging. Mayor Schroder commented on time needed for the permitting process. Mr. Folsom asked for confirmation of the timeline and what improvements will be done at City costs. Mayor Schroder said phase 1 (including permits and the entitlement process) will take 1-2 years and cost to the City is \$275,000. Mr. Folsom asked if expansion of the breakwater would be included. Mayor Schroder said it was not possible to say at this point.

Mr. Pearson said the permits would include everything needed for rebuilding and expanding the marina. Mr. Folsom asked, and Mr. Pearson confirmed there would be no expansion to the east.

Julian Frazer cautioned that no action should be taken by the Council at special meetings, in the interest of open government. He was concerned about the entitlement period lasting up to two years, with no projects starting until after that time. He suggested that improvements could be started with Joe DiMaggio’s boat, now owned by the City, in the form of a semi-permanent cover and stabilization.

Mr. Folsom asked for further information regarding Pacific Marine Management and its relationship with Moffett Nichols and with Almar. Mr. Walter said his office would be sure before the document is signed, to identify the persons who make up the entities and ensure they are qualified to do business in the State. He further stated that Moffett Nichols is well-known for their work with marinas throughout California. He noted that Pacific Marina Development is a California corporation, and a managing member of Martinez Marina LLC. He was unsure who the other shareholders were, noting it might not be a matter of public record.

Mr. Walter also confirmed that the term sheet approved last year shows demolition of the dock as an obligation the City has assumed.

Vice Mayor DeLaney questioned when the dock was included. In response to a further question from Councilmember Wainwright, Mr. Walter clarified where in the document it was mentioned. He indicated it will be paid for with loans.

Seeing no further speakers, Mayor Schroder closed public comment.

Councilmember Wainwright said he thought that the City had previously done their due diligence and investigated who they were doing business with. Mr. Walter and Mr. Pearson were unable to confirm, but Mr. Pearson noted that only the management lease has been signed at this point with Almar, a family-owned organization that operates several marinas in the State. Councilmember Wainwright expressed concern that the background information had not been provided. He commented on the executive summary of July 2005, which indicates that Almar/Pacific Marina Development would be able to invest \$4 million in the marina. He questioned whether the company was financially capable if they now are unable to pay for the entitlements.

Councilmember Wainwright also recommended that the City specify in the lease that the parking lots must remain as such. He agreed with Mr. Walker that the lease should not include geography discovered in the meantime. He said he would like to know the effect this agreement might have on the Council's ability to negotiate with other developers/individuals for projects in the marina area. Mr. Walter said if the document specifies uses, negotiation for non-listed uses cannot occur unless the parties and DBAW agree (DBAW requirements limit the use of berths). Councilmember Wainwright asked, and Mr. Walters confirmed there were no restrictions on landside uses.

Vice Mayor DeLaney commented on confusion with the changes to the term sheet, specifically the costs for phase 1 entitlements. She also said that the sublease agreement has too many holes and contradictory ideas that have not been resolved. She indicated she could not approve the agreement as it is, and she expressed doubt about the firmness of the June 1 deadline. At the request of Mayor Schroder, Mr. Pearson clarified that only \$275,000 has been agreed to by the City, and that is what is before the Council at this time. Any additional costs would need to be negotiated. He noted, however, that the authorization for the City Attorney and City Manager to finalize the agreement had been granted by the Council in July of 2005.

Vice Mayor DeLaney questioned whether the July resolution actually provides the necessary authorization, since the name of the leasing organization has changed. Councilmember Wainwright added that the Council is not being treated with good faith if the City Attorney and City Manager are authorized to sign an agreement that has completely changed from its original form.

Vice Mayor DeLaney noted that the resolution mentioned a DBAW deadline of August 2005. Councilmember Wainwright agreed, saying it would be irresponsible of the Council to agree to something like this, especially since Pacific Marina Development has been suspended from doing business in California.

Vice Mayor DeLaney said she was interested in making progress on the marina, but there were still too many substantive points not settled.

Councilmember Ross moved to approve adoption of a resolution authorizing changes to the Marina Term Sheet and authorizing the City Manager to sign the completed Marina Sublease Agreement with Martinez Marina, LLP, subject to a final review by the City Attorney at the May 3rd City Council meeting and include information regarding the status of the Lessee's actual corporate status, revisions of the \$519,000 figure and other errata that is included in the Marina Term sheet and the agreement before us and any other questions regarding the parking lot and sublease use.

Mr. Walter said there was not sufficient time by May 3 to make enough progress on developing the agreement. Councilmember Ross amended his motion to May 10. Mr. Walter suggested May 11 instead. Councilmember Ross agreed.

Councilmember Kennedy asked for clarification on the effect of the motion, questioning whether anything would be gained, since information could be requested without a motion, and final action would not take place until the May 11th meeting anyway.

Mayor Schroder seconded the motion, but acknowledged he would like answers to some of the questions as well. He noted that his past research into Pacific Marina Development and Almar had indicated some entities were suspended, but others with similar names were not. He agreed careful investigation was needed. He also suggested that contact be made with Harold Flood of DBAW regarding the status of the City's process and the upcoming deadline.

Councilmember Wainwright commented that Exhibit E, "Due Diligence Tasks" should be titled "Unfinished Business" because there are major matters that should be covered in the signed document, but are not. He questioned whether the issues would ever be satisfactorily addressed. He also indicated that he had many other questions that he will send to the City Attorney and to the other Councilmembers.

Vice Mayor DeLaney asked about the possibility for a 20-year extension of the sublease, at the option of the operator. She said the City should have some control over whether it is extended. Mr. Walter indicated that the lessee cannot be forced to extend.

Councilmember Kennedy said she was not bothered by the fact that the original agreement is with one agency and a different organization is involved now, noting it is not uncommon for development companies to change hands during a project. She was concerned, however, about delays in getting the entitlements and the potential loss of DBAW funding. She also noted that the entitlements are necessary to determine what is feasible.

Councilmember Wainwright asked whether the City could do the entitlements through Moffett Nichols without approving the sublease at this time. Mayor Schroder noted that DBAW is requiring the City to have a managing partner.

Councilmember Ross expressed respect for the questions raised by the Council, but he noted that some of the answers will come through the entitlement process. He called for the question.

Councilmember Wainwright asked if he could make an amendment. Mayor Schroder said no, the question has been called.

On motion made by M. Ross, seconded by R. Schroder, the Council adopted a resolution authorizing changes to the Marina Term Sheet and authorizing the City Manager to sign the completed Marina Sublease Agreement with Martinez Marina, LLP, subject to a final review by the City Attorney and the City Council on a potential May 11<sup>th</sup> meeting and include information regarding the status of the Lessee's actual corporate status, revisions of the \$519,000 figure and other errata that is included in the Marina Term sheet and the agreement before us and any other questions regarding the parking lot and sublease use by the following vote: Kennedy, Schroder, Ross, Ayes; Rest, No.

At Councilmember Wainwright's request, Councilmember Ross reviewed the details of the motion. Staff was requested to contact Harold Flood of DBAW to find out whether the June 1<sup>st</sup> deadline for the loan commitment is firm or not. [J.Tool/14.01.00]

CITY MANAGER/CITY COUNCIL

3. Comments.

No comments made.

ADJOURNMENT

Adjourned at 9:12 p.m. to a Regular Meeting on May 3, 2006, at 7:00 p.m. at City Hall in the Council Chambers, 525 Henrietta Street, Martinez, California.

Approved by the City Council,

Rob Schroder, Mayor

Mercy G. Cabral , Deputy City Clerk – 7/5/06