

CITY COUNCIL MEMORANDUM

FOR INFORMATION

TO: Mayor and City Council
FROM: Alvin G. Coby, City Manager
DATE: March 5, 2009
SUBJECT: Community Maritime Park – Status of Negotiations

Members of City staff and Mr. Barry Abramson of Abramson & Associates, in collaboration with Mr. Owen Beitsch of Real Estate Research Consultants, have been involved in negotiation of the Community Maritime Park Development Agreement with Maritime Park Development Partners (MPDP) since receiving direction from City Council on January 23, 2009. The charge of staff and Mr. Abramson is to negotiate a Maritime Park Development Agreement that is reasonable for MPDP and in the best interests of the City.

Over the past six (6) weeks, a considerable amount of time has been devoted to gathering the information necessary to carry negotiations forward. While Mr. Beitsch is intimately familiar with the discussions that led to the initial draft of the Agreement, City Council's input required a more comprehensive understanding of MPDP's development concepts in order to establish new parameters for the Agreement.

Discussions with MPDP are focused on the following major issues:

- Development Management
 - Development Fee: fee in Draft Development Agreement subject to agreement on other costs..
 - Termination: that the contract for development services should allow termination at CMPA's discretion with reasonable termination provisions
 - Third party expenses: possibility for coverage of reasonable expenses incurred by MPDP directly related to implementation of the project prior to execution of the Agreement

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- **General Contractor Fee**
 - **General Contract Fee:** profit and overhead percentage competitive with that in the current construction market
 - **General Conditions:** determination of limits in the Agreement with further specification to be set in the design/build contract.
 - **Disposition of project cost savings**
 - **Termination:** at discretion of CMPA prior to execution of GMP contract(s)
- **Private Land Lease**
 - **Land Pricing:** to be based on a future pricing approach so as to avoid future pricing being based on bottom of the market real estate conditions.
 - **Lease Term:** variable, dependent upon residential, hotel, commercial development
 - **Development Pace:** requirement for annual minimum development to maintain development rights.
- **Management of Improvements**
 - **Term:** initial term with one (1) automatic renewal based upon meeting certain established performance criteria.
 - **Fee:** differentiation of management costs between multiuse stadium, public/park area, and sponsorship of major events
 - **Termination:** at CMPA discretion if negative CMPA cash flow.

The specifics on the major points of the negotiations are not identified because at the drafting of this memorandum, MPDP has not had the opportunity to definitively respond to the City/CMPA's latest proposals. In addition, there are numerous other points under discussion/negotiation that must be reconciled or generally agreed upon for incorporation into subsidiary agreements, such as the design/build contract (which would most appropriately incorporate conditions associated with the Community Maritime Park Covenant), the Land/Lease Pricing Schedule(s), and the Park Management Agreement (which could also incorporate conditions associated with the Covenant). It is possible that the Agreement can be in final draft form by March 13, 2009; however, at minimum a detailed term sheet will be complete provided consensus is reached on all points of the negotiation.