



WATERFRONT & MARINA SUBCOMMITTEE AGENDA

DATE: Monday, October 28, 2024
TIME: 4:00 PM
PLACE: COUNCIL CHAMBER - 525 Henrietta Street, Martinez, CA 94553; and via Zoom

INFORMATION FOR THE PUBLIC

Information regarding meetings, including agenda materials, schedules and more, please visit the City's Meetings & Agendas webpage: <https://www.cityofmartinez.org/government/meetings-and-agendas>.

REMOTE PARTICIPATION

This meeting will be conducted in-person in the City Hall Council Chamber and shall be aired in real time via Zoom. The City cannot guarantee the public's access to teleconferencing technology, nor guarantee uninterrupted access as technical difficulties may occur from time to time. To attend the meeting via Zoom, you must be logged into a registered Zoom account. Click "Join Meeting" and enter the following details:

1. **Link:** <https://cityofmartinez-org.zoom.us/j/95047247546?pwd=xPM5lelnOQnT9gxltzbnkZCqdyxNauV.1>
2. **Webinar ID:** 950 4724 7546
3. **Passcode:** 010110

PUBLIC COMMENTS

Public comments can be made in person at the meeting or submitted in writing. Written comments must be received by 12pm the day of the meeting. For information on how to submit written comments, please visit the City's Meetings & Agendas webpage linked above.

ADA ACCOMODATIONS

In accordance with the Americans with Disabilities Act and California law, the Council Chamber is wheelchair accessible and disabled parking is available at City Hall. If you are a person with a disability and require modifications or accommodation to attend and/or participate in this meeting, please contact the City Clerk's Office at (925) 372-3512. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility.

AGENDA CONTINUED TO PAGE 2

CALL TO ORDER

ROLL CALL - *Vice Mayor Debbie McKillop and Councilmember Jay Howard*

REGULAR ITEMS

1. Receive presentation, hold discussion, and make recommendation to the City Council on potential new Martinez Marina management contract.

[Staff Report - Marina Management Agreement with F3](#)

[Marinas Attachment A - Proposed F3 Management Terms](#)

PUBLIC COMMENT - *Agenda Items Only*

ADJOURNMENT

On October 25, 2024, a true and correct copy of this agenda was posted on the City Hall Kiosk, located at 525 Henrietta Street, Martinez, CA 94553, and on the City website at www.cityofmartinez.org.

/s/ Kat Galileo, Assistant City Clerk

**ATTACHMENT A:
PROPOSED F3 MANAGEMENT TERMS FOR THE MARTINEZ MARINA**

1. BASIC TERMS

	Parties:	City of Martinez ("Owner" or "City") F3 Marina LLC, a Florida limited liability company ("Manager")								
(a)	Owner Address:	City of Martinez 525 Henrietta Street Martinez, CA 94533 Attn: Community Development Director Copy to: City Attorney								
(b)	Owner Federal ID Number:									
(c)	Manager's Address:	F3 Marina LLC 1335 Southeast 16 th Street Fort Lauderdale, Florida 33316								
(d)	Premises:	7 North Court Street Martinez, CA 94533								
(e)	Original Term:	<u>Duration:</u> 2 Years	<u>Starts:</u> 1/1/25	<u>Ends:</u> 12/31/26						
(f)	One-Time Start-Up Fee:	\$8,000								
(g)	Monthly Management Fee:	\$6,000 or 6.5% of gross monthly receipts, whichever is greater								
(h)	Monthly Management Fee Increase, Annual:	N/A								
(i)	Incentive Fee	<p>Calculated on increase of Gross Revenue over agreed upon Fiscal Year ("FY") gross revenue of \$423,000.00 ("Base Gross Revenue"). Base Gross Revenue excludes utility payments, which are a pass-through. Future increases shall be calculated at end of each FY, paid once per annum following conclusion of the applicable FY</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Amount over Base Gross Revenue</th> <th style="text-align: left;">% paid to Manager</th> </tr> </thead> <tbody> <tr> <td>\$0 - \$125,000</td> <td>20%</td> </tr> <tr> <td>\$125,001 +</td> <td>10%</td> </tr> </tbody> </table> <p>e.g. If the increase was a total of \$130,000, the first \$130,000 is applied at 20% and \$125,001 to \$130,000 is applied at 10% for a total incentive fee of \$25,500</p>			Amount over Base Gross Revenue	% paid to Manager	\$0 - \$125,000	20%	\$125,001 +	10%
Amount over Base Gross Revenue	% paid to Manager									
\$0 - \$125,000	20%									
\$125,001 +	10%									
(j)	Advance Deposit:	\$10,000								
(k)	Initial Working Capital Deposit:	\$10,000								
(l)	Minimum Funds Balance:	\$10,000								
(m)	Expenditure Limit:	\$2,500 – unless approved in budget, then budgeted amount								
(n)	Post-Termination Management Fee:	N/A								
(o)	Ownership Fiscal Year:	July 1 – June 30								
(p)	Operating Budget Due Date	March 31								
(q)	Management Reports Due Date:	20 th of each month								

2. MANAGER DUTIES AND AUTHORITY

During the Term of this Agreement, Manager shall perform the following management functions and services for the Premises. To assist this, Owner grants Manager the authority, to do the following:

Property Management Standards: Manager will manage and operate Marina and recreation facility offering dockage and other marina related services for the use of and by the general public. Manager will deliver exceptional customer service to the patrons of the Marina and will be responsive and proactive in coordinating with the Owner. Manager will keep the Marina in a clean, tidy, safe, and well-maintained condition at all times. Manager will work proactively to adopt and apply industry best practices to the Marina operations, and will strive to improve the Marina's profitability, financial performance, and overall reputation. Except where specifically provided, and subject to the funding limitations in the current approved budget, the Manager will perform the services described herein at the Owner's expense.

- (a) Reasonable Care and Diligence: Manager shall exercise reasonable care and diligence in alignment with marina industry standards while managing the Premises and performing its obligations under this Agreement. Examples of typical management duties include diligent attention to:
- Pressure washing of dirt and algae
 - Cleaning of docks and equipment
 - Reapplying sealants for UV protection
 - Manage slip amenities (dock numbering, storage boxes, etc.)
 - Replacing damaged bolts/screws/brackets/ladders/etc.
 - Removing rust and corrosion
 - Ensuring all hardware and floats are secure
 - Seasonal preparations and preparations to guard against severe weather events
 - Cleaning of submerged parts of barnacles/algae/etc.
 - Safety checks of handrails, non-slip surfaces, lighting/electrical, first aid kits/extinguishers, etc.
 - Ensuring all boaters have the proper current insurance and registration
 - Diligent maintenance of all records, documents, and online content related to the Marina
 - Safety and security
 - Creating and administering policies for Marina operation
- (b) Collect Rents and Deposits: Manager shall bill and collect all charges and rents due from boat owners mooring at the Marina on a monthly basis. Manager shall deposit all receipts collected for Owner in a separate insured savings or checking account(s) in a reputable bank separate from Manager's other accounts ("Owner's Operating Account"). Manager shall make reasonable efforts to collect delinquent charges or rents before collection efforts. If needed, Manager shall carry out collection efforts, or other necessary actions in close coordination with Owner and Owner's agents, including preparing necessary financial records and information, in each case, at Owner's cost. The City of Martinez Finance Director shall be added to and have access to the Owner's Operating Account as needed to perform operational functions.
- (c) License Administration: Manager shall be responsible for the administration of all mooring licenses and other agreements affecting the Premises. Manager shall, in connection with such administration: monitor boater compliance and enforce the Owner's rights under all such licenses, at Owner's cost; upon default by any boater and after consultation with Owner, terminate licenses and sign and serve in the name of the Owner to evict boaters and licensees and to recover possession of the Premises, and make commercially reasonable efforts to recover rents and other sums due, at Owner's cost; when expedient, settle, compromise and release such disputes, actions or suits or reinstate such licenses on behalf of Owner and at Owner's cost; provide Owner with periodic forecasts of scheduled or anticipated vacancies; advise Owner of suggested mooring rates and terms.
- (d) Provide Management Reports: Manager shall maintain revenues and expenses in separate accounts, and shall provide Owner an accounting of the operation, income, expenses, and maintenance regarding the operation of the Premises on a periodic basis as stated in Section 1(q) for all transactions occurring during the prior month. In addition, the reports shall compare the actual receipts and disbursements to the budgeted receipts and disbursements. Owner shall have access to Manager's books, records receipts, and Owner's

Operating Account at Manager's office during normal business hours (to the extent such books, records, and receipts relate to the services provided hereunder).

- (e) Provide Operating Budget: On or before the date in Section 1(p), Manager shall provide Owner a budget for the current fiscal year outlining the proposed expenditures for Owner's approval (the "Operating Budget"). For each new fiscal year, Manager shall provide Owner a new budget at least ninety (90) days prior to the beginning of each fiscal year. When approved by Owner, Manager will use the budget as a guide to operate the Premises, subject to any mutually-agreed revisions by Owner and Manager. If Owner does not approve the budget prior to the start of the new fiscal year, Manager may utilize Manager's proposed budget as a guide until revised by Owner.
- (f) Pay Operating Expenses: Manager shall, at Owner's sole cost and expense, pay utility charges, water charges, insurance premiums and other charges to operate and manage the Premises, excluding the Manager's insurance set forth in Section 10 of this Agreement and other corporate costs.
- (g) Administer Repairs and Maintenance: Manager shall, at Owner's sole expense and subject to Owner's approval, make, or cause to be made, and supervise repairs, maintenance, replacements, alterations, and decorating of the Premises, and purchase supplies and pays all bills therefore. All fees for Manager's supervision under the preceding sentence shall comply with the Operating Expenses schedule in Section 5(d). Manager shall obtain Owner's prior approval for all expenditures above the Expenditure Limit in Section 1(m) for any one item, except recurring operating charges or other expenses approved by Owner in the Operating Budget, and emergency repairs. In the case of an emergency, Manager shall immediately notify Owner and attempt to mitigate any further damage and stabilize the situation before seeking additional expenditure approval. Owner shall receive the benefit of any rebate or discount which Manager may obtain.
- (h) Hire Independent Contractors: Manager shall hire, supervise, and discharge any additional labor contractors required for the operation and maintenance of the Premises as independent contractors. Owner may request Manager to discontinue using a particular independent contractor. Manager agrees to obtain executed indemnity agreements with provisions identical to those set forth herein from each and every independent contractor or any other person or entity involved in the performance of this Agreement on Manager's behalf.
- (i) Contract for Services: Manager shall, at Owner's sole expense, establish accounts and enter into contracts in the name of Owner for electricity, gas, fuel, water, dock maintenance, telephone, trash, janitorial, security, and other services Manager may deem advisable and as provided for in the Operating Budget.
- (j) Act as Government Liaison: Manager will prepare, execute and file, or submit to Owner for execution and filing, as applicable, all necessary reports to governmental or other regulatory authorities, such as sales tax returns, if necessary, and insurance reports.
- (k) Additional Services: Manager may, at its discretion, perform any other services beyond the scope of ordinary management services of this Agreement as requested in writing by Owner. This may include, but is not limited to, supervising major capital repairs, additions, or restoration of damage. Cost to Owner for such additional services will be reasonable and under terms as the parties may mutually agree.
- (l) Place On-Site Manager Signage: With Owner's prior written approval regarding location and type, which shall not be unreasonably withheld, Manager may place signage around the Premises at Manager's sole expense indicating that the Premises is managed by a professional management company.
- (m) Security: Manager shall, at Owner's expense and written request, hire, supervise, and discharge any on-site security services, including cameras, alarms, after-hours security personnel on the Premises or other security services mutually agreed upon by Manager and Owner. Such expenses for security shall be mutually agreed upon by Owner and Manager and included in the Operating Budget. Any and all security personnel shall be independent contractors. Owner may request Manager to discontinue using particular security personnel. In addition, Manager will take reasonable actions to ensure that the documents, records, on-site equipment, and other assets of Marina offices are secure from burglary, theft, tampering, or cybersecurity attacks.

3. OWNER'S DUTIES

The Owner shall exercise commercially reasonable efforts to enable the Manager to operate and maintain the Premises in first class condition, including, but not limited to, providing sufficient capital or financing for the Premises and approving operating budgets that provide sufficient funds to adequately maintain the Premises. Owner and Manager acknowledge that the Marina docks are currently past their expected lifecycle and that capital improvements may need to be spread out over a long period due to funding limitations.

4. MANAGER'S ON-SITE EMPLOYEES

Any on-site property manager, assistant manager, harbormaster, dockhands, maintenance technicians, front-desk, or other employees will be the employee of Manager or its affiliate and not of Owner. Manager shall ensure there is professional supervision, training, and accountability for all staff or contractors used for the Marina. Manager shall maintain effective communication, collaboration, and oversight over the personnel management at the Marina. Manager shall comply with all applicable laws and regulations regarding employees including obtaining and maintaining worker's compensation insurance, withholding and paying employment taxes, paying wages, establishing an unemployment compensation account, if required, with the state or country, filing required state and federal tax reports, and monitoring labor hours and other matters the parties may agree to in writing (collectively, the "Employee Related Expenses"). Manager is an equal-opportunity employer and will advertise as such. All employees shall be under Manager's sole direction and control to perform the services under this Agreement.

5. FEES AND EXPENSES

Owner shall pay the following fees and expenses to Manager:

- (a) One-Time Start-Up Fee: Owner will pay the start-up fee in Section 1(f), on or before the beginning of the Term as defined in **Exhibit A**.
- (b) Monthly Management Fee: The Monthly Management Fee shall be due and payable on the first day of the month from Owner's Operating Account. The start date for the Monthly Management Fee will begin at the beginning of the month that the marina is available for occupancy by boaters. ~~In the event that the City has serious and severe concerns about the management or operation of the Marina, the City will have the right to withhold the Monthly Management Fee for up to 90 days upon written notice to the Manager while the City conducts an investigation of the matter.~~
- (c) On-Site Employee Fees: All Employee Related Expenses of any on-site employees will be paid for by Manager through the Owner's Operating Account at Owner's expense on a monthly basis. Manager shall submit to Owner estimated employee costs in advance for approval and shall also include in the Operating Budget. Should Owner request PTO coverage for any on-site employee, those costs shall be paid by Owner, without any administrative markup.
- (d) Operating Expenses: Owner shall reimburse Manager for the following expenses ("Operating Expenses"):
 - (i) Office Expenses: Postage, courier fees, copies, telephone, bank/check charges, facsimile, after hour's answering service and similar expenses will be charged to Owner at cost without markup.
 - (ii) 3rd Party Accounting System: Electronic transactions and accounting records maintained in a 3rd party software system, including monthly fees, invoice scanning, and on-line payment portal processing if applicable. Applicable software licensing fees will charged to Owner at cost when applicable.
 - (iii) Security Equipment and Security Personnel: installation and monitoring costs of security equipment or security personnel on the Premises.
- (e) Labor Expenses: All labor expenses will be materially consistent with the Operating Budget. Labor charges will be itemized and drawn from Owner's Operating Account on monthly invoices.

- (f) Labor Rates: Manager's current rates are shown in the table below, and subject to reasonable adjustment upon advance notice.

Service	Hourly Rate
General Manager	\$59/hour
Dockmaster	\$48/hour
Administrative Manager	\$42/hour
Administrative Assistant	\$35/hour
Dockhands	\$32/hour

- (g) Manager Fees for Construction Management / General Contracting Services: Manager will oversee and manage minor construction activities without additional charge. However, if Owner requests Manager to become a construction manager, Manager's fee will be 0% for projects under \$25,000.

6. ACCOUNTS AND DEPOSITS

- (a) Advance Deposit: Upon execution of this Agreement, Owner shall deposit sufficient funds with Manager to cover one month's payment of projected Employee Related Expenses and Monthly Management Fees. Such account shall be established and maintained by Manager. All advanced funds deposited under this section will be reimbursed to Owner upon termination of this Agreement after paying all Owner-approved payments due to Manager including, but not limited to, fees, reimbursements, and other payables.
- (b) Initial Working Capital Deposit: Before the Term of this Agreement begins, Owner shall deposit with Manager the Initial Working Capital Deposit in Section 1(k). This Initial Working Capital Deposit shall be held in the Owner's Operating Account for Manager to pay Operating Expenses until sufficient revenue is generated by the Premises to pay them. The amount retained in Owner's Operating Account as working capital shall be adjusted as Manager and Owner approve and the Operating Budget shall be revised accordingly.
- (c) Minimum Fund Balance: Owner shall maintain the Minimum Funds Balance required in its Owner's Operating Account under Section 1(l) to assure the timely payment of all applicable expenses and fees and to avoid penalties. Manager shall notify Owner if the balance in Owner's Operating Account decline below the Minimum Funds Balance and Owner shall restore the Minimum Funds Balance within 30 to 45 days
- (d) Manager's Rights Upon Shortage of Funds: Owner shall remain obligated to and shall timely pay the Monthly Management Fee for all periods through the termination of this Agreement. Similarly, Owner shall remain obligated to and shall timely pay all other fees and expenses of this Agreement.

7. MANAGER'S AGENCY STATUS

Manager is an independent contractor and shall act as Owner's exclusive agent to manage, operate, maintain and service the Premises in Manager's sole discretion, and as further stated in this Agreement.

8. OWNER DOCUMENTS AND RECORDS REQUIRED BY MANAGER

Owner shall provide Manager all documents and records, including all licenses, service agreements and applicable correspondence, name, contact information and account numbers for all boaters, name, contact information and account numbers for all lenders, mortgage payment schedules and any other recurring financial obligations, insurance policies and endorsements, and organizational documents including articles and amendments thereto file stamped by the state of organization, operating agreement, federal employer identification number and consent resolutions. These organizational documents are for informational purposes only, and Manager is not responsible to interpret, apply, or enforce such organizational documents. Exclusivity of appointment shall not apply to construction management or general contractor activities because Owner reserves the right to contract with third parties for such services. Manager will take reasonable steps to protect all documents, especially financial and/or personal information, from security or cybersecurity threats.

9. INDEMNIFICATION AND HOLD HARMLESS

- (a) To the maximum extent permitted by law, Manager shall fully defend, indemnify and hold harmless the Owner (i.e., the City of Martinez) and its elective and appointive boards, commissions, officers, agents, and employees, from and against any and all damages, liabilities, claims, costs or expenses, including but not limited to reasonable attorneys' fees and costs, for economic damage to third parties, property damage or bodily injury, including but not limited to death:
- (1) which result from any alleged act or omission by Manager or any officer, director, employee or subcontractor of Manager in connection with Manager's performance under this Agreement for operation of the Marina;
 - (2) which result from any action taken by Manager relating to the Marina that is prohibited by this Agreement, or that is not within the scope of Manager's duties under this Agreement, or that is not within Manager's delegated authority under this Agreement;
 - (3) which result from Manager's violation of Insurance Requirements or Legal Requirements; or
 - (4) which Owner, by reason of any alleged breach of a "non-delegable duty," is subject to, because of the Manager's violation of any national, state or local law, regulation or order which pertains to providing safe working conditions for Manager's employees, or because of Manager's failure to provide safe working conditions for Manager's employees.

This section shall not apply to damages, liabilities, claims, costs or expenses that arise out of Owner's sole negligence or willful misconduct. The provisions of this Section shall survive the expiration or termination of this Agreement and are NOT limited by the provisions of any workers' compensation act or the insurance coverage limits stated in this Agreement.

- (b) **Mutual Cooperation:** Should any claims, demands, suits or other legal proceedings be made or instituted by any person against Owner or Manager which arise out of any of the matters relating to this Agreement, each party shall give the other party all pertinent information and reasonable cooperation in the defense and disposition thereof. The obligations contained in this paragraph shall be in addition to, and not in limitation of, any other obligations, contained in this Agreement.

10. **INSURANCE**

- (a) **Insurance Policies.** During the term of this Agreement, the Manager shall maintain in full force and effect, as a Direct Cost, the following minimum insurance coverage:
- Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit. The City of Martinez, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Operator for the management of the marina.
 - Automobile Liability: Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than \$3,000,000 per accident for bodily injury and property damage. The City of Martinez, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the Auto Liability policy with respect to liability arising out of work or operations performed by or on behalf of the Operator for the management of the marina.
 - United States Longshore and Harbor Workers (USL&H) Insurance as required by the U.S. Longshore and Harbor Workers Compensation Act, Jones Act or any other federal law for which Manager is responsible due to work on or next to navigable waters.
 - Marine General Liability Insurance. A commercial marine liability policy of insurance, written on ISO Form CG 00 01 10 01 (or equivalent), that protects Manager and the City, as an additional insured using ISO Form 20 26 (either 11 85 or 07 04 revision) or equivalent, against claims for bodily injury, personal injury and property damage based upon, involving or arising out of the management, use, occupancy or maintenance of the Premises, to include dock handling, Wharfingers Liability, Marina Operators' Liability, loading/unloading liability while using the Martinez Marina for the berthing and docking of vessels. Such

insurance shall be on occurrence basis providing single limit coverage in an amount not less than \$2,000,000 per occurrence. The policy shall contain a minimum \$100,000 sub-limit that covers damage to the Martinez Marina, including fire damage. The policy shall be endorsed to make the Manager's insurance primary and non-contributory to any insurance the City may carry. The policy shall be endorsed with a waiver of subrogation or waiver of the transfer of the rights of recovery in favor of the City. The City shall be submitted upon Agreement inception, and annually thereafter, a copy of the additional insured endorsement, the primary and non-contributory endorsement, and the waiver of subrogation endorsement. Blanket additional insured endorsements are not acceptable. The City of Martinez, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the Marine General Liability policy with respect to liability arising out of work or operations performed by or on behalf of the Operator for the management of the marina.

- Marina Operators' Liability. In lieu of Marine General Liability. Manager can opt to purchase a Marina Operators' Liability with a limit of no less than \$2,000,000 per occurrence. This insurance is to provide coverage for the legal liability of the Manager for loss or property damage to pleasure watercraft in the insured's care, custody and control for operations including repair, alterations or maintenance, mooring at slips, hauling in or out of vessels and fueling. The City of Martinez, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the Marine General Liability policy with respect to liability arising out of work or operations performed by or on behalf of the Operator for the management of the marina.
 - Pollution Legal Liability Insurance. Manager shall provide this coverage, with the City named as an additional insured on the policy, with limits of not less than \$2,000,000 per occurrence. The coverage shall extend to sudden and accidental incidents, claims, damages, and losses, including defense costs that arise from the operations of the Manager as it relates to the services to be performed under this Agreement, including those contracted services the Manager has the authority to contract out. This policy shall cover incidents, claims, damages, and losses, at the Martinez Marina, including clean-up and remediation as well as third party bodily injury, third party property damage, and clean-up/remediation, both on and off the project site. The City of Martinez, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the Pollution Legal Liability Insurance policy with respect to liability arising out of work or operations performed by or on behalf of the Operator for the management of the marina.
 - Commercial Crime Insurance. A commercial crime policy which includes, without limitation, a blanket bond for all employee dishonesty in the amount of \$1,000,000; coverage for theft, disappearance and destruction of monies and securities in or on the Premises or outside the Premises in an amount not less than \$35,000; and depositor's forgery in the amount of \$250,000. The cost of Commercial Crime insurance is not considered a Direct Cost.
- (b) **Certificates of Insurance.** Manager shall complete and file with the City's Risk Manager, within fifteen (15) days of its execution of this Agreement, and prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance and endorsements evidencing the coverages specified above, which shall provide that no cancellation, change in coverage or nonrenewal by the insurance company(s) will be made during the term of this Agreement, without thirty (30) days' prior written notice to Owner. All certificates shall be signed by a person authorized by the insurance company to bind coverage on its behalf. Neither the procuring of insurance by Manager nor the delivery by Manager to Owner of certificates of insurance evidencing such coverages shall be construed as a limitation of Manager's indemnity obligations under this Agreement.
- (c) **Inspection of Policies:** Change in Coverage Amounts. Manager shall permit Owner, at all reasonable times, to inspect any policies of insurance of Manager covering risks upon the Premises. Owner reserves the right to change the coverage limits of the insurance policies set forth above as Owner may deem advisable, in Owner's sole and absolute discretion; provided that Owner shall increase the applicable Direct Cost Budget(s) reasonably to account for any increase in insurance premiums.
- (d) **Umbrella Policy.** Notwithstanding any provision to the contrary, Manager's obligation to provide for insurance may be brought within the coverage of so-called "umbrella" or "blanket" policy or policies of insurance carried and maintained by Manager, provided that: (i) Owner, Manager and such other persons as Owner may specify from time to time are named as additional insureds, to the extent their interests appear; (ii) the coverage

afforded Owner and the other persons will not be reduced or diminished by reason of the use of such umbrella or blanket policy; and (iii) the other insurance requirements as set forth in Section 10 are satisfied. In such case, an allocable portion of the premiums for such umbrella policies of insurance shall be considered a Direct Cost.

11. TERM AND TERMINATION

- (a) Term: The term of this Agreement shall be as set forth in Section 1(e), unless otherwise terminated as provided in this Agreement. This Agreement shall automatically be extended for an additional calendar year following the expiration of the Original Term. After the Original Term, either party shall have the right to terminate this Agreement upon ninety (90) days prior written notice to the other at which time Manager and Owner shall fully and completely perform their remaining obligations under this Agreement including, without limitation, the payment of the Monthly Management Fee and all other fees, expenses and charges due to Manager and third parties through the date of termination of the Agreement pursuant to such notice, and the parties shall thereafter have no further obligations to each other.
- (b) This Agreement may be terminated:
- (1) By either party without prior notice, in the event a petition in bankruptcy is filed by or against the other party, and such petition is not dismissed within thirty (30) days of filing or either party makes an assignment for the benefit of creditors, or invokes any insolvency act; or
 - (2) By either party upon material breach of any term or condition of this Agreement by the other party and failure to cure such breach within thirty (30) days after written notice of such breach has been given to the breaching party.
 - (3) By Manager upon change in controlling interest of Owner at any time during this Agreement upon 30 days' notice.
 - (4) By Owner upon thirty (30) days' notice if the Manager fails to meet mutually agreed performance metrics which shall be defined and approved in the Operating Budget, and shall include customer satisfaction parameters, among others.
- (c) Return of Owner Records and Funds upon Termination: Upon termination, Manager shall, at Owner's cost, deliver to Owner (i) copies of all books, records, contracts, leases, deposit receipts, unpaid bills, and deposit account records related to managing the Premises; (ii) a final accounting reflecting the income and expense balances as of the date of termination, within 30 days after termination; and (iii) any balance of Owner funds or security deposits held by Manager after Owner pays all applicable Monthly Management Fees and all other fees and expenses. Any security deposits shall not be offset to the extent such offset is prohibited by applicable law.
- (d) Operating Expense Deposit upon Termination: Upon termination, Owner will deposit a sum equal to the average of one month's Operating Expenses in the Owner's Operating Account to ensure all Operating Expenses and independent contractor expenses are paid by their due dates.
- (e) Default: If Manager materially defaults on any of the provisions within this Agreement, Owner may notify Manager in writing. Manager shall have 15 calendar days to respond in writing with a detailed plan on how they will address the Owner's concerns. Manager shall work diligently to cure the default within as short a time period as practicable, given the situation.

12. NO CONFLICTS OF INTEREST AND EXCLUDED SERVICES

Manager and its officers, directors, shareholders, and its affiliates are active in managing, marketing, developing, and leasing marina, commercial, residential and industrial buildings. This may include the same market as the Premises and Owner agrees that such activities do not constitute a conflict of interest or otherwise breach Manager's duties. Manager services do not include selling all or any portion of the Premises. If Owner hires such affiliates, the terms and conditions of this Agreement shall not be affected and there shall be no conflict of interest or breach of Manager's duties by reason of such arrangement.

13. NON-CIRCUMVENTION / NON-SOLICITATION OF EMPLOYEES

Owner warrants that, during the term of this Agreement and for a period of six (6) months thereafter, Owner will not, directly or indirectly (i) solicit for employment any employee of Manager with whom/which any person associated with Owner had direct contact (whether in person or electronically) in connection with this Agreement, or (ii) encourage or otherwise or directly or proximately cause any event(s) to occur which results in the termination of employee's relationship with Manager with the purpose or intent of Owner eventually employing such person.

14. ADDITIONAL PROVISIONS

- (a) **Arbitration**: Any dispute or claim between the parties shall be settled by a single arbitrator in binding arbitration conducted in Contra Costa County, California under the Commercial Arbitration Rules of the American Arbitration Association, or other arbitration service the parties may agree upon. The arbitration award may be entered in any court having jurisdiction. Additionally, the following rules shall apply:
- (i) Each party shall be entitled to discovery exclusively by these means: (i) requests for admission, (ii) requests for production of documents, (iii) up to 15 written interrogatories (subparts to be counted as a separate interrogatory), and (iv) depositions of no more than six individuals;
 - (ii) Unless the arbitrator states delay is justified, or as agreed by the parties, discovery shall be completed and the arbitration hearing shall begin within five months after the arbitrator is appointed;
 - (iii) Unless the arbitrator states delay is justified, the hearing will be completed, and an award determined within 30 days of concluding the hearing.

The arbitrator may provide equitable types of relief and any court may enter an order compelling such relief. The arbitrator also shall determine which party's legal position is more substantially correct (the "Prevailing Party") and the non-prevailing party shall pay the legal and other reasonable arbitration and court costs incurred by the Prevailing Party. However, a court of competent jurisdiction may enter a temporary restraining order or an order enjoining a breach of this Agreement pending a final award or further order by the arbitrator. Such remedy shall be cumulative and nonexclusive.

- (b) **Notices**: Any written notice to be given by either party to the other under this Agreement shall be delivered in person or sent by either US certified mail to the addresses in Sections 1(a) and 1(c), return receipt requested, postage prepaid or by Federal Express or other nationally recognized delivery service.
- (c) **Non-Assignable**: This Agreement and any rights hereunder may not be assigned without the prior written consent of the other party. Any attempt to assign this Agreement or any rights herein without the prior written consent of the other party shall be void.
- (d) **Binding Agreement**: This Agreement shall be binding upon, and inure to the benefit of the heirs, executors, administrators, personal representatives, successors, and assigns of the parties.
- (e) **Applicable Law**: This Agreement shall be governed by the laws of the State of California.
- (f) **Severability**: Each provision of this Agreement shall be severable. If any provision is determined to be invalid, such invalidity shall not impair or affect the other provisions of this Agreement which are valid.
- (g) **Headings**: Section headings are for descriptive purposes only and shall not control or alter the meaning of this Agreement as stated in the text.
- (h) **Entire Agreement**: This Agreement is the entire agreement of the parties. Any amendments, additions, or deletions to this Agreement shall be null and void unless approved in writing by both parties.

Kat Galileo

From: Martinez, CA <webmaster@cityofmartinez.org>
Sent: Saturday, October 26, 2024 4:26 PM
To: CityClerk
Subject: *NEW SUBMISSION* Public Comment

Follow Up Flag: Follow up
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Public Comment

Submission #: 3576840
IP Address: 66.234.200.248
Submission Date: 10/26/2024 4:25
Survey Time: 3 minutes, 16 seconds

You have a new online form submission.

Note: all answers displaying "*****" are marked as sensitive and must be viewed after your login.

Public Comment

For City Council and Council Subcommittee Meetings and Agenda Items

To submit written comments for an upcoming City Council meeting, complete the form details below. Upon submission, the City Clerk will receive your comments and forward them to the City Council in advance of the meeting. Comments must be submitted by 12pm the day of the meeting.

Name

Steve Standefer

Company/Organization (If Applicable)

City Council Meeting Date

10/28/2024 04:00 PM

For a list of upcoming meetings dates visit: www.cityofmartinez.org/government/meetings-and-agendas

I wish to speak on:

Agenda Item

Agenda Item

Comment

Council members Howard and McKillop, I'm having trouble reconciling the staff report recommendation of the F3 contract to the Almar budget for 2025. The staff report identifies a net operating loss of \$176,320. The Almar budget reports a net operating loss of \$64,220 The staff report from your June subcommittee meeting projects a \$19,107 net profit. The city council meeting staff report of 10/23 cites a \$176,320 deficit to fund utilities, with \$119,000 identifies as water during the meeting. The Almar budget identifies water, electricity, and gas as; \$9,648, \$44,597, \$995 for 9 month actual and \$12,864, \$59,463, \$1,327. In addition to these

inconsistencies the staff report discussing F3 says they recommend gradually increasing fees to align with the current Bay Area marina market. This is in spite of the promises Brianne and Jill made to us at the harbormaster office this summer prior to the city assuming management that fees would not change. The proposed contract gives F3 financial incentive to raise rates. Rather than a fixed monthly management fee their piece of the pie increase with revenue growth. The parks and marina committee should be a part of creating and reviewing the budget. Staff wants to hand that over to F3. It's interesting that the F3 agreement includes manager performance metrics in the operating budget, but F3 creates this budget. The city council wisely recommended reconvening after identification of how utility rates could be this out of control. I request you do the same on a management agreement, wait and further negotiate terms to include operational oversight.

Thank you,
Martinez, CA

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Marina Regulation Amendments

City Council

November 1, 2024

Changes to Ordinance - Added Today

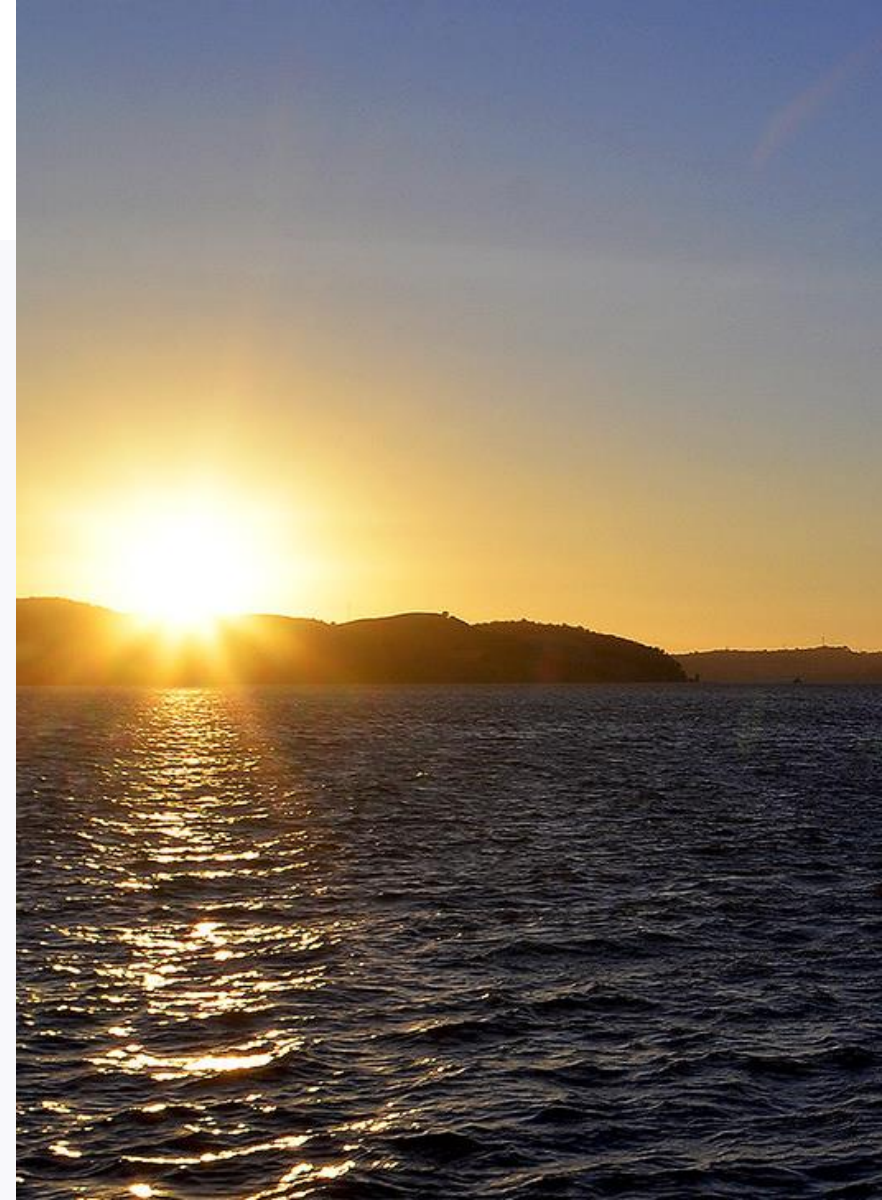
City Attorney noted a few last-minute modifications that needed to be incorporated into the proposed amendments for consistency. ***These are not reflected in the posted Staff Report.***

- Replacing the term “berth agreements” with “Mooring Licenses”
- Deleting term “Sublease” which was already addressed through term “Assign”
- Replace term “tenant” with “occupant”



Background

- Modifications to Municipal Code Chapter 12.36 (Marina Regulations) of Title 12 (City Real Property) and Chapter 1.12 (Enforcement) of Title 1 (General Provisions) relating to use of the Martinez Marina.
- Marina Regulations have not been updated since 1998
- City took over operations on August 22nd. This involved the City's need to develop a Municipal Mooring Agreement for boat owners and led to the discovery of inconsistencies with code terminology and practices resulting in the need to update the Municipal Code to reconcile the code with operation and management of the Marina.



Proposed Amendments to Ordinance

The proposed amendments include:

- Make late berthing fees delinquent if not paid by the 10th of the month (changed from the last day of the month).
- Require short-term (or “guest”) mooring for longer than one week be subject to a full month’s mooring fee.
- Require payment of a full month’s mooring fee regardless of when a monthly mooring license is effective.
- Make charges for water and electricity use subject to a separate fee that is not included in the standard mooring fee.
- Allow the Operator to install a meter to charge for actual utility use, at the Operator’s sole discretion. (future initiative)
- Remove language regarding “on-board tenant permits” and require the payment of liveaboard fees for continuous occupation of vessels for longer than 48 hours in any seven-day period.

Proposed Amendments to Ordinance - Continued

- Authorize the Operator to enter upon vessels in the harbor to verify they are in operable condition.
- Amend vehicle parking and towing requirements to specify vehicles shall comply with marked signs and that no vehicle shall be parked for a period exceeding 72-hours, rather than 24 hours, without permission of the Operator.
- Insert language related to pets and wildlife.
- Require proof of adequate insurance when entering the harbor.
- Clearly define parking requirements for vehicles, trailers and RV's
- Make violation of any provisions set forth in Chapter 12.36 a misdemeanor, rather than an infraction.
- Replace masculine pronouns with gender neutral terms and replace "boat" with "vessel" for consistency throughout.
- Correct section numbering.

Recommendation

Conduct a Public Hearing, waive first reading, and introduce an Ordinance amending Martinez Municipal Code Chapter 12.36 (Marina Regulations) of Title 12 (City Real Property) and Chapter 1.12 (Enforcement) of Title 1 (General Provisions) relating to use of the Martinez Marina.





Questions?

