



CITY OF MARTINEZ

PARKS, RECREATION, MARINA & CULTURAL
COMMISSION

DATE: April 20, 2011
TO: Parks, Recreation, Marina & Cultural Commission
FROM: Mitch Austin, Recreation Manager
SUBJECT: Zocchi Buildings Update

RECOMMENDATION

Receive staff presentation and provide feedback.

BACKGROUND

At the April City Council meeting the Council approved the letters of intent to guide the process by which a lease agreement is developed and the CEQA review is handled for both Nor Cal Courts (formerly California Court Side) and the Universal Sports Academy. Staff has not proceeded with lease deal point with both vendors. Attached is the draft deal points sent to each vendor for their review, Staff is awaiting vendor responses.

Attachments: Draft Deal Points for Zocchi Building Lease

Building and Site Development Section

1. Planning commission approval of recreation uses for this site – zoning/ CEQA study completed and approved
2. Performance Bond/ Surety for the construction of the site – TBD
3. Secondary Emergency access to the site via Shell Oil site or agreed upon other access point
4. Parking study completed and approved
5. CCTA lease approval
6. Lessee will provide drawings of all improvements and specifications of materials to be used to the building department for approval prior to construction.
7. All work on this site must be completed by licensed and insured contractors – with a current Martinez business license. Prevailing wage requirement for improvements – TBD
8. The building will be assumed in its current condition (as is) and the owner assumes no liability for that condition or its repair i.e. roof repairs and maintenance , gutter replacements
9. Lessee is to proceed with any and all improvements through the city of Martinez building department and comply with (specified TBD building code.)
10. All graffiti to be removed or painted over within 48 hours by the city of Martinez
11. No access shall be granted to any users until the facility has been granted a Occupancy permit by the city of Martinez

Common Areas Development Section

12. ADA parking requirements(handi-capped slots and ramps) to be met by and paid for by the developer potentially twice (pre-parking lot renovation and post parking lot renovation)
13. Parking lot improvements to the site will be phased to the city will make a "Reasonable Effort" minimize the impact to the Lessee and their users during any and all construction.-
COM
14. Any signage incorporated onto the building , site or entry drive must be approved by the COM
15. (Blank Number (TBD) of Parking spaces shall be left vacant for use by the Amtrak patrons) –
CCTA – COM Martinez to provide this signage
16. Future parking lot improvement costs (after renovation summer 2012) to be shared between the owner and Lessees – stripping ,seal coats, lighting replacement etc.
17. Parking lot cleaning and vandalism to building area and / or parking lot is the responsibility of the lessee to repair.
18. The Lessee shall be solely responsible for the actions of its users within the property both interior and exterior.
19. Parking lot security and access shall be the responsibility of the Lessee and meet the terms of agreement with COM
20. Parking lot light curfew and site curfew

Insurance / Indemnification Section

21. The city of Martinez is not liable for any actions, services or programs provided by the developers, nor shall the developers represent themselves as agents of the city at anytime.
22. **ALTERATIONS, IMPROVEMENTS, FIXTURES AND SIGNS.** Lessee shall not make any alterations, additions to, or improvement of the Premises, including the installation of fixtures, equipment, or signs in or upon the Premises, without the prior written consent of the Lessor. If consent is granted, any such alteration or installation, including the cost of obtaining all necessary permits, shall be at Lessee's sole cost and expense. Said fixtures shall become the property of the Lessor unless Lessor otherwise elects. If the Lessee elects to remove or is directed by Lessor to remove such permitted fixtures, equipment, or signs, such removal shall be at Lessee's expense.
23. **INDEMNIFICATION AND HOLD HARMLESS.** Lessee covenants and agrees to defend, release, indemnify, and hold harmless the Lessor and its officers and employees, in their capacities as such, from all liabilities, claims, demands, or causes of action by any person, including Lessee, for injury, death, or property damage, in any way arising from or connected with the use, maintenance or operation of the leased Premises and regardless of the concurrent negligence of another, including Lessor.
24. Lessee agrees to procure and maintain, at its own cost and at all times during the Term of this Lease, public liability and property damage insurance in the amount of two million dollars (\$2,000,000/ TBD) per occurrence for bodily and personal injury, and property liability insurance in the amount of one million dollars (\$1,000,000/ TBD) per occurrence for damage to the leased Premises. The liability insurance policy shall be with insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the following specific language:
25. a. The City of Martinez, its elected or appointed officers, officials, employees, agents and volunteers, are to be covered as additional insured with respect to liability arising out of the use of the Premises located at 360 Ferry St. Martinez, CA, 94553.
26. Lessee is solely responsible for insurance coverage of objects stored or displayed within the leased Premises.

Uses Section

27. City use of site and buildings 2 weekends a year use of site and buildings and parking lots for Beer festival Saturday in April and Saturday in October -

28. Hours of use will be mutually agreed upon to in writing annually – and subject to modification annually by either of the parties. And will be in accordance with city of Martinez Municipal code
29. This site may not be subleased at anytime during this agreement by the Lessee unless approved by the COM – All Rental policies for these spaces must be approved by the city of Martinez.

Terms Section

30. Development and approval, of a complete financial model including : annual operational budget -
31. 15 year lease –with a maximum of 5 one year extensions. Extension beyond this time frame TBD
32. Facility will be made available by the Lessee to the owner for inspection within 24 hours of a written request by the owner. (quality of upkeep , maintenance , health and safety review purposes)
33. 90 day out clause with written notification by either party for cause i.e. Health and safety, illegal activity etc. All Lessee improvements to the building other than personal equipment provided by the tenant shall be come the property of the city of Martinez upon termination of the lease
34. Lease terms – flat rate annually / performance based lease. Capital repayment to the investors of initial project development cost – establish amount and period of time. 5 year review of revenue generation – above expenses and capital improvement investment (\$100,000) –review of lease/ rent based upon performance for building improvements and on going maintenance.
35. The lessee at no time will represent itself as an agent of or working with the city of Martinez without written approval from the city of Martinez.
36. Annual financial audit of business to be provided to city of Martinez at the sole expense of the tenant
37. Lease termination /out clause for both parties in writing – time frame TBD
38. All cost for facility operation / all utilities ie. electricity ,water , sewer , garbage etc. will be the responsibility of the lessee – other than any identified common area cost to be shared by owner and lessee
39. Any additional services required to maintain the health and safety of the users will be the sole responsibility of the Lessee any costs related to these issues will be paid for by the Lessee should any costs arise from the use of this site.