



**CITY OF MARTINEZ**

**CITY COUNCIL AGENDA  
May 16, 2012**

**TO:** Mayor and City Council  
**FROM:** Philip Vince, City Manager  
**SUBJECT:** Letter of Intent and Non-Binding Agreement to Consider a Restaurant at the Marina  
**DATE:** May 10, 2012

**RECOMMENDATION:**

Authorize the City Manager and the Restaurant Ad Hoc Committee consisting of Mayor Schroder and Councilmember Menesini to execute a Letter of Intent agreement to negotiate a ground lease and other terms for the intent to develop and operate a restaurant at a site to be determined at the Marina.

**BACKGROUND:**

Tony LoForte and Dino Gerosolimo approached the City approximately six weeks ago expressing an interest in exploring the possibility of building a restaurant in close proximity to a previous restaurant called the Albatross at the Marina. The interested parties requested the City support this project and provide a letter of intent to formally begin the negotiating process.

Both staff and the Ad Hoc Committee have discussed the restaurant proposal at this preliminary stage and conducted a site visit at the Marina with the parties of interest. Given that a previous restaurant existed in the location there are existing water and sewer hook-ups, which is critical infrastructure that is very costly. There seems to be adequate parking in the nearby area.

Staff has notified the interested parties that a number of local agencies and jurisdictions would be involved in approving the proposed project, which could be a time consuming process in an attempt to streamline the design and construction of a new restaurant.

**FISCAL IMPACT:**

In the foreseeable future staff does anticipate spending time assisting the interested parties in answering questions and guiding them through the entitlement process.

**ACTION:**

Authorize the Mayor and the interested parties to sign a Letter of Intent to negotiate a ground lease and other items for the intent to develop and operate a restaurant at a site to be determined in the Marina.

Attachment: Letter of Intent

## NON BINDING AGREEMENT TO NEGOTIATE

THIS AGREEMENT is entered into as of May 16, 2012, by and between the City of Martinez (“City”) and Tony LoForte and Dino Gerosolimo (collectively “Proposers”) in reference to the following facts:

### RECITALS

- A. Proposers are restaurateurs who are desirous of establishing and operating a restaurant in the City’s marina. Proposers represent and warrant that they have, combined, more than 30 years of experience in building and operating successful restaurants in Northern California and elsewhere.
- B. The City leases and/or owns land in the marina. There have been at least two previous restaurants located in the marina and the City and its citizens will benefit should a new restaurant be established in that area.
- C. The Proposers’ idea of establishing, financing, building and operating a restaurant is at its incipient stages of formation and development, but the Proposers wish to be able to pursue those entitlements, rights and interests in order to commence restaurant operations at the marina and negotiate with the City for the purpose of securing lease rights, if required, in order to do so.
- D. The parties acknowledge that the nature and cost of constructing and operating the restaurant need to be investigated and ascertained by the Proposers.
- E. Nevertheless, the parties are willing to continue exploring the possibility of locating the restaurant at the marina, while, at the same time, the Proposers undertake the work necessary to establish the appropriate legal entity which will own, develop and operate the restaurant, develop plans, pursue entitlements and negotiate lease terms necessary to make the proposed site suitable for the Proposers’ needs:

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

### AGREEMENT

1. For the one year period following the date first stated above (“Negotiation Period”), the City agrees to negotiate with and provide reasonable assistance to the Proposers for the purpose of determining the entitlements, financing, location and leasehold rights, if any, the Proposers will need to secure in order to establish and operate a restaurant at the marina. Proposers have tentatively selected the site (“Site”) shown on Exhibit A as the most appropriate location for their new restaurant. By its commitment stated herein, the City is not obligating itself to providing any financial assistance to Proposers nor agreeing to waive any fees or other costs that would otherwise apply to Proposers’ pursuit of the entitlements, permits and rights that they must obtain in order to establish and operate a restaurant at the marina; however, the City does reserve the right

to assist the Proposer in helping secure all approvals required by agencies such as East Bay Regional Park, State Lands Commission, State Department of Boating and Waterways and BCDC. The City reserves all of its land use and police powers in this connection.

2. Proposers understand that the City has several existing agreements with other parties that affect and control the activities and businesses that can occur at the marina, including but not limited to a lease with the State Lands Commission, loan and other agreements with the State Department of Boating and Waterways, an operating agreement with Almar Marinas, and a lease agreement with the Martinez Yacht Club (collectively, "Existing Agreements"). It may prove to be the case that Proposers' proposal will be affected by any or all of these existing agreements.

3. If it is determined that the most effective and efficient way to entitle Proposers to use the Site for a restaurant includes negotiating and signing a lease agreement, the parties agree to attempt to negotiate same in good faith during the Negotiation Period, acknowledging, however, that the actual leasing of the Site to Proposers is dependent upon a variety of factors, variables and circumstances which are not now resolved nor known with sufficient clarity as to permit the parties to enter into binding or meaningful agreements pertaining to same at the present time.

4. Consequently, the parties make this Agreement primarily for the City to demonstrate its general support for the concept of establishing a restaurant at the marina and for the Proposers to conduct their due diligence in ascertaining and accepting all the conditions, agreements, entitlements, permits, approvals and legal documents that they must agree to before their restaurant can commence operations.

5. This Agreement shall remain in effect until May 16, 2013, but can be extended by the mutual, written consent of all parties.

6. During the Negotiation Period, the Proposers shall exercise their best efforts to accomplish the tasks necessary to establish and commence operations of a restaurant on the Site.

7. Commencing on June 30, 2012, and quarterly thereafter, the Proposers shall submit a brief written update report to the City describing the steps they have taken to complete and accomplish the tasks specified in sections 4 and 6 above.

8. Subject to and except as is provided in the Existing Agreements, during the Negotiation Period, the City agrees that it shall not enter into a rental, lease or other agreement committing the use of the Site to any other persons.

9. Upon request by either party, they shall meet and confer about the progress Proposers are making in complying with this Agreement.

10. The parties acknowledge and agree that this Agreement is not a lease of the Site, nor does it constitute an offer, nor an acceptance of such a lease or another contract obligating the City to permit the Proposers or anybody else to use the Site in any way. The parties acknowledge and agree that no binding, implied covenants attach to this document concerning the use of the Site or marina. Only upon the full and final execution and delivery of a lease or other agreement will any obligation attach with respect to the Proposers' use of the Site or marina.

IN WITNESS WHEREOF, the parties hereto execute this Agreement on the date first written above.

CITY OF MARTINEZ

By: \_\_\_\_\_  
Rob Schroder, Mayor

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