



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
July 25, 2012**

TO: Mayor and City Council
FROM: Michael Chandler, Senior Management Analyst
SUBJECT: Eagle Marine Second Amendment to Lease
DATE: July 19, 2012

RECOMMENDATION:

Adopt a resolution authorizing the Mayor to execute a second amendment to the lease with Eagle Marine.

BACKGROUND

The City entered into a Marina Boat Yard Facility Lease agreement with Gerald N. Long, doing business as Eagle Marine, as of June 1, 1997. The initial lease term of 10 years was extended at the option of Eagle Marine for an additional 5 years through the attached “First Amendment to Lease” on July 18, 2007, for the period August 1, 2007 to July 31, 2012. Per the terms of the Lease, Eagle Marine has an option to extend the Lease for an additional 5 years, pursuant to meeting certain terms and conditions, provided it notices the City 180 days prior to the expiration of the extended term. Eagle Marine provided this notice to the City in a letter dated January 24, 2012. The proposed option would extend the Lease from August 1, 2012, to July 31, 2017.

City staff and Eagle Marine met numerous times in recent months and wish to amend the Lease to reflect certain new terms and conditions, which are stated in the attached Second Amendment to Lease. These terms include increasing the minimum rent amount in the second year of the extension from \$48,000/year to \$51,000/year, paid in equal monthly installments as before. This new rent amount will be in effect from August 1, 2013 through the end of the term on July 31, 2017. Eagle Marine will continue to be required to pay the City a monthly percentage rent in the event that percentage rent exceeds minimum rent.

Except as is otherwise provided in the attached Second Amendment to Lease, the terms and conditions of the original lease shall remain in full force and effect. As this is the second and last of Eagle Marine’s two options to extend the Lease, the parties have agreed to commence dialogue on the possibility of a new lease agreement early in the term of this final lease extension.

FISCAL IMPACT:

Starting August 1, 2013, and effective through the end of the term, the City will receive an additional \$3,000 per year in minimum rent, which will increase from \$48,000 to \$51,000 per year.

ACTION:

Motion to adopt resolution authorizing the Mayor to execute a second amendment to the lease with Eagle Marine.

Attachments

Resolution

Exhibit A: First Amendment to Lease

Exhibit B: Second Amendment to Lease

APPROVED BY:

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Assistant City Manager

RESOLUTION NO. 12

**AUTHORIZING THE MAYOR TO EXECUTE A SECOND AMENDMENT
TO THE LEASE WITH EAGLE MARINE**

WHEREAS, the City of Martinez entered into a Marina Boat Yard Facility Lease agreement with Gerald N. Long, dba Eagle Marine, dated as of June 1, 1997 (the "Lease"); and

WHEREAS, pursuant to the terms of the Lease, Eagle Marine exercised its first of two options to extend the term of the Lease for an additional five (5) years by entering into a First Amendment to Lease ("First Amendment") with the City on July 18, 2007, effective August 1, 2007 to July 31, 2012, attached hereto as Exhibit "A"; and

WHEREAS, Eagle Marine has a second option to extend the term of the Lease for an additional five (5) years, so long as written notice has been provided to the City of this intent at least 180 days prior to the expiration of the initial term and a variety of other conditions have been met; and

WHEREAS, Eagle Marine provided the City said written notice to the City in a letter dated January 24, 2012, and otherwise complied with all the conditions precedent to its exercise of said option; and

WHEREAS, the City and Eagle Marine wish to amend the Lease to reflect certain new terms and conditions as stated in the Second Amendment to Lease, a true and correct copy of which is attached hereto as Exhibit "B", but otherwise maintain the existing terms and conditions of the Lease and the First Amendment.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Martinez that the Second Amendment to Lease is hereby approved and the Mayor is hereby authorized and directed to execute said Second Amendment to Lease between the City of Martinez and Eagle Marine extending the existing Lease from August 1, 2012 through July 31, 2017.

* * * * *

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at a Regular Meeting of said Council held on the 25th day of July, 2012 by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, City Clerk
CITY OF MARTINEZ

EXHIBIT A
**FIRST AMENDMENT TO LEASE
(EAGLE MARINE – GERALD N. LONG)**

This First Amendment to Lease is made as of July 18, 2007, by and between the City of Martinez, a municipal corporation, hereafter referred to as "Lessor", and Gerald N. Long, hereafter referred to as "Lessee".

Recitals

- A. WHEREAS, Lessor entered into a 10-year Marina Boat Yard Facility Lease agreement with Lessee dated as of June 1, 1997, with a commencement date of August 1, 1997 (the "Lease"); and
- B. WHEREAS, pursuant to the terms of the Lease, the Lease agreement is due to expire on July 31, 2007; and
- C. WHEREAS, pursuant to Section 2 (B) of the Lease, the Lessee has the option to extend the original lease term by five (5) years provided Lessee satisfies several conditions precedent, including notifying the City in writing of Lessee's intent to extend the Lease term by five (5) years at least 180 days prior to the expiration of the original term; and
- D. WHEREAS, Lessee informed the City that it provided the requisite written notice of its intent to extend the term of the Lease on January 21, 2007 ("Extension Notice"), and has met all of the other conditions precedent to exercising the option specified in Section 2(B) of the Lease; and
- E. WHEREAS, after receipt of Lessee's Extension Notice, the parties negotiated the percentage rent and other provisions of the Lease deemed worthy of modification.

NOW THEREFORE, Lessor and Lessee agree as follows:

Agreement

- A. The Lease is amended as follows:
 - 1. Pursuant to Section 2(B) of the Lease, the term of the Lease shall be extended for an additional five (5) years beginning on August 1, 2007, and ending on July 31, 2012.
 - 2. Section 3(A) of the Lease, Minimum Annual Rent, is amended to read as follows:

A. MINIMUM ANNUAL RENT. Beginning on August 1, 2007 and continuing throughout the term of this Lease, namely, up through July 31, 2012, LESSEE shall pay annual, minimum fixed rent ("minimum") to LESSOR in the following amounts for the following periods of time:

August 1, 2007 – July 31, 2010. \$45,000/year (\$3,750/month)
August 1, 2010 – July 31, 2012 \$48,000/year (\$4,000/month)

LESSEE shall pay the minimum rent in equal monthly installments as set forth above on the first day of each month. Each monthly installment of minimum rent shall be paid in advance, without prior demand by LESSOR, and without any deduction or setoff.

3. Section 3 (D) (2) of the Lease, Revision of Minimum Rent, shall be deleted from the Lease.

4. Section 3(B) of the Lease, Percentage Rent, is hereby amended to read as follows:

B. PERCENTAGE RENT.

1. Notwithstanding section 3(A) to the contrary, LESSEE shall pay to LESSOR a percentage rent for each month of each year of this lease or the minimum monthly rent, whichever is greater. LESSEE shall pay the amount, if any, by which the monthly percentage rent exceeds the monthly minimum rent (plus the minimum rent) in accordance with the procedures specified in Section 5.

2. The Percentage Rent, effective October 1, 2007, shall equal: (a) one percent (1%) of all the gross receipts generated during the accounting year for or in connection with new boat, new motor, and/or new trailer sales ("new boat sales receipts"), resale item sales, accessory electronics sales, and sales to tax-exempt organizations; and (b) five percent (5%) of gross receipts (as defined in Section 4, below) other than new boat sales receipts, resale item sales, accessory electronics sales, and sales to tax-exempt organizations, generated during the accounting year.

3. Said percentage rent is payable on a monthly basis.

5. Section 3(C) of the Lease, Travel Lift/Haul Out, shall be renamed "Launch Ramp" and be amended to read as follows:

“In addition to the rent and other monetary obligations required to be paid by LESSEE, LESSEE shall pay to LESSOR or LESSOR’s designee a Launch Ramp fee of \$5.00 each time LESSEE uses the Launch Ramp located at the Martinez Marina to retrieve boats. LESSEE shall remit said payment on a monthly basis, in arrears. Said monthly payment shall be accompanied by a log which sets forth the date(s) and time(s) the LESSEE used said Launch Ramp.”

6. Section 4(C) shall be amended to read as follows:

“Gross receipts shall exclude: LESSEE’s receipt of a sublessee’s payment for the sublessee’s pro-rata share of utilities provided that LESSEE pays for the utilities; revenue received for special handling and freight charges provided that LESSEE pays for such charges; revenue received for sublet services, including propeller repair; revenue received for payment of EPA environmental disposal fees provided that LESSEE pays for said fees; revenue received for payment of license and documentation fees provided that LESSEE pays for said fees; revenue received from gas sold to customers; and the amounts LESSEE pays for parts ordered for service on manufacturer’s warranties. Gross receipts shall also exclude all sales and excise taxes payable by LESSEE to Federal, State, County, or Municipal governments as a direct result of operations under this Lease. Refunds for goods returned and deposits shall be deducted from current gross receipts upon their return to LESSEE. Bad debt losses shall not be deducted from gross receipts.”

7. Section 4(D) shall be added and read as follows:

“New boat sales receipts” includes new boat, new motor (including electric trolling motors), and/or new trailer sales. “Resale item sales” means items sold to other dealers for purposes of resale. “Accessory electronics sales” includes the sale of navigation equipment, such as depth finders, fish finders, and radar equipment. “Sales to tax-exempt organizations” includes sales to the U.S. Coast Guard and other Federal, State, or Local tax-exempt organizations. “Sublet services” means services provided for LESSEE’s customers by another boat yard or business which are paid by LESSEE and then passed through to the customer.”

8. The last two sentences of the second paragraph of Section 5(B) of the Lease, Payments of Rentals and Monthly Reporting Statements, shall be deleted from the Lease.

9. Section 17(B) of the Lease is amended to read as follows:

“Notwithstanding anything to the contrary stated herein, in the event that the LESSOR is required to consent and consents to any assignment, sublease, or

transferring of the whole or any part of this Lease, or any interest therein, the assignee, sublessee, and/or transferee shall pay to the LESSOR, upon the commencement date of the assignment, sublease, or transfer, a minimum annual rent of \$55,000 (\$4,583.33/month) or a percentage rent as specified in section 3(B) above of monthly gross receipts, whichever is greater, and shall, in all other events comply with each and every term and condition hereof.”

10. Section 45 of the Lease, Notices, is amended to read as follows:

“A. NOTICES. All Notices shall be sufficiently given for all purposes as follows:

1. When personally delivered to the recipient, and the recipient’s signature, acknowledging receipt, is obtained, notice is effective upon delivery.
2. When mailed by certified mail with return receipt requested, notice is effective upon receipt if delivery is confirmed by a return receipt.
3. When delivered by overnight delivery with charges prepaid or charged to the sender’s account, notice is effective on delivery if confirmed by the delivery service.
4. When sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective on receipt as long as (i) a duplicate copy of the notice is promptly given by certified mail or by overnight delivery and (ii) the receiving party delivers a written confirmation of receipt showing the date and time of receipt. Any notice given by fax shall be considered to have been received on the next business day if it is received after 5 p.m.

B. REFUSED, UNCLAIMED, OR UNDELIVERABLE NOTICES. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service.”

B. Except as otherwise provided in this First Amendment to Lease, the terms and conditions of the original Lease shall remain in full force and effect.

DATED: 7/31/07

LESSOR:
CITY OF MARTINEZ
By: [Signature]
ROB SCHRODER
Mayor

Attest: [Signature]

DATED: 7-31-07

LESSEE:
Gerald N. Long, dba
EAGLE MARINE
By: [Signature]
Gerald N. Long
Title: owner

Attach copy of Resolution or other authorization of signatory for Eagle Marine.

Approved as to Form:
[Signature]
Jeffrey A. Walter, City Attorney

Approved:
see attached waiver
Attorney for Gerald N. Long

**EXHIBIT B
SECOND AMENDMENT TO LEASE
(EAGLE MARINE – GERALD N. LONG)**

This Second Amendment to Lease is made as of _____, 2012, by and between the City of Martinez, a municipal corporation, hereafter referred to as “Lessor”, and Gerald N. Long, hereafter referred to as “Lessee”.

Recitals

- A. WHEREAS, Lessor entered into a 10-year Marina Boat Yard Facility Lease agreement with Lessee dated as of June 1, 1997, with a commencement date of August 1, 1997 (the “Lease”); and
- B. WHEREAS, Lessor entered into a 5-year extension of the Lease with Lessee on July 18, 2007, with a commencement date of August 1, 2007 (the “First Extension”); and
- C. WHEREAS, the terms and conditions of said First Extension are set forth in the First Amendment to Lease (Eagle Marine-Gerald Long), dated July 18, 2007 (the “First Amendment”); and
- D. WHEREAS, pursuant to the terms of the Lease and the First Amendment, the Lease agreement is due to expire on July 31, 2012; and
- E. WHEREAS, pursuant to Section 2 (B) of the Lease, the Lessee has the option to extend the lease Term by an additional five (5) years beyond the First Extension provided Lessee satisfies several conditions precedent, including notifying the City in writing of Lessee’s intent to extend the Lease term by five (5) years at least 180 days prior to the expiration of the original term; and
- F. WHEREAS, Lessee provided the City the requisite written notice of its intent to extend the term of the Lease on January 24, 2012 (“Extension Notice”), and has met all of the other conditions precedent to exercising the option specified in Section 2(B) of the Lease; and
- E. WHEREAS, after receipt of Lessee’s Extension Notice, the parties negotiated the percentage rent and other provisions of the Lease deemed worthy of modification.

NOW THEREFORE, Lessor and Lessee agree as follows:

Agreement

- A. The Lease as amended by the First Amendment is hereby amended as follows:
 - 1. Pursuant to Section 2(B) of the Lease, the term of the Lease shall be extended for an additional five (5) years beginning on August 1, 2012, and ending on July 31, 2017.
 - 2. Section 3(A) of the Lease, Minimum Annual Rent, is amended to read as follows:

A. MINIMUM ANNUAL RENT. Beginning on August 1, 2012 and continuing throughout the term of this Lease, namely, up through July 31, 2017, LESSEE shall pay annual, minimum fixed rent (“minimum”) to LESSOR in the following amounts for the following periods of time:

August 1, 2012 – July 31, 2013. \$48,000/year (\$4,000/month)
August 1, 2013 – July 31, 2017 \$51,000/year (\$4,250/month)

LESSEE shall pay the minimum rent in equal monthly installments as set forth above on the first day of each month. Each monthly installment of minimum rent shall be paid in advance, without prior demand by LESSOR, and without any deduction or setoff.

B. Except as otherwise provided in this Second Amendment to Lease, the terms and conditions of the original Lease and First Amendment to Lease shall remain in full force and effect.

DATED: _____

LESSOR:
CITY OF MARTINEZ

By: _____
ROB SCHRODER
Mayor

Attest: _____

DATED: _____

LESSEE:
Gerald N. Long, dba
EAGLE MARINE

By: _____
Gerald N. Long

Title: _____

Attach copy of Resolution or other authorization of signatory for Eagle Marine.

Approved as to Form:

Approved:

Jeffrey A. Walter, City Attorney

Attorney for Gerald N. Long