



CITY OF LONG BEACH

DEPARTMENT OF PARKS, RECREATION & MARINE

C-11

2760 N. Studebaker Road, Long Beach, CA 90815-1697

(562) 570-3100 • FAX (562) 570-3109

www.lbparks.org

October 17, 2006

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Authorize the City Manager to execute all documents necessary to assign Lease No. 28285 from Naples Yacht Sales, Inc., a California corporation, to Heritage Yacht Sales, Inc., a California corporation. (District 3)

DISCUSSION

On January 28, 2003, the City Council authorized the execution of a five-year lease (Lease) with Naples Yacht Sales, Inc. (Assignor), for the operation of a marine vessel sales and brokerage business at 231 Marina Drive in the Alamitos Bay Marina. The leased facilities consist of building improvements and immediately adjacent dock space in the Alamitos Bay Channel.

On June 19, 2006, the Assignor contacted the Department of Parks, Recreation and Marine (Department) regarding the pending sale of the business to Heritage Yacht Sales, Inc. (Assignee), owned and operated by Toni and Ann Duni. In accordance with the Lease, the City must provide prior written approval to assign the Lease interest. Keyser Marston Associates (KMA) was requested to review the financial capacity and business expertise of Toni and Ann Duni. KMA's analysis report supports a conditional assignment of the Lease requiring the Duni's to provide a letter of credit as a guarantee for the annual minimum rent.

The terms and conditions of the assignment are as follows:

- Assignor: Naples Yacht Sales, Inc., a California corporation.
- Assignee: Heritage Yacht Sales, Inc., a California corporation.
- Security deposit: Assignee shall provide a letter of credit in favor of the City of Long Beach in the amount of the annual minimum rent. If Assignee fully performs under the Lease and Assignee's account is in good standing at the end of the initial five-year term, the letter of credit requirement shall be terminated.
- Premises: Building located at 231 Marina Drive and immediately adjacent dock space in the Alamitos Bay Channel.

HONORABLE MAYOR AND CITY COUNCIL

October 17, 2006

Page 2

- **Use:** The premises shall be used for office space in conjunction with the sale and brokering of marine vessels. The assigned dock space will be used in connection with sales and brokering activities. The premises shall also include limited use for vessel outfitting related to sales and brokering.
- **Term:** Five-year term from March 1, 2003, through February 29, 2008, with one five-year option for renewal at Assignee's sole discretion by giving written notice at least 90 days prior to expiration of the initial term.
- **Rent:** Annual minimum rent is \$24,000, or five percent of commissions for brokerage sales and five percent of profit on new boat sales, whichever sum is greater.
- **Commission or Broker Transactions:** Percentage of transactions shall be equal to five percent of any commissions for brokerage sales made at or from the premises, plus five percent of net profit on new boat sales generated from business done on or from the premises. Net profit shall be gross sales of vessels sold or leased or otherwise delivered, less the actual freight or transportation charge for such vessels paid to get them to the premises, and less the actual cost paid (net of any rebates or incentives received) for such vessels, and less the actual cost of additional equipment installed by Assignee on any such vessel so sold or leased or otherwise delivered.
- **Quarterly Reporting:** If Assignee's percentage of transactions exceeds the minimum rent, Assignee shall, within 30 days after each calendar quarter during the Lease term, pay the City such percentage of transactions and furnish the City with a detailed statement showing all elements of the calculations of percentage of transactions. Within 45 days after each December during the term of the Lease, Assignee will furnish the City with a detailed accounting, certified to by a certified public accountant, of all elements of the calculation of percentage of transactions for the just ended calendar year, including all sales and leases of vessels individually stated and all elements of deductions allowed used to arrive at net profit.
- **Point of Sale:** For the purpose of reporting sales taxes, Long Beach will be reported as the point of sale for all transactions.
- **Maintenance:** The Assignee will be responsible for all maintenance and repair of the premises, including the dock space.
- **Improvements:** Any improvements to the premises must receive prior written approval from the Manager of Marine Operations. The cost of improvements shall be the sole responsibility of the Assignee.
- **Utilities:** Assignee shall be responsible for the payment of all utilities.

HONORABLE MAYOR AND CITY COUNCIL

October 17, 2006

Page 3

- Signage: Any signage requires prior written approval from the Manager of Marine Operations, is at Assignee's sole cost and expense, and shall conform to all appropriate laws and regulations.
- Insurance: The Assignee shall maintain insurance to the satisfaction of the City's Risk Manager.

This matter was reviewed by Deputy City Attorney Charles Parkin on September 29, 2006, and Budget Management Officer David Wodynski on October 2, 2006.

TIMING CONSIDERATIONS

City Council action is requested on October 17, 2006, to enable the timely execution of the Lease assignment.


FISCAL IMPACT

All revenue resulting from this Lease will be deposited in the Tidelands Operating Fund (TF) in the Department of Parks, Recreation and Marine (PR).

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,

 FOR PHIL
HESTER

PHIL T. HESTER
DIRECTOR OF PARKS, RECREATION AND MARINE

PTH:JCS:MS:RG:rg

APPROVED:


GERALD R. MILLER
CITY MANAGER