

CITY OF SANTA BARBARA WATERFRONT DEPARTMENT

MEMORANDUM

Date: November 15, 2012
To: Harbor Commission
From: Scott Riedman, Waterfront Director
Subject: **Five-Year Lease Agreement with Merritt Bartlett Marine, Incorporated, doing business as Harbor Marine Works**

RECOMMENDATION:

That Harbor Commission review and recommend to the City Council approval of a five-year lease agreement with Harbor Marine Works at an initial base rent of \$4,157 per month, subject to annual CPI increases, for the boat repair yard at 122 Harbor Way.

DISCUSSION:

Damon Hulst assumed the Harbor Marine Works lease through a lease assignment process on June 10, 1999. The lease expired on February 28, 2011, and the tenant has occupied the space on a holdover status, with the Department's approval, since that time. The current base rent is \$4,157 or a percentage of gross sales, whichever is greater. The base rent is subject to annual CPI increases.

Due to some performance issues early in the lease term, staff contemplated opening up the boatyard concession to public bidding through a Request for Proposals (RFP) process. However, performance issues have been limited to two unsolicited customer complaints over the past six years, one in 2007 and one in 2009.

Therefore, after considering various options and interviewing several boatyard owners, it was determined that it would be in the best interest of the City to offer a limited lease renewal to Harbor Marine Works. The RFP option would be used if lease negotiations were unsuccessful. Staff met with the RFP Committee (Commissioners Sloan and Spicer present) and the Committee agreed with this course of action.

The business terms of the proposed lease are as follows:

- **Term:** Five years
- **Base Rent:** \$4,157 per month
- **Annual Rent Adjustment:** Cost of Living increases based on the Consumer Price Index (CPI)

- **Percentage Rent:**

- Ten percent (10%) of Gross Receipts on all labor, service repairs and fees
- Five percent (5%) of Gross Receipts on all crane services, yard rental fees ("lay days"), tool and equipment rentals and for the launching and retrieval of boats, rafts, barges and other watercraft
- Four percent (4%) of Gross Receipts on all marine supplies, hardware and equipment
- One percent (1%) of Gross Receipts on boat sales - new and used; warranty sales and service; off site contractual labor; catalogue and mail order sales; sales of marine electronics, electric motors and electric motor driven equipment, internal combustion engines, drives generators and related equipment
- Ten percent (10%) of all other Gross Receipts from any transactions which are not specifically defined above

Permitted Uses: (no change)

- Rental and repair of boats
- Service repairs and labor on boats
- Rental of tools and equipment
- Launching and retrieval of boats, rafts, barges and other watercraft
- Sales of marine supplies, hardware and equipment
- Boat sales - new and used; warranty sales and service; catalogue and mail order sales; sales of marine electronics, electric motors and electric motor driven equipment, internal combustion engines, drives generators and related equipment

Average annual sales for the boatyard have increased from \$585,000 per year under the previous owner to an average of \$1,041,000 under the current tenant. Percentage rent payments have increased correspondingly. Mr. Hulst replaced the Travel Lift Hoist, upgraded water and electrical service to the site, and made other improvements and substantial investment in the business. In 2006, Harbor Marine Works paid to have the yard runoff filtered and diverted from a storm drain into the City sewer system, correcting a substandard condition that existed for many years under prior owners of the boatyard.

The current lease dates from 1990 and has been assigned twice and amended five times. As such, it is an outdated lease format and lacks current insurance requirements, lease assignment provisions, maintenance and default clauses. The proposed lease modernizes those provisions and adds several more specific to the boatyard operation.

For example:

“ Tenant shall be required to haul out vessels that are in imminent danger of sinking as determined by the Waterfront Director. Landlord will guarantee payment of reasonable and customary fees for haulout and storage of said vessels.”

“A current schedule of basic prices charged per foot based upon vessels’ overall length, to include Travelift hauling, loading and launching, pressure washing, vessel and mast storage, and applicable yard fees shall be available on site and to the Waterfront Department upon request. It is recognized by both Tenant and Landlord that providing service on a firm bid basis is not always possible due to the nature of marine related repair, however when and where possible tenant agrees to furnish firm bids prior to commencing each scope of work.”

“Prior to commencing work on a customer’s vessel, Tenant shall require a work order (Attachment 1) and yard agreement signed by the customer. If in the course of working on a customer’s vessel Tenant discovers additional work that must be done that is not included in the original estimate, Tenant shall require a signed change order or email authorization prior to performing the additional work.”

The proposed term is relatively short (five years) to allow the Department to evaluate the performance of the tenant during the next five years. Since the lease is with a corporation, Mr. Hulst has signed the City’s personal guaranty. An audit of the business was completed by the CPA firm of Pyne, Waltrip, Decker & McCoy in May 2011, and revenue reporting was found to be in compliance with the lease. Harbor Marine Works is considered a tenant in good standing for purposes of a lease renewal as there are no outstanding default notices on file and rent payments have been prompt. Harbor Marine Works owner Damon Hulst supports the lease agreement (Attachment 2).

A copy of the lease is available for review at the Waterfront Administration office.

Attachments: 1. Work order form
2. Letter from Damon Hulst
3. Boatyard survey
4. Site Plan

Prepared by: Scott Riedman, Waterfront Director