

COMMITTEE MEMORANDUM

COMMITTEE: Committee of the Whole

FROM: Alvin G. Coby, City Manager

DATE: May 26, 2009

SUBJECT: Community Maritime Park Conditions Precedent

RECOMMENDATION:

That City Council deem the Conditions Precedent of the Maritime Park Master Development and Master Lease Agreements satisfied with the exception of Section 11.02 (a) (Studer Group Memorandum of Understanding for use of the Conference Center), (b), (d), (e) and 11.03 (b) and (e) with the aforementioned sections referred back to the Community Maritime Park Associates (CMPA) for modifications identified as necessary and appropriate by City staff. Further, that City Council modify Section 11.02 (f) to read "There are sufficient funds on deposit in the Trust Fund or are projected to be deposited in the Trust Fund to pay the Public Financing Debt Service without need for revenue directly derived from the Project."

SUMMARY:

Subject to the Master Development and Master Lease Agreements, the Community Maritime Park Associates (CMPA) are obligated to construct the Maritime Park Site and Public Improvements. The CMPA in the fulfillment of the obligation must satisfy a series of Conditions Precedent for commencement of the Master Lease Agreement and prior to undertaking any construction. Hence, without satisfying the Conditions Precedent and commencement of the Master Lease, the CMPA cannot execute the Development Agreement and Sub-Lease with their Developer (Maritime Park Development Partners, LLC).

In a memorandum dated April 30, 2009, the CMPA presented to the City the current status of the Conditions Precedent. The City Attorney reviewed the status report and has advised City staff that generally the Conditions Precedent have been satisfied but there are conditions that in the interest of the City and the Project should be rewritten and/or modified. While the 2006 Agreements allow for a waiver, it is the opinion of both City staff and the City Attorney's Office that rather than waiving any condition, the City Council should delay action on those conditions over which there is concern. However, in order to allow execution of the Development and Sub-Lease Agreements by CMPA and avoid project delays, the recommendation is to approve those conditions that have been fully satisfied.

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The specific Conditions Precedent that City staff considers in need of modification or rewriting are:

MASTER DEVELOPMENT AGREEMENT

- Section 11.02(a) – Paragraph D(1)(c) of the Studer Group Memorandum of Understanding (MOU) (Conference Center Use) states that upon closing of the bond issue (Public Financing) for the Maritime Park Public Improvements, Studer's legal counsel shall prepare an initial draft of the Use Agreement for the Conference Center for the conduct of seminars, conferences and other meetings. However, given that construction of the Conference Center is indefinitely delayed, this section of the MOU should be modified to retain the obligation for a defined period of time until a final decision is made relative to the Conference Center by the City and CMPA.
- Section 11.02(b) Pensacola Professional Baseball (Pensacola Pelicans) have an Agreement for the long term use of the Community Multi-Use Facility. The Agreement specifies CMPA completion of the Facility on or before March 31, 2011 as a material condition to the Team's obligation to take possession and use the Facility. Maritime Park Development Partners have projected project completion in March 2011 and under ideal conditions that schedule can be met; however, given that execution of the Agreement is pending, the Facility has not been designed and the Facility must be constructed, there is little margin. It is the opinion of City staff that the CMPA should negotiate an occupancy date for the Multi-Use Facility that allows additional time to complete the project.
- Section 11.02(d) requires that the University of West Florida (UWF) have sufficient funds to construct and equip a fifty thousand (50,000) square foot Museum or an alternate facility acceptable to the City and CMPA. Given the current funding available to UWF, the University cannot construct its proposed facility nor has another "level" been conceptualized. It is the opinion of City staff that action on this Condition be delayed until UWF has either secured funding for the proposed Facility or presents a different concept.

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- Section 11.02(e): UWF has entered into a Maritime Museum Lease Agreement. The City Attorney has identified two (2) aspects of the Agreement that should be rewritten in the interests of the City and the Project:
 1. Article XII Assignment and Subletting – the language is vague in that it allows UWF to “grant any concession or license, or to allow anyone to occupy the Property in its (UWF) discretion.” Staff does not object to UWF pledging their lease interests for loans to finance any portion or all of the cost of construction; however, any assignment should be with the expressed consent of the CMPA.
 2. Section 11.03(d) of the Master Agreement. Quinton D. and Mary P. Studer contributed two million two hundred fifty thousand dollars (\$2,250,000) to the Maritime Museum Project which in the event the Museum is not constructed is to be applied to the Public Improvement costs. The donation and the associated conditions are not referenced in or made part of the Agreement and as part of the Conditions Precedent but should be.
- Section 11.02(f) defines the proposed means of funding the project. While Tax Increment Finance (TIF) revenues have always been and remain the source for debt service payment, the secondary pledge is a covenant to budget and appropriate. Given that a covenant to budget pledges non-ad valorem revenue, the language “without need for any pledge of City general revenue or any special specific revenue” must be removed from the Condition.
- Section 11.03(b) is addressed under Section 11.02(a)
- Section 11.03(e) Memorandum of Understanding Between CMPA and UWF establishes that the University will utilize 16,000 square feet of space in the Conference Center for classroom and office space (Executive Center Space), upon completion (on or about the fall of 2012 or when budgetary constraints allow). Given that the construction of the Conference Center has been delayed indefinitely, as with the Studer MOU, this Understanding should be modified to retain the obligation for a defined period or until a final decision on the Conference Center is made.

City Staff has had recent discussions with UWF and it appears that solutions to all issues with the Conditions Precedent effecting UWF can and will be quickly resolved.

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PRIOR ACTION:

City Council approved the Development Agreement and Sub-Lease Agreement, April 23, 2009

FUNDING:

Budget: \$ N/A

Actual: \$ N/A

FINANCIAL IMPACT:

Project financing continues to be the issuance of 30-year fixed rate Capital Improvement Revenue Bonds to provide \$40 million in net proceeds secured by Tax Increment Financing revenues with a covenant to budget and appropriate non-ad valorem revenues.

ATTACHMENTS:

- 1) CMPA memorandum of April 30, 2009
- 2) Studer Group Memorandum of Understanding (building and lease development
- 3) Studer Group Memorandum of Understanding (Conference Center Use)
- 4) Pensacola Professional Baseball (Pensacola Pelicans) Use Agreement
- 5) University of West Florida Sub-Lease Agreement
- 6) University of West Florida Memorandum of Understanding

STAFF CONTACT:

PRESENTATION:

No