
DOUGLAS LAW FIRM

ATTORNEYS AND COUNSELORS AT LAW

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FLEMING ISLAND, & FLAGLER BEACH

DATE: April 16, 2026
TO: Mayor Buddy Pinder, Vice Mayor Douglas Dew, and Commissioner Jessica Finch,
Town of Marineland
FROM: Jeremiah Blocker, Town Attorney and Joe Saviak, Attorney at Law
RE: Review of the Marina Management Contract

Overview and Analysis

The Douglas Law Firm was asked by the Town Commission to review the current marina management contract between the Town of Marineland and Mobius Marine, Inc. Three contracts and a contract extension were reviewed. To do this involved significant effort by the Town Clerk in document retrieval from both the Town and county government. Documents relating to this contractual relationship were found in the possession of the Town and Flagler County Government. The process required analysis of these documents and interviews by the town's legal team. The former town attorney and former county attorney were contacted. The Town Clerk has attempted without success to obtain an audiotape of the 1/19/23 Town commission meeting at which the 2014 contract extension was made.

The former Town Attorney believes that the Town of Marineland engaged in competitive procurement and issued a Request for Proposals (RFP) in 2011 for marina management services. From the record, it is unclear how many proposals in response were received by the Town. It is possible that the size and limited total revenue opportunities might have influenced the degree of market interest and participation in this opportunity. Mobius Marine was selected. According to their Statement of Qualifications, the firm has significant experience and expertise in this arena.

Three contracts (2011, 2013, 2014 – present) and one extension (2023) are in the possession of the Town. Three different Mayors signed these contracts and single extension, and multiple Town commission members supported the approval of these contracts with Mobius Marine, Inc. Although the contractual provision concerning the revenue ratio to the parties changed from 60% of marina earnings to the Town/40% to Mobius Marine in the 2011 and 2013 contracts to a set \$18,000 annually to the Town in the 2014 contract, other contractual terms are identical or similar between the three versions.

The current 2014 contract may be renewed or extended twice for ten years by mutual agreement of the parties which has been done once in 2023. A new RFP would not be required if an extension was still available under the contract and could be agreed to by both parties.

Pages 1-22 of the current governing contract are available. Pages 22-30 from the extended 2014 contract are missing and efforts to locate these pages have been attempted but without success. Pages 1-22 appear to contain many if not all of the key terms of the contract. While there is a 2023 extension, this 2014 contract appears to be the sole and governing contract. The former Town Attorney is not aware of any other versions of the contract.

Under the agreement, the status of Mobius Marine is that of an independent contractor. Under the contract, the Town reviews and approves the marina marketing activities, key operational details such as hours of service, and the annual budget of Mobius Marine. The Town must also approve in advance a specific list of changes in capital assets.

The contract specifies different timelines for termination of the contract depending on specific and legally operative events to effectuate the end of the contractual relationship with the Town. Events with different timelines for contract termination are described on pages 11-14 of the contract. Facts would have to be gathered to support and prove that one of these specific triggering events has transpired.

According to the former town attorney Dennis Bayer, when the town population substantially declined, the composition of the Town Commission was changed to three members. He believes this was effectuated in 2005. It is unclear if this was done through a Town ordinance or charter change. The specific ordinance or charter amendment has not been located. It is clear from meeting minutes that the Town Commission has operated with three members for a number of years lending credence to that reported history. Other local government boards in Flagler County operate with three members.

Although the January 19th, 2023, meeting minutes only reflect the motion and a second to extend the current contract, the Town attorney remembers a vote in the affirmative by all three commission members. It is logical to assume that the two who made the motion to approve the contract in the meeting minutes then voted to approve the contract. The Town Clerk made all efforts to obtain the audio recording of this 1/19/23 meeting but has not been able to secure it.

There appears to be sufficient consideration for the contract extension as one party is promising to continue its work in managing the marina and the other party (the Town) is promising continued revenue production and sharing.

On pages 11-14 of the contract, there is a list of specific conditions which could be the basis for termination by the parties. These are included at the end of this memo. For these defenses to operate and void the contract, they must be proven factually in a court of law. Facts would have to be gathered to support and prove one of these recognized defenses to contract formation and enforcement.

In the event of a contract termination which could not be upheld in court, contractual damages and remedies can be expectation or reliance damages, restitution, or specific performance. Expectation damages seek to provide the successful plaintiff with what they would have received from the contract, reliance damages aim to restore the plaintiff to where they would be had they not depended on the contract, restitution pays the plaintiff the profits of the defendant, and specific

performance compels the defendant to perform their duties under the contract when appropriate. In addition, the contract allows for recovery of legal fees and expenses by the winning party. The contract does require mediation prior to litigation in the event of a dispute.

This memo is intended only to address legal questions that the Town Commission may have. Administrative, financial, operational, and other aspects of this contractual relationship are policy questions to be addressed by the Town Commission. However, in the interest of best serving the Town of Marineland, several recommendations are made which involve policy issues.

Recommendations

The Town may want to consider requesting to amend this contract with the management company. The Town Attorneys are available to discuss potential amendments to the contract from the Town Commission with Mobius Marine, Inc..

If the Town wants to pursue legal action to void the current contract, facts will need to be developed and substantiated which could prove one or more of the defenses to contract formation and enforcement available to the Town.

All Town contracts should contain an amendment provision and process.

All Town contracts should consider containing a clause enabling termination for the convenience of the government. This is a well-utilized provision found in contracts with government. It enables the government to unilaterally end the contractual relationship.

All final and actionable votes by the Town commission during Town commission meetings need to be recorded and retained within accessible meeting minutes.

An analysis of annual revenue to the Town during the life of this contract (specific revenue by year) might enable the Town Commission to compare different revenue sharing formulas. Agreeing to a revenue sharing formula is a policy decision by the Town commission to be incorporated into the contract governing the relationship.

The Town Commission might want to evaluate key performance metrics of the marina under the management of Mobius Marine, Inc.

Retention and access to Town contracts and their supporting documents should be guaranteed with a records management system. Retention and access to the audio recordings of Town commission meetings through an effective and easily accessible records management system should remain a priority.

A potential town administrative policy recommendation might be for staff to provide an analysis or report with any agenda item involving approval of a new contract or extension of an existing contract to offer elected policymakers with more information to aid in their decision-making. This resource would also aid future Town commissions. Moreover, annual staff reports to the Town

Commission on the performance of major contracts with applicable metrics such as revenue generation for the community might be advisable.

Termination – pages 11-14 of the 2014 contract:

IV. TERMINATION OF AGREEMENT.

In the event of the termination of this Agreement under any of the provisions contained in this Article, this Agreement shall become null and void and unenforceable by any Party hereto, and neither the Town nor Mobius shall have any further liability or obligation except as provided herein.

Immediately upon notice of termination as provided in this Article, Mobius shall discontinue its operations at the Marina and shall remove all its personal property no later than the effective date of termination. Any personal property of Mobius not removed in accordance with this paragraph may be removed by the Town for storage at the cost of Mobius or shall constitute a gratuitous transfer of title thereof to the Town for whatever disposition is deemed to be in the best interests of the Town. The Town shall not be liable to Mobius for safekeeping for Mobius' personal property during or after termination of this Agreement.

A. TERMINATION BY THE TOWN.

This Agreement may be terminated by the Town under the terms and conditions as set forth below.

1. Immediate Termination.

The Town may immediately terminate this Agreement by providing written notice to Mobius upon the occurrence of any of the following:

- a. Voluntary bankruptcy or reorganization by the Mobius, or the institution of proceedings and involuntary bankruptcy against Mobius, if such proceedings continue for a period of more than ninety (90) days;
- b. Assignment by Mobius for the benefit of creditors;
- c. Abandonment or discontinuation of operations except as provided herein for more than a seven day period without prior written approval from the Town;
- d. Discovery of any misstatement in Mobius' Statement of Qualifications leading to the award of this Agreement, which in the determination of the Town significantly affects Mobius' qualifications to perform under the Agreement.

1. TERMINATION AFTER THIRTY (30) DAYS.

The Town may provide written notice of default and termination of this Agreement within thirty (30) days, as set forth herein, for the reasons set forth below:

- A. Nonpayment of any sum or sums due hereunder after the due date for such payment; provided, however, that such termination shall not be effective if Mobius makes the required payments during the thirty (30) calendar day period following mailing of written notice.
- B. Existence of any condition imposing a threat to health or safety of public patrons; provided, however, that Mobius shall have the opportunity to correct such condition within the thirty (30) calendar day period from receipt of written notice.
- C. A final determination in a court of law in favor of the Town in litigation instituted by Mobius against the Town or brought by the Town against Mobius.
- D. Instances in which a corporate acquisition or a merger represents a conflict of interest or is contrary to any local, state, or federal laws.

In the event that Mobius does not cure any breach described in this subsection, to the satisfaction of the Town, within the thirty (30) calendar days of the notice as set forth herein, then this Agreement shall be terminated.

2. TERMINATION AFTER FORTY-FIVE (45) DAYS.

The Town may provide written notice of default and termination of the Agreement within forty-five (45) days, as set forth herein, for the reasons set forth below:

- A. Nonperformance of any covenant of this Agreement not otherwise addressed in Section V(A) of this Agreement.
- B. The inability or failure of Mobius to provide the Town with an unqualified, certified statement of Marina occupancy and/or gross revenues, or to strictly adhere to the revenue control procedures established in this Agreement.

In the event that Mobius does not cure any breach described in this subsection, to the satisfaction of the Town, within the forty five (45) calendar days of the notice as set forth herein, then this Agreement shall be terminated.

3. HABITUAL DEFAULT.

Notwithstanding the foregoing, in the event Mobius has repetitively defaulted four (4) times within a twelve (12) month period in the performance of this Agreement, or has breached any of the terms, covenants and conditions required herein to be kept and performed by Mobius, regardless of whether Mobius has cured each individual condition of breach or default, Mobius may be determined by the Town to be a "habitual violator." At the time such determination is made, the Town shall issue to Mobius a written notice advising of such determination citing the circumstances therefor. Such notice shall also advise Mobius that there shall be no further notice or grace periods to correct any subsequent breaches or defaults and that any subsequent breaches or defaults, whatever nature taken, with all previous breaches and defaults shall be considered cumulative and collectively shall constitute condition of non-curable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, the Town may cancel this Agreement upon the giving of written notice of termination to Mobius, with such termination to be effective upon the 10th calendar day following the date of receipt thereof. In the event of termination as provided in this subsection, all payments due hereunder shall be payable and immediately due, up to and including the effective date of termination. Mobius shall have no further rights hereunder.

4. NATURAL DISASTER

In the event that the Town's Marina is destroyed or significantly damaged by a natural disaster or act of God, either Party may terminate this Agreement upon providing 30 days' written notice to the other Party.

5. LOSS OF TAX-EXEMPT STATUS

The Town shall provide notice to Mobius, and an opportunity to cooperate with the Town, as to the measures that may be necessary to protect the tax exempt status for Ad Valorem purposes. In the event that the Town loses its tax exempt status on the existing municipal improvements as a result of the implementation or enforcement of the terms of this Agreement, either Party may initiate to modify the terms of this Agreement upon providing 30 days' written notice to the other Party.

B. TERMINATION BY MOBIUS.

Mobius shall have the right, upon thirty (30) calendar days from receipt of written notice to the Town by certified or registered mail sent to the address specified in Section VI(l) above, to terminate this Agreement at any time after the occurrence of one or more of the following events:

1. Issuance by any court of competent jurisdiction of any injunction substantially restricting the use of the Marina property, which injunction stays in force for more than thirty (30) calendar days.
2. A breach by the Town of any of the terms, covenants, or conditions contained in this Agreement and the failure of the Town to remedy such breach for a period of ninety (90) calendar days after receipt of written notice sent by registered or certified mail from Mobius of the existence of such breach.
3. The assumption by any governmental agency, or any other authorized agency, of the operational control or use of the Marina.

C. TERMINATION FOR CONDEMNATION.

1. TOTAL CONDEMNATION.

If during the term of this Agreement or any extension or renewal of this Agreement, all of the MOA is taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or is sold to the condemning authority under threat of condemnation, this Agreement shall terminate, and the payments will be abated during the unexpired portion of this Agreement effective as of the date the condemning authority takes the said Area.

2. PARTIAL CONDEMNATION.

If less than all, but more than ten percent (10%) of the MOA is taken for any public or quasi-public use under any governmental law, ordinance, or regulation or by the right of eminent domain, or is sold to the condemning authority under threat of condemnation, either Party may terminate this Agreement by giving written notice to the other Party within sixty (60) days. If the said area is partly condemned and neither Party elects to terminate this Agreement, or if less than ten percent (10%) of the said area is condemned, this Agreement shall not terminate, but any payments to be made hereunder shall be adjusted equitably during the unexpired portion of this Agreement.

3. CONDEMNATION AWARD.

The Town shall receive the entire award from any condemnation, and Mobius shall have no claim to that award or for the value of any unexpired term of this Agreement. A breach by the Town of any of the terms, covenants, or conditions contained in this Agreement and the failure of the Town to remedy such breach for a period of ninety (90) calendar days after receipt of written notice sent by registered or certified mail from Mobius of the existence of such breach.

The assumption by any governmental agency, or any other authorized agency, of the operational control or use of the Marina.