



FILED
OFFICE OF THE CITY CLERK
OAKLAND

2016 MAR 30 AM 10: 59

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Stephanie Hom
Interim Director
Oakland Parks & Recreation

SUBJECT: Oakland Golf LLC – Sublease and
Operating Agreement

DATE: March 18, 2016

City Administrator Approval

Date:

3/29/16

RECOMMENDATION

Staff Recommends That The City Council Adopt A Resolution Authorizing The City Administrator Or Her Designee To 1) Execute A Third Amendment To The Sublease And Operating Agreement With Oakland Golf, LLC For The Operation Of Metropolitan Golf Links Course To Restructure The Minimum Annual Guarantee Rent Amount To \$400,000, Amend The Percentage Rent Of Gross Revenue From Golf Activities To 13.5%, And Modify The Sublease Term To Twenty-Two Years; And 2) Execute A Settlement Agreement With Oakland Golf, LLC To Resolve Payment Of Delinquent Rent

EXECUTIVE SUMMARY

Council action adopting the proposed resolution would authorize the City Administrator to execute the following:

1. A Third Amendment to Sublease and Operating Agreement ("3rd Amendment") to restructure the existing Sublease and Operating Agreement between the City of Oakland and Oakland Golf, LLC for the Metropolitan Golf Links located on Port of Oakland property at Oakland International Airport to,
 - a. Restructure the Minimum Annual Guarantee rent amount from \$624,097 to \$400,000;
 - b. Restructure the Percentage Rent of Gross Revenue from Golf Activities from 20 percent to 13.5 percent; and
 - c. Modify the Sublease term from a potential 27 years to 22 years.
2. A Settlement Agreement to resolve the existing rental delinquency of approximately \$566,000 with equal payments over a 48-month period.

Item: _____
Finance Committee
April 12, 2016

BACKGROUND / LEGISLATIVE HISTORY

The Metropolitan Golf Links is an 18-hole course, located at the northeast corner of Oakland International Airport. The golf course property is leased by the Port of Oakland to the City of Oakland pursuant to the Lease dated as of June 1, 1965, and the Amended and Restated Lease dated March 16, 1999 (“Lease”). The City of Oakland subleases the golf course to Oakland Golf, LLC, (“Oakland Golf”) pursuant to a Sublease and Operating Agreement (“Sublease”) dated August 24, 2001. The Sublease is for a 25 year term, commencing May 23, 2003, with options to extend the term (unilateral options in favor of Oakland Golf) for three additional five (5) year periods; the latest possible expiration date is May 2043. As allowed under the Sublease, Oakland Golf has retained CourseCo, Inc., (“CourseCo”) a professional golf course management company, to operate, manage, and maintain the golf course. Unlike many municipal golf courses that are developed with public funds, as part of its sublease obligation, Oakland Golf has invested more than \$9.5 million to construct the golf course, club house and related facilities.

The rent structure in the Sublease is such that Oakland Golf pays a Minimum Annual Guarantee (MAG) rent amount, or an agreed Percentage Rent of gross revenue from the combination of Golf Activities (e.g., green fees, carts, range, and instruction) (20 percent), Merchandise & Services (four percent), and Food & Beverage sales (four percent), whichever is greater.

To assist Oakland Golf in the startup of its operations, the initial year (FY 2003-04) MAG was \$100,000 and stepped-up each year by \$100,000 until it reached \$500,000 in FY 2006-07. Thereafter, the MAG is adjusted annually by the Consumer Price Index (“CPI”) each July 1; and as of July 1, 2015, is \$624,097. Pursuant to the Lease, “the Port shall collect all Golf Course Revenue derived under the [Sublease] and shall forward fifty percent (50%) of such revenue to the City...”.

Temporary Rent Relief: Beginning in FY 2006-07 (shortly after commencement of the full MAG requirement), Oakland Golf stated that it could not continue to operate Metropolitan Golf Links at a financial loss for an indefinite, sustained period. CourseCo reported that Metropolitan Golf Links was losing between \$400,000 to \$500,000 annually on a cash flow basis, due in large part to Oakland Golf’s unrealized projected revenue growth, increasing capital improvement requirements, higher operating expenses, and a soft Bay Area regional golf market. In addition, the required principal pay-down of invested capital was a significant drain on this cash flow.

In 2008, Oakland Golf approached the City to request modifying the terms of the Sublease for temporary, partial rent relief with the anticipation that with an improving global economy, the financial fortunes of the Bay Area and Metropolitan Golf Links would also improve. At its May 6, 2008 meeting, the City Council approved Resolution No. 81274 C.M.S. providing for a five-year rent relief package reducing the MAG by 50 percent (“Rent Relief”). The Council directed City staff to come back each year of the five-year Rent Relief period to review the financial condition of Oakland Golf.

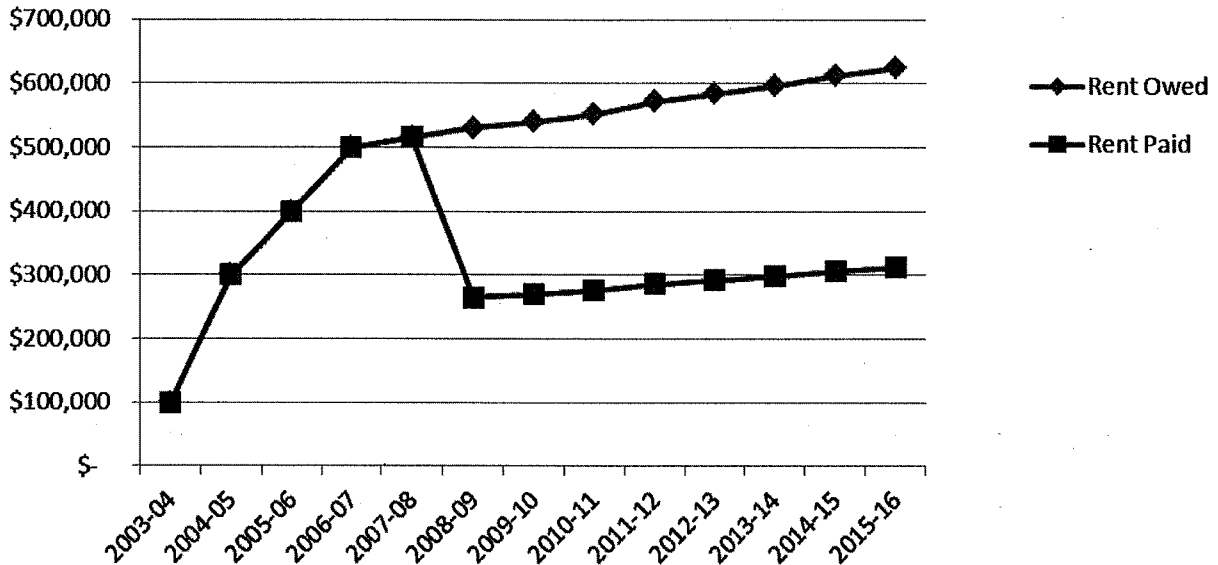
Consistent with the City Council’s action, the Port of Oakland Board adopted Resolution No. 08177 C.M.S. on July 15, 2008, which authorized the execution of a First Amendment to Sublease and Operating Agreement (“1st Amendment”) between Oakland Golf and the City of Oakland, which provided for a five-year Rent Relief period commencing on July 1, 2008, and

expiring on June 30, 2013, subject to Council's annual approval of the Rent Relief (with the concurrent expiration on June 30, 2013).

Starting July 1, 2013, the five-year Rent Relief period had ended. Oakland Golf continued paying half the MAG owed without approval by the City or the Port. On November 4, 2013, the City Council approved Resolution No. 84678 C.M.S. extending the rent relief through June 30, 2014. However, the Port did not approve the additional year of rent relief and instead, Oakland Golf, the City and the Port negotiated and entered into a "Settlement Agreement with Respect to Metropolitan Golf Links Fiscal Year 2013-2014 Rental Obligations."

In a continuing pattern, since the expiration of the rent relief package, Oakland Golf LLC has continued to submit payment of approximately \$300,000 in rent, approximately 50 percent of the full rental obligation. The below **Chart 1** illustrates the contractual amount of the MAG (without Rent Relief) and the amount of rent actually paid by Oakland Golf, LLC for the past 13 years.

Chart 1. Oakland Golf, LLC Rent Paid vs. Rent Owed



Consultant's Report: In May 2013, Oakland Golf and the City received from Pro Forma Advisors, LLC, a nationally recognized golf course consultant, a report titled, "Summary Report: Evaluation of Rent Structure Metropolitan Golf Links – Oakland, California". The Summary Report discusses findings of current Bay Area golf market conditions, historical and projected performance of Metropolitan Golf Links, and includes recommendations for a supportable and sustainable rent structure. Based upon the findings in the Summary Report, Oakland Golf requested permanent MAG relief to \$248,000 versus the FY 2015-16 contract MAG of \$624,097, and which is in excess of the 50 percent Rent Relief provided by the City and Port in the prior six years. Such a dramatic reduction in rental was deemed unacceptable by City and Port staff, the City Council and by the Board. For over the past year, City and Port staffs have been meeting with Oakland Golf to negotiate economic terms and conditions reflecting an achievable and sustainable rent structure.

ANALYSIS AND POLICY ALTERNATIVES

Sublease Restructuring

City and Port staffs negotiated with Oakland Golf to modify a minimal number of sections of the Sublease. As listed in the below **Table 1**, items open for discussion included Term, MAG, frequency of CPI adjustment to the MAG, percentage rental amounts, and management fee:

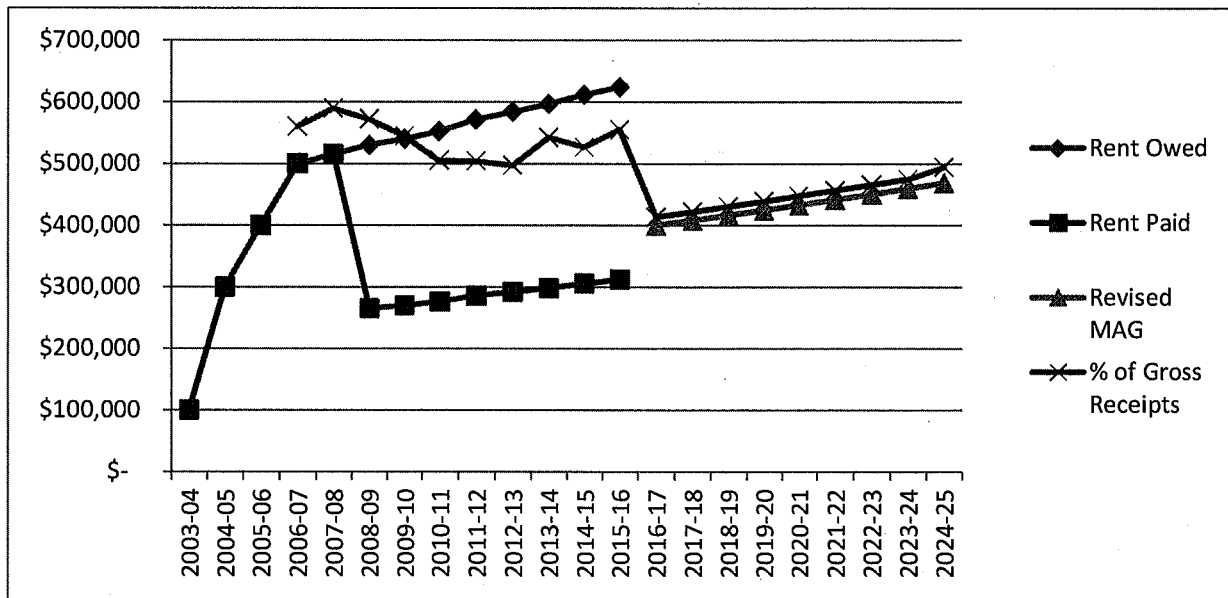
TABLE 1. Points of Negotiation

Discussion Point	Existing <i>Sublease</i> Terms	Oakland Golf, LLC Proposal	City and Port Staff Position
Sublease Term	Current term expires May 2028 + options ¹ to extend for (3) five (5) year periods	No change proposed	Modify Sublease term to 22 years ² - to expire in 2038, by eliminating one five (5) year option
Minimum Rent (MAG)	\$624,097/year	\$400,000/year	Acceptable to City and Port
Rent Adjustments	Annual adjustments per CPI	CPI adjustments (not to exceed 10%) every 5 years	Keep annual CPI adjustments (next adjustment effective 07/01/2017), but will accept CPI adjustments every 30 months.
% Rents – Golf Activities	Currently at 20% of gross receipts	12% of gross receipts	13.5% of gross receipts
% Rents – Food/Beverage	4% of gross receipts	No Change	Acceptable to City and Port
% Rents – Merchandise	4% of gross receipts	No Change	Acceptable to City and Port
Management Fee	5.5% of gross receipts	4% of gross receipts	Acceptable to City and Port

- Notes. 1. Options to Extend the Term, are at the sole discretion of Oakland Golf, LLC.
 2. Modified Sublease Term consists of 12 years of existing Sublease term + (2) additional 5-year options.

City and Port staffs believe that the proposed modifications are significant and meaningful improvements from Oakland Golf's initial proposal (from 2014) and represent a fair compromise. Importantly, as shown in the **Chart 2** below, while the percentage for golf activities is suggested to be reduced from 20 percent to 13.5 percent, based on historic gross sales at Metropolitan Golf Links, Oakland Golf will be paying a small dollar amount of percentage rental as of the effective date of the 3rd Amendment. If and when sales begin to increase, the City and Port will start sharing in the increased sales volume.

Chart 2. Oakland Golf, LLC Rent Paid vs. Rent Owed and Projected Rent



Furthermore, as a trade-off for approving the reduction in MAG and percentage for golf activities, City and Port staffs negotiated a reduction in the remaining term of the Sublease by removing one of the three five-year renewal options. If Oakland Golf exercises the two remaining five year options, it will have at least 22 remaining years of term in the Sublease to fully amortize its original capital investment.

Settlement Agreement for Under Payment of Rent

As noted above, and with no City or Port authority to do so, Oakland Golf, since July 2014, continues to short-pay the MAG by 50 percent as if the City and Port approved an extension to the expired Rent Relief. Through April 2016, this underpayment in rent totals approximately \$566,000 (split equally between the City and the Port).

Concurrent with the Sublease restructuring, City and Port staffs negotiated a Settlement Agreement for Oakland Golf to reimburse the total rental delinquency as of the effective date of the 3rd Amendment (anticipated to be May 1, 2016). Oakland Golf agrees to reimburse the full amount of this delinquency over a four-year (48 month) period, with equal and interest-free monthly payments of approximately \$11,790. As with the modifications to the Sublease, City

and Port staffs believe that the proposed delinquency repayment schedule is a significant obligation and represents a fair compromise.

FISCAL IMPACT

In FY 2015-16, the revenue estimated from the MAG rent was estimated at \$312,048 (50 percent of the existing MAG \$624,097). The City's share of this rent amount was estimated at \$156,024, with the Port receiving the other \$156,024.

The proposed MAG is \$400,000 so the approval of the 3rd Amendment will generate additional annual revenue from the MAG rent of approximately \$50,000 each for the City and the Port.

In addition, the proposed Settlement Agreement for the delinquent rent owed to the City and Port will generate additional revenue over the 48-month payment period. This repayment is estimated at \$566,000, half for the City and the other half for the Port.

The increases in revenue as a result of the amendment to the agreement and the collection of delinquent rent owed to the City will positively impact the Golf Enterprise Fund (3200) and will be factored into revenue estimates in the FY 2016-17 midcycle budget.

PUBLIC OUTREACH / INTEREST

No outreach was deemed necessary for the proposed policy action beyond the standard City Council agenda noticing procedures.

COORDINATION

This report and the actions discussed have been coordinated with staff from City of Oakland's offices and departments of City Attorney's Office, City Administrator's Office, Oakland Parks & Recreation, and Economic and Workforce Development – Real Estate, as well as from the Port of Oakland.

This report and legislation have been reviewed by the Office of the City Attorney and the Controller's Bureau.

SUSTAINABLE OPPORTUNITIES

Economic: Metropolitan Golf Links creates sales tax revenue through green fees, cart rental, food, and beverage and by drawing visitors to Oakland who might also make purchases at other nearby businesses.

Environmental: Metropolitan Golf Links is a fully-certified Audubon International Cooperative Sanctuary. CourseCo is the first golf management firm to receive the Governor's award for economic and environmental leadership for sustainable practices.

Social Equity: The Metropolitan Golf Link's Oakland Turfgrass Education Initiative (OTEI) is a nonprofit that exposes 80 -100 Oakland youth each year to turfgrass management with the objective of helping youth create career paths into industries not currently offered to urban youth. In addition, Metropolitan Golf Link's Junior Golf Program offers free golf equipment and lessons to children ages 6-17.

CEQA

This report is not a project under CEQA.

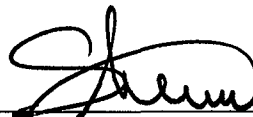
ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Adopt A:

Resolution Authorizing The City Administrator Or Her Designee To 1) Execute A Third Amendment To The Sublease And Operating Agreement With Oakland Golf, LLC For The Operation Of Metropolitan Golf Links Course To Restructure The Minimum Annual Guarantee Rent Amount To \$400,000, Amend The Percentage Rent Of Gross Revenue From Golf Activities To 13.5%, And Modify The Sublease Term To Twenty-Two Years; And 2) Execute A Settlement Agreement With Oakland Golf, LLC To Resolve Payment Of Delinquent Rent

For questions regarding this report, please contact Robert Davila, Administrative Services Manager, Oakland Parks & Recreation, at 510-238-3926.

Respectfully submitted,



STEPHANIE HOM
Interim Director, Oakland Parks & Recreation

Prepared by:
Robert Davila, Administrative Services Manager
Oakland Parks & Recreation

Macanlay
City Attorney

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2016 MAR 30 AM 10:09 **OAKLAND CITY COUNCIL**

RESOLUTION No. _____ C.M.S.

Introduced by Councilmember _____

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR HER DESIGNEE TO 1) EXECUTE A THIRD AMENDMENT TO THE SUBLEASE AND OPERATING AGREEMENT WITH OAKLAND GOLF, LLC FOR THE OPERATION OF METROPOLITAN GOLF LINKS COURSE TO RESTRUCTURE THE MINIMUM ANNUAL GUARANTEE RENT AMOUNT TO \$400,000, AMEND THE PERCENTAGE RENT OF GROSS REVENUE FROM GOLF ACTIVITIES TO 13.5%, AND MODIFY THE SUBLEASE TERM TO TWENTY-TWO YEARS; AND 2) EXECUTE A SETTLEMENT AGREEMENT WITH OAKLAND GOLF, LLC TO RESOLVE PAYMENT OF DELINQUENT RENT

WHEREAS, Metropolitan Golf Links is an 18-hole regulation public golf course located at the northeast corner of the Oakland International Airport and was developed on the site of the former City of Oakland Galbraith Municipal Golf Course ("Premises"); and

WHEREAS, the Port of Oakland ("Port") is the lessor of that real property and the City of Oakland ("City") is the lessee pursuant to the Lease dated as of June 1, 1965, as amended by the Amended and Restated Lease dated March 16, 1999, as amended by the First Supplemental Agreement dated July 1, 2000, the Second Supplemental Agreement dated July 11, 2001, the Third Supplemental Agreement dated July 1, 2008, and the Fourth Supplemental Agreement dated March 24, 2015, collectively referred to herein as the "Lease"; and

WHEREAS, in 2001 with the Port's consent the City subleased the Premises to Oakland Golf LLC in an agreement entitled "Sublease and Operating Agreement" dated August 24, 2001, as amended by the First Amendment to the Sublease and Operating Agreement dated July 1, 2008 and the Second Amendment to the Sublease and Operating Agreement dated March 24, 2015, collectively referred to herein as the "Sublease" for the purpose of operating and managing the Metropolitan Golf Links Golf Course, a public golf course, (the "Course"); and

WHEREAS, between 2001 and 2003 Oakland Golf LLC completed a \$14 million capital improvement project at Metropolitan Golf Course, \$9.5 million of which was funded by Oakland Golf LLC, and \$4.5 million of which was funded by the Port and the City; and

WHEREAS, the City Council approved Resolution No. 81274 C.M.S. on May 6, 2008 and the Port approved Resolution No. 08177 on July 15, 2008 providing a five-year, fifty percent (50%) rent relief package through Fiscal Year 2012-13, subject to annual review, in the total amount of approximately \$1 million, and the Second Amendment to the Sublease was executed, in order to continue the economic viability of the enterprise; and

WHEREAS, the City Council approved Resolution No. 84678 C.M.S. on November 5, 2013 extending the rent relief through the Fiscal Year 2013-14, however, the Port did not approve the additional year of rent relief and instead negotiated and entered into a "Settlement Agreement with Respect to Metropolitan Golf Links Fiscal Year 2013-2014 Rental Obligations" authorized by Port Resolution No. 14-83 and Oakland City Council Resolution No. 85458 C.M.S.; and

WHEREAS, since the expiration of the rent relief package, Oakland Golf LLC has continued to submit payment of approximately \$300,000 in rent, approximately 50% of the full rental obligation; and

WHEREAS, in May 2013, Pro Forma Advisors, LLC conducted an evaluation of the rent structure for the Metropolitan Golf Links and recommended a permanent Minimum Annual Guarantee rent amount of \$248,000, which is less than the 50% rent relief, and unacceptable to the City and Port; and

WHEREAS, it is in the interest of all parties to modify the Sublease toward a supportable and sustainable rent structure; now, therefore, be it

RESOLVED: That the City Administrator or her designee is hereby authorized to execute a Third Amendment to the Sublease and Operating Agreement with Oakland Golf LLC to restructure the Minimum Annual Guarantee rent amount from \$624,097 to \$400,000, amend the percentage rent of gross revenue from golf activities from 20% to 13.5%, and modify the sublease term to remove one of Oakland Golf's five-year options to renew decreasing the maximum term from twenty-seven years to twenty-two years; and be it

FURTHER RESOLVED: That the City Administrator is hereby authorized to execute a Settlement Agreement to resolve payment of delinquent rent and have Oakland Golf LLC make payment in the full amount of approximately \$566,000 due in equal, interest-free monthly payments over a 48-month period; and be it

FURTHER RESOLVED: That the Office of the City Attorney shall approve the Third Amendment to the Sublease and Operating Agreement and the Settlement Agreement as to form and legality and copies will be on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB. KAPLAN, REID and PRESIDENT GIBSON MCELHANEY
NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California