CITY OF OAKLAND

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2015 MAR 19 PM 3: 01

AGENDA REPORT

TO: John A. Flores
INTERIM CITY ADMINISTRATOR

FROM: Mark Sawicki

SUBJECT: Amendment of Ground Lease for Oakland Marriott Hotel

DATE: March 19, 2015

City Administrator Approval		Date	3/19/15

COUNCIL DISTRICT: 3

RECOMMENDATION

Staff recommends that the City Council adopt:

An Ordinance Authorizing The Interim City Administrator, Without Returning to the City Council, to Negotiate and Execute an Amendment to the Oakland Marriott City Center Ground Lease Between the City of Oakland and either the Current Tenant, the CIM Group, Inc. (or a Related Entity), or the Prospective Tenant, AGRE DCP Oakland City Center LLC (or a Related Entity), Clarifying or Modifying Various Lease Provisions, Including the Terms of the Tenant's Option to Purchase

OUTCOME

Adoption of the proposed Ordinance will clarify or modify certain provisions included in the ground lease (the "Ground Lease") for the Oakland Marriott City Center (the "Marriott") and facilitate the sale of the Marriott from its current owner, CIM Group, Inc., or a related entity ("CIM"), to AGRE DCP Oakland City Center LLC ("AGRE DCP"), a company consisting of Apollo Global Management ("Apollo") and DiNapoli Capital Partners, LLC ("DiNapoli").

EXECUTIVE SUMMARY

The City of Oakland ("City") has a Ground Lease with CIM for a term of 66 years for City-owned property (the "Site") on which a Hyatt Regency Oakland Hotel, now the Marriott, was constructed in 1981. The Ground Lease expires in 2047. CIM is selling the Marriott to AGRE DCP, and CIM and the prospective buyer have requested that various provisions in the Ground

Lease be clarified or modified by amending the agreement either before or after the close of the sale of the hotel.

Staff is recommending that the City Council adopt legislation authorizing the Interim City Administrator (the "City Administrator") to approve an amendment to a Ground Lease for the Marriott between the City and CIM or AGRE DCP. The proposed amendment will, among other minor clean-up changes, clarify or modify the terms of the tenant's option to purchase, including processing and closing terms for the option sale, to replace terms that may have been on a now-missing page of the Ground Lease and delete references to a Financing Agreement, a Restructuring Agreement and a Payment Agreement between the City and a previous owner, Oakland Renaissance Associates ("ORA"), that are no longer applicable since all amounts due to the City under these agreements were fully repaid in 2007.

BACKGROUND/LEGISLATIVE HISTORY

On August 12, 1981, pursuant to Ordinance No. 10117 C.M.S., the City entered into the Ground Lease with Oakland Hotel Associates, Ltd. ("OHAL"), for the development of a Hyatt Regency Oakland Hotel, now the Marriott, on the Site. The Ground Lease gives the lessee (the "Ground Lease Tenant") an option to purchase the Site at its fair market value.

On December 29, 1986, as part of an effort by the City and OHAL to restructure the hotel finances, the Ground Lease was assigned from OHAL to ORA, a limited partnership, and the City agreed to provide ORA $3.2 million in financing.

Concurrent with the assignment of the Ground Lease from OHAL to ORA, the Ground Lease was amended for the first time in December 29, 1986, to address (1) deferrals of rent and other fees, (2) damage assessments and repair cost estimates in the event that the hotel is damaged or destroyed by casualty, and (3) the terms and conditions for refinancing existing debt obligations.

The Ground Lease was further amended in August 28, 1997, to address (1) the term of the Ground Lease, (2) rent payments, and (3) certain default provisions.

On August 28th, 1997, the City also executed a Restructuring Agreement that capitalized the outstanding loan principal of $3.2 million and unpaid interest thereon in the amount of $3.3 million, unpaid Ground Lease rent in the amount of $300,000 and unpaid ballroom fees of $1.4 million) into a share of a loan pool that was retired in 2007, when the City received $7.3 million from ORA to pay off the debt.

In 2007, ORA sold the Marriott to CIM. On March 6, 2007, pursuant to Resolution No. 80446 C.M.S., the City Council approved an assignment of the Ground Lease from ORA to CIM.

Since 2007, CIM and its subsidiary, Integrated Services Corporation ("ISC"), have operated the Marriott and also managed the adjacent City-owned George P. Scotlan Memorial Convention Center (the "Convention Center").

On March 17, 2015, the City Council passed a resolution authorizing the City Administrator to consent to an assignment of the Ground Lease from CIM to AGRE DCP.

ANALYSIS

Key Issues

CIM and AGRE DCP have requested that the Ground Lease be amended for a third time (the "Third Amendment") to clarify or modify various terms, including the option to purchase the Site. Following are a discussion of key issues and how they are proposed to be resolved in the amended lease:

Site Size and Determination of Fair Market Value

The original Ground Lease included an option to purchase the Site. The Ground Lease Tenant has the right to exercise the option beginning eight years after the opening date of the hotel, or commencing in 1991, until termination of the Ground Lease in 2047. The purchase price for the Site is the fair market value of the Site, which must be mutually agreed upon by the City and the Ground Lease Tenant.

The first two clarifications relate to establishing the size of the Site and how the Site will be appraised to determine its fair market value taking into account its current use for a hotel.

Section 4.1 of the original Ground Lease provided a formula for determining the Site area and minimal and to a certain degree ambiguous guidance on how to appraise the Site. Moreover, the second amendment to the Ground Lease replaced all of Section 4, and thus inadvertently deleted the section in the document that described the method to calculate the size of the Site.

Staff reviewed the formula for determining the Site area as described in Section 4.1 of the original Ground Lease and concluded that the Site has an adjusted size of 38,992 square feet. This is consistent with Site area calculations that were prepared by City staff in 1981. The adjusted size of the Site is less than the actual size of the property under the Marriott (44,801 square feet) because the adjusted size excludes common areas governed by the Covenants, Conditions & Restrictions (CC&R), such as the pre-function area, or areas partially dedicated for City use, such as the entry to the Convention Center on 10th Street.

In terms of appraising the fair market value of the Site, the original Ground Lease states that the fair market value of the Site must be the value of "the Site as then used", unencumbered by the Ground Lease. This definition of "Site as then used" is ambiguous because it could be interpreted that both the land and the value of any improvements that may be on the Site as of the date of the option (i.e. the value of City's reversionary rights to the improvements made by the tenant) should be included in the appraisal, thus potentially increasing the value of the Site. The buyer has requested that the meaning of "the Site as then used" be clarified to establish that the value of any improvements on the site be excluded from the determination of fair market value.

The original Ground Lease establishes a minimum purchase price of $10 per square foot without any periodic price adjustments based on increases in the Consumer Price Index (CPI). Staff believes that the stated minimum purchase price is less than the price of unimproved land in downtown Oakland in 1981, and certainly less than the price of the land and the new improvements at that time. Hence, the intended determination of fair market value very likely only involved the Site valued as unimproved real property, and did not include the hotel and other improvements.

Accordingly, the parties have agreed to add language into the Ground Lease stating that the fair market value of the Site shall be determined based upon (i) the Site being calculated, solely for the purpose of determining the fair market value, as 38,992 square feet, (ii) the value of the Site, valued as unimproved real property, exclusive of the hotel and any improvements on the Site, (iii) the assumption that the Site will be used for, hotel use, as a hotel similar in size, scope and use to the hotel that is upon the Site as of the fair market value date (or if no hotel exists upon the Site as of the fair market value date, then the hotel that last existed upon the Site), and (iv) the assumption that the Site is unencumbered by the Lease provided that the purchase price shall not be less than the amount calculated by multiplying the square footage of the site set forth in sub-item by twenty dollars ($20.00), including an annual CPI adjustment of not less than 2% per year. A recent appraisal of adjacent property (T5/6) for hotel use indicated a market value of $126 per square foot, which is far in excess of the minimum price of $20 as adjusted.

This additional specific definition allows for clear and specific instructions to be given to an appraiser to determine fair market value, and ultimately avoids any dispute about the size or determination of market value of the Site in the future.

Close of Escrow

The third modification involves replacing certain terms, including processing and closing terms for the option sale, which may have been on a now-missing page of the Ground Lease. These terms are important for closing a sale of the Site in the event that AGRE DCP exercises its option to purchase the Site once they have acquired the leasehold interest in the Marriott and accepted the assignment of the Ground Lease.

Staff and the buyer have agreed to include standard language in the proposed amendment regarding the opening of an escrow account, pre-closing requirements, the nature of the sale of the Site as an "as-is" sale and remedies available to each party in the event that a sale does not close within certain required periods.

Repayment of City Debt

Lastly, CIM and AGRE DCP have requested that certain references in the Ground Lease to previous financing assistance from the City that was paid off in 2007 be deleted. Staff has reviewed the financing assistance in question and determined that the City received a final pay-off amount of $7.3 million as part of the sale of the Marriott from ORA to CIM in 2007, thus retiring all outstanding debt obligations. Hence, all references related to the City financing such as a Financing Agreement, a Restructuring Agreement and a Payment Agreement between the City and ORA should be removed from the Ground Lease.

The Convention Center Management Agreement

During the Community and Economic Development Committee Meeting of March 10, 2015, members of the Committee requested that staff evaluate making the management of the Convention Center available to an Oakland-based entity in order to maximize local utilization of the facility. This evaluation would not be addressed in the Third Amendment to the Ground Lease, but rather in a renegotiated Management Agreement.

As stated in the March 10, 2015 report, at this time, the current term of the Management Agreement expires on June 30, 2015, with year-to-year extensions thereafter. Given the complexity of negotiating a new Management Agreement for the Convention Center with AGRE DCP, staff plans to allow the agreement to be automatically extended for one year, from July 1, 2015 to June 30, 2016, as permitted by the terms of the existing agreement, and present a new Management Agreement for approval to the City Council in the spring of 2016.

The Management Agreement not only covers the booking of events and coordination of hotel and Convention Center staff for such occasions, but also the day-to-day asset management of the facility which shares certain building systems, management of the parking garage that is part of the Convention Center, and management of the City's lease for the Warriors Training Facility, which is located on the roof of the Convention Center. Staff will explore opportunities for local involvement in the management of the Convention Center in the course of negotiating a new Management Agreement with AGRE DCP.

PUBLIC OUTREACH/INTEREST

There is no additional public outreach required in connection with the proposed amendment to the Ground Lease, other than what is required by the City's Sunshine Ordinance and Brown Act for publication of this report to the City Council.

COORDINATION

The Economic and Workforce Development Department's Project Implementation Division consulted with the Office of the City Attorney, the Controller's Bureau and the City Administrator's Office in the coordination and preparation of this report.

COST SUMMARY/IMPLICATIONS

There is no direct fiscal impact associated with the proposed amendment of the Ground Lease, except as the parties may modify or clarify the option price provision.

Staff was also advised by the City Attorney's Office that the previously stated amount of transfer tax revenues for the City may have been overstated and that application and determination of the City's transfer tax is within the exclusive jurisdiction of the tax administrator, who will make a final determination regarding the amount of transfer taxes related to the sale of the Marriott.

SUSTAINABLE OPPORTUNITIES

Economic: There are no sustainable economic opportunities that apply to this particular action. The new owner will make significant improvements to the hotel that will enhance its attractiveness and broaden its customer base. Any such improvements are designed to bring more guests to the hotel and the Convention Center that will patronize downtown Oakland's restaurants, shops and entertainment venues, thus benefitting the City's businesses and tax base.

Environmental: There are no sustainable environmental opportunities that apply to this particular action. However, staff will discuss Leadership in Energy & Environmental Design (LEED) certification for the hotel with the buyer.

Social Equity: There are no social equity opportunities related to the proposed Council action. Nevertheless, staff will work with the new owner to ensure that any announcements for employment opportunities at the hotel, the Convention Center or at other businesses operating at the Marriott are made available for posting at the West Oakland Job Resource Center and other appropriate organizations to ensure that Oakland residents are properly notified and have a chance to apply for vacant positions. Moreover, the new ownership will continue to improve the financial performance of the hotel and the Convention Center, which should enhance job security for the hotel and Convention Center's current workforce.

CEQA

The City has determined, after independent review and consideration, that the proposed approval to amend the Ground Lease complies with CEQA because this action on the part of the City is exempt from CEQA pursuant to Section 15301 (existing facilities) of the CEQA guidelines.

For questions regarding this report, please contact Jens Hillmer, Urban Economic Coordinator, at 238-3317.

Respectfully submitted,

Mark Sawicki, Director
Economic & Workforce Development Department

Reviewed by:
Patrick Lane, Acting Director
Economic & Workforce Development Department
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Jens Hillmer, UEC
Economic & Workforce Development Department
Project Implementation Division

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OAKLAND

2015 MAR 19 PM 3:02

APPROVED AS TO FORM AND LEGALITY:

D Mcee
CITY ATTORNEY

ORDINANCE NO.________ C.M.S.

AN ORDINANCE AUTHORIZING THE INTERIM CITY ADMINISTRATOR, WITHOUT RETURNING TO THE CITY COUNCIL, TO NEGOTIATE AND EXECUTE AN AMENDMENT TO THE OAKLAND MARRIOTT HOTEL CITY CENTER GROUND LEASE BETWEEN THE CITY OF OAKLAND AND EITHER THE CURRENT TENANT, THE CIM GROUP, INC. (OR A RELATED ENTITY), OR THE PROSPECTIVE TENANT, AGRE DCP OAKLAND CITY CENTER LLC (OR A RELATED ENTITY), CLARIFYING OR MODIFYING VARIOUS LEASE PROVISIONS, INCLUDING THE TERMS OF THE GROUND TENANT'S OPTION TO PURCHASE

WHEREAS, on August 12, 1981, pursuant to Ordinance No. 10117 C.M.S., the City of Oakland ("City) entered into a Ground Lease (the "Ground Lease") for certain City-owned property (the "Property") with Oakland Hotel Associates, Ltd. ("OHAL") to develop a Hyatt Regency Oakland Hotel, which is now the Oakland Marriott City Center (the "Marriott"); and

WHEREAS, on December 29, 1986, the Ground Lease was amended and assigned from OHAL to Oakland Renaissance Associates ("ORA"), a limited partnership; and

WHEREAS, on December 29, 1986, the Ground Lease was amended to address (1) deferrals of rent and other fees, (2) damage assessments and repair cost estimates in the event that the hotel is damaged or destroyed by casualty, and (3) the terms and conditions for refinancing existing debt obligations; and

WHEREAS, on August 28, 1997, the Ground Lease was further amended to address (1) the term of the Ground Lease, (2) rent payments, and (3) certain default provisions; and

WHEREAS, on March 6, 2007, pursuant to Resolution No. 80446 C.M.S., the City Council approved an assignment of the Ground Lease from ORA to the CIM Group, Inc.(or a related entity) ("CIM"), as part of the sale of the Marriott from ORA to CIM; and

WHEREAS, CIM is selling the Marriott, which is located on the City-owned Property, to AGRE DCP Oakland City Center Owner LLC, ("AGRE DCP"), a company consisting of Apollo Global Management ("Apollo") and DiNapoli Capital Partners, LLC ("DiNapoli"), or a related entity (collectively referred to herein as "AGRE DCP"); and

WHEREAS, the Ground Lease includes an option to purchase the Property at fair market value; and

WHEREAS, CIM and AGRE DCP have requested that the Ground Lease be amended for the third time (the "Third Amendment") to clarify or modify various lease provisions, including the terms of the option to purchase the Property; and

WHEREAS, the City desires to amend the Ground Lease to facilitate the sale of the Marriott from CIM to AGRE DCP; and

WHEREAS, the City is the Lead Agency for the proposed amendment to the Ground Lease for purposes of environmental review under the California Environmental Quality Act of 1970 ("CEQA"); and

WHEREAS, the requirements of the CEQA guidelines as prescribed by the Secretary of Resources and the provisions of the Environmental Review Regulations of the City of Oakland have been satisfied; now therefore

The Council of the City of Oakland does ordain as follows:

SECTION 1. The City Council hereby authorizes the Interim City Administrator or his/her designee, without returning to the City Council, to negotiate and execute a Third Amendment to the Ground Lease to clarify or modify various lease provisions, including the terms of the option to purchase the Property, and such other documents as necessary or appropriate, in consultation with the City Attorney's Office, to facilitate the Third Amendment to the Ground Lease in order to consummate the transaction in accordance with this Ordinance, or to otherwise effectuate the purpose and intent of this Ordinance and its basic purpose.

SECTION 2. All agreements associated with the Third Amendment to the Ground Lease shall be reviewed and approved as to form and legality by the City Attorney's Office prior to execution by the City, and shall be placed on file with the City Clerk.

SECTION 3. That the City finds and determines, after independent review and consideration, that this action complies with the California Environmental Quality Act ("CEQA") because it is exempt from CEQA pursuant to Section 15301 (existing facilities) of the CEQA Guidelines.

SECTION 4. The Interim City Administrator or his/her designee is hereby authorized to file a notice of determination with the Office of the Alameda County Recorder and the State Office of Planning and Research, and to take any other action necessary in furtherance of the Project, consistent with this Ordinance and its basic purposes.

SECTION 5. The record before this Council relating to this Ordinance includes, without limitation, the following:

A. All staff reports, decision letters and other documentation and information produced by or on behalf of the City, and all notices relating to this Ordinance and the Ground Lease, as amended; and

B. All matters of common knowledge and all official enactments and acts of the City, such as (1) the General Plan; (2) the Oakland Municipal Code, without limitation, the Oakland real estate regulations; (3) the Oakland Planning Code; (4) other applicable City policies and regulations; and (5) all applicable state and federal laws, rules and regulations.

SECTION 6. The custodians and locations of the documents or other materials which constitute the record of proceedings upon with the City Council's decision is based are respectively (a) the Project Implementation Division, 250 Frank Ogawa Plaza, 5th Floor, Oakland, CA; (b) Planning and Building Department, 250 Frank Ogawa Plaza, 3rd, Floor, Oakland, CA; and (c) the Office of the City Clerk, 1 Frank Ogawa Plaza, 1st Floor, Oakland, CA.

SECTION 7. The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision.

SECTION 8. The Ordinance shall be in full force and effect immediately upon its passage as provided by Section 216 of the City Charter if adopted by at least six members of Council, or upon the seventh day after final adoption if adopted by fewer votes.

IN COUNCIL, OAKLAND, CALIFORNIA, ________________________________2015

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

An Ordinance Authorizing The Interim City Administrator, Without Returning to the City Council, to Negotiate and Execute an Amendment to the Oakland Marriott City Center Ground Lease Between the City of Oakland and either the Current Tenant, the CIM Group, Inc. (or a Related Entity), or the Prospective Tenant, AGRE DCP Oakland City Center LLC (or a Related Entity), Clarifying or Modifying Various Lease Provisions, Including the Terms of the Tenant's Option to Purchase

Notice and Digest

The City of Oakland ("City") has a Ground Lease with CIM for a term of 66 years for City-owned property (the "Site") on which a Hyatt Regency Oakland Hotel, now the Marriott, was constructed in 1981.

Adoption of the proposed Ordinance will clarify or modify certain provisions included in the Ground Lease for the Oakland Marriott City Center and facilitate the sale of the Marriott from its current owner, CIM Group, Inc., or a related entity, to AGRE DCP Oakland City Center LLC, a company consisting of Apollo Global Management and DiNapoli Capital Partners, LLC. Specifically, the proposed amendment will clarify or modify the terms of the tenant's option to purchase, including processing and closing terms for the option sale, to replace terms that may have been on a now-missing page of the Ground Lease and delete references to a Financing Agreement, a Restructuring Agreement and a Payment Agreement between the City and a previous owner, Oakland Renaissance Associates, that are no longer applicable since all amounts due to the City under these agreements were fully repaid in 2007.