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Title: A) ORDINANCE AUTHORIZING AMENDMENT NO. 2 TO THE SAN DIEGO UNIFIED PORT DISTRICT'S AMENDED, RESTATED, AND COMBINED LEASE WITH PACIFIC GATEWAY, LTD DBA SAN DIEGO MARRIOTT MARQUIS AND MARINA TO REPLACE FUTURE RENT REVIEWS WITH FIXED RENT INCREASES AND UPDATE CERTAIN LEASE TERMS.
B) ORDINANCE AUTHORIZING OPTION TO THE SAN DIEGO UNIFIED PORT DISTRICT'S AMENDED, RESTATED, AND COMBINED LEASE WITH PACIFIC GATEWAY, LTD DBA SAN DIEGO MARRIOTT MARQUIS AND MARINA FOR AN OPTION TO ADD TWENTY-TWO (22) YEARS TO THE LEASE TERM.
C) ORDINANCE AUTHORIZING OPTION TO THE SAN DIEGO UNIFIED PORT DISTRICT'S AMENDED AND RESTATED LEASE WITH MANCHESTER GRAND RESORTS, L.P. DBA MANCHESTER GRAND HYATT FOR AN OPTION TO ADD SIXTEEN (16) YEARS TO THE LEASE TERM.

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Attachments: 1. 9. 2019-0018 Attachment A, 2. 9. 2019-0018 Attachment B, 3. 9. 2019-0018 Attachment C, 4. 9. 2019-0018 Attachment D, 5. 9. 2019-0018A Draft Ordinance, 6. 9. 2019-0018B Draft Ordinance, 7. 9. 2019-0018C Draft Ordinance

Date	Ver.	Action By	Action	Result
2/12/2019	1	Board of Port Commissioners	continued	

DATE: February 12, 2019

SUBJECT:

- A) ORDINANCE AUTHORIZING AMENDMENT NO. 2 TO THE SAN DIEGO UNIFIED PORT DISTRICT'S AMENDED, RESTATED, AND COMBINED LEASE WITH PACIFIC GATEWAY, LTD DBA SAN DIEGO MARRIOTT MARQUIS AND MARINA TO REPLACE FUTURE RENT REVIEWS WITH FIXED RENT INCREASES AND UPDATE CERTAIN LEASE TERMS.
- B) ORDINANCE AUTHORIZING OPTION TO THE SAN DIEGO UNIFIED PORT DISTRICT'S AMENDED, RESTATED, AND COMBINED LEASE WITH PACIFIC GATEWAY, LTD DBA SAN DIEGO MARRIOTT MARQUIS AND MARINA FOR AN OPTION TO ADD TWENTY-TWO (22) YEARS TO THE LEASE TERM.
- C) ORDINANCE AUTHORIZING OPTION TO THE SAN DIEGO UNIFIED PORT DISTRICT'S AMENDED AND RESTATED LEASE WITH MANCHESTER GRAND RESORTS, L.P. DBA MANCHESTER GRAND HYATT FOR AN OPTION TO ADD SIXTEEN (16) YEARS TO THE LEASE TERM.

EXECUTIVE SUMMARY:

The District entered into Amended, Restated, and Combined Lease with Pacific Gateway, Ltd. dba San Diego Marriott Marquis and Marina, (Marriott Lease) (Attachment A) which is owned by Host Hotels & Resorts, LP (Lessee), on December 1, 1995, for a term of sixty-six (66) years. The Marriott Lease requires that percentage and minimum rents be reviewed and adjusted every ten (10) years. The first rent review occurred in 2006. The current rent review is for the period of December 1, 2016 to November 30, 2026.

Staff began negotiating with Lessee in May of 2016 and has agreed to terms for the current rent review period. Staff and Lessee have agreed to the following terms which, if approved, would update outdated terms and conditions in the Marriott Lease that created ambiguity in the rent review process and grant the District set rental increases in exchange for options for lease term extensions.

The updated terms would increase percentage rental rates through the remaining term of the Marriott Lease, eliminate future rent reviews, adjust minimum rent and update certain terms to District standard in exchange for granting an option to extend the Marriott Lease by twenty-two (22) years. Additionally, the District entered into an Amended and Restated Lease with Manchester Grand Resorts, L.P., dba Manchester Grand Hyatt, (Hyatt Lease) on June 1, 2001, for a term of sixty-six (66) years, which is also owned by Host Hotels & Resorts, LP. Lessee would also be granted an option to extend the lease by sixteen (16) years. Listed below are the terms:

1. Agreement for Amendment of Marriott Lease (Attachment B)
 - Adds Fixed Rent Increases
 - Eliminates Ambiguous Rent Review Language Beneficial to Lessee
 - Updates Minimum Rent
 - Modifies Assignment Language
 - Updates Eminent Domain Language
 - Updates Conformance with Laws and Regulations
 - Updates Equal Employment Opportunity/Nondiscrimination Language
 - Adds Compliance with Prevailing Wage Laws
2. Option to Ground Lease- Marriott Lease (Attachment C)
 - Option to Extend Lease by twenty (22) years.
 - Adds Fixed Percentage Rental Rate Increases During Additional Term
3. Option to Ground Lease - Hyatt Lease (Attachment D)
 - Option to Extend Lease by sixteen (16) years (Lease already includes fixed percentage rental rate increases)

Host Hotels & Resorts, which owns both the Marriott Lease and Hyatt Lease, has a strong track record of making significant capital investments into the hotels, oftentimes without receiving additional lease term. In addition, the San Diego Marriott Marquis and Marina and Manchester Grand Hyatt collectively generate more than 30% of total concession-based rent for the District. Both hotels would pay above-market percentage rent on rooms during the extended lease terms (eight and one-quarter percent (8.25%) and nine percent (9%), respectively, versus the Board adopted seven percent (7%)) without the need for potentially contentious rent review negotiations which would provide certainty for both the District and the tenants.

RECOMMENDATION:

- A) Ordinance Authorizing Amendment No. 2 to the San Diego Unified Port District's Amended, Restated, and Combined Lease with Pacific Gateway, Ltd dba San Diego Marriott Marquis and Marina to Replace Future Rent Reviews with Fixed Rent Increases and Update Certain Lease Terms.
- B) Ordinance Authorizing Option to Ground Lease Agreement to the San Diego Unified Port District's Amended, Restated, and Combined Lease with Pacific Gateway, Ltd dba San Diego Marriott Marquis and Marina for an Option to add Twenty-Two (22) Years to the Lease Term.
- C) Ordinance Authorizing Option to Ground Lease Agreement to the San Diego Unified Port District's Amended and Restated Lease with Manchester Grand Resorts, L.P. dba Manchester Grand Hyatt for an Option to add Sixteen (16) Years to the Lease Term.

FISCAL IMPACT:

The increase in the percentage rental rate for rooms over the lifetime of the Marriott Lease will result in a net present value of approximately \$12.8 million in additional rent to the District above a base case of no change in percentage rental rates.

Rent Analysis	NPV Rent*
Rent without Increases	\$367,841,361
Rent with Proposed Increases	\$380,667,924
Additional Rent to District	\$12,826,563
*NPV 5% Disc. Rate	

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A vibrant waterfront destination where residents and visitors converge.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

Staff worked very closely with Lessee to find a win-win solution that would eliminate ambiguous Marriott Lease language favorable to Lessee, eliminate future rent reviews, and add fixed percentage rental rate increases to the Marriott Lease in exchange for options for lease term extension to the Marriott and Hyatt Leases. Staff believes the agreement is reasonable, fair and equitable given the benefits to both parties.

Terms Proposed

- Replace rent reviews with fixed percentage rental rate increases - Marriott Lease
 - Increase room rent to 7.25% in 2036
 - Increase room rent .25% every ten years thereafter (up to 8.25% in 2076)
- Agreement for Amendment of Lease - Marriott Lease
 - Add Fixed Rent Increases

- Eliminate Rent Review Language
- Update Minimum Rent
- Modify Assignment Language
- Update Eminent Domain Language
- Update Conformance with Laws and Regulations
- Update Equal Employment Opportunity/Nondiscrimination Language
- Add Compliance with Prevailing Wage Laws

- Option to Ground Lease - Marriott Lease
 - Option to Extend Lease by twenty-two (22) years
 - Add Fixed Rent Increases During Additional Term

- Option to Ground Lease - Hyatt Lease
 - Option to Extend Lease by sixteen (16) years (Lease already includes fixed rent increases)

The proposed agreement with the Lessee would update outdated terms and conditions in the Marriott Lease that created ambiguity and uncertainty in the rent review process. The updated terms would eliminate future rent reviews and any potential disagreements stemming from the rent review process and fix future percentage rental rate increases. Staff projected the increases in room rent over the lifetime of the Marriott Lease will result in a net present value of approximately \$12.8 million in additional rent to the District versus a base case of no change in percentage rental rates. The agreement would establish fixed percentage rental rate increases for rooms starting in 2036 and eliminate all future rent reviews and update certain terms of the Marriott Lease to District standard in exchange for 22 additional years of term on the Marriott Lease and 16 additional years of term on the Hyatt Lease. The terms represent a fair deal for the District and Lessee by minimizing the risk and expense of future arbitrations for these two highly successful assets.

During the extension term, the percentage rental rate for rooms for the Marriott Lease would be eight and one-quarter percent (8.25%) and the Hyatt Lease will be nine percent (9%), which are above current Board adopted percentage rental rates of seven percent (7%) for rooms. Host Hotels & Resorts, which owns both the Marriott and Hyatt Leases, has a strong record of reinvesting significant capital into the hotels. The recently completed Marriott Hall and associated improvements were constructed at a cost of approximately \$180 million and required an extensive entitlement process with no lease extension. The Manchester Grand Hyatt recently spent over \$10 million on restaurant and meeting space renovations with no lease extension. Term extensions for these two leases would lock in above-market rents for the extended terms and extend a successful partnership with two tenants that collectively generate more than 30% of total concession-based rent for the District, and have a track record of reinvesting in the leaseholds.

General Counsel's Comments:

The Office of the General Counsel has reviewed the Marriott Lease amendment and lease options for the Marriott and Hyatt Leases, consulted with the California State Lands Commission on all issues presented in the Leases and options, and approves as to form and legality.

Environmental Review:

The proposed Board actions, including without limitation, ordinances authorizing amendments to the Marriott Lease and options to extend the lease term and alter the rent, were adequately covered in the Environmental Impact Report (EIR) for the Inter-Continental Hotel and Marina, San Diego Embarcadero (UPD No. 80220-EIR-9), which was certified by the District on September 8, 1981 (Resolution No. 81-294), and the EIR for San Diego Marriott Marquis & Marina Facilities Improvement and Port Master Plan Amendment Project (UPD #83356-EIR-846; SCH #2010091012), which was certified by the District on December 13, 2011 (Resolution No. 2011-178). The proposed project is not a separate “project” for CEQA purposes but is a subsequent discretionary approval related to a previously approved project. (CEQA Guidelines § 15378(c); *Van de Kamps Coalition v. Board of Trustees of Los Angeles Comm. College Dist.* (2012) 206 Cal.App.4th 1036.) Additionally, pursuant to CEQA Guidelines Sections 15162 and 15163, and based on the review of the entire record, including without limitation, the EIRs, the District finds and recommends that the ordinances authorizing amendments to the Marriott Lease to extend the lease term and alter the rent do not require further environmental review as: 1) no substantial changes are proposed to the project and no substantial changes have occurred that require major revisions to the EIRs due to the involvement of new significant environmental effects or an increase in severity of previously identified significant effects; and 2) no new information of substantial importance has come to light that (a) shows the Project will have one or more significant effects not discussed in the EIRs, (b) identifies significant impacts would not be more severe than those analyzed in the EIRs, (c) shows that mitigation measures or alternatives are now feasible that were identified as infeasible and those mitigation measures or alternatives would reduce significant impacts, and (d) no changes to mitigation measures or alternatives have been identified or are required. Because none of these factors have been triggered the District has the discretion to require no further analysis or environmental documentation (CEQA Guidelines §15162(b)). Pursuant to CEQA Guidelines §15162(b), the District finds and recommends that no further analysis or environmental documentation is necessary. Accordingly, the proposed Board action is merely a step in furtherance of the original project for which environmental review was performed and no supplemental or subsequent CEQA has been triggered, and no further environmental review is required.

The proposed Board action, including without limitation, an ordinance authorizing an option to the Hyatt Lease to extend the lease term, was adequately covered in the EIR for the Convention Center Complex and Option Site Hotel San Diego Embarcadero (UPD No. EIR-83356-EIR-3), which was certified by the District on August 14, 1984 (Resolution No. 84-289), the Final Environmental Impact Report (FEIR) for the South Embarcadero Redevelopment Program 1 and Port Master Plan Amendment #83356-EIR-338; SCH #97051014), which was certified by the District on May 26, 1998 (Resolution No. 98-135). The proposed project is not a separate “project” for CEQA purposes but is a subsequent discretionary approval related to a previously approved project. (CEQA Guidelines § 15378(c); *Van de Kamps Coalition v. Board of Trustees of Los Angeles Comm. College Dist.* (2012) 206 Cal.App.4th 1036.) Additionally, pursuant to CEQA Guidelines Sections 15162 and 15163, and based on the review of the entire record, including without limitation, the EIR and FEIR, the District finds and recommends that the amendment to the Hyatt Lease to extend the lease term does not require further environmental review as: 1) no substantial changes are proposed to the project and no substantial changes have occurred that require major revisions to the FEIR due to the involvement of new significant environmental effects or an increase in severity of previously identified significant effects; and 2) no new information of substantial importance has come to light that (a) shows the Project will have one or more significant effects not discussed in the EIR and FEIR, (b) identifies significant impacts would not be more severe than those analyzed in the FEIR, (c) shows that mitigation measures or alternatives are now feasible that were identified as infeasible and those mitigation measures or alternatives would reduce significant impacts, and (d) no changes to

mitigation measures or alternatives have been identified or are required. Because none of these factors have been triggered the District has the discretion to require no further analysis or environmental documentation (CEQA Guidelines §15162(b)). Pursuant to CEQA Guidelines §15162 (b), the District finds and recommends that no further analysis or environmental documentation is necessary. Accordingly, the proposed Board action is merely a step in furtherance of the original project for which environmental review was performed and no supplemental or subsequent CEQA has been triggered, and no further environmental review is required.

In addition, the proposed Board actions comply with Sections 21, 36, and 87 of the Port Act, which allow for the Board to pass all ordinances and resolutions for the regulation of the District, to do all acts necessary and convenient for the exercise of its power, and for tidelands to be used for all visitor serving commercial and industrial uses and purposes. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board actions are consistent with the Public Trust Doctrine.

The ordinances authorizing amendments to the Marriott Lease to extend the lease term and alter the rent were covered in the Coastal Development Permit (CDP) (A81-3-33) for the Inter-Continental Hotel Beach and Bay Resort, issued on March 22, 1982; an amendment to the CDP to accurately reflect the existing tower and to incorporate the second tower and conference center, issued on May 25, 1984; and the CDP (2013-04) for the San Diego Marriott Marquis and Marina Facilities Improvement Project, issued on May 7, 2013 (Resolution No. 2103-61). The proposed Board action is consistent with the projects in those CDPs. No additional action under the California Coastal Act is required at this time.

The ordinance authorizing an amendment to the lease for the Hyatt Lease to extend the lease term was covered in the CDP (CDP-99-1) for the Manchester Grand Hyatt Regency, issued on November 17, 1988 (Resolution No. 88-319) and the CDP (CDP-99-1) for the Manchester Grand Hyatt Regency Hotel Expansion, issued on August 13, 1999 (Resolution No. 99-181). The proposed Board action is consistent with the project in those CDPs. No additional action under the California Coastal Act is required at this time.

Equal Opportunity Program:

Not applicable.

PREPARED BY:

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Attachment(s):

Attachment A:	Location Map
Attachment B:	Agreement for Amendment of Lease - San Diego Marriott Marquis and Marina
Attachment C:	Option to Lease - San Diego Marriott Marquis and Marina
Attachment D:	Option to Lease - Manchester Grand Hyatt