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Title: A) ORDINANCE GRANTING LEASE AMENDMENT NO. 2 TO OLD TOWN TROLLEY TOURS OF SAN DIEGO LOCATED AT 996-B NORTH HARBOR DRIVE, IN THE CITY OF SAN DIEGO, AMENDING THE RENT AND OPTION TERM PROVISIONS, AND OTHER PROVISIONS

B) ORDINANCE GRANTING LEASE AMENDMENT NO. 1 TO OLD TOWN TROLLEY TOURS OF SAN DIEGO LOCATED AT 1004-A NORTH HARBOR DRIVE, IN THE CITY OF SAN DIEGO, AMENDING THE RENT AND OPTION TERM PROVISIONS, AND OTHER PROVISIONS

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Date	Ver.	Action By	Action	Result
10/6/2020	1	Board of Port Commissioners	adopted	

DATE: October 6, 2020

SUBJECT:

A) ORDINANCE GRANTING LEASE AMENDMENT NO. 2 TO OLD TOWN TROLLEY TOURS OF SAN DIEGO LOCATED AT 996-B NORTH HARBOR DRIVE, IN THE CITY OF SAN DIEGO, AMENDING THE RENT AND OPTION TERM PROVISIONS, AND OTHER PROVISIONS

B) ORDINANCE GRANTING LEASE AMENDMENT NO. 1 TO OLD TOWN TROLLEY TOURS OF SAN DIEGO LOCATED AT 1004-A NORTH HARBOR DRIVE, IN THE CITY OF SAN DIEGO, AMENDING THE RENT AND OPTION TERM PROVISIONS, AND OTHER PROVISIONS

EXECUTIVE SUMMARY:

Old Town Trolley Tours of San Diego (OTT) has two long term leases with the District for the Visitor Information Center (VIC) and a ticket kiosk (Kiosk) (collectively, the OTT Leases) both located on the Embarcadero (Attachment A - Location Map). Both of the OTT Leases have an initial ten-year term with a five-year option to extend and both commenced on December 1, 2014. OTT provides a valuable service to the public and the San Diego region through its operation of the VIC and Kiosk on the Embarcadero. OTT directs visitors to attractions and businesses both on and off of tidelands, provides important information on District tenants, and sells tickets for attractions around San Diego including the Old Town Trolley and SEAL Tours.

OTT has requested modifications to the rent structure in the OTT Leases due to the impacts of the

COVID-19 pandemic on its businesses on the Embarcadero. Based on input from OTT, and staff's review of OTT's unique circumstances, staff has determined that the District's rent deferral program would not provide the right type of economic relief for OTT to remain operational through the year. If not for the proposed amendments, staff believes OTT may not be capable of continuing to operate on tidelands. Staff has reviewed OTT's financials and has determined that a structural reset of the rent in the OTT Leases, rather than rent deferral, is necessary for OTT to continue operating their visitor serving businesses. Staff recommends amending both OTT Leases to modify the amount and the timing of the rent payments as further described below. In addition, the amendments will add a requirement in each of the OTT Leases that requires that the District approve OTT's exercise of the 5-year extension option, which is a right the District currently does not have. Both the amendments for the OTT Leases will also include corrections to scrivener's errors, and related clarifying changes to certain provisions. Staff believes these proposed modifications to OTT Leases will provide OTT with sufficient relief to remain economically viable through these difficult times and continue to provide an important service for waterfront visitors, while at the same time ensuring that the District still receives rent and these unique and highly visible District owned improvements remain occupied by a visitor serving business.

RECOMMENDATION:

A) Adopt an ordinance granting Lease Amendment No. 2 to OTT located at 996-B North Harbor Drive, in the City of San Diego, amending the rent and option term provisions, and other provisions.

B) Adopt an ordinance granting Lease Amendment No. 1 to OTT located at 1004-A North Harbor Drive, in the City of San Diego, amending the rent and option term provisions, and other provisions.

FISCAL IMPACT:

If both ordinances are adopted, staff estimates the maximum fiscal impact to the District to be a revenue loss of approximately \$44,203 for retroactive rent adjustments to the last quarter of Fiscal Year 2020, and a revenue loss of approximately \$176,813 in Fiscal Year 2021. These amounts represent additional reductions to the reforecasted Fiscal Year 2021 budget. If the concession rents exceed the Minimum Annual Rent (MAR) for both leases, which is possible later in Fiscal Year 2021, the loss to the District would be reduced.

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:

Background

In March 2020, OTT reached out to staff to request a structural rent reset of the OTT Leases due to the economic impacts of the COVID-19 pandemic on their businesses. With both businesses closed

from mid-March until July 23rd of this year, and much of their business dependent on tourism and third party operators, the impact to their business has been severe. Since reopening in July, ticket sales for the Old Town Trolley and the SEAL tours have been down substantially compared to the same time last year. OTT's business is very seasonal and relies on the busy tourism months during the summer for the majority of their annual revenue. Now that the summer season has passed, OTT is unlikely to generate sufficient revenue to remain operational for the remainder of Fiscal Year 20/21 without some assistance from the District.

As a concession and fixed rent-paying tenant, staff invited OTT to participate in the different rent deferral programs adopted by the Board. In May, OTT submitted a rent deferral request for its locations, but informed staff that the deferral would not be sufficient to keep them afloat. As the pandemic worsened, staff in consultation with OTT, determined that a deferral of rent would not enable OTT to remain operational through the coming year. After analyzing OTT's financial information and sales history, it is apparent that OTT needs a structural rent reset for its OTT Leases in order to remain economically viable through the end of the year and beyond.

Visitor Information Center Lease

The OTT Lease for the VIC is for the operation of the Visitor Information Center along the promenade in the Embarcadero that sells tickets for the Old Town Trolley and SEAL tours along with other third-party attractions. The VIC provides an important service for visitors to the waterfront with an information desk stocked with brochures and concierge services available. The VIC also provides a benefit to District tenants and other San Diego attractions by informing the public of their locations and services offered. Despite the public value these services offer, they generate little to no revenue for OTT.

In mid-March of this year, the VIC closed and did not reopen until July 23rd. The impact of the COVID-19 pandemic on the VIC has been substantial with ticket sales for the Old Town Trolley and the SEAL tours at about 30% of the sales from the same time last year. Moreover, even prior to COVID-19, the fixed amount of the Improvement Rent (IR) (which reimburses the District over the term of the lease for the costs the District incurred in initially constructing the VIC), in addition to percentage rent due under the lease, made it difficult for OTT to operate profitably even under normal economic conditions.

Based on discussions with OTT, staff recommends the following proposed amendments to the OTT Leases with the goal of reducing immediate expenses for OTT thereby allowing them to remain in business. Attached as Attachment B is the proposed Amendment No. 2 to the OTT Lease. The two proposed changes to the rent structure are to the MAR and the IR. The current MAR is \$87,457. Under the proposed amendment, MAR would be reduced by 75% retroactively from April 1, 2020 until November 30, 2021. This would allow OTT to continue operating through the COVID-19 pandemic and continue to provide visitor services. Additionally, the District would continue to receive some rent and allow a very visible Embarcadero building to remain occupied by a business that provides valuable service to the District and the public.

VIC Lease (12/01/2014 – 11/30/2029) (includes 5-year option)		
Terms	Current	Proposed Adjustment
MAR	\$87,457	<u>4/1/2020 - 11/30/2021</u> - \$21,864 (75% reduction), - 75% MAR adjustment reset on 12/1/2021
Improvement Rent	\$72,240 yr./ \$6,020 mo. 12/1/14- 11/30/2024	<u>4/1/2020 - 11/30/2021</u> - \$18,060 yr./ - \$1,505 mo. (75% reduction) <u>12/1/2021 – 11/30/2024</u> - \$36,120 yr./ - \$3,010 mo. (50% reduction) <u>Option Period (12/1/2024-11/30/2029)</u> - \$54,180 yr./ - \$4,515 mo. (25% reduction)
5-Year Option	OTT unilateral right to exercise	<u>District has the right to approve or reject the option</u>

Under the proposed terms, the MAR would reset on December 1, 2021 to 75% of the average total percentage rent paid in the previous six months (i.e., June 1, 2021-November 30, 2021). The percentage rental rates would remain the same in the OTT Lease so if the market does bounce back prior to December 2021, the District would receive concession rent (which is higher than MAR) similar to how the current lease is structured. The VIC lease also includes the IR that reimburses the District for the costs the District incurred in originally constructing the buildings, which would be reduced by 75% retroactively from April 1, 2020 through November 30, 2021, would increase to a 50% reduction on December 1, 2021, and increase to a 25% reduction on December 1, 2024. The adjustment to IR is necessary to allow OTT to operate the VIC while tourism is still rebounding, with gradual increases over the years so OTT can recover while allowing the District to still receive some reimbursement.

Through the amendment, the 5-year option period would be modified to give the District the right to approve the option, instead of allowing OTT to unilaterally exercise the right. This change will give the District flexibility with regard to the future of the space. Moreover, the VIC lease currently only requires OTT to pay IR through the initial 10-year term. If the Board accepts staff's recommendation, staff would extend the payment of IR into the option period (if the option is exercised and approved) at a rate of 75% of the original IR amount. If the option is exercised and the extension approved, the net present value of the adjusted IR would be slightly higher than the original IR and would allow the District to receive reimbursement in the full amount contemplated by the current lease. If OTT does

not exercise the option, or the District does not consent to the extension, the District could still potentially receive the full amount of the reimbursement by leasing the improvements to a new tenant and charging IR.

Kiosk Lease

The OTT Lease for the Kiosk is for the operation of the kiosk booth on the Embarcadero which sells tickets for the Old Town Trolley, the SEAL tours and other third-party attraction tickets in San Diego. Similar to the VIC, the Kiosk closed in mid-March and reopened as of July 23rd of this year. Sales are down considerably with ticket sales at approximately 20% of the same time last year. The OTT Lease for the Kiosk typically performs much better than the VIC due to its proximity to a nearby trolley stop and reduced staffing needs, compared to the VIC, allowing OTT to keep expenses down.

To provide relief while tourism rebounds, staff recommends making similar changes to the VIC lease for the MAR and option. Attached as Attachment C is the proposed Amendment No. 1 to the OTT Lease. The MAR would be reduced by 75% retroactive to April 1, 2020 and reset to 75% of the average total percentage rent paid in the past six months (i.e., June 1, 2021-November 30, 2021) on December 1, 2021. The IR and the percentage rental rates would remain the same. The OTT Lease for the Kiosk also includes the change to the option that gives the District the ability to approve or reject the option in its sole and absolute discretion. For further details on the adjustments to rent, see the table below:

<i>Kiosk Lease (12/01/2014 – 11/30/2029) (includes 5-year option)</i>		
<i>Terms</i>	<i>Current</i>	<i>Proposed Adjustment</i>
MAR	\$76,054	<u>4/1/2020 - 11/30/2021</u> - \$19,013 (75% reduction) - 75% MAR adjustment reset on 12/1/2021
5-Year Option	OTT unilateral right to exercise	<u>District has the right to approve or reject the option</u>

Requirement to Pay Outstanding Rent Prior to Rent Relief

OTT has also agreed to pay all outstanding rent through March 31, 2020 prior to execution of any amendment to the OTT Leases with the proposed modifications to the MAR, IR, and option outlined above. OTT had an outstanding balance of \$23,143 it owed to the District from December 2019 through March 2020 as OTT was making concession rent payments during that time and such concession rent payments were not sufficient to cover the MAR due. On September 3, 2020 the outstanding rent was paid to the District by OTT.

Conclusion

Staff recommends that the Board approve the amendments to the OTT Leases to allow for the recommended modifications to the rent and option provisions and correct some scrivener's errors and make related clarifying changes. Staff anticipates that this will provide OTT the relief necessary

to remain economically viable through these difficult times so that OTT can continue to provide an important service for waterfront visitors while at the same time ensuring that the District still receives some rent and the very visible District owned improvements remain occupied by a visitor serving business. In these unprecedented and uncertain times, staff believes it is essential and mutually beneficial to facilitate and maintain communication with the District tenants and make any necessary economic changes to ensure tenants, such as OTT, remain active participants in maintaining a vibrant waterfront for visitors to the Bayfront.

General Counsel's Comments:

The General Counsel's Office has reviewed this agenda sheet and Attachment B and Attachment C, as presented to it, and approves each as to form and legality.

Environmental Review:

The proposed Board actions, including without limitation, ordinances granting lease amendments for rent and term provisions for Old Town Trolley Tours, do not constitute a "project" under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because they would not have the potential to result in a direct or indirect physical change in the environment and are, therefore, not subject to CEQA. No further action under CEQA is required.

The proposed Board action complies with Sections 21 and 35 of the Port Act, which allow the Board to pass resolutions and to do all acts necessary and convenient for the exercise of its powers. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board actions do not allow for "development," as defined in Section 30106 of the California Coastal Act, or "new development," pursuant to Section 1.a. of the District's Coastal Development Permit Regulations. Therefore, issuance of a Coastal Development Permit or exclusion is not required.

Equal Opportunity Program:

Not Applicable.

PREPARED BY:

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Program Manager, Real Estate

Attachment(s):

Attachment A:	Location Map
Attachment B:	Lease Amendment No. 2 to VIC Lease
Attachment C:	Lease Amendment No. 1 to Kiosk Lease

