City of Culver City, California

Agenda Item Report

Meeting Date: 10/13/2014	Item Number: A-3
CITY COUNCIL AGENDA ITEM: Approval of a Purchase Agreement and Escrow Instructions for the Sale of Culver City Theaters to OliverMcMillan Culver City Theaters, LLC for the Purchase Price of $13,000,000.	
Contact Person/Dept.: Elaine Warner/CDD Todd Tipton/CDD	Phone Number: (310) 253-5777 (310) 253 - 5783
Fiscal Impact: Yes [X] No []	General Fund: Yes [X] No []
Public Hearing: [] Action Item: [X]	Attachments: [X]
Commission Action Required: Yes [] No [X]	Date: ________________
Public Notification: (E-Mail) Meetings and Agendas – City Council (10/08/14), Downtown Business Association (10/08/14)	
Department Approval: Sol Blumenfeld: (10/01/14)	City Attorney Approval: Carol Schwab (by H. Baker) (10/07/14) City Special Counsel Approval: Murray Kane (10/07/14)
Chief Financial Officer Approval: Jeff Muir (by M. Noller) (10/08/14)	City Manager Approval: John M. Nachbar (10/08/14)

RECOMMENDATION:

Staff recommends the City Council approve a Purchase Agreement and Escrow Instructions for the sale of Culver City Theatres (currently Pacific Theaters) located at 9500 Culver Boulevard to OliverMcMillan Culver City Theaters, LLC for the purchase price of $13,000,000.

BACKGROUND

The Culver City Theaters (operated as Pacific Theaters) has been a successful partnership between the City (as owner of the theater) and Oliver McMillian (OM), the leasee of the theater. The theater's performance exceeded initial projections and has yielded the City $12.35 million in revenues since the opening of the theater in May of 2003 as of the close of Fiscal Year 2013/2014. Due to the success of the theater over the last several years, OM approached the City in April 2014 regarding purchasing the theater and maintaining it as one of their legacy projects.

DISCUSSION:

Staff has negotiated the terms of this sale with OM over the last several months and has agreed in principal to the following deal points.

1. Purchase Price: The purchase price is $13 million which is based upon a fair market value appraisal conducted in January 2014 as adjusted as recommended by Keyser Martson Associates, the City's financial analysis firm.

2. "AS-IS" Purchase: OM will purchase the property in its physical and environmental "as-is" condition in reliance with its inspection and existing tenancy of the property. The proposed grant deed includes provisions that the City will offer no warranty, expressed or implied, including, but not limited to, the presence of hazardous materials, conditions of improvements, soil, geology, presence of known or unknown seismic faults or the suitability of the property for the use and operation purpose intended.

3. Financing Period: OM will have 60 days from the date of City Council approval of the Purchase Agreement and Escrow Instructions to secure financing from a qualified lender and/or equity investors to finance the entire amount of the purchase price. OM may extend the financing period up to three times by up to 30-days each time by paying the City a $50,000 non-refundable extension fee for each extension.

4. City Theatre Requirement: City will require that the property operate as a high quality theater for at least 15 years (with at least 4 – 5 year renewal options in favor of the theatre tenant.) A qualified theater operator must be approved by the City prior to the close of escrow, and the operator shall be comparable in quality (for example, ArcLight Cinemas, Look Cinemas, iPic Theaters, Landmark Theaters, Knife and Fork, Cobb's Premium, Soho House Theater, Cinepolis, and The Lot or similar quality theaters).

5. Liquidated Damages: If the City breaches the agreement resulting in the failure of escrow to close, OM will be entitled to a refund of any Financing Period extension fees paid to the City and an additional $100,000 as its sole remedy. City will have no other liability to OM under the agreement for damages, specific performance, or otherwise.

6. Deed Restrictions: The deed restrictions will apply to the 20-year period following the close of escrow and encompass the operation of the theater, on-going maintenance, "as-is" condition, and indemnification of the City.

7. Quality/Type of Theater: Per the grant deed restrictions, OM must operate the property to provide an upscale/high quality theater experience with dine-in,

restaurant, or café/bar facilities comparable with or better than the quality of the property as of the date of the grant deed.

8. Lease Terms: The tenant lease will be subject and subordinate to the grant deed restrictions that require OM to operate the property as a theater. If no theater lease continues after the 15th anniversary of the grant deed, OM will only be obligated to meet the requirement if, after using commercially reasonable efforts, they can lease or operate the theatre at a profit (even a minimal profit).

9. Maintenance: Property shall be maintained in a first quality condition, free of debris, waste and graffiti (including repair, restoration and reconstruction) and in compliance with the Culver City Municipal Code.

10. Parking Agreement Amendment/Restrictions: The existing Parking Agreement shall be amended to allow the City to increase parking rates without developer approval if the increase is needed for the maintenance or capital improvements of the parking facilities.

11. Termination of Ground Lease and Developer Obligations: Upon close of escrow, any and all obligations of the Developer under its Disposition and Development Agreement with the former Culver City Redevelopment Agency will terminate and be succeeded by the covenants, restrictions, and other provisions set forth in the grant deed.

FISCAL ANALYSIS:

The sale of the Culver City Theaters will provide approximately $13 million in revenue to the City's General Fund (less tax and rent proration and escrow fees) while ensuring that the property is operated and maintained as a high quality, competitive theater for the region at large. The City's partnership with OM has proved highly successful, and staff believes that OM will continue to operate the theater as a first class destination in Downtown Culver City.

ATTACHMENTS:

Proposed Purchase Agreement and Escrow Instructions

MOTION:

That the City Council:

1. Approve a Purchase Agreement and Escrow Instructions for the sale of Culver City Theatres to OliverMcMillan Culver City Theatres, LLC for the purchase price of $13,000,000.

2. Authorize the City Attorney to review/prepare the necessary documents; and,

3. Authorize the City Manager to execute such documents on behalf of the City.