

**STAFF REPORT  
C22**

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04/05/19  
PRC 4687.1  
A. Franzoia

**AMENDMENT OF LEASE AND REVISION OF RENT**

**LESSEE:**

Burlingame Bay Associates

**AREA, LAND TYPE, AND LOCATION:**

6.04 acres of filled and unfilled sovereign land in San Francisco Bay, adjacent to 60 Bay View Place, Burlingame, San Mateo County.

**AUTHORIZED USE:**

Use and maintenance of a restaurant, parking lot, lagoon, footbridge, paved pedestrian path, landscaping, and shoreline protection.

**LEASE TERM:**

66 years, beginning July 1, 1972.

**CONSIDERATION:**

Current rent is one-half the net cash income from the lease property, which in no event shall be less than \$3,000 per year.

**PROPOSED AMENDMENT:**

- Include provisions detailing the process for adjusting the rent on an annual basis beginning July 1, 2018. This lease currently provides that the Commission may modify the rent one time over the lease term, on or after July 1, 2007. Pursuant to this provision, staff conducted a review of the rent under this lease and recommends that rent be revised to \$42,228 for the period of July 1, 2018, through June 30, 2019. Beginning July 1, 2019, the annual rent shall be the greater of \$31,000 per year or 30 percent of gross income.
- Include provisions requiring the Lessee to deposit \$30,000 each year, beginning July 1, 2019, into a security account. The Lessee may request reimbursement from the security account to cover no more than 50 percent of expenses required under the Lease for capital improvements and repair and maintenance to the public use areas associated with the lease premises such as: bridge structure, public driveway, public parking area, and public pedestrian trail. At the end of the term of the lease any

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balance remaining in the security account shall become the property of the State. Lessee's failure to comply with the deposit requirements of the security account shall constitute a material breach of the Lease.

**STAFF ANALYSIS AND RECOMMENDATION:**

**Authority:**

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.1, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

**Public Trust and State's Best Interests Analysis:**

On July 6, 1972, the Commission authorized a General Lease – Commercial Use for a term of 66 years, beginning July 1, 1972, and ending June 30, 2038, to Anza Pacific Corporation in conjunction with a Boundary Agreement and Land Exchange, (BLA 131) ([Item 24, July 6, 1972](#)), for filled and unfilled submerged land in San Francisco Bay, in the city of Burlingame.

On March 25, 1976, pursuant to BLA 131, the Commission authorized an assignment ([Item 47, March 25, 1976](#)) from Anza Pacific Corporation to Anza Shareholder's Liquidating Trust (Anza Trust) for the purpose of receiving transfers or assignments of all the assets, liabilities, and properties of Anza Pacific.

On July 19, 1978, the Commission authorized a sublease under PRC 4687.1 ([Item 17, July 19, 1978](#)) between Anza Trust and Victoria Station, Inc., for construction of a restaurant on approximately 2.28 acres of the 6.04-acre lease premises.

On November 16, 1982, the Commission authorized an assignment of Lease No. PRC 4687.1 ([Item 1, November 16, 1982](#)) from Anza Trust to Kwok Hung Szeto and Nikki Szeto. At the same meeting, the Commission authorized an amendment to the assignment to substitute Burlingame Bay Associates as assignee.

On May 20, 1986, Victoria Station filed Chapter 11 bankruptcy and entered into an agreement to sell its leasehold interest and personal property to Restaurants Unlimited, Inc. The U.S. Bankruptcy Court stipulated to the assignment of lease and for modification of lease terms on September 26, 1986. On October 29, 1990, the Commission approved the amendment of the sublease between Burlingame Bay Associates and Restaurants Unlimited, Inc. ([Item C10, October 29, 1990](#)).

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On March 25, 2016, staff sent notice to the Lessee of staff's review of their rent pursuant to the terms of the lease. On March 31, 2016, staff received a response from the Lessee stating that they did not agree with staff's recommendation and that they would have the fair market value determined by a MAI-designated appraiser. Staff notified the Lessee that any adjustment to rent negotiated would be applied beginning on July 1, 2016, so that any additional time to reach a resolution would not be at the expense of the State.

The Lessee's appraiser completed an appraisal of the lease premises on July 1, 2016, and staff used the information in the appraisal to revise the proposed rent in negotiations with the Lessee.

Staff believed an agreement on the rent adjustment was imminent, until a letter was received from the Lessee on January 11, 2018, in which the Lessee rejected the staff's proposed rent revision that was based on the Lessee-commissioned appraisal.

On February 27, 2018, staff presented a rent modification to the Commission ([Item C45, February 27, 2018](#)). That item was discussed and deferred, to be heard at a later meeting. The Commission directed staff to continue working with the Lessee. Staff has been in regular communication with the Lessee and their representatives since March 2016, and has worked diligently to come to an agreeable and reasonable rent.

The requirement under the lease to maintain that portion of the lease premises not subject to a sublease and open to the public for public use has been of particular concern. On March 25, 2019, staff received material from the Lessee detailing current and future estimated repair and maintenance expenses for these public amenities. This area includes a portion of a public pedestrian bridge, public driveway, public parking area, and public pedestrian trail. Staff is confident the Lessee will maintain the Lease Premises as required by their lease throughout the remaining term of the lease.

The Lessee was not, however, able to provide evidence that they incurred these repair and maintenance costs historically. Therefore, staff recommends establishment of a security account to ensure the Lessee adheres to their proposed maintenance plan. The Lessee has agreed to deposit \$30,000 each year, beginning July 1, 2019. The establishment of this account will help ensure the lease premises will be properly maintained throughout the remaining term of the lease. The

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proposed amendment also provides that the establishment of this reimbursement process in no way obligates the State to make repairs or perform maintenance that is the responsibility of the Lessee under the lease.

Taking into account the ongoing expense associated with maintaining the public use area of the lease premises, staff recommends a new rent be set at \$42,228 for the period of July 1, 2018, through June 30, 2019, and the greater of \$31,000 per year or 30 percent of gross income, effective July 1, 2019. The Lessee has requested to make installment payments for the 2018/2019 lease period, in two equal installments on July 1, 2019, and July 1, 2020. Staff supports the payment plan and has incorporated it into the amendment.

**OTHER PERTINENT INFORMATION:**

1. This action is consistent with Strategy 2.2 of the Commission's Strategic Plan to ensure timely receipt of revenues and royalties from the use and development of State lands and minerals.
2. Approving the amendment of lease to revise the rent is not a project as defined by the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

**EXHIBIT:**

- A. Site and Location Map

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**AUTHORIZATION:**

1. Authorize an amendment of the lease to revise the rent from one-half the net cash income from the lease property, which in no event shall be less than \$3,000 per year, to \$42,228 for the period of July 1, 2018, through June 30, 2019, and the greater of \$31,000 per year or 30 percent of gross income, effective July 1, 2019; and acceptance of the 2018/2019 rent in two installments due on July 1, 2019, and July 1, 2020.

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2. Authorize an amendment of the lease to establish a security account and require the Lessee to deposit \$30,000 each year, beginning July 1, 2019, for expenses required under the lease. Lessee may request reimbursement once per year on or before the lease anniversary date beginning in Fiscal Year 2020-21 from said account, to cover no more than 50 percent of expenses associated with capital improvements and repair and maintenance to the bridge structure, public driveway, public parking area, public pedestrian trail referred to as the 'Bay Trail,' and any other improvement, repair, or maintenance cost approved by Lessor's Executive Officer, or her designee.
3. Delegate authority to the Executive Officer, or authorized designee, to manage the security account, qualify valid reimbursable expenses, and authorize reimbursements to cover no more than 50 percent of qualified expenses. The determination of qualified expenses can be appealed by the Lessee to the Commission at one of its regularly scheduled meetings.

NO SCALE

# SITE



60 BAY VIEW PLACE, BURLINGAME

NO SCALE

# LOCATION



MAP SOURCE: USGS QUAD

## **Exhibit A**

PRC 4687.1  
 BURLINGAME BAY  
 ASSOCIATES  
 APN 026-363-510  
 GENERAL LEASE -  
 COMMERCIAL USE  
 SAN MATEO COUNTY



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

TS 08/14/17