

**CALENDAR ITEM
C17**

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08/09/16
PRC 7001.1
A. Franzoia

ASSIGNMENT AND AMENDMENT OF SUBLEASE

LESSEE/SUBLESSOR:

City of Sacramento

SUBLEESSEE/ASSIGNOR:

Waterfront Management, Inc.

ASSIGNEE/SUBLEESSEE:

Riverwalk Ventures, LLC

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Sacramento River, between the "I" Street Bridge and the Tower Bridge, city of Sacramento, Sacramento County.

AUTHORIZED USE:

LEASE: Use and maintenance of docks, walkways, access ramps, floating vessels, and any other structure necessary or appurtenant to the development of the lease premises and for the mooring of vessels.

SUBLEASE: Operating and conducting a full service restaurant and cocktail lounge, Rio City Café, together with ancillary uses.

LEASE TERM:

LEASE: 49 years, beginning July 1, 1986.

SUBLEASE: 11 years, beginning July 27, 1993, with the option to extend the term of the sublease for up to three additional 5-year terms under the terms and conditions contained in the sublease.

CONSIDERATION:

LEASE: Commencing with years 6 through 25, the State shall receive 20 percent of the gross annual rent the City of Sacramento (City) receives from a sublessee.

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SUBLEASE: A guaranteed minimum monthly fee of \$4,000 or a percentage of gross receipts, whichever is greater: 3½ percent of gross receipts from any activities for the first three years of the contract and 4 percent of gross receipts thereafter. If gross sales exceed \$200,000 during any calendar month, sublessee shall pay 5 percent of the overage of those sales over \$200,000 for that month; if gross sales exceed \$250,000 during any calendar month, sublessee shall pay 5½ percent of the overage of those sales over \$250,000 for that month.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6216, 6301, and 6501; California Code of Regulations, title 2, section 2000, subdivision (b); section 2002, subdivision (a); and section 2003.

Public Trust and State's Best Interests Analysis:

On July 24, 1986, the Commission approved the issuance of a Master Lease (Lease) to the City for an area covering a portion of the Sacramento River in Old Sacramento between the I Street Bridge and Tower Bridge. The Commission has amended the Lease to adjust the rent, the due date of annual reports, and the expiration date of the Lease to June 30, 2035.

In 1993, City staff discussed with Commission staff a proposal for a restaurant and cocktail lounge on the Lease Premises for a facility to be named the "Cadillac Bar." Based on these discussions, the Commission authorized on April 28, 1993, a Sublease between the City and Cadillac Bar, Inc., for the operation of a restaurant and cocktail lounge. However, following the Commission's action, the City and the proposed restaurant's representatives concluded the Cadillac Bar format was too limiting for a restaurant to fully serve the diverse clientele of Old Sacramento. The City, therefore, entered into a Sublease with Waterfront Management, Inc. (Waterfront), commencing July 27, 1993, for an 11-year period to operate a restaurant and cocktail lounge called the Rio City Cafe. The sublease allowed for three, 5-year renewal options. The Commission never rescinded its action approving the Sublease between the City and Cadillac Bar, Inc., approved April 28, 1993, and never approved the Sublease between the City and Waterfront.

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On August 20, 2010, the Commission approved, by endorsement, a sublease between the City and Waterfront for of a portion of Lease No. PRC 7001.1 to operate a full service restaurant and cocktail lounge called Rio City Cafe for an 11-year term with three 5-year extensions beginning July 27, 1993. The City has now submitted an application requesting an endorsement of the assignment of the sublease from Waterfront to Riverwalk Ventures, LLC, and an endorsement of a Second Amendment to the sublease terminating the sublease on July 26, 2019.

The State of California acquired sovereign ownership of all tidelands and submerged lands and the beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes that include, but are not limited to, waterborne commerce, navigation, fisheries, water-related recreation, visitor-serving amenities, habitat preservation, and open space.

The Lease premises are used for the maintenance of docks, moorings, appurtenant structures, and facilities adjacent to Historic Old Sacramento providing recreational boating and visitor-serving retail and restaurants/uses. The recreational boating, visitor-serving retail, restaurants, and cafes that have been developed on the Lease premises and adjacent City-owned land include Rio City Café, Joe's Crab Shack, and the Delta King floating restaurant. Preservation of historic waterfront facilities, as well as water-dependent recreational boating and visitor-serving amenities are generally consistent with the common law Public Trust Doctrine. The subject structures are owned and maintained by the City.

The proposed assignment and amendment of the sublease includes certain provisions protecting the public use of the proposed lease area, including a limited lease term of 3 years for the sublease, and a non-exclusive use provision. The Lease also contains provisions that require the lessee to remove their improvements and restore the lease premises at the end of the lease term. Additionally, the Lease requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved. For all the reasons above, Commission staff believes the assignment and amendment of this Lease is consistent with the common law Public Trust Doctrine and is in the best interests of the State at this time.

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OTHER PERTINENT INFORMATION:

1. The action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
2. Approving the sublease assignment and amendment 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:

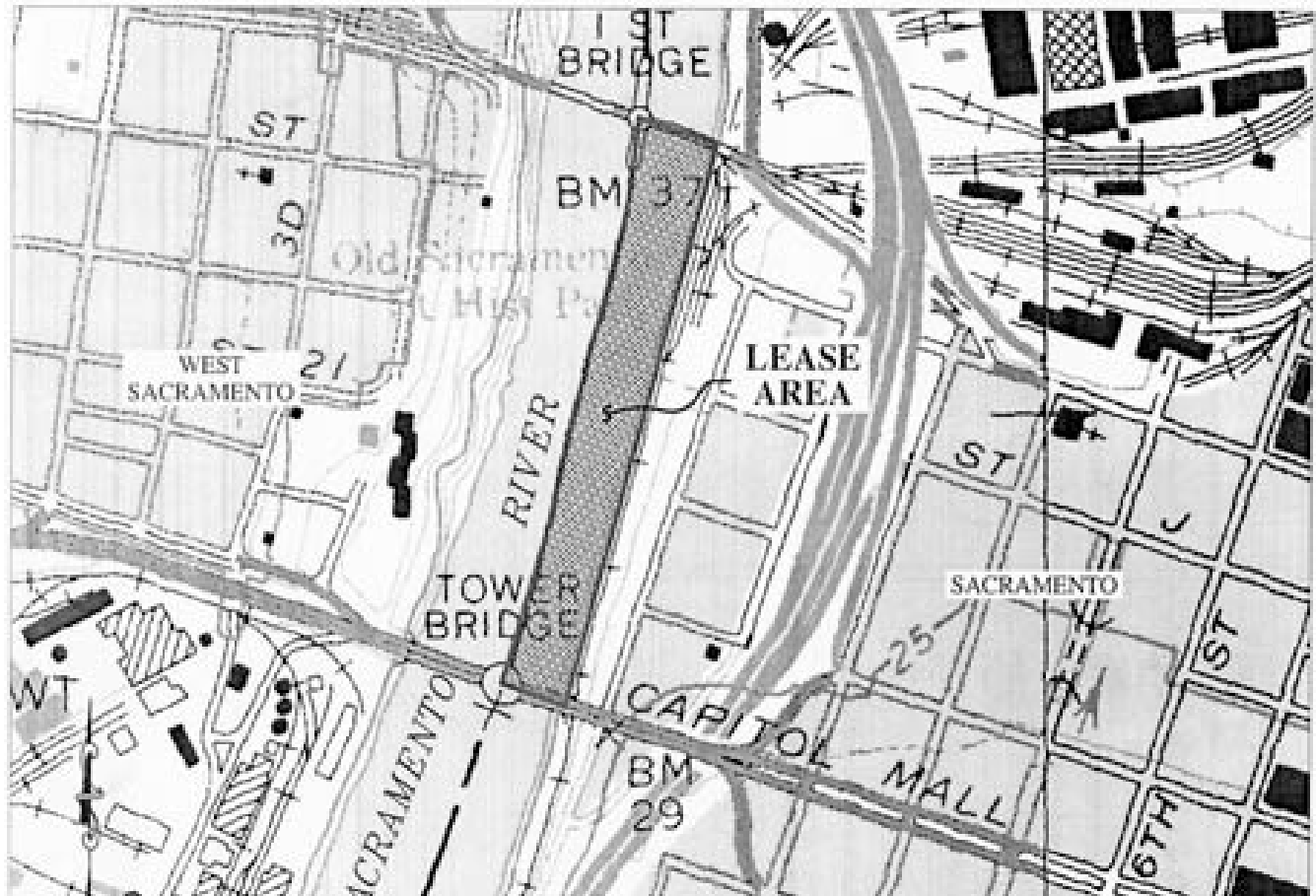
It is recommended that the Commission:

AUTHORIZATION:

1. Authorize, by endorsement, an assignment of a Sublease from Waterfront Management, Inc., to Riverwalk Ventures, LLC, for a portion of Lease No. PRC 7001.1, as shown on Exhibit A, attached and by this reference made a part hereof, effective August 9, 2016.
2. Authorize, by endorsement, a Second Amendment to Sublease to terminate the sublease on July 26, 2019, with no right to renew the sublease.

NO SCALE

SITE



SACRAMENTO RIVER BETWEEN I STREET BRIDGE AND TOWER BRIDGE

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit A

PRC 7001.1
CITY OF SACRAMENTO
MASTER LEASE
SACRAMENTO COUNTY



IWP 09/09

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.