

**STAFF REPORT
C57**

A 74
S 37

06/21/18
PRC 6616.1
L. Pino

**TERMINATION OF A GENERAL LEASE – PUBLIC AGENCY USE,
AND ISSUANCE OF A GENERAL LEASE – PUBLIC AGENCY USE,
AND ENDORSEMENT OF SIX SUBLEASES**

APPLICANT/LESSEE/SUBLESSOR:

City of Huntington Beach

SUBLESSEES:

Abercrombie & Fitch Co.; Ruby's Diner, Inc.; Let's Go Fishing; Fare Share Enterprises; Surf City Store; Kite Connection.

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Pacific Ocean, offshore Huntington Beach, Orange County.

AUTHORIZED USE:

The operation and maintenance of an existing public municipal pier and related concessions.

LEASE TERM:

25 years, beginning June 21, 2018.

CONSIDERATION:

Annual rent in the amount of \$125, with additional consideration being the Public Use and Benefit, with additional rent triggering for any fiscal year that revenue from the pier exceeds operational expenses; and the State reserves the right to fix a different rent if the Commission finds such action to be in the State's best interests.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

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

Public Trust and State's Best Interests Analysis:

On May 7, 1984, the Commission authorized the issuance of Lease No.

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PRC 6616.9, a 35-year General Lease – Public Agency Use, to the City of Huntington Beach (City) for the Huntington Beach Municipal Pier and ancillary facilities ([Item C06, May 7, 1984](#)), beginning February 1, 1984.

On August 22, 1990, the Commission authorized the issuance of an Amendment of Lease No. PRC 6616.9 to (1) approve the demolition and reconstruction of the Huntington Beach Pier, (2) acknowledge the termination by the City of Huntington Beach of those subleases approved by the Commission on May 7, 1984, (3) amend the land description to permit a recreational pier with restrooms and lifeguard stations, and (4) amend the land description to accommodate a minor extension in the length of the pier when reconstructed ([Item 71, August 22, 1990](#)), effective August 30, 1990.

On December 9, 2004, the Commission authorized the issuance of a second Amendment of Lease No. PRC 6616.9 to amend the authorized improvements to include: (1) an existing restaurant structure not previously authorized by the Commission; and (2) authorization of five subleases, not previously authorized by the Commission (Ruby's Diner, Inc., Let's Go Fishing, Carden's Coin Telescopes, Surf City Store, Kite Connection) ([Item C09, December 9, 2004](#)), effective April 1, 2003.

On April 23, 2014, the Commission authorized the issuance of a third Amendment of Lease No. PRC 6616.9 to change the annual report due date from August 1 to September 30 of each year; and authorization of two subleases, not previously authorized by the Commission (Abercrombie & Fitch Co. and See Scope) ([Item C62, April 23, 2014](#)), which was never executed.

The current lease expires on January 31, 2019. The City is now applying for termination of that lease and issuance of a new lease.

The first pier in Huntington Beach was built by the Huntington Beach Company, owned by Standard Oil, in 1904 before Huntington Beach was incorporated in 1909. The original wooden pier extended 1,000 feet into the Pacific Ocean. In 1910 severe storms damaged the pier causing a large portion of the pier to collapse into the ocean.

In 1911 the Huntington Beach Township Board of Trustees approved a bond to reconstruct the Huntington Beach Pier (Pier), replacing the remains of the old wooden pier with a new concrete pier extending 1,350 feet into the Pacific Ocean. At that time, the Pier set a record as the

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longest and highest concrete recreational pier in the United States. In 1931 the City extended the Pier by 500 feet.

In 1983 and in 1988, Pacific storms severely damaged the Pier. A structural assessment of the Pier determined that it was unsafe, and it was closed to the public in July 1988. The Pier was deemed worthy of preservation by the federal government and was added to the National Register of Historic Places (NRHP) on August 24, 1989. In October 1990, the City began reconstruction of the Pier, which was completed on July 18, 1992. Over 500,000 people attended the rededication and grand reopening ceremony.

Located at Pacific Coast Highway and Main Street, the iconic Huntington Beach Pier is one of the longest piers on the West Coast. It is the center of the City's prominent beach culture and is available to the public free of charge. The Pier is a focal point of the City which connects coastal resources and recreation activities on the beach to a range of overnight accommodations, including low-cost RV overnight accommodations at the beach.

The Pier is frequently utilized for coastal recreation activities and is a point of interest that connects regional multi-use trails leading to the Bolsa Chica Wetlands, Sunset Beach, Santa Ana River Trail, and Newport Beach. The Pier offers panoramic views of Catalina Island, Newport Beach to the south, and Long Beach and San Pedro to the north. The Pier is open to the public daily from 5 a.m. to midnight and is a popular tourist destination. Moreover, the Pier also features prominently in many City-hosted events throughout the year including the annual U.S. Open of Surfing, the largest surfing competition in the world; the Annual Pier Swim and Rough Water Swim in which participants swim around the pier; and a 4th of July parade and fireworks show.

The proposed lease is limited to a 25-year term and does not alienate the State's fee interest or grant the lessee exclusive rights to the lease premises. The proposed lease will require the lessee to indemnify the State for any liability incurred as a result of the lessee's activities on the lease premises.

Subleases:

The City has several subleases associated with the Pier. Staff has reviewed the following six agreements and believes that they are consistent with the terms of the proposed lease, do not extend beyond the term of the proposed lease, and are not inconsistent with the Public Trust.

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- Ruby's Diner, Inc. - 15-year sublease for operation of the existing restaurant on the Pier, beginning September 9, 2016, and ending May 31, 2032).
- Marian Johnson, doing business as Let's Go Fishing and Surf City Snack Bar - 5-year sublease for operation of the existing fishing supply and snack shop on the Pier, beginning November 16, 2009, and ending November 16, 2014. The sublease also included a 5-year extension provision which was exercised on August 16, 2014. The sublease expires on November 16, 2019.
- Tina Viray and Nelson Wescott, a General Partnership, doing business as The Surf City Store - 5-year sublease for operation of the existing gift shop on the Pier, beginning November 16, 2009, and ending November 16, 2014. The sublease also included a 5-year extension provision which was exercised on August 13, 2014. The current sublease expires on November 16, 2019.
- David Shenkman, doing business as Kite Connection International Inc., a California corporation - 5-year sublease for operation of the existing kite store on the Pier, beginning November 16, 2009 and ending November 16, 2014. The sublease also included a 5-year extension provision which was exercised on August 14, 2014. The current sublease expires on November 16, 2019.
- Fare Share Enterprises, a New York Corporation - 3-year licensing agreement for installation, operation and maintenance of coin-operated telescopes located on the Pier, beginning October 13, 2016, and ending October 13, 2019.
- Abercrombie & Fitch Co., a Delaware Corporation; Abercrombie & Fitch Trading Co., an Ohio Corporation; and J.M. Hollister, LLC, a Delaware Corporation (collectively referred to as "Abercrombie") - 5-year licensing agreement with the City for recording video of the beach from the pier, beginning on September 29, 2014, and ending on September 29, 2019. The agreement also authorizes four automatic 5-year extensions of the agreement, after the expiration of the term, unless sooner terminated. A retail store, such as Abercrombie & Fitch, is not generally considered a use consistent with the Public Trust, as it is not traditionally known as a store that is water-related and facilitates the public's enjoyment of the waterfront. However, the sub-lease does not substantially interfere with

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Public Trust needs and values at this location currently and for the foreseeable term of the sub-lease and lease.

Climate Change Analysis:

Climate change impacts, including sea-level rise, more frequent and intense storm events, and increased flooding and erosion, affect both open coastal areas and inland waterways in California. The lease area is in the Pacific Ocean and within the Huntington City Beach, which is a tidally influenced site vulnerable to flooding at current sea levels. Compared to year 2000 levels, the region could see up to 1 foot of sea-level rise by the year 2030, 2 feet by 2050, and possibly over 5 feet by 2100 (National Research Council 2012). As stated in *Safeguarding California* (California Natural Resources Agency 2014), climate change is projected to increase the frequency and severity of natural disasters related to flooding, drought, and storms (especially when coupled with sea-level rise). The combination of these conditions will likely result in increased wave run-up, storm surge, and flooding in coastal and near coastal areas. In tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris. Climate change and sea-level rise will further influence coastal and riverine areas by changing erosion and sedimentation rates. Beaches, coastal landscapes, and near-coastal riverine areas will be exposed to increased wave force and run up, potentially resulting in greater beach or bank erosion than previously experienced.

The combination of these projected conditions increases the likelihood of damage to structures within the lease premises during the term of the lease. Improvements to the lease area consist of the rehabilitated Huntington Beach Pier, which was reconstructed in 1992 and is in good condition, based on the most recent inspection conducted in 2015 by American Marine. The fixed components of the rehabilitated Pier could be susceptible to damage from rising seas and flooding events.

The reconstructed Pier has sufficient clearance to potentially avoid overtopping from current storm events, as analyzed and mitigated in the associated 1990 Environmental Impact Report. However, the environmental analysis was performed almost 30 years ago, and the structure height (38 feet above the Mean Lower Low Water Line) may not be adequate to avoid wave-overtopping related damage for the remainder of the facility's lifespan. The Pier may require more frequent inspection and maintenance to ensure continued function during and after future

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storm seasons. Finally, increased flooding and erosion could require additional or reinforced shoreline protection.

Regular maintenance, as required by the lease, will reduce the likelihood of severe structural degradation or dislodgement of the Pier. Under the proposed lease, the City of Huntington Beach acknowledges that the lease premises may be subject to effects of climate change, including sea-level rise. The lease contains provisions requiring a structural and utility safety assessment inspection every five years and an annual summary report related to sea-level rise vulnerability and adaptation capacity of the lease premises and the facilities.

Conclusion:

For all the reasons above, staff believes the issuance of this lease will not substantially interfere with Public Trust needs and values at this location, at this time, and for the foreseeable term of the proposed lease; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. This 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 and Strategy 1.3 to protect, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.
2. Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

3. Authorization, by endorsement, of subleases is not a project as defined by CEQA 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).

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EXHIBITS:

- A. Land Description
- B. Site and Location Map
- C1. Ruby's Diner Inc. Sublease Endorsement
- C2. Let's Go Fishing Sublease Endorsement
- C3. Surf City Store Sublease Endorsement
- C4. Kite Connection Sublease Endorsement
- C5. Fare Share Enterprises Sublease Endorsement
- C6. Abercrombie & Fitch Company Sublease Endorsement
- D. Lease Maintenance Reimbursement Agreement

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that issuance of the lease is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease will not substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; and is in the State's best interests.

AUTHORIZATION:

1. Authorize termination, effective June 21, 2018, of Lease No. PRC 6616.9, a General Lease – Public Agency Use, issued to City of Huntington Beach.
2. Authorize issuance of a General Lease – Public Agency Use, to the City of Huntington Beach, beginning June 21, 2018, for a term of 25 years, for the continued operation and maintenance of the existing municipal pier, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration in the amount of \$125, with additional consideration being the public use and benefit, with the State reserving the right to fix a different rent if the Commission finds such action to be in the State's best interests.
3. Authorize, by endorsement, six sublease agreements between the City of Huntington Beach and Ruby's Diner, Inc., Let's Go Fishing, Surf City Store, Kite Connection, Fare Share Enterprises, and

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Abercrombie & Fitch Co., located on the lease premises. Each sublessee shall name the State as an additional insured for its operations within the lease premises for all liability insurance coverage required under the sublease.

EXHIBIT A

PRC 6616.1

LAND DESCRIPTION

A strip of tide and submerged land 160 feet wide being 80 feet on each side of the following described centerline situate within the City of Huntington Beach, Orange County, State of California, the centerline of said strip being described as follows:

BEGINNING at the intersection of northeasterly line of Ocean Avenue with the centerline of Main Street, thence S 41° 41' 37" W 2065.92 feet to the end of said centerline of said strip of tide and submerged land.

EXCEPTING THEREFROM all that portion lying landward of the ordinary high water mark of the Pacific Ocean.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 06/14/2018 by the California State Lands Commission Boundary Unit.



NO SCALE

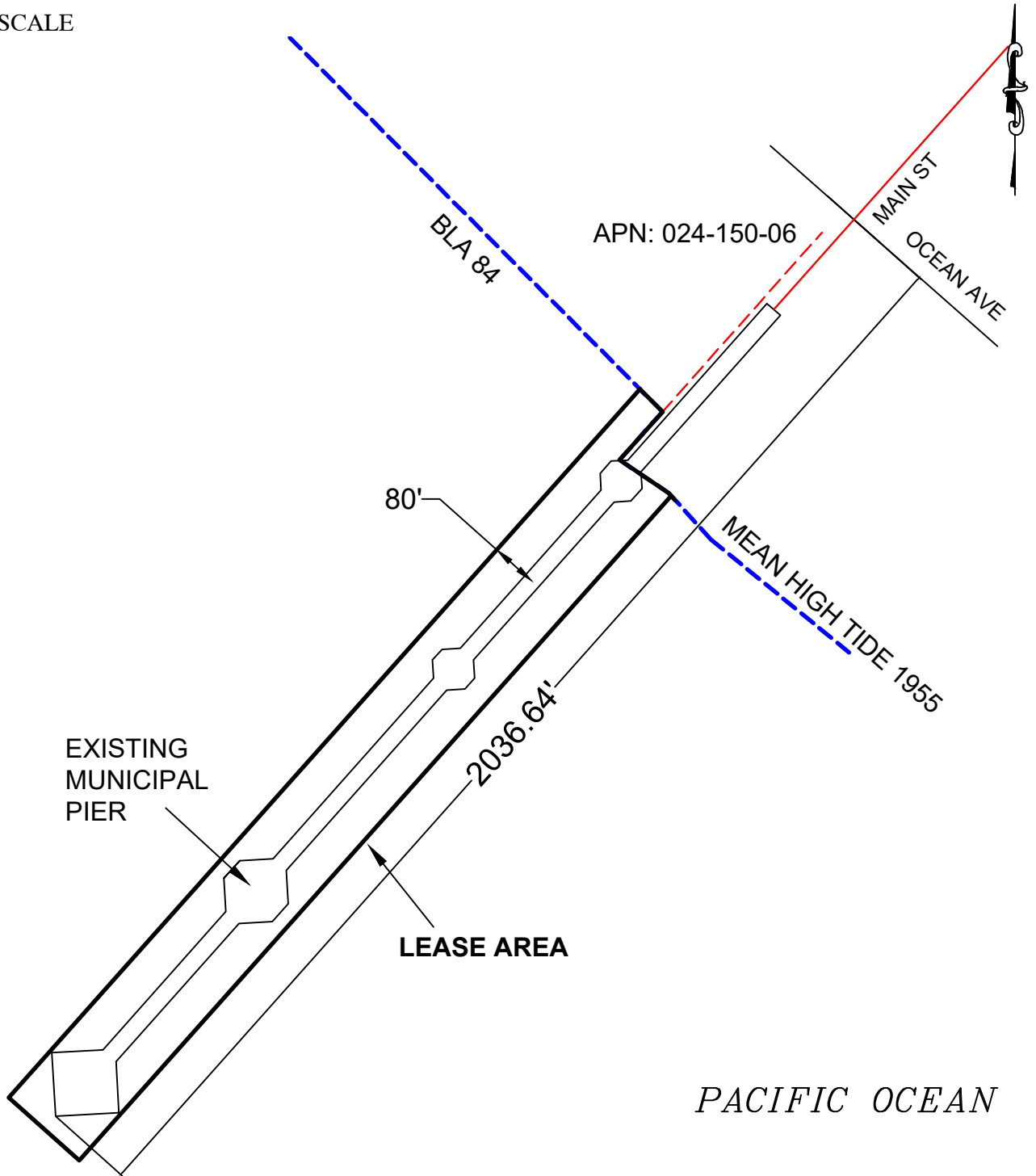


EXHIBIT A

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RPF 06/14/2018

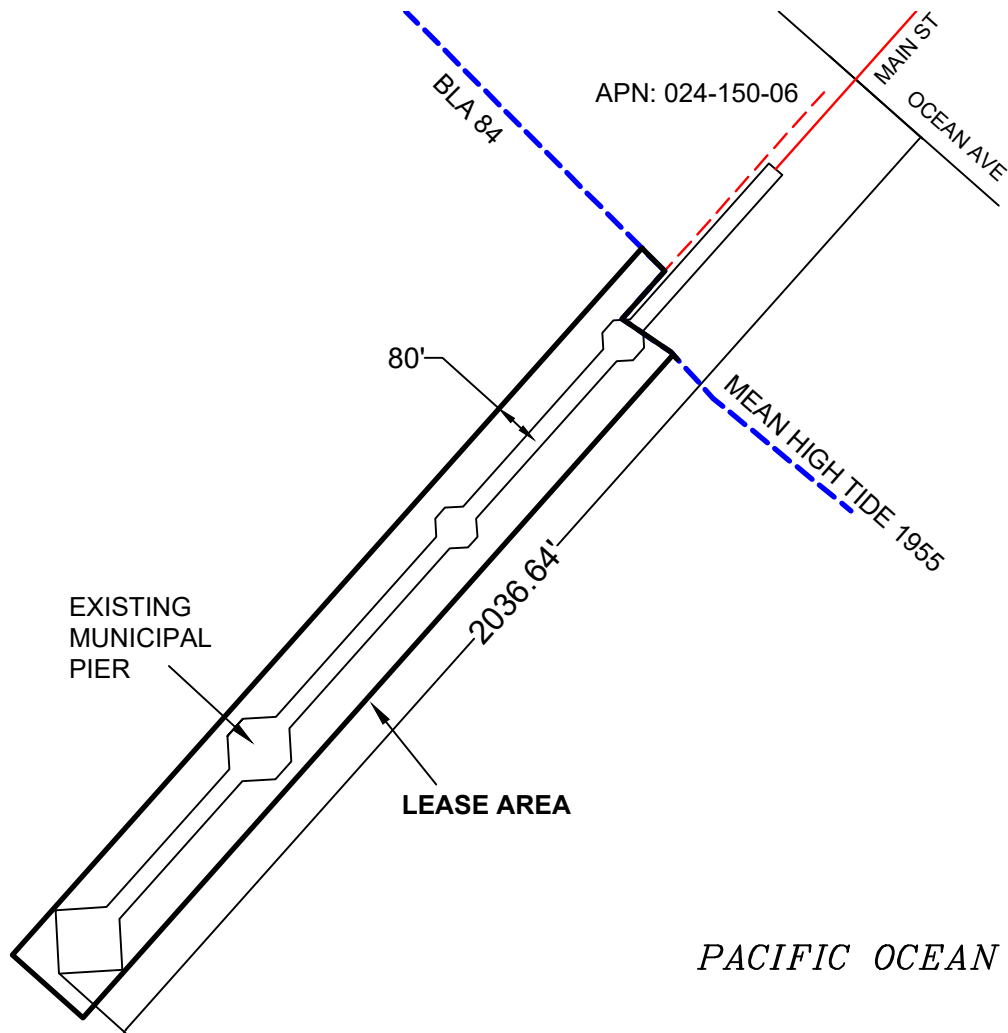
LAND DESCRIPTION PLAT
PRC 6616.1, CITY OF
HUNTINGTON BEACH
ORANGE COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE

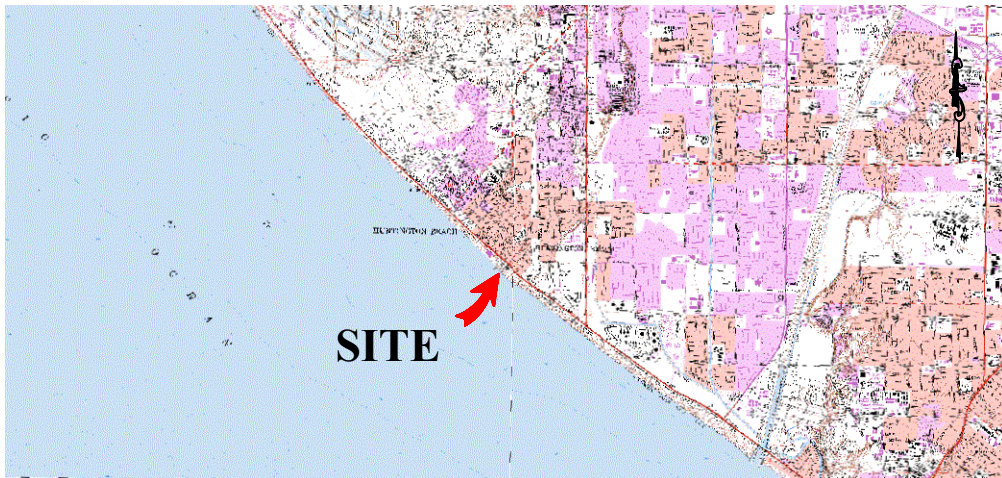


PACIFIC OCEAN

MUNICIPAL PIER, HUNTINGTON BEACH

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 6616.1
 CITY OF HUNTINGTON BEACH
 APN 024-150-06
 GENERAL LEASE -
 PUBLIC AGENCY USE
 ORANGE 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.

EXHIBIT C-1

PRC 6616.1

SUBLEASE

ENDORSEMENT

STATE OF CALIFORNIA STATE LANDS COMMISSION

Pursuant to Commission Minute Item No.TBD dated, June 21, 2018, the herein sublease between the City of Huntington Beach and Ruby's Diner Inc., under a portion of State Lease PRC No. 6616.1, is hereby approved.

BY: _____
ROBERT BRIAN BUGSCH, Chief
Land Management Division

EXHIBIT C-2

PRC 6616.1

SUBLEASE

ENDORSEMENT

STATE OF CALIFORNIA STATE LANDS COMMISSION

Pursuant to Commission Minute Item No.TBD dated, June 21, 2018, the herein sublease between the City of Huntington Beach and Let's Go Fishing, under a portion of State Lease PRC No. 6616.1, is hereby approved.

BY: _____
ROBERT BRIAN BUGSCH, Chief
Land Management Division

EXHIBIT C-3

PRC 6616.1

SUBLEASE

ENDORSEMENT

STATE OF CALIFORNIA STATE LANDS COMMISSION

Pursuant to Commission Minute Item No.TBD dated, June 21, 2018, the herein sublease between the City of Huntington Beach and the Surf City Store, under a portion of State Lease PRC No. 6616.1, is hereby approved.

BY: _____
ROBERT BRIAN BUGSCH, Chief
Land Management Division

EXHIBIT C-4

PRC 6616.1

SUBLEASE

ENDORSEMENT

STATE OF CALIFORNIA STATE LANDS COMMISSION

Pursuant to Commission Minute Item No.TBD dated, June 21, 2018, the herein sublease between the City of Huntington Beach and the Kite Connection, under a portion of State Lease PRC No. 6616.1, is hereby approved.

BY: _____
ROBERT BRIAN BUGSCH, Chief
Land Management Division

EXHIBIT C-5

PRC 6616.1

SUBLEASE

ENDORSEMENT

STATE OF CALIFORNIA STATE LANDS COMMISSION

Pursuant to Commission Minute Item No.TBD dated, June 21, 2018, the herein sublease between the City of Huntington Beach and Fare Share Enterprises, a New York corporation, under a portion of State Lease PRC No. 6616.1, is hereby approved.

BY: _____
ROBERT BRIAN BUGSCH, Chief
Land Management Division

EXHIBIT C-6

PRC 6616.1

SUBLEASE

ENDORSEMENT

STATE OF CALIFORNIA STATE LANDS COMMISSION

Pursuant to Commission Minute Item No.TBD dated, June 21, 2018, the herein sublease between the City of Huntington Beach and Abercrombie & Fitch Company, Abercrombie & Fitch Trading Company, and J.M. Hollister, LLC (collectively referred to as "Abercrombie") under a portion of State Lease PRC No. 6616.1, is hereby approved.

BY: _____
ROBERT BRIAN BUGSCH, Chief
Land Management Division

EXHIBIT D

STATE OF CALIFORNIA
STANDARD AGREEMENT
STD.213 (new 06/03)

AGREEMENT NUMBER
REGISTRATION NUMBER

- This Agreement is entered into between the State Agency and the Contractor named below:
STATE AGENCY'S NAME
California State Lands Commission (State)
CONTRACTOR'S NAME
City of Huntington Beach
- The term of this Agreement is: May 29, 2018 thru May 28, 2043
- The maximum amount of this Agreement is: \$ 22,500
- The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement:

Exhibit A – Scope of Work	2	Page(s)
Exhibit B – Budget Detail and Payment Provision/Definitions and Terms	2	Page(s)
Exhibit C* – General Terms and Conditions	GTC 4/2017	
Check mark one item below as Exhibit D:	2	Page(s)
<input checked="" type="checkbox"/> Exhibit D – Special Terms and Conditions (attached hereto as part of this Agreement)		
<input type="checkbox"/> Exhibit D* – Special Terms and Conditions		

Items shown with an Asterisk (*) are hereby incorporated by reference and made part of this Agreement as if attached hereto. These documents can be viewed at <http://www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx>.

IN WITNESS WHEREOF, this Agreement has been executed by parties hereto.

CONTRACTOR		CALIFORNIA Department of General Services Use only
CONTRACTOR'S NAME (if other than individual, state whether a corporation, partnership, etc.) <u>City of Huntington Beach</u>		
BY (Authorized Signature)	DATE SIGNED	
PRINTED NAME AND TITLE OF PERSON SIGNING <u>Michael Posey, Mayor</u>		
ADDRESS <u>2000 Main Street, Huntington Beach, CA 92648</u>		
STATE OF CALIFORNIA		
AGENCY NAME <u>California State Lands Commission</u>		
BY (Authorized Signature)	DATE SIGNED	
PRINTED NAME AND TITLE OF PERSON SIGNING <u>Denise Cook, Fiscal Officer</u>		
ADDRESS <u>100 Howe Avenue, Suite 100-South, Sacramento, California 95825</u>		

EXHIBIT A

SCOPE OF WORK

1. Work to be Performed – The City of Huntington Beach, the “Lessee”, enters into this Agreement with the California State Lands Commission, the “Commission” or “State” (hereafter the Lessee and the Commission/State are referred to collectively as the “Parties”) for staff costs associated with the processing and review of periodic reports of the facilities associated with Lessee’s General Lease – Public Agency Use, Lease No. PRC 6616.1 (Lease). The State hereby agrees to perform the following services:
 - A. Lease Management: The State shall review the Lessee’s annual summary reports. Reviewing costs shall include, but not be limited to, actual costs for staff time for review of sea-level rise and flooding vulnerability and risk assessments, updates or amendments to the Local Coastal Program, annual flooding frequency and extent, annual site photographs, schedule and nature of repair and maintenance operations, and coastal hazard remediation and removal. In addition to Lessee’s annual report submissions, Lessee shall conduct a structural assessment on or before December 31, 2020 and then every five years following the initial inspection, with a report to be provided within 30 days of inspection for Commission engineering staff review. Staff costs shall include but not be limited to, actual costs of staff time for review of submitted annual summary reports and engineering review of structural inspection reports for the term of the lease pursuant to Section 2, Special Provisions, Paragraph 6, of Lease No. PRC 6616.1.
 - B. Mutual Understanding: This Agreement is entered into by the parties hereto with the express understanding that the State cannot assure: 1) final approval of the permit or lease; 2) that permits from other State or local permitting agencies are obtainable; and 3) that either the State or the Lessee by entering into this Agreement is representing that the lease will go forward as proposed. Lessee understands and expressly acknowledges that the State’s review of annual summary and inspection reports is for the sole purpose of evaluating Lessee’s compliance with a lease from the Commission, if any, and not for any other purpose.

2. Parties’ Agents
 - A. For Engineering Review the State’s Project Officer shall be:
Chandrashekar Basavalinganadoddi, Supervising Mineral Resource Engineer
California State Lands Commission
Mineral Resource Management
200 Oceangate, 12th floor
Long Beach, CA 90802
Tel. (562) 590-5209
Email: Chandrashekar.Basavalinganadoddi@slc.ca.gov

B. For Lease Management the State's Project Officer shall be:
Lucien Pino, Public Land Management Specialist
California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825
Tel. (916) 574- 1858
E-mail: lucien.pino@slc.ca.gov

C. The Applicant's Project Manager shall be:
Travis K. Hopkins, Director of Public Works
City of Huntington Beach Public Works Department
2000 Main Street
Huntington Beach, CA 92648
Tel. (714) 374-5348
E-mail: thopkins@surfcity-hb.org

D. The Applicant's Agent is:
Travis K. Hopkins, Director of Public Works
City of Huntington Beach Public Works Department
2000 Main Street
Huntington Beach, CA 92648
Tel. (714) 374-5348
E-mail: thopkins@surfcity-hb.org

3. Notices and Authorities

A. Any notice or other written communications required or permitted under this Agreement may be personally delivered in writing to the State's Project Officer or Applicant's Project Manager, or may be sent by certified mail, return receipt requested, to the address stated above and shall, based on such delivery or sending, be deemed to have been effectively communicated. Either party may change such address by written notice to the other party.

Any notice given other than as provided above, shall not be deemed to be effectively communicated until received in writing.

B. The Project Manager shall have full authority to act on behalf of the Lessee for administration of the Project. All communications given to the Project Manager shall be as binding, as if given to the Lessee.

C. The State may change its Project Officer, at any time, by written notice to the Lessee. The Lessee may change its Project Manager, at any time, by written notice to the State's Project Officer.

EXHIBIT B

BUDGET AND PAYMENT PROVISIONS

1. **Invoicing and Payment** – Lessee agrees to reimburse the State for all reasonable costs associated with the review and processing of annual summary report and quinquennial inspection report submissions according to this Standard Agreement whether prior or subsequent to the execution of this Agreement. Processing costs shall include, but not be limited to, staff time associated with those tasks outlined in Exhibit A, Scope of Work. Staff costs shall be computed in accordance with Section 8752 of the State Administrative Manual and shall include salaries and wages, related staff benefits and administrative overhead.

The invoice shall be mailed to the Lessee's Project Manager. Payments shall reference the Agreement number assigned to this Agreement and must be mailed to the following address:

California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202
Attention Accounting

2. **Estimated Reimbursable Costs** – The initial estimated costs are based on the information and contracts existent as of the date of this Agreement. The itemized reimbursable costs estimate, to include recurring annual costs, for Work to be Performed is:

A. Lease Management Estimate:

To include the following:

1. Processing and Review of Annual Summary Report: \$500
2. Processing and Engineering Review of Periodic Structural Inspection Reports (once every five years): \$2,000¹ (\$400 per year)

Approximate Recurring Annual Cost Estimate for Lease Management Review: \$900²

3. **Expense Deposits and Billings:**

- A. Lease Management:** Staff costs incurred by the State for Lease Management pursuant to this Agreement, as specified in Exhibit B, paragraph 2(c), shall be billed in arrears on a monthly basis. All payments are due 30 days from the date of the invoice. The State reserves the right to demand an expense deposit equal to the remainder of the Agreement should the Lessee fail to pay invoices within the time specified. Total costs invoiced, including expense deposits, shall not exceed the dollar amount specified in this Agreement unless amended.

¹ Estimate is based on usual and customary review; should extraordinary circumstances or major repair work occur, staff time needed for engineering review may exceed this estimate. In such an event, Lessee will compensate the State for staff time that exceeds the estimated amount, in accordance with the terms of this agreement.

² The \$900 Recurring Annual Cost Estimate includes the \$500 annual amount, and the recurring periodic amount divided equally at \$400 per year over each five-year period.

4. Additional Costs or Services – Lessee will be advised of any estimated cost increase in writing in accordance with this Agreement should the need for additional services become known or as costs previously estimated exceed the above estimate.

Upon notification of the need for additional funds, the Lessee shall have the option to dispute or accept the increase with all the terms and conditions of this Agreement being unchanged and in effect. The Lessee shall notify the State within five (5) days of notice of any intent to dispute the change. Non-response shall be acknowledged as acceptance of the additional charges and Lessee will be billed for the balance in accordance with the terms above.

5. Definitions and Terms - Wherever the following abbreviations and terms (or pronouns in place of them) are used, the intent and meaning shall be interpreted as provided in this section. Working titles having a masculine gender, and pronouns referring to such said titles, are utilized in this Agreement for the sake of brevity and are not intended to refer to either sex or the neuter. All references to the singular shall refer also to the plural. All references to the plural shall refer also to the singular.
 - A. As used within this Agreement, the terms “Lessee” and “Contractor” are used interchangeably and are to be considered the same entity.
 - B. As used within this Agreement, the terms “State” and “Commission” are used interchangeably and are to be considered the same entity.
 - C. The term “Agreement” refers to this document as executed by the Lessee and the State. This document includes Standard Form and any attached Exhibits.
 - D. The term “Project Manager” refers to that person appointed or designated by the Applicant to administer the lease for the Applicant.
 - E. The term “Project Officer” refers to that person appointed by the State to manage the lease file associated with this agreement.
 - F. The term “Lessee’s Agent” refers to that person designated by the Lessee to provide technical assistance and support to the State in coordinating transmittal of reports and other technical information and shall have no authority to act for the Lessee unless otherwise stated in writing by Lessee to the State’s Project Officer.

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EXHIBIT C

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.
8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or

duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require in ascertaining compliance with this clause. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.)

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 04/2017 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tender's final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a “loss leader” as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

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EXHIBIT D

SPECIAL TERMS AND CONDITIONS

1. Type of Agreement – This Agreement between the State and the Lessee is for the reimbursement of costs, from the Lessee to the State, for lease maintenance related activities, detailed in Exhibits A and B of this Agreement, performed by staff of the California State Lands Commission. This Agreement does not involve the procurement of goods or services from the Lessee.
2. Effective Reimbursement Period – Notwithstanding the date of Agreement approval in paragraph 1 of GTC 4/2017, the Lessee agrees to reimburse the State for lease maintenance-related review costs detailed in Exhibits A and B of this Agreement, that accrue beginning on the date listed in form STD.213, paragraph 2 of this Agreement until the termination of this Agreement. The term of this agreement shall extend to include any holdover period of Lease No. PRC 6616.1.
3. This paragraph supersedes paragraph 5 of, Exhibit C, “Indemnification”:

Indemnification – To the fullest extent permitted by law, Lessee shall defend, indemnify, and hold harmless the State of California and any and all agencies or departments thereof, including but not limited to, any and all boards, commissions, officers, agents, employees, and representatives (Indemnitees), against any and all claims, liabilities, charges, losses, expenses, and costs, including the State’s attorneys’ fees (Liabilities), that may arise from or by reason of any action or inaction by the Indemnitees in connection with the work described in Exhibit A. This obligation of the Lessee to indemnify, defend, and hold harmless the Indemnitees shall not apply to any Liabilities caused solely by the gross negligence or intentional acts of the State or its officers, agents, and employees; or to any claims, litigation, or to other actions brought by the Lessee against the Indemnitees in relation to the Lessee’s application or this Agreement. This provision shall survive termination of this Agreement.

4. This paragraph supersedes paragraph 6 of GTC 610, Exhibit C, “Disputes”:

Disputes – Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under or relating to the performance of this Agreement which is not disposed of by Agreement shall be decided by the Project Officer, who shall reduce his decision to writing in regard to the dispute and shall transmit a copy thereof to the Lessee within thirty (30) days. The decision of the Project Officer shall be final and conclusive, unless within thirty (30) days from the date of receipt of such copy, the Lessee transmits to the State a written appeal. Said appeal shall be supported with specificity.

- a. In connection with any appeal proceeding under this clause, the Lessee shall be afforded an opportunity to be heard before the State Lands Commission within sixty (90) days of the receipt by the State of the Lessee’s written appeal and to offer evidence in support of its appeal. Pending the final decision of any such dispute, the Lessee shall proceed diligently with the performance of the Agreement and in accordance with the written decision of the Project Officer which is the subject of the Lessee’s appeal including the payment of invoices to the State.
- b. The procedure described herein shall not prejudice or deny the Lessee’s remedies at law. However, the Lessee agrees to exhaust the procedure described herein before pursuing remedies at law. All amounts paid to the State under protest shall be held by the State in trust until the dispute is resolved.

5. Modification – This paragraph supersedes paragraph 7 of GTC 610, Exhibit C, “Termination for Cause”:

Either party may elect to modify the scope of work or costs associated with the lease maintenance described in Exhibit A, Paragraph 1(A) and Exhibit B, Paragraphs 2(A) of this Agreement by written notice at any time prior to or during the lease term upon ten (10) days written notice to the other party. The Lessee agrees that in the event of such modification of this Agreement by either party as provided above, it shall reimburse the State one hundred percent (100%) of all costs incurred by the State in the performance of its obligations as described in this Agreement.

6. Reimbursement of Costs – Lessee shall reimburse the State in full for all reasonable costs and attorney’s fees, including, but not limited to, those charged it by the California Office of the Attorney General, that the State incurs in connection with the defense of any action brought against the State challenging this Agreement or any other matter related to this Agreement or the work performed by the State under this Agreement. In addition, Lessee shall reimburse the State for any court costs and reasonable attorney fees that the State may be required by a court to pay as a result of such action. Lessee may participate in the defense of the action, but its participation shall not relieve it of its obligations under this Paragraph. The provision of this Paragraph shall not apply to any claims, litigation or other actions which may be brought by the Parties against each other and shall not apply to the extent that any such obligation is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement. Nothing in this Paragraph shall be construed to require the State to defend itself against all or any aspect of the challenge to this Agreement or work performed under this Agreement. However, Lessee may take whatever legal action is available to it to defend this Agreement or any work performed under this Agreement against any challenge by a third party, whether or not the State chooses to raise a defense against such a challenge.
7. Records – Upon five (5) business days’ notice, the State’s records relating to its costs shall be available for the Lessee’s audit in the State’s office in Sacramento. Said audit shall take place only during regular business hours of the State. Payment of costs by the Lessee shall not constitute a waiver of its rights to audit nor an acknowledgment by the Lessee of the validity of the costs that have been paid. Nothing herein shall be deemed to require the State, its consultants, other contractors and subcontractors to maintain books, records, or documents other than those usually maintained by them, provided that such books, records and documents reasonably segregate and identify the costs for which reimbursement is required hereunder. As used herein, “State’s records” include any audit of the consultant by the State or its designated representative as authorized in this Agreement.
8. Paragraphs 4, 7, 8, 9, 10, 11, 13, 15, 16, 18, 19, and 20 of GTC 4/2017, Exhibit C, do not apply to this Reimbursement/Revenue Agreement, and are hereby waived and shall have no force or effect upon this Agreement.

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