

STAFF REPORT

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08/23/19
PRC 7001.1
A2074
M. Schroeder

**CONSIDER AMENDMENT OF ONE SUBLEASE
AND ENDORSEMENT OF TWO SUBLEASES**

LESSEE/SUBLESSOR:

City of Sacramento (City)

SUBLESSEES:

Hornblower Yachts, Inc.
Diversified Restaurant Concepts dba River City Queen
Sac Brew Boat, 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: Hornblower Yachts, Inc.
Exclusive use of the "Passenger Boat Dock" for the purpose of mooring and operating tour boats and other passenger vessels, such as the *Capitol Hornblower* and *Empress Hornblower*, with an option to operate a water taxi service. Storage barge and equipment rental.

TERM:

LEASE: 49 years, beginning July 1, 1986.

SUBLEASE: Hornblower Yachts, Inc.
10 years, beginning July 15, 2009, with the option to extend the sublease for two 5-year terms.

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CONSIDERATION:

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

Annual rent for the term of the lease for years 26 through 49 is subject to adjustment as agreed to between the Commission and the City.

SUBLEASE: Hornblower Yachts, Inc.

Annual rent to the City is as follows: \$24,000 for years 1 through 5; \$27,000 for years 6 through 10; \$30,000 for the first extended 5-year period; and \$36,000 for the second extended 5-year period plus 5 percent of gross receipts, without deductions, as set forth in the sublease. Monthly rental payment to the City in the amount of \$250.

PROPOSED AUTHORIZATION:

The City seeks the Commission's approval to amend the sublease with Hornblower Yachts, Inc., as follows:

1. Authorize extension of the sublease for 1 year, beginning July 15, 2019, with the option to extend the sublease for four additional 1-year terms.
2. Revise annual moorage fee to the City to \$10,560.

The City seeks the Commission's endorsement of the following subleases:

1. To the River City Queen for the use of the "L Street Barge" for the purpose of mooring and operating a tour boat for a term of 3 years, beginning May 6, 2019, with the option to extend the sublease for two additional 1-year terms. Annual rent to the City of \$6,528 plus 5 percent of gross receipts, as set forth in the sublease.
2. To Sac Brew Boat LLC, use of the "Visitors Boat Dock" for the purpose of mooring and operating a tour boat for 3 years, beginning April 10, 2019, with the option to extend the sublease for two additional 1-year terms. Annual rent to the City of \$4,080 plus 5 percent of gross receipts, as set forth in the sublease.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, and 6501.1; California Code of Regulations.

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Public Trust and State's Best Interests Analysis:

On July 24, 1986, the Commission authorized a Master General Lease – Public Agency Use (Lease) to the City for an area covering a portion of the Sacramento River in Old Sacramento between the “I” Street Bridge and the Tower Bridge ([Item 20, July 24, 1986](#)).

On October 22, 2009, the Commission authorized a sublease between the City and Hornblower Yachts, Inc. ([Item C32, October 22, 2009](#)). On December 17, 2009, the Commission authorized an amendment of the sublease to add a storage barge and equipment rental provision ([Item C19, December 17, 2009](#)). The purpose of the sublease was for the exclusive use of the Passenger Boat Dock for mooring and operating tour boats and other passenger vessels, such as the *Capitol Hornblower* and *Empress Hornblower*, with an option to operate a water taxi service. The sublease agreement between the City and Hornblower Yachts, Inc., required Hornblower Yachts, Inc., to obtain a historic-style passenger vessel satisfactory to the City. The new vessel was supposed to be at the Passenger Boat Dock by April 1, 2017, and operational no later than May 1, 2017.

On May 31, 2018, staff was notified by the City that Hornblower Yachts, Inc., had not obtained a historic-style passenger vessel and that the City revoked Hornblower Yachts, Inc.'s, exclusive use of the Passenger Boat Dock. Thereafter, the City issued two short-term (6 month) subleases with the River City Queen and Sac Brew Boat, LLC. On July 2, 2018, a letter of non-objection was provided to the City from Commission staff approving the short-term subleases.

On January 24, 2019, the City solicited a Request for Proposal to award new longer-term subleases. The Request for Proposal closed on February 20, 2019, resulting in three operators (River City Queen, Sac Brew Boat, LLC, and Sacramento Jetboat Excursions) being selected by the City. On April 10, 2019, the City approved a 3-year agreement with the option to extend for 2 additional 1-year terms with Sac Brew Boat, LLC, to use the Visitors Boat Dock for the purpose of mooring and operating a tour boat. On May 6, 2019, the City approved a 3-year agreement with the option to extend for 2 additional 1-year terms with River City Queen to use the L Street Barge for the purpose of mooring and operating a tour boat. In the event the City executes an agreement with Sacramento Jetboat Excursions, the City will apply to the Commission for authorization of the additional sublease.

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Additionally, the City is applying for a third amendment to the sublease with Hornblower Yachts, Inc., to add a 1-year term, beginning July 15, 2019, with the option to extend the sublease for four additional 1-year terms, and revise the annual moorage fee to \$10,560.

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 restaurant 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 subleases include certain provisions protecting the public use of the proposed lease area, including limited lease terms, and non-exclusive use provisions. The primary Lease, itself, contains provisions that require the City 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 these reasons, staff believes the proposed amendment and endorsement of subleases does not substantially interfere with the Public Trust needs at this location, at this time, and for the foreseeable term of the proposed subleases; is consistent with the Public Trust Doctrine; and is in the state's best interests.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the amendment of the sublease and endorsement of two subleases is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the requests, the City or the sublessees may be required to remove the tour boats and other passenger vessels such as the Capitol Hornblower and Empress Hornblower and restore the premises to their original condition. Upon expiration or prior termination of the subleases, the sublessees also have no right to a new sublease or to renewal of any previous sublease.
2. 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

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resources under the Commission's jurisdiction; Strategy 1.3 to protect, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways; and 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.

3. The amendment of one sublease and endorsement of two subleases are not projects as defined by the California Environmental Quality Act because they are administrative actions 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:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed amendment of one sublease and endorsement of two subleases will not substantially interfere with the Public Trust needs and values at this location; find that these actions are consistent with the common law Public Trust Doctrine; and find that they are in the best interests of the State.

AUTHORIZATION:

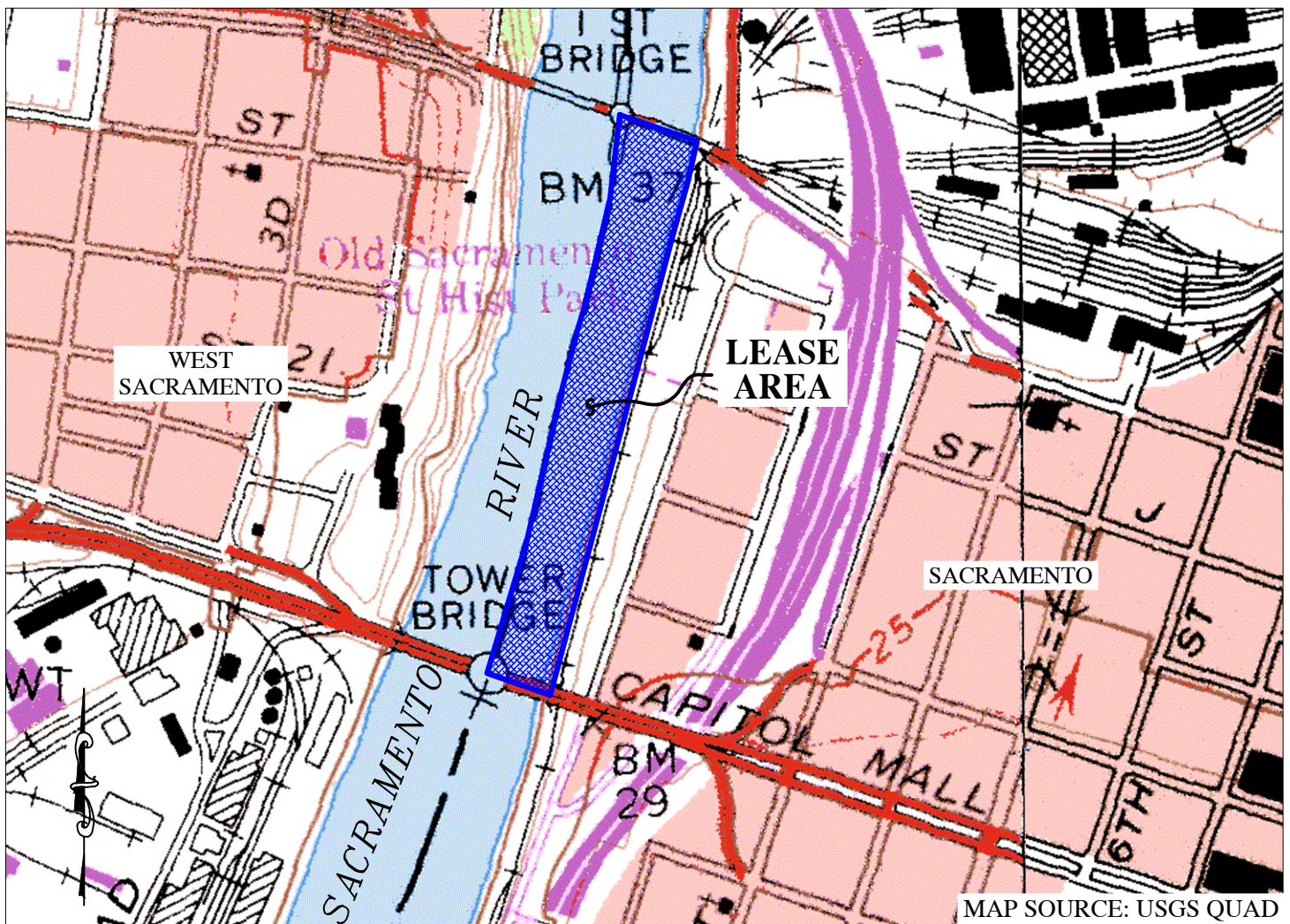
1. Authorize an amendment to the Sublease between the City and Hornblower Yachts, Inc., to extend the sublease for 1 year, beginning July 15, 2019, with the option to extend the sublease for four additional 1-year terms and to revise the annual moorage fees to the City to \$10,560.
2. Authorize, by endorsement, a sublease between the City and River City Queen for use of the "L Street Barge" for the purpose of mooring and operation of a tour boat for 3 years, beginning May 6, 2019, with the option to extend the sublease for two additional 1-year terms and annual rent due to the City in the amount of \$6,528 plus 5 percent of gross receipts.
3. Authorize, by endorsement, a sublease between the City and Sac Brew Boat, LLC, for use of the "Visitors Boat Dock" for the

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proposed mooring and operation of a tour boat for 3 years, beginning April 10, 2019, with the option to extend the sublease for two additional 1-year terms and annual rent due to the City in the amount of \$4,080 plus 5 percent of gross receipts.

NO SCALE

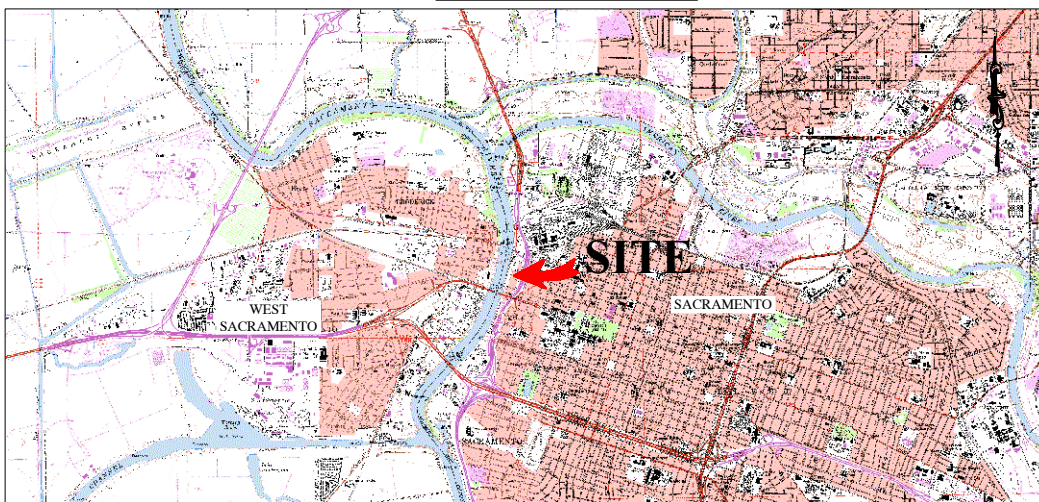
SITE



SACRAMENTO RIVER BETWEEN I STREET BRIDGE AND TOWER BRIDGE

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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 A

PRC 7001.1
CITY OF SACRAMENTO
MASTER LEASE
SACRAMENTO COUNTY

