

**EXCLUSIVE NEGOTIATION AGREEMENT
BETWEEN
CITY OF HUNTINGTON BEACH
AND
SURF CITY PARTNERS, LLC**

This Exclusive Negotiation Agreement [ENA] is made by and between the City of Huntington Beach, a municipal corporation and serving in its capacity as Lessor (the "Lessor"), and Surf City Partners, LLC, a California limited liability company (the "Proposed Lessee"), hereinafter jointly referred to as the (the "Parties"), for the purpose of **negotiating, for a set period of time, and to refrain from negotiating with others**, the development of a proposed lease.

RECITALS

WHEREAS, the Lessor leases real property commonly referred to as 21 Main Street on the Huntington Beach Pier, shown on Exhibit A and incorporated herein by this reference (the "Property"). The Property is approximately 800 square feet and is located in the Downtown Specific Plan (DTSP) and Coastal Overlay District;

WHEREAS, Lessor desires to explore the possibility of repurposing a certain area of the Property, including the entire interior of the concession space with some adjacent exterior outdoor dining area, to include a new restaurant business; and

WHEREAS, on May 26, 2021, the Lessor released a Request for Qualifications (RFQ) to solicit interest from potential concessionaires with a proven track record of operating a successful business; and

WHEREAS on September 7, 2021, the Huntington Beach City Council selected Surf City Partners, LLC, a local team with hospitality and franchise experience comprised of Jeff Bergsma (Design/Construction/Maintenance), Keith Bohr (Government Approvals), Paul Motenko (Restaurant Food and Beverage/Operational Systems), and Sharon and Adam Go (Restaurant Systems/Recruitment/Training), based on their expertise, qualifications and unique concept of a "locals" eatery named Huntington's which would, subject to additional approvals, provide high quality comfort food and beverages, outdoor dining, surf line views, and occasional live music, incorporated herein by this reference (the "Project"); and

WHEREAS, the Parties desire to enter into an Exclusive Negotiation Agreement (the "ENA") **for a set period of time, and to refrain from negotiating with others**, the development of a proposed lease for the use and occupancy of the Property (the "Lease").

The Parties acknowledge and agree that this ENA in itself does not obligate the Proposed Lessee to acquire or the Lessor to convey the Property, does not grant the Proposed Lessee the right to develop the Project, and does not obligate the Proposed Lessee or the Lessor to pursue or complete any activities or costs to develop the Project, except for the preliminary analysis and negotiations contemplated by this ENA; and

WHEREAS, during this process, Lessor will also be acting in the capacity as a Charter City and nothing in this ENA shall limit, waive, or otherwise impair the authority and discretion of the City, including the City's Police, Fire, Community Services, Planning, Building, and Engineering departments or divisions.

WHEREAS, the Parties agree that the purpose of this ENA is to provide broad parameters on which the Parties will negotiate in good faith for a set amount of time detailed in the timeline, attached as Exhibit B and incorporated herein by this reference (the "Performance Timeline"), and, in the end, possibly execute a Lease.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

ARTICLE I: TERM

Unless terminated earlier, as set forth herein, including Exhibit B, this ENA shall be in effect for a period of three hundred and sixty-five (365) days commencing upon the Effective Date hereof, and will end 365 days later or until the effective date of an approved Lease, whichever occurs first ("Term"). Unless continuing obligations exist pursuant to this ENA, once the term expires neither party shall have any further rights against or liability to the other under this ENA. The City Manager or designee may extend the time to complete the milestones identified in the Performance Timeline in his or her sole discretion. In no event shall such extensions result in the Term being extended by more than 365 days without amending the Term herein pursuant to City Council approval.

ARTICLE II: EXCLUSIVITY

Lessor hereby agrees that during the term of this ENA, and so long as Proposed Lessee is conducting due diligence and negotiating in good faith toward the drafting, submission and execution of all approvals, including a Lease (and all other associated and necessary documents), Lessor shall not negotiate with any other person or entity regarding the Property.

ARTICLE III: DUTIES OF LESSOR

3.1 During the term, Lessor and its staff shall be available to meet with the Proposed Lessee to discuss the Project for the Property and any other matters pertaining to the renovation of the Property at mutually agreed upon times and dates. Lessor will negotiate in good faith, including not unreasonably rejecting any submissions, the terms and conditions of a proposed Lease with the Proposed Lessee. In addition, Lessor will, to the extent possible:

- a. Advocate and cooperate with outside government and regulatory agencies to advance the Project;
- b. Provide timely access to all public records, reports, studies, plans, permits, in its possession, related to the Property and the pier;
- c. Assist with access to the Property and coordination with the existing tenant; and,

- d. Authorize Proposed Lessee to apply and submit for permits and entitlements. At the Lessor's sole discretion, Lessor maintains the right to be a co-applicant on permit submittal.

3.2 Lessor Discretion. Nothing in this ENA shall obligate the Lessor to exercise its discretion regarding the Property or Project in any particular manner. Proposed Lessee acknowledges that execution of this ENA by the Lessor does not constitute approval by the City of any entitlements, permits or any other regulatory requirements, known or unknown and in no way limits any authority of the City to act, or refrain from acting, including exercise of the City's regulatory authority, or any discretionary or non-discretionary actions of the City. Proposed Lessee acknowledges that approval, conditional approval, or denial of entitlements and/or the entering into a Lease is within the sole and exclusive discretion of the City without limitation by or consideration of the terms of this ENA.

Lessee hereby acknowledges that in general, the Lessor does not make any commitment to any particular Project before it completes review including committing to planning and zoning approvals by contract; and that the Lessor makes no representation regarding the ability or willingness of the City to approve entitlements or a Lease, nor any representation regarding the imposition of any mitigation measures or other conditions of approval.

In addition, the Proposed Lessee acknowledges that the State of California, acting by and through the California State Lands Commission, leases the Property to the City of Huntington Beach. In addition to the proposed lease, there are other regulatory agencies that require additional entitlements including the California Coastal Commission and that any approval by the City does not bind any other agency.

ARTICLE IV: DUTIES OF PROPOSED LESSEE

4.1 Proposed Lessee will provide to Lessor, in a timely manner, all requested information related and/or necessary to complete this ENA phase and if successful, entering into a Lease. Information includes but is not limited to a draft Project Schedule of Performance with milestones to be included as an Exhibit to the Lease. The Schedule of Performance will outline timing associated with major tasks and milestones commencing with submittal of an application for Building Permit and ending with a Certificate of Occupancy, among other things.

4.2 Proposed Lessee will provide to Lessor a Site Plan and architectural renderings of the proposed Project. The Site Plan and architectural renderings shall include a well-defined architectural concept for the Property showing interior and exterior areas, elevations, signage, and architectural character of the proposed Project. However, notwithstanding submission by the Proposed Lessee as set forth herein, no such Site Plan or architectural renderings shall be deemed final until regulatory approvals and approval of the Lease. Such approval is at the sole discretion of the City.

4.3 Proposed Lessee will provide sample menus including pricing of food items

for breakfast, lunch and dinner, as well as hours of operation.

4.4 Proposed Lessee will work to secure Project funding and exhibit evidence of funding commitments upon execution of the Lease.

4.5 Proposed Lessee will provide an updated pro forma and description of proposed improvements.

4.6 Proposed Lessee shall undertake such due diligence as is necessary to determine the suitability of the Property for the Project, including but not limited to alcohol sales, parking, outdoor dining, outdoor display of goods, ADA compliance, and other building and health department requirements. Proposed Lessee shall conduct due diligence activities it deems necessary to provide the Lessor with sufficient information to determine the feasibility of developing the Project on the Property and shall be responsible for the costs of all such studies, surveys and investigations.

4.7 The Proposed Lessee, at its sole cost, shall be responsible for obtaining all land use entitlements and other governmental approvals from the City, and other entities as may be necessary for the Proposed Lessee's contemplated use on the Property. The Lessor shall cooperate with the Proposed Lessee's efforts to obtain such entitlements. Prior to submitting any applications to the City or other governmental entities, the Proposed Lessee shall submit to the Lessor the design and architecture of the Project, including the conceptual plans, elevations, the exterior design and layout and any other information that the Proposed Lessee intends to submit as part of its entitlement application. In the exercise of its reasonable discretion, the Lessor shall respond to the Proposed Lessee's written request for approval of conceptual plans within ten (10) business days of the Proposed Lessee's request therefor or the items submitted for approval shall be deemed approved. If the Lessor disapproves of the items submitted, it shall specifically state the reasons for such disapproval. The Proposed Lessee shall not submit any applications for entitlements until the Lessor has approved the conceptual plans and application materials. The Proposed Lessee shall provide to the Lessor, for its approval, any changes to the Project during the entitlement process and the Proposed Lessee shall not agree to any such changes unless previously approved by the Lessor.

ARTICLE V: LEASE AGREEMENT

The Parties agree to negotiate in good faith the terms, conditions, issues and topics to be included in the Lease. The terms, conditions, issues and topics to be included in the Lease shall include, but are not limited to, the following:

5.1 Term of the Lease including commencement date, extensions, rent and adjustments, and security deposit. The Lease will also include terms and conditions for termination of the Lease by either Party.

5.2 The terms and conditions for the operation and management of the Property by the Proposed Lessee, including a lease guaranty and assignment restrictions.

5.3 Requirement that Proposed Lessee shall operate and manage the Property in compliance with all federal, state and local equal opportunity standards.

5.4 Right of the Lessor to oversee and inspect the operations and management of Proposed Lessee to determine compliance with the provisions of the Lease.

5.5 Lessor oversight of all work done on the Property and that the work will be of the highest quality and standard.

ARTICLE VI: TERMINATION

Either Party may terminate this ENA if there is a material breach of the ENA. Material breach includes, but is not limited to, failure by either Party to negotiate in good faith and to use their reasonable efforts to negotiate the terms and conditions of the Lease. If a Party believes the other party is in breach, the aggrieved Party will provide notice to the other Party and request that both Parties negotiate in good faith, with ten (10) business days to cure. If the Lessor is the aggrieved Party and Proposed Lessee does not cure such default, the Lessor may terminate the ENA. If the Proposed Lessee is the aggrieved Party and the Lessor does not cure, neither party shall have any further rights against or liability to the other under this ENA. Proposed Lessee and Lessor may, at any time, mutually agree to terminate this ENA.

6.1 Termination by Lessor. Lessor shall have the right to terminate this ENA in the event that:

- a. The proposed Project is not approved.
- b. If the proposed Project is determined by Lessor, within reasonable discretion, to be infeasible or Proposed Lessee fails to meet the milestones in accordance with the critical milestones identified in the Performance Timeline.
- c. Any substitution of an individual of Surf City Partners, LLC without express written consent of the Lessor.

6.2 Termination by Proposed Lessee. Proposed Lessee shall have the right to terminate this ENA in the event that:

- a. Proposed Lessee determines that the Property is infeasible to undertake the proposed Project.
- b. Proposed Lessee fails to secure necessary entitlement approvals.

ARTICLE VII: COMPLIANCE WITH FEDERAL AND STATE LAW

Execution of a Lease by the Lessor shall be subject to compliance with all Federal and State laws and regulations including but not limited to the California Environmental Quality Act (California Public Resources Code § 2100 et seq.). The Proposed Lessee hereby agrees to

provide all reasonable assistance to the Lessor necessary for the City to carry out its obligations under CEQA. The costs of consultants, attorneys, engineers, appraisers, and other third party services undertaken by the City in considering and preparing any CEQA-required analysis or document shall be paid by the Proposed Lessee.

ARTICLE XIII: NONDISCRIMINATION

The Proposed Lessee shall not discriminate against nor segregate any person, or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry, handicap or sexual preference, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property in the formulation of the Lease or after its execution, nor shall the Proposed Lessee establish or permit any such practice or practices of discrimination or segregation in the selection, location, number, use or occupancy of Proposed Lessees, lessees, sub-Proposed Lessees, sub-lessees or vendees of the land. The Lease shall contain all applicable statutory covenants.

ARTICLE IX: MUTUAL CONFIDENTIALITY

To the extent permitted by applicable law, the Parties shall maintain all information concerning this ENA and any pending or subsequent negotiations between the Parties as confidential, disclosing information only to those individuals and representatives as designated by the other Party, provided that such individuals acknowledge and agree to maintain the confidentiality of such information. Proposed Lessee agrees and acknowledges that the Lessor is a public agency and is subject to the California Public Records Action (Gov. Code 6250 et. seq.) (the "Act"). Lessor agrees to inform Proposed Lessee of any requests for information related to this ENA or the Project pursuant to the Act not less than 3 days prior to the release of information.

ARTICLE X: CITY COUNCIL APPROVAL

Proposed Lessee understands and agrees that any proposed Lease or other binding agreement(s) contemplated in this ENA, must be reviewed, considered, and approved at a public meeting before the City Council of the City of Huntington Beach. Further, this ENA does not convey any property rights, or any right to develop and/or lease the Property. While the City's staff may recommend approval of the Project, the City Council shall have the sole discretion to approve or disapprove.

ARTICLE XI: MISCELLANEOUS PROVISIONS

11.1 Governing Law. This ENA shall be governed by and construed and enforced in accordance with the laws of the State of California. Therefore, any action brought by either Party in connection with this ENA shall be commenced and maintained in any proper jurisdiction located in Orange County, California.

11.2 Entire Agreement. This ENA constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes any and all prior agreements and

understandings between the Parties. There are no agreements or understandings between the Parties and no representations by either Party to the other as an inducement to enter into this ENA. Notwithstanding anything provided herein to the contrary, whether expressed or implied, the Lessor shall have no obligation to enter into a Lease with the Proposed Lessee and neither the Lessor, its representatives, staff or agents have made any promises to the Proposed Lessee other than to exclusively negotiate a Lease for the Property in good faith with the Proposed Lessee during the Exclusive Negotiating Period. No statements of the Lessor, its representatives or its officers, members, staff or agents as to future obligations shall be binding upon the Lessor unless and until such statements are memorialized in a Lease that has been approved by the City.

11.3 Assignment. The Proposed Lessee's may not transfer or assign any or all of its rights or obligations hereunder to any other person or entity without the written consent of the Lessor which may be withheld at its sole discretion.

11.4 No Warranty as to Site/Improvement Conditions. No warranty or representation of any kind is made by Lessor with respect to the condition of the Property or any improvements thereon.

11.5 Conflicts of Interest. The Parties to this ENA have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code and related regulations and rulings relating to conflict of interest as well as the Conflict of Interest Code of the City. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of Lessor/City relating to this ENA. Notwithstanding any other provision of this ENA, it is further understood and agreed that if such a financial interest does exist at the inception of this ENA, Lessor may immediately terminate this ENA by giving written notice thereof.

11.6 Notices. Any notice which is required or which may be given hereunder may be delivered, mailed or emailed to the other Party to be notified, as follows:

PROPOSED LESSEE: Jeff Bergsma
Surf City Partners, LLC
221 Main Street, Suite S
Huntington Beach, CA 92648
(949) 877-9542
jeff@teamdesignhb.com

LESSOR: City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648
Attention: Community Development Director
With a Copy to: City Attorney

11.7 Counterparts. This ENA may be executed in counterparts, each of which when so executed shall be deemed an original, and all of which, together, shall constitute one and the

same instrument.

11.8 Attorney Fees. In the event that either party brings action or proceeding against the other party to enforce or interpret any of the conditions or provisions of this ENA, the prevailing party shall NOT be entitled to recover any attorney's fees and expenses and court costs associated with such action or proceeding.

[END OF TEXT; SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Lessor and Proposed Lessee have executed this ENA which shall be effective as of the day and year set next to the Mayor's signature below ("Effective Date").

Proposed Lessee:

**SURF CITY PARTNERS, LLC, a California
limited liability company**

By: _____

Jeff Bergsma, Managing Member

Date: _____

10/27/21

Lessor:

**CITY OF HUNTINGTON BEACH, a municipal
corporation of the State of California**

By _____

Mayor

Date: _____

ATTEST

By _____

Robin Estanislau, City Clerk

Date: _____

REVIEWED AND APPROVED:

By _____

Oliver Chi, City Manager

Date: _____

INITIATED AND APPROVED:

By _____

Ursula Luna-Reynosa
Community Development Director

Date: _____

10.27.21

APPROVED AS TO FORM:

By _____

Michael E. Gates, City Attorney

Date: _____

EXHIBIT A

PROPERTY DESCRIPTION

21 Main Street

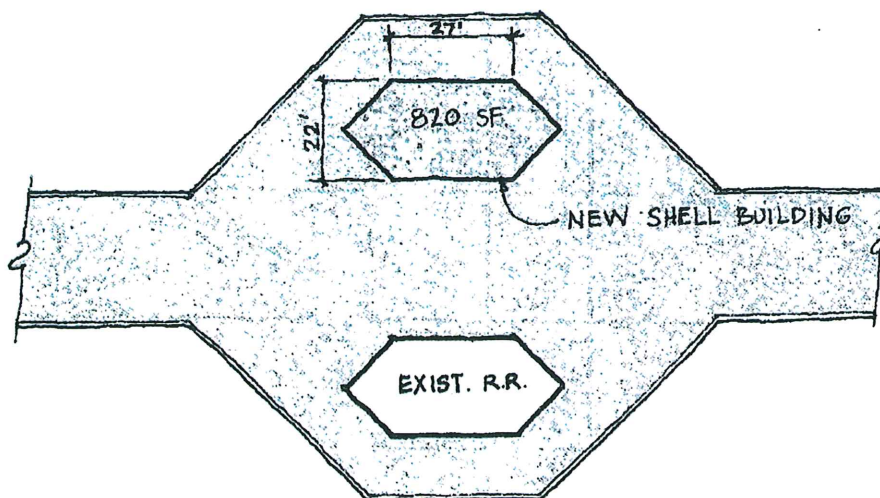
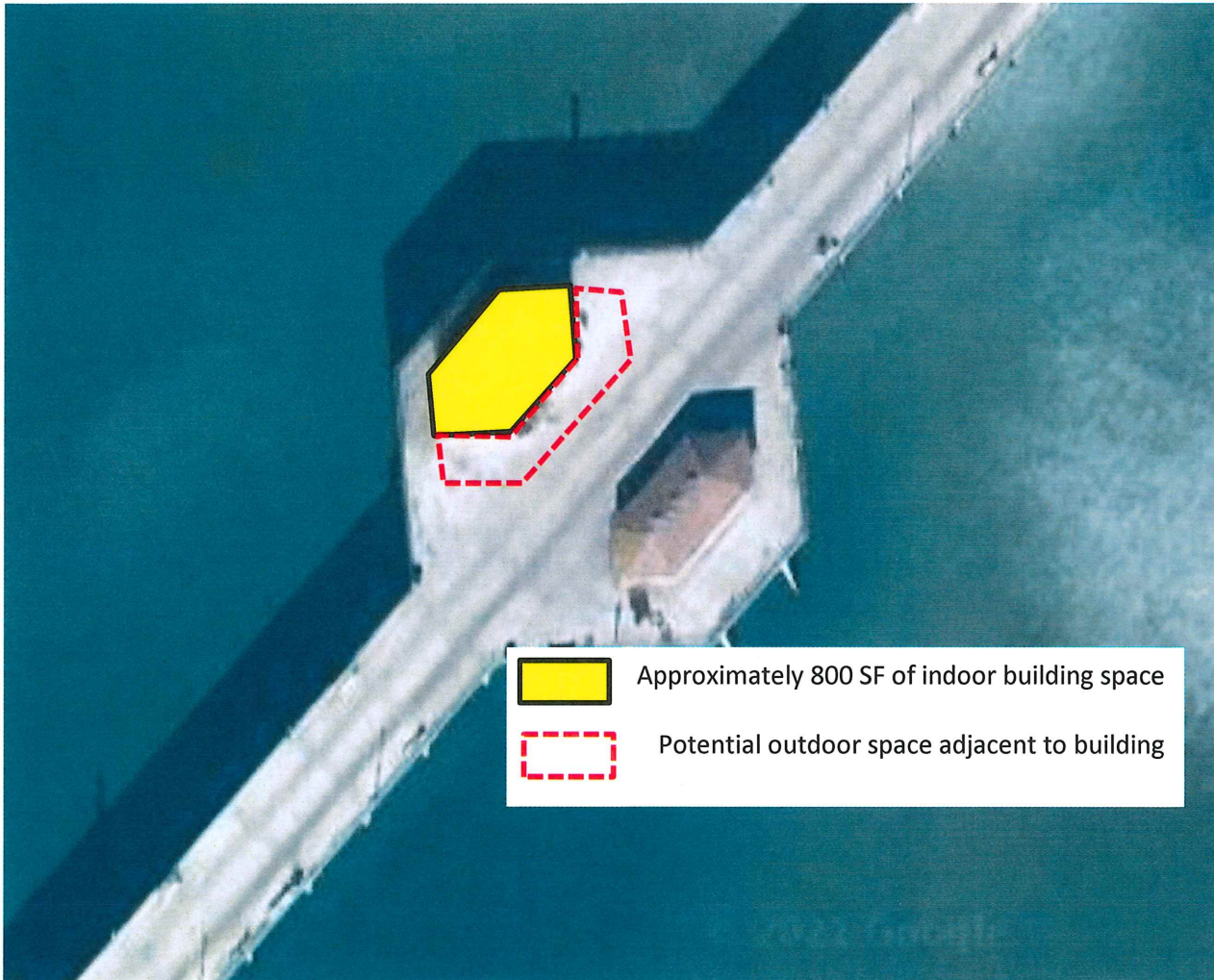


EXHIBIT B

PERFORMANCE TIMELINE

EXHIBIT B

PERFORMANCE TIMELINE

	Milestone	Responsible Party	Target Date
1	Proposed Lessee to submit preliminary project description and plans to Lessor for review	Proposed Lessee	Within 30 days of Effective Date
2	Lessor to approve preliminary project description and plans	Lessor	Within 30 days of submittal of preliminary project description and plans
3	Proposed Lessee to consult with Regulatory Authority and other permitting agencies (ABC, CCC, and Health Department) to make best faith efforts to obtain written feedback on preliminary project description and plans	Proposed Lessee	Within 30 days of Lessor's approval of preliminary project description and plans
4	Proposed Lessee to schedule meeting with Lessor to review feedback from Regulatory Authority and other permitting agencies	Proposed Lessee/ Lessor	Within 15 days of Lessor's approval of preliminary project description and plans
5	Lessor to determine if requisite changes based on feedback from Regulatory Authority and other permitting agencies is feasible; if not, Lessee needs to revise plans to make feasible or ENA terminates	Lessor	Within 15 days of meeting to review Regulatory Authority and other permitting agencies' feedback
6	If feedback from Regulatory Authority and other permitting agencies is feasible, then Proposed Lessee to revise project description and plans and submit application to Regulatory Authority	Proposed Lessee	Within 15 days of Lessor determining that project is feasible
7	Regulatory Authority to schedule public hearing; if permits denied (after exhausting due process) then ENA terminates	Regulatory Authority	Within 35 days of application being deemed complete
8	If Regulatory Authority approves permits, Proposed Lessee to submit CDP application to the CCC; if CDP denied then ENA terminates	Proposed Lessee	Within 7 days of Regulatory Authority approving permits
9	If CDP approved, Proposed Lessee to submit CD's to Regulatory Authority; if unable to secure permits then ENA terminates	Proposed Lessee	Within 112 days of the CCC approving CDP
10	Provide sample menu with prices and updated pro forma to Lessor	Proposed Lessee	Within 14 days of the CCC approving CDP
11	Lessor to approve sample menu and pro forma	Lessor	Within 7 days of receipt
12	Lessor to provide draft term sheet to Proposed Lessee	Lessor	Within 14 days of approval of menu and pro forma
13	Proposed Lessee to respond to draft term sheet	Proposed Lessee	Within 7 days of receipt
14	Lessor and Proposed Lessee to agree to draft term sheet	Proposed Lessee/ Lessor	Within 21 days of Proposed Lessee's response
15	Proposed Lessee to provide construction timeline, budget, and proposed method of financing	Proposed Lessee	Within 28 days of agreement on term sheet
16	Lessor to provide draft lease agreement	Lessor	Within 14 days of receipt of construction timeline
17	Proposed Lessee to respond to draft lease agreement	Proposed Lessee	Within 14 days of receipt
18	Lessor and Proposed Lessee to agree to final lease agreement	Proposed Lessee/ Lessor	Within 21 days of Proposed Lessee's response
19	Proposed Lessee to provide evidence of financing	Proposed Lessee	Within 7 days of agreement on lease agreement
20	CC consideration of lease agreement at public meeting	Lessor	Within 28 days of CCC approval of CDP or submittal of evidence of financing, whichever occurs LAST
21	Provide State Lands Commission with copy of lease agreement for review and approval	Lessor	Within 7 days of CC approval
22	Execute Lease Agreement and commence construction	Proposed Lessee/ Lessor	Within 14 days of State Lands Commission approval of lease or issuance of building permit, whichever occurs LAST