

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Public Works

BOARD AGENDA # \*C-2

Urgent

Routine

AGENDA DATE December 15, 2015

CEO Concurs with Recommendation YES  NO

4/5 Vote Required YES  NO

(Information Attached)

SUBJECT:

Approval to Terminate the Existing Lease of State Lands for the McHenry Avenue Bridge over the Stanislaus River and Execute a New Lease with the California State Lands Commission for the New McHenry Avenue Bridge Project

STAFF RECOMMENDATIONS:

1. Approve the termination (quitclaim) of the existing lease for the old McHenry Bridge with the California State Lands Commission.
2. Approve the New General Lease Agreement for the new McHenry Bridge with the California State Lands Commission

(Continued on Page 2)

FISCAL IMPACT:

The required application fee for the renewal of the General Lease Agreement with the California State Lands Commission for the McHenry Avenue Bridge over the Stanislaus River is \$3,025 (\$3,000 for California State Lands Commission estimated staff time for review of the General Lease Agreement renewal application and a \$25 non-refundable processing fee), the cost of which was shared equally, 50/50, with San Joaquin County and has already been paid. Any funds not expended by the California State Lands Commission for staff review of the application will be refunded.

(Continued on Page 2)

BOARD ACTION AS FOLLOWS:

No. 2015-636

On motion of Supervisor Chiesa, Seconded by Supervisor Monteith  
and approved by the following vote.

Ayes: Supervisors: O'Brien, Chiesa, Monteith, DeMartini, and Chairman Withrow

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) \_\_\_\_\_ Denied

3) \_\_\_\_\_ Approved as amended

4) \_\_\_\_\_ Other:

MOTION:

ATTEST: Christine Ferraro  
CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Terminate the Existing Lease of State Lands for the McHenry Avenue Bridge over the Stanislaus River and Execute a New Lease with the California State Lands Commission for the New McHenry Avenue Bridge Project

**STAFF RECOMMENDATIONS (CONTINUED):**

3. Authorize the Director of Public Works to sign the quitclaim on the existing McHenry Avenue Bridge lease.
4. Authorize the Director of Public Works to sign the new General Lease Agreement with the California State Lands Commission for the McHenry Avenue Bridge over the Stanislaus River.

**FISCAL IMPACT (CONTINUED):**

The renewal application fee covers the General Lease Agreement term of 25 years, effective December 18, 2015 and ending December 17, 2040.

**DISCUSSION:**

The McHenry Avenue Bridge was built in 1959 and consists of a concrete slab bridge over the overflow banks and concrete cast in place box girder bridge over the main stem of the Stanislaus River. In July of 2001, the results of a study determined that the Bridge was seismically, structurally, and functionally inadequate with regards to the proposed improvements to the McHenry Avenue corridor and recommended that the Bridge be widened and replaced. It further recommended that County of Stanislaus and County of San Joaquin work toward the replacement of the Bridge. On June 26, 2007, the Stanislaus County Board of Supervisors approved the Cooperative Agreement with San Joaquin. The National Environmental Policy Act (NEPA) was completed on March 7, 2013, and the California Environmental Quality Act (CEQA) was adopted by San Joaquin County on February 25, 2014.

The California State Lands Commission ("Commission") has jurisdiction and management control over those public lands of the State received by the State upon its admission to the United States in 1850 ("sovereign lands"). Generally, the sovereign lands include all ungranted tidelands and submerged lands, beds of navigable rivers, streams, lakes, bays, estuaries, inlets, and straits. The Commission manages the sovereign lands for the benefit of all the people of the State, subject to the Public Trust uses. In addition, the State manages land received after Statehood including swamp and overflow lands and schools lands. The Commission's Land Management Division in Sacramento administers the surface leasing of these lands, sand and gravel extractions from these lands, and dredging or disposal of dredge material on these lands.

The California State Land Commission has jurisdiction and management responsibility for the lands that the McHenry Avenue Bridge crosses over the Stanislaus River. The California State Land Commission is considering action on the quitclaim and new lease on December 18, 2015. Prior to the California State Land Commission action, they are requesting from San Joaquin County and Stanislaus County approval of the quitclaim and new lease. The new lease expands the area encompassed by the old lease and accommodates both footprints of the old bridge and the new bridge.

Approval to Terminate the Existing Lease of State Lands for the McHenry Avenue Bridge over the Stanislaus River and Execute a New Lease with the California State Lands Commission for the New McHenry Avenue Bridge Project

**STAFFING IMPACT:**

There is no staffing impact associated with this item.

**CONTACT PERSON:**

Matt Machado, Public Works Director. Telephone: (209) 525-4153.

**ATTACHMENTS:**

1. Quitclaim Deed
2. Lease No. PRC 2057.9

DL/dn

H:\Clerical\Board Items\2015\BOS 12-15\Dave\CSLC - Quitclaim and new lease.pdf

**ATTACHMENT 1**  
**QUITCLAIM DEED**

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED MAIL TO:  
STATE OF CALIFORNIA  
California State Lands Commission  
Attn: Title Unit  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202

STATE OF CALIFORNIA  
OFFICIAL BUSINESS  
Document entitled to free recordation  
pursuant to Government Code Section 27383

Counties: San Joaquin, Stanislaus

SPACE ABOVE THIS LINE FOR  
RECORDER'S USE

### GENERAL LEASE - PUBLIC AGENCY USE QUITCLAIM DEED

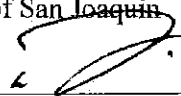
WHEREAS, pursuant to General Lease - Public Agency Use No. PRC 2057.9, executed by the State Lands Commission on January 15, 2007, by and between the **State of California**, acting by and through the **State Lands Commission**, as Lessor, County of San Joaquin, a political subdivision of the State of California, and the County of Stanislaus, a political subdivision of the State of California as Lessees, said Lessees were granted a General Lease - Public Agency Use commencing January 24, 2007, the right to use the property herein described, for certain purposes specified in said lease; and

NOW THEREFORE, the County of San Joaquin, a political subdivision of the State of California and the County of Stanislaus, a political subdivision of the State of California, do hereby remise, release, and forever quitclaim unto the State of California any and all right, claim, title, or interest arising by virtue of or pursuant to that certain General Lease - Public Agency Use designated Lease No. PRC 2057.9, and approved by the State Lands Commission on December 14, 2006, respecting lands located in San Joaquin and Stanislaus Counties, State of California, and described on Exhibit A-1, attached.

LESSEES:

County of San Joaquin

County of Stanislaus

By:   
Kris Balaji

By: \_\_\_\_\_

Title: Director of Public Works  
San Joaquin County

Title: \_\_\_\_\_  
Stanislaus County

In witness whereof, this Quitclaim Deed is executed this \_\_\_\_\_ day of \_\_\_\_\_.

Please attach All-Purpose Acknowledgement Notarization

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED MAIL TO:  
STATE OF CALIFORNIA  
California State Lands Commission  
Attn: Title Unit  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202

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OFFICIAL BUSINESS  
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pursuant to Government Code Section 27383

Counties: San Joaquin, Stanislaus

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RECORDER'S USE

### GENERAL LEASE - PUBLIC AGENCY USE QUITCLAIM DEED

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NOW THEREFORE, the County of San Joaquin, a political subdivision of the State of California and the County of Stanislaus, a political subdivision of the State of California, do hereby remise, release, and forever quitclaim unto the State of California any and all right, claim, title, or interest arising by virtue of or pursuant to that certain General Lease - Public Agency Use designated Lease No. PRC 2057.9, and approved by the State Lands Commission on December 14, 2006, respecting lands located in San Joaquin and Stanislaus Counties, State of California, and described on Exhibit A-1, attached.

LESSEES:

County of San Joaquin

By: \_\_\_\_\_  
Kris Balaji

Title: Director of Public Works  
San Joaquin County

County of Stanislaus

By:  \_\_\_\_\_  
Matthew Machado

Title: Public Works Director  
Stanislaus County

In witness whereof, this Quitclaim Deed is executed this \_\_\_\_\_ day of \_\_\_\_\_.

Please attach All-Purpose Acknowledgement Notarization

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

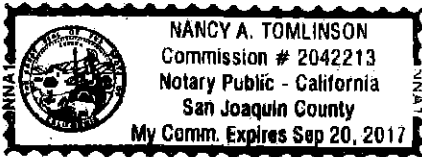
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of San Joaquin )  
On 12/14/15 before me, Nancy A. Tomlinson, Notary Public  
Date Here Insert Name and Title of the Officer  
personally appeared Krishnamurthy Balaji  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Nancy A. Tomlinson  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: General lease - Quitclaim Deed Document Date: \_\_\_\_\_  
Number of Pages: 1 Signer(s) Other Than Named Above: Stanislav Counts

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Krishnamurthy Balaji  
 Corporate Officer - Title(s): \_\_\_\_\_  
 Partner --  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: Director of Public Works  
Signer Is Representing: San Joaquin County

Signer's Name: \_\_\_\_\_  
 Corporate Officer - Title(s): \_\_\_\_\_  
 Partner --  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Stanislaus

On December 16, 2015 before me, Keimi Espinoza, Notary Public  
(insert name and title of the officer)

personally appeared, Matthew Machado

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Keimi Espinoza (Seal)  
Notary Public Signature

**OPTIONAL INFORMATION**

THIS OPTIONAL INFORMATION SECTION IS NOT REQUIRED BY LAW BUT MAY BE BENEFICIAL TO PERSONS RELYING ON THIS NOTARIZED DOCUMENT

TITLE OR TYPE OF DOCUMENT General Lease - Public Agency Use Quitclaim Deed; No. PRC 2057.9

DATE OF DOCUMENT \_\_\_\_\_ NUMBER OF PAGES \_\_\_\_\_

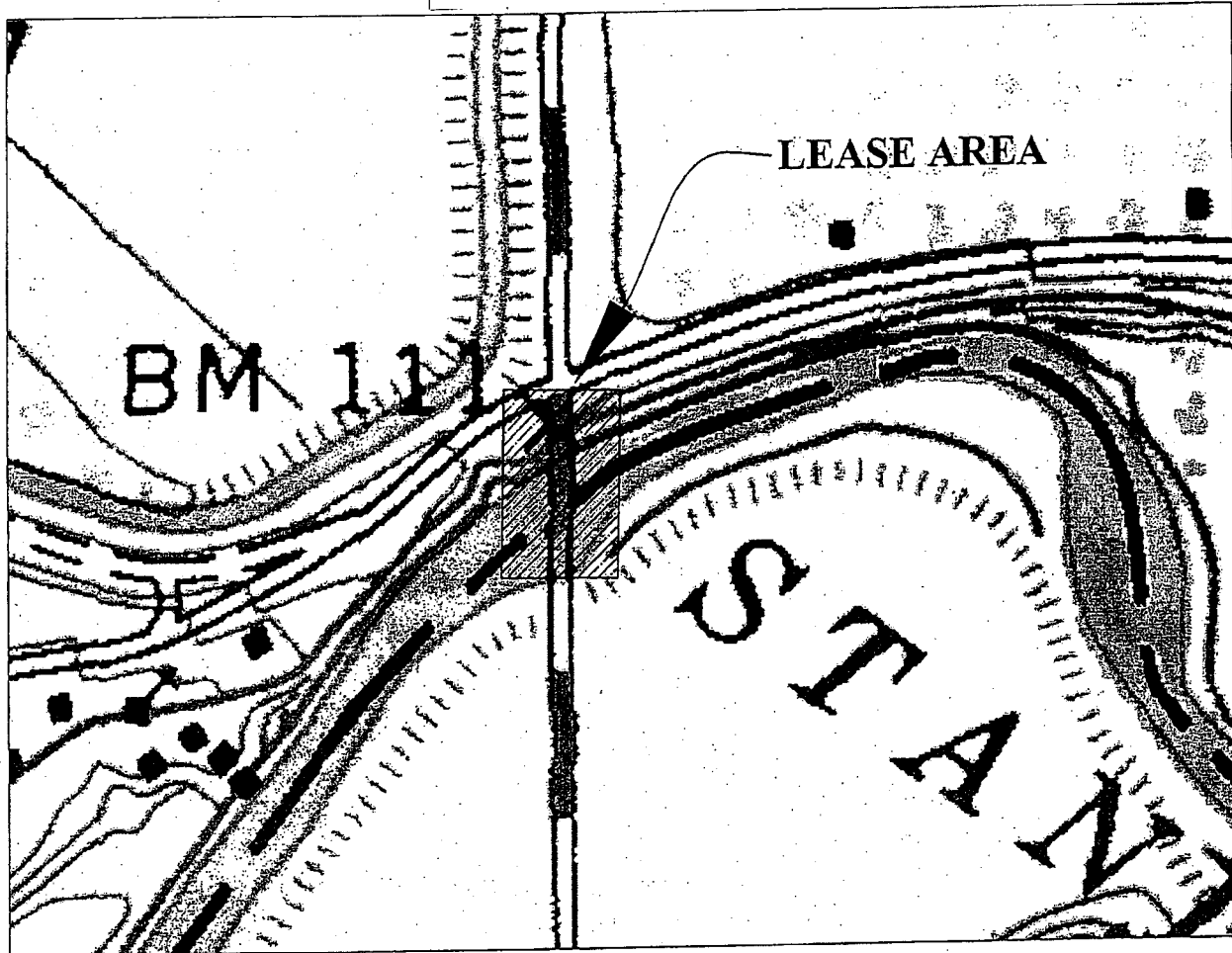
SIGNER(S) OTHER THAN NAMED ABOVE \_\_\_\_\_

SIGNER'S NAME \_\_\_\_\_ SIGNER'S NAME \_\_\_\_\_



NO SCALE

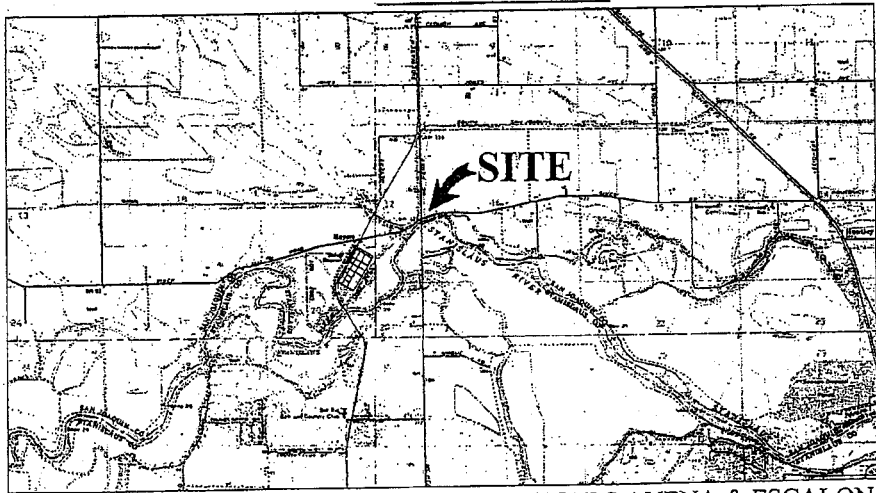
**EXHIBIT A-1**



State Hwy. 13 (McHenry Ave.)  
Stanislaus River, Stanislaus and San Joaquin Counties

NO SCALE

**LOCATION**



MAP SOURCE: USGS QUADS AVENA & ESCALON

**Section 3**  
**PRC 2057.9**  
**PUBLIC AGENCY USE**  
**STATE HWY. 13**  
**STANISLAUS &**  
**SAN JOAQUIN COUNTIES**



**SITE**

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.

**ATTACHMENT 2**

**LEASE NO. PRC 2057.9**

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED MAIL TO:  
**STATE OF CALIFORNIA**  
California State Lands Commission  
Attn: Title Unit  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202

**STATE OF CALIFORNIA**  
**OFFICIAL BUSINESS**  
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pursuant to Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

County: San Joaquin, Stanislaus

**LEASE No. PRC 2057.9**

This Lease consists of this summary and the following attached and incorporated parts:

Section 1	Basic Provisions
Section 2	Special Provisions Amending or Supplementing Section 1 or 3
Section 3	General Provisions
Exhibit A	Land Description
Exhibit B	Site and Location Map
Exhibit C	Mitigation Monitoring Plan

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**SECTION 1**

**BASIC PROVISIONS**

**THE STATE OF CALIFORNIA**, hereinafter referred to as Lessor acting by and through the **CALIFORNIA STATE LANDS COMMISSION** (100 Howe Avenue, Suite 100-South, Sacramento, California 95825-8202), pursuant to Division 6 of the Public Resources Code and Title 2, Division 3 of the California Code of Regulations, and for consideration specified in this Lease, does hereby lease, demise and let to the **County of San Joaquin**, a political subdivision of the State of California **and the County of Stanislaus**, a political subdivision of the State of California, hereinafter referred to as Co-Lessees, those certain lands described in Exhibit A hereinafter referred to as Lease Premises, subject to the reservations, terms, covenants, and conditions of this Lease.

**MAILING ADDRESS:** County of San Joaquin  
Public Works Department  
1810 East Hazelton Avenue  
Stockton, CA 95201

County of Stanislaus  
Public Works Department  
1010 10<sup>th</sup> Street Ste. 4204  
Modesto, CA 95358

**LEASE TYPE:** General Lease – Public Agency Use

**LAND TYPE:** Sovereign

**LOCATION:** Stanislaus River, at McHenry Avenue (State Highway 13) near the city of Escalon, San Joaquin and Stanislaus Counties, as described in Exhibit A attached and by this reference made a part hereof.

**LAND USE OR PURPOSE:** The demolition and removal of the existing McHenry Avenue Stanislaus River Bridge and the construction, use, and maintenance of a new bridge.

**TERM:** 25 years; beginning December 18, 2015 ending December 17, 2040, unless sooner terminated as provided under this Lease.

**CONSIDERATION:** The public use and benefit, subject to modification by Lessor as specified in Paragraph 3(e) of Section 3 - General Provisions.

**AUTHORIZED IMPROVEMENTS:**

**EXISTING:** McHenry Avenue Stanislaus River Bridge, a three span cast-in-place (CIP) reinforced concrete (RC) box girder and thirty two slab concrete deck bridge on concrete piers, approximately 1134 feet long by 31 feet wide, to be demolished and removed.

**TO BE CONSTRUCTED:** The new bridge is approximately 1,148-feet long in total, with approximately 320-feet over State sovereign land, and 79-feet wide, with twenty five spans in three segments. Three spans over the river will be CIP post-tensioned box girder with girder webs, 5-foot superstructure, deck and soffit slabs on RC piers with cast-in-drilled-hole pile shafts. The width allows up to five traffic lanes, five-foot shoulders on both sides, and a six-foot sidewalk and barrier. Bridge will be at the same alignment as the old bridge, but will be wider.

**SECTION 2  
SPECIAL PROVISIONS**

**BEFORE THE EXECUTION OF THIS LEASE, ITS PROVISIONS ARE AMENDED,  
REVISED, OR SUPPLEMENTED AS FOLLOW:**

1. In issuing this Lease and authorizing the installation, use, and maintenance of the authorized improvements as described in Section 1, Lessor is relying on the information and data provided by the Co-Lessees in its application and accompanying materials. It is the responsibility of the Co-Lessees to ensure that the information provided is accurate. If the information and data prove to be false, materially incomplete, or inaccurate, this Lease may be modified, suspended, or revoked, in whole or in part, and/or the Lessor may, in addition, institute appropriate legal proceedings to have the structure modified or removed from the Lease Premises in accordance with Section 3, Paragraph 12 of this Lease.
2. Co-Lessees agrees to be bound by and fully carry out, implement, and comply with all mitigation measures and reporting obligations identified as Co-Lessees' responsibility as set forth in the Mitigation Monitoring Program, attached hereto as Exhibit C, and by reference made a part of this Lease or as modified by Lessor as permitted by law.
3. Co-Lessees shall indemnify, hold harmless, and, at the option of Lessor, defend Lessor from all damages, injuries, or claims arising from the installation, maintenance, or operation of any facilities owned by a public utility that are attached, suspended, or otherwise fixed to the Co-Lessee's improvements.
4. Prior to the start of construction, Co-Lessees shall forward to Lessor documentation that demonstrates Co-Lessees has the right to access the uplands adjacent to the Lease premises.
5. Prior to the start of construction, Co-Lessees shall provide to Lessor copies of all permits and authorizations from all federal, state, and local agencies having jurisdiction over the project.
6. Co-Lessees shall not place, attach, or authorize the placement of any utilities or other improvements on the Bridge or within the Lease Premises without the Lessor's prior review and approval. Separate leases may need to be obtained for all utilities not operated by Lessees.
7. At least 30 days prior to commencement of the bridge removal and replacement construction activities, Co-Lessees shall provide to Lessor a set of engineering design drawings as issued for construction certified by a California registered Civil/Structural Engineer, a construction schedule time line chart showing all significant work activities that will take place during the course of the bridge removal and replacement project.
8. Co-Lessees shall place warning signage and/or buoys clearly visible from the shore and in the water both upstream and downstream of the construction site to provide notice of the bridge replacement project and to advise the public to exercise caution. Such signage shall conform to the requirements specified in California Code of Regulations (CCR) Title 14, Section 7000, et seq.

and shall be in place and maintained by Co-Lessees at all times during bridge removal and construction activities.

9. Co-Lessees shall notify the California Department of Parks and Recreation, Division of Boating and Waterways of the location, description, and purpose of such warning signage and/or buoys upon their installation and removal pursuant to CCR Title 14, Section 7003 (c).
10. Co-Lessees agrees to make a reasonable, good-faith effort to remove all existing bridge improvements in their entirety. In the event any of the improvements cannot be removed completely, Co-Lessees shall remove all portions of the remaining improvements to a minimum depth of three feet below the existing mud line within the lease premises.
11. Co-Lessees shall immediately notify Lessor in writing should Co-Lessees be unable to completely remove any bridge improvements. Notification shall include a written narrative of the removal efforts, the conditions prohibiting such removal, and a general description of the improvements not removed.
12. Within 90 days of written notification as discussed in Section 2, Paragraph 10, above, Co-Lessees shall submit to Lessor's staff for review and comment an action plan detailing how Co-Lessees will remedy, at Lessor's option, any potential hazards, nuisances, or other conditions arising from or related to any improvements not removed that Lessor determines to be adverse to public interest, including, but not limited to, the subsequent exposure of any such improvements.
13. Co-Lessees shall, at its sole risk and expense, remove any or all portions of any improvements not removed if Lessor at any time determines such improvements to be adverse to the public interest. All removal activities shall be carried out in accordance with all applicable safety regulations, permits and conditions of other agencies having jurisdiction in the area of such improvements. Upon notice from Lessor that any improvements not removed are adverse to the public interest and within 90 days following the issuance of all necessary permits and authorizations, Co-Lessees shall complete removal of such improvements, unless such removal period is otherwise extended by Lessor.
14. Co-Lessees agrees to respond in a responsible and timely manner to any claims arising from or related to any improvements not removed and shall immediately notify Lessor of any accident, injury, casualty, or claim arising out of or related in any way to the bridge removal and replacement project.
15. Co-Lessees shall require the contractor(s) to maintain a logbook during construction operations conducted under the Lease to keep track of all debris created by objects of any kind that fall into the water. The logbook should include the type of debris, date, time, and location to facilitate identification and location of debris for recovery and site clearance verification. All waste material and debris created by Co-Lessees shall be promptly and entirely removed from the Lease Premises and lands subject to Lessor's jurisdiction.
16. Any vehicles, equipment, or machinery to be used on the Lease Premises are limited to those which are directly required to perform the authorized use and shall not include any vehicles, equipment, or machinery that may cause damage to the Lease Premises or lands subject to Lessor's jurisdiction.

17. No vehicle or equipment refueling, maintenance, or repairs will be permitted within the Lease Premises or lands subject to Lessor's jurisdiction.
18. All vehicles, equipment, machinery, tools or other property taken onto or placed within the Lease Premises or lands subject to Lessor's jurisdiction shall remain the property of the Co-Lessees and/or its authorized contractors. Such property shall be promptly and properly removed by Co-Lessees, at its sole risk and expense.
19. Lessor accepts no responsibility for any damages to any property, including any vehicles, equipment, machinery, or tools within the Lease Premises or lands subject to Lessor's jurisdiction.
20. Within 60 days of issuing the notice of project completion, Co-Lessees provide post construction project verification including:
  - A. A set of "as built" construction plans, certified by a California registered Civil/Structural Engineer, showing all design changes or other amendments to the construction as originally approved.
  - B. A post construction written narrative report confirming completion of the project with discussion of any significant field changes or other modifications to the approved design or execution plan, and providing details of any extraordinary occurrences such as spill incidents, accidents involving serious injury or loss of life etc. Also, include certified copies of the welding inspection records, if applicable.
21. All future repairs, structural modifications, or the abandonment/removal of any improvements within the Lease Premises shall require prior review and approval by Lessor. In the event of an urgent repair requiring immediate action, telephone contact can be made through the Lessor's 24-hour emergency response number (562) 590-5201.
22. All plans for abandonment and/or removal of the casings/conduits within the Lease Premises and subsequent restoration of the Lease Premises shall be approved by the Lessor and shall be completed within 90 days after the expiration or sooner termination of this Lease or after Co-Lessees has obtained all required permits or other governmental approvals that may be required by lawful authority and has complied with all applicable laws. In the event the Lessor authorizes the abandonment of all or any portion of the conduits, Co-Lessees may be required to enter into a termination agreement with the Lessor.
23. Co-Lessees acknowledges that the land described in Exhibit A of this Lease is subject to the Public Trust and is presently available to members of the public for recreation, waterborne commerce, navigation, fisheries, open space, and any other recognized Public Trust uses. Co-Lessees also agrees that any proposed construction activities and subsequent use of the Lease Premises shall not unreasonably interfere with or limit Public Trust rights, and shall do so only to the extent necessary to protect public health and safety during construction activities authorized by Lessor, or when imminent threats to public health and safety are present.

24. Co-Lessees shall install signs directing the public to the nearby McHenry Avenue public recreation area for public access.

25. Lease Section 3, Paragraph 9 INSURANCE, and Paragraph 10 SURETY BOND are deleted in their entirety.

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## SECTION 3

### GENERAL PROVISIONS

#### 1. GENERAL

In the case of any conflict between these General Provisions and Special Provisions found in Section 2, the Special Provisions control.

#### 2. DEFINITIONS

For the purposes of this Lease, the following terms shall be defined as stated below:

“Additions” shall be defined as any use or Improvements other than those expressly authorized in this Lease.

“Alterations” shall be defined as any material change in the size, scope, density, type, nature, or intensity of Improvements on the Lease Premises from what is authorized in this Lease. Alterations shall also include any modifications, alterations, or renovations of the land or waterways on the Lease Premises other than those authorized by this Lease.

“Breach” shall be defined as a party's unjustified or unexcused nonperformance of a contractual duty the party is required to immediately perform.

“Damages” shall include all liabilities, demands, claims, actions or causes of action whether regulatory, legislative or judicial in nature: all assessments, levies, losses, fines, penalties, damages, costs and expenses, including, without limitation: (i) reasonable attorneys', accountants', investigators', and experts' fees and expenses sustained or incurred in connection with the defense or investigation of any such liability, and (ii) costs and expenses incurred to bring the Lease Premises into compliance with Environmental Laws, a court order, or applicable provisions of a Regulatory Agency. The term “Damages” also includes, expressly, those Damages that arise as a result of strict liability, whether arising under Environmental Laws or otherwise.

“Default” shall be defined as a material Breach of magnitude sufficient to justify termination of the Lease.

“Environmental Law” shall be defined as and include all federal, state, and local environmental, health, and safety laws, statutes, ordinances, regulations, rules, judgments, orders, and notice requirements, which were in effect as of the date of execution of this Lease or are subsequently enacted and lawfully applied hereto, which regulate or relate to (a) the protection or clean-up of the environment; (b) the use, treatment, storage, transportation, handling or disposal of hazardous, toxic or otherwise dangerous substances, wastes or materials; (c) the quality of the air and the discharge of airborne wastes, gases, particles, or other emissions; (d) the preservation or protection of waterways, groundwater, or drinking water; (e) the health and safety of persons or property; or (f) impose liability with respect to any of the foregoing, including without limitation, the California Environmental Quality Act (CEQA) [PRC §§ 21000 et seq.]; the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) [42 USCS §§ 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 (RCRA) [42 USCS §§ 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act (FWPCA) [33 USCS §§ 1251 et seq.]; the Toxic Substances Control Act (TSCA) [15 USCS §§ 2601 et seq.]; the Hazardous Materials Transportation Act (HMTA) [49 USCS §§ 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USCS §§ 136 et seq.]; the Superfund Amendments and Reauthorization Act [42 USCS §§ 6901 et seq.]; the Clean Air Act [42 USCS §§ 7401 et seq.]; the Safe Drinking Water Act [42 USCS §§ 300f et seq.]; the Solid Waste Disposal Act [42 USCS §§ 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 USCS §§ 1201 et seq.]; the Emergency Planning and Community Right to Know Act [42 USCS §§ 11001 et seq.]; the Occupational Safety and Health Act [29 USCS §§ 655 and 657]; the California Underground Storage of Hazardous Substances Act [H & S C §§ 25280 et seq.]; the California Hazardous Substances Account Act [H & S C §§ 25300 et seq.]; the California Hazardous Waste Control Act [H & S C §§ 25100 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [H & S C §§ 24249.5 et seq.]; the Porter-Cologne Water Quality Act [Water C §§ 13000 et seq.] together with any amendments of or regulations promulgated under the statutes cited above.

“Hazardous Material” shall be defined as and include any substance which falls within the definition of hazardous substance, hazardous waste, hazardous material, toxic substance, solid waste, pollutant, or contaminant, under any Environmental Law.

“Improvements” shall be defined as any modification, alteration, addition, or removal of any material, and any other action which serves to change the condition of the Lease Premises from the natural state whether situated above, on, or under the Lease Premises. Improvements include, but are not limited to buildings, structures, facilities, decks, docks, wharves, piers, walks, curbs, bridges, buoys, landscaping, roadways, shoreline protective structures of all types, foundations, pilings or similar support structures whether above or below the water line, fences, utilities, pipelines, and any other construction of any type situated on the Lease Premises.

“Lease” shall be defined as this lease contract together with all amendments and exhibits.

“Lease Premises” shall be defined as the area of land, together with any improvements located thereon, the use and occupancy of which

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is authorized by this Lease.

"Lessor" shall be defined as the state of California, acting by and through the California State Lands Commission, including the Commissioners, their alternates and designates, the Executive Officer, and the staff of the California State Lands Commission.

"Regulatory Agency" shall include any Federal, State, County, Municipal, or Local agency having jurisdiction over the Lease Premises.

"Repairs" shall be defined as all work of any kind made to maintain, change, restore, strengthen, replace, alter, or otherwise affect any Improvement on the Lease Premises.

"Residence" shall be defined as any Improvement, whether permanent, movable, or temporary, or a portion thereof, which is for the time being a home or place of lodging. A Residence includes any Improvement affixed to the land such as trailers or cabins, built on a raised foundation such as stilts or pilings, and floating residences such as boats, barges, arks, and houseboats, and any combination of such Improvements which provide residential accommodations to the Lessee or others. "Residence" shall not include transitory, intermittent, recreational use of facilities such as campgrounds.

"Residential Use" shall be defined as Improvements such as, but not limited to, sundecks, and sunrooms which are extensions of, or additions to, the upland property and are not water-dependent uses. Although the various uses or Improvements which may fall under this definition may vary by geographic area, lease type, or other factors, it is the intention of the parties to include in this definition all uses and Improvements which are not water-dependent but residential in nature, or those uses and Improvements which are not consistent with common law public trust principles and values.

### 3. CONSIDERATION

#### (a) **Absolute Triple Net Lease**

This Lease is an absolute triple net lease, pursuant to which Lessor has no obligation with respect to the payment of taxes, insurance, the cost of maintenance, utilities and repairs or other costs or obligations associated with the Leased Premises, except as expressly stated herein.

#### (b) **Rent**

Lessee agrees to pay Lessor rent as stated in this Lease, in annual installments, for the use and occupancy of the Lease Premises. The first installment shall be due on or before the beginning date of this Lease and all subsequent installments shall be due on or before each anniversary of its beginning date during each year of the Lease term, or as otherwise provided in this Lease. Said sums shall be paid in lawful money of the United States of America. Lessee shall send said rent to the mailing address of Lessor. Timeliness of receipt of remittances sent by mail shall be governed by the postmark date as stated in Government Code Section 11002. Invoices for rent due may be provided by Lessor as a courtesy. Lessor's failure to, or delinquency in, providing invoices shall neither excuse Lessee from paying rent, nor extend the time for paying rent.

#### (c) **Modification**

Lessor may modify the method, amount, or rate of consideration effective on each fifth anniversary of the beginning date of this Lease. Should Lessor fail to exercise such right effective on any fifth anniversary it may do so effective on any one (1) of the next four (4) anniversaries following such fifth anniversary, without prejudice to its right to effect such modification on the next or any succeeding fifth anniversary of the beginning date. No such modification shall become effective unless Lessee is given at least thirty (30) days' notice prior to the date of the Commission meeting wherein the rent modification is considered, or thirty (30) days' notice prior to the effective date of the increase, whichever provides a greater notice period.

If the consideration for this Lease is based on a percentage of income, royalties, profits, or any similar business performance indicators, Lessee shall provide Lessor with financial statements and all other documents necessary to determine the relevant basis for income.

#### (d) **Penalty and Interest**

Any installments of rent accruing under this Lease not paid when due shall be subject to a delinquency charge equal to five percent (5%) of the principal sum due. Annual payments shall bear interest as specified in Public Resources Code Section 6224 and the Lessor's then existing administrative regulations governing penalty and interest.

#### (e) **Non-Monetary Consideration**

If the consideration to Lessor for this Lease is the public use, benefit, health, or safety, Lessor shall have the right to review such consideration at any time and set a monetary rental if the Lessor, at its sole discretion, determines that such action is in the best interest of the State. Lessee's assignment or transfer of this Lease pursuant to Section 3 Paragraph 11 below to any third party

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which results in royalties, profits, or any form of compensation, whether monetary or otherwise, shall give Lessor the right to reevaluate the requirements of this Lease as stated in Section 3 Paragraph 11. Lessee shall be given at least thirty (30) days' notice prior to the date of the Commission meeting wherein the rent modification is considered, or thirty (30) days' notice prior to the effective date that this Lease is converted to a monetary rental, whichever provides more notice.

**(f) Place for Payment of Rent**

All rent that becomes due and payable under this Lease shall be paid to Lessor in person or by United States mail at the Sacramento Offices of the California State Lands Commission, currently at 100 Howe Avenue, Suite 100-South, Sacramento, CA 95825-8202, or at any other place or places that Lessor may designate by written notice to Lessee. Alternately, Lessee may contact Lessor's accounting department for Lessor's current practices for payment by credit card or electronic fund transfer.

**4. BOUNDARIES**

This Lease is not intended to establish the State's boundaries and is made without prejudice to either party regarding any boundary or title claims which may be asserted presently or in the future.

**5. LAND USE**

**(a) General**

(1) Lessee shall use the Lease Premises only for the purpose or purposes stated in this Lease and only for the operation and maintenance of the Improvements expressly authorized in this Lease. Lessee shall commence use of the Lease Premises within ninety (90) days of the beginning date of this Lease or within ninety (90) days of the date set for construction to commence as set forth in this Lease, whichever is later.

(2) All demolition, construction, remodeling, reconstruction, maintenance, repairs, removal, or remediation performed on the Lease Premises at any time by Lessee shall first be authorized by all appropriate Regulatory Agencies. Lessee is solely responsible for determining what approvals, authorizations, or certifications are required, and shall be solely responsible for all costs incurred thereby. In addition, Lessee shall obtain and comply with preventative or remedial measures required by any environmental reports, assessments, or inspections, including, but not limited to those required by the California Environmental Quality Act and/or the National Environmental Policy Act, or as otherwise required by law or reasonably requested by Lessor. Nothing in this Lease shall be interpreted as a pre-approval of any permit, certification, or any other precondition required for the use of the Lease Premises.

**(b) Continuous Use**

Lessee's use of the Lease Premises shall be continuous from commencement of the Lease until its expiration. Lessee's discontinuance of such use for a period of ninety (90) days shall be presumed to be an abandonment unless Lessee demonstrates to Lessor's satisfaction that Lessee's use of the Lease Premises is consistent with similarly situated properties. In the event of an abandonment, Lessor may elect to terminate the Lease as provided in Paragraph 12(a)(3). Abandonment of the Lease Premises shall not relieve Lessee of any obligations under this Lease.

**(c) Repairs and Maintenance**

(1) Lessor shall not be required to make any Repairs in, on, or about all or part of the Lease Premises. Lessee shall, at all times during the term of this Lease and without any cost or expense to Lessor, keep and maintain the Lease Premises, including all Improvements, in good order and repair and in a clean, safe, sanitary, and orderly condition.

(2) Lessee shall make, or cause to be made, any Repairs which may be required by any Regulatory Agency. Lessee shall observe and comply with, any law, statute, ordinance, plan, regulation, resolution, or policy applicable to the Lease Premises in making such Repairs. All work shall be performed with reasonable diligence, completed within a reasonable time, and performed at the sole cost and expense of Lessee.

(3) Lessee expressly accepts the Lease Premises "as is" and expressly acknowledges that:

(i) Lessor has made no representations or warranties as to the suitability of the Lease Premises for any Improvements. Lessee shall conduct all tests necessary to determine the suitability of the Lease Premises for any proposed use or Improvements authorized; and

(ii) Lessor has made no representations or warranties as to the quality or value of any Improvements found on the Lease Premises, or of their conformity to any applicable building codes, zoning ordinances, or other regulations. Lessee agrees to inspect any preexisting Improvements at its own cost to determine whether such Improvements are safe and suitable for

the Lessee's intended use; and

(iii) Lessee shall neither be entitled to any reduction in rent, nor any extension of the terms of this Lease because of damage to or destruction of any Improvements on the Lease Premises.

(iv) Lessee and Lessor agree that any Improvements on the Lease Premises constitute the personal property of Lessee and that fixture law does not apply.

(4) In the event that the Lease Premises is partly, or in whole, comprised of tidal, submerged, or waterfront property, Lessee expressly accepts the hazards involved in using or improving such lands. Lessor is not responsible for, and Lessee shall not be reimbursed for nor receive any offset of rent for, any damages or reduced use of the Lease Premises caused by: local or invasive flora or fauna, flooding, erosion, sea level rise, storms, freezing, inclement weather of any kind, acts of god, maintenance or failure of protective structures, and any other such hazards.

**(d) Additions, Alterations, and Removal**

No Improvements other than those expressly authorized in this Lease shall be constructed by the Lessee on the Lease Premises without the prior written consent of Lessor. Any Additions or Alterations are expressly prohibited. Lessee is also prohibited from any Additions or Alterations which cause a material change to the environmental impact on or around the Lease Premises.

**(e) Enjoyment**

This Lease is non-exclusive, and is subject to the provisions of Section 3, Paragraph 6 below. Lessee shall have the right to exclude persons from the Lease Premises only when their presence or activity constitutes a material interference with Lessee's use and enjoyment of the Lease Premises.

**(f) Discrimination**

Lessee, in its use of the Lease Premises, shall not discriminate against any person or class of persons on any basis protected by federal, state, or local law, including: race, color, creed, religion, national origin, sex, sexual orientation, gender identity, age, marital/parental status, veteran status, or disability.

**(g) Residential Use**

Unless otherwise provided for in this Lease, no portion of the Lease Premises shall be used as a location for a Residence, for the purpose of mooring or maintaining a structure which is used as a Residence, or for Residential Uses.

**(h) Commercial Use**

Unless otherwise provided for in this Lease, the Lease Premises is to be used by Lessee and Lessee's invitees or guests only. Use of the Lease Premises for commercial purposes; conducting a business, whether for profit or otherwise; and any subleasing, rental, or any transaction whereby Lessee directly or indirectly receives compensation from a third party in exchange for use of the Lease Premises shall constitute an immediate Default of this lease with no cure period.

**6. RESERVATIONS, ENCUMBRANCES, AND RIGHTS-OF-WAY**

**(a) Reservations**

(1) Lessor expressly reserves all natural resources in or on the Lease Premises, including but not limited to timber, minerals, and geothermal resources as defined under Public Resources Code sections 6401, 6407, and 6903, respectively; the right to grant and transfer the same; as well as the right to grant leases in and over the Lease Premises which may be necessary or convenient for the extraction of such natural resources. Such leasing shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.

(2) Lessor expressly reserves a right to go on the Lease Premises and all Improvements for any purposes associated with this Lease or for carrying out any function required by law, or the rules, regulations, or management policies of the State Lands Commission. Lessor shall have a right of reasonable access to the Lease Premises across Lessee owned or occupied lands adjacent to the Lease Premises for any purpose associated with this Lease.

(3) Lessor expressly reserves to the public an easement for convenient access across the Lease Premises to other State-owned lands located near or adjacent to the Lease Premises and a right of reasonable passage across and along any right-of-way granted by this Lease; however, such easement or right-of-way shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.

(4) Lessor expressly reserves the right to lease, convey, or encumber the Lease Premises, in whole or in part, during the Lease term for any purpose not inconsistent or incompatible with the rights or privileges of Lessee under this Lease.

(b) **Encumbrances**

The Lease Premises may be subject to pre-existing contracts, leases, licenses, easements, encumbrances, and claims and is made without warranty by Lessor of title, condition, or fitness of the land for the stated or intended purpose.

**7. RULES, REGULATIONS, AND TAXES**

(a) Lessee shall comply with and be bound by all presently existing or subsequently enacted rules, regulations, statutes or ordinances of the State Lands Commission or any Regulatory Agency. Occupancy or use of the Lease Premises provides no exemption from applicable regulations including, but not limited to, federal, state, county and local regulations, regulations promoting public health, safety, or welfare, building codes, zoning ordinances, and sanitation regulations. Lessee expressly acknowledges that Regulatory Agencies have jurisdiction over the Lease Premises unless such laws are in direct conflict with state law or public trust principles.

(b) Lessee understands and agrees that a necessary condition for the granting and continued existence of this Lease is that Lessee obtains and maintains all permits or other entitlements. Lessee expressly acknowledges that issuance of this Lease does not substitute for, or provide preference in obtaining authorizations from other Regulatory Agencies.

(c) **Taxes**

(1) In addition to the rent due under this Lease, Lessee accepts responsibility for and shall pay any and all real and personal property taxes, including possessory interest taxes, assessments, special assessments, user fees, service charges, and other charges of any description levied, imposed on, assessed, or associated with the leasehold interest. Improvements on the Lease Premises, any business or activity occurring on the Lease Premises, the Lease Premises itself, or any portion thereof, levied by any governmental agency or entity. Such payment shall not reduce rent due Lessor under this Lease and Lessor shall have no liability for such payment.

(2) In the event that this Lease commences, terminates or expires during a tax year, Lessee shall pay the taxes for the period of such year during which this Lease was in effect.

(3) Any and all taxes and assessments and installments of taxes and assessments required to be paid by Lessee under this Lease shall be paid when due and the official and original receipt for the payment of such tax, assessment, or installment shall be delivered to Lessor upon request.

(4) Lessee shall indemnify and hold Lessor, the Lease Premises, and any Improvements now or hereafter located thereon, free and harmless from any liability, loss, or Damages resulting from any taxes, assessments, or other charges required by this Lease to be paid by Lessee and from all interest, penalties, and other sums imposed thereon and from any sales or other proceedings to enforce collection of any such taxes, assessments, or other charges.

**8. INDEMNITY**

(a) Lessee's use of the Lease Premises and any Improvements thereon is at Lessee's sole and exclusive risk.

(b) In addition to any other obligation to indemnify Lessor as otherwise provided in this Lease, except to the extent caused by the sole negligence and/or willful misconduct of the Lessor, Lessee shall indemnify, hold harmless, and, at the option of Lessor, defend Lessor, its officers, agents, and employees from any and all Damages resulting from Lessee's occupation and use of the Lease Premises. Lessee shall reimburse Lessor in full for all reasonable costs and attorneys' fees, specifically including, without limitation, any Damages arising by reason of: (1) The issuance, enjoyment, interpretation, Breach, or Default of this Lease; (2) The challenge to or defense of any environmental review upon which the issuance of this Lease is based; (3) The death or injury of any person, or damage to or destruction of any property from any cause whatever in any way connected with the Lease Premises, or with any of the Improvements or personal property on the Lease Premises; (4) The condition of the Lease Premises, or Improvements on the Lease Premises; (5) An act or omission on the Lease Premises by Lessee or any person in, on, or about the Lease Premises; (6) Any work performed on the Lease Premises or material furnished to the Lease Premises; (7) Lessee's failure to comply with any material legal or other requirement validly imposed on Lessee or the Lease Premises by a Regulatory Agency.

(c) The reimbursement provisions of this Paragraph 8 shall not apply to any claims, litigation, or other actions which may be brought by either Lessee or Lessor against each other.

(d) Nothing in this paragraph shall be construed as requiring that Lessor defend itself against all or any aspect of any challenge to

this Lease or any associated environmental review. However, Lessee may take whatever legal action is available to it to defend this Lease or any associated environmental review against any challenge by a third party, whether or not Lessor chooses to raise a defense against such a challenge.

(e) Lessee shall notify Lessor immediately in case of any accident, injury, or casualty on the Lease Premises.

## 9. INSURANCE

(a) Lessee shall obtain and maintain in full force and effect during the term of this Lease comprehensive general liability insurance and property damage insurance, with such coverage and limits as may be reasonably requested by Lessor from time to time, but in no event for less than the sum(s) specified against any and all claims or liability arising out of the ownership, use, occupancy, condition, or maintenance of the Lease Premises and all Improvements.

(b) The insurance policy shall identify the Lease by its assigned number. The specific Improvements shall also be generally identified, as well as their location on state owned property. The coverage provided shall be primary and non-contributing. Lessee shall keep such policy current. Lessor shall be named as a "certificate holder" and/or an "additional interest" on the policy. Lessee shall provide Lessor with a current certificate of insurance at all times. At Lessor's request, Lessee shall provide a full copy of the current insurance policy, along with any and all endorsements or other such documents affecting the coverage. Lessor will not be responsible for any premiums or other assessments on the policy.

(c) The insurance coverage specified in this Lease shall be in effect at all times during the Lease term and subsequently until Lessor has either accepted all of the Lease Premises as improved or restored by Lessee as provided elsewhere in this Lease. Lessee shall notify Lessor within five (5) business days if the insurance is canceled for any reason.

## 10. SURETY BOND

(a) When required by Section 1 of this Lease, Lessee shall provide a surety bond or other security device acceptable to Lessor, for the specified amount, and naming the State of California, California State Lands Commission as the assured, to guarantee to Lessor the faithful observance and performance by Lessee of all of the terms, covenants, and conditions of this Lease.

(b) Lessor may require an increase in the amount of the surety bond or other security device to cover any additionally authorized Improvements, any modification of consideration, or to provide for inflation or other increased need for security. The surety bond or other security device may be increased on each fifth anniversary of the beginning date of this Lease. Should Lessor fail to exercise such right effective on any fifth anniversary, it may do so effective on any one (1) of the next four (4) anniversaries following such fifth anniversary without prejudice to its right to effect such modification on the next or any succeeding fifth anniversary. No such modification shall become effective unless Lessee is given at least thirty (30) days' notice prior to the date of the Commission meeting wherein the modification of the bond or security is considered, or thirty (30) days' notice prior to the effective date of the increase, whichever provides more notice.

(c) The surety bond or other security device shall be maintained in full force and effect at all times during the Lease term and subsequently until Lessor has either accepted all of the Lease Premises as improved or restored by Lessee as provided elsewhere in this Lease. Lessee must first seek approval of Lessor before changing the type of security device used, or the bond holder.

## 11. ASSIGNMENT, ENCUMBRANCING OR SUBLETTING

(a) Lessee shall not either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease and shall not sublet the Lease Premises, in whole or in part, or allow any person other than the Lessee's employees, agents, servants and invitees to occupy or use all or any portion of the Lease Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

(1) Notwithstanding the foregoing prohibition against transfer and assignment, the Lease may be transferred by Lessee if the transfer is caused by the death of a spouse and the full interest of the deceased spouse is transferred to a surviving spouse; or the transfer is caused by the dissolution of the marriage of Lessee and the full interest of one of the spouses is transferred to the other spouse. In the event of such a transfer, Lessor shall be notified in writing within 30 days of the transfer.

(2) Notice to Lessor of Successor Trustee(s): In the event this Lease is held in trust, and the Lessee is a trustee thereof, the substitution or succession of a new trustee shall not be an assignment or transfer for the purposes of this Paragraph. Lessee (and by operation of law, any successor trustee) agrees to provide prompt notice to Lessor of any succession or substitution of trustee in accordance with Paragraph 16(c) of General Provisions, no later than sixty (60) days after the named trustee as appears on the face of this Lease becomes unable or ceases to serve as trustee for any reason.

(b) The following shall be deemed to be an assignment or transfer within the meaning of this Lease:

(1) If Lessee is a business entity, any dissolution, merger, consolidation or other reorganization of Lessee, or the sale or other transfer of substantially all the assets of Lessee. If Lessee is a publicly traded entity, transfers of interests in Lessee shall not constitute an assignment requiring the consent of Lessor.

(2) If Lessee is a partnership, a transfer of any interest of a general partner, a withdrawal of any general partner from the partnership, or the dissolution of the partnership.

(c) If this Lease is for sovereign lands appurtenant to adjoining littoral or riparian land, Lessee shall not transfer or assign its ownership interest or use rights in such adjoining lands separately from the leasehold rights granted herein without the prior written consent of Lessor.

(d) If Lessee desires to assign, sublet, encumber or otherwise transfer all or any portion of the Lease Premises, Lessee shall do all of the following:

(1) Give not less than 90 days' prior written notice to Lessor;

(2) Provide the name, complete business organization, operational structure, and formation documents of the proposed assignee, sublessee, secured third party, or other transferee; and the nature of the use of and interest in the Lease Premises proposed by the assignee, sublessee, secured third party or other transferee.

(3) Provide the terms and conditions of the proposed assignment, sublease, or encumbrance or other transfer;

(4) Provide audited financial statements for the two most recently completed fiscal years of the proposed assignee, sublessee, secured party or other transferee; and provide pro forma financial statements showing the projected income, expense and financial condition resulting from use of the Lease Premises; and

(5) Provide such additional or supplemental information as Lessor may reasonably request concerning the proposed assignee, sublessee, secured party or other transferee.

(6) Lessor will evaluate proposed assignees, sublessees, secured third parties and other transferees and grant approval or disapproval according to standards of commercial reasonableness considering the following factors within the context of the proposed use: the proposed party's financial strength and reliability, their business experience and expertise, their personal and business reputation, their managerial and operational skills, their proposed use and projected rental, as well as other relevant factors.

(e) Lessor shall have a reasonable period of time from the receipt of all documents and other information required under this provision to grant or deny its approval of the proposed party. Lessor may reevaluate the rent, insurance and/or bond provisions of this Lease, and may condition its approval of the proposed assignment, sublease, hypothecation, mortgage, or other transfer on the party's acceptance of the new terms. Lessee's rights stated in this paragraph shall apply regardless of whether the proposed transfer coincides with a regular rent review period as stated in Section 3 Paragraph 3(c) above.

(f) Lessee's mortgage or hypothecation of this Lease, if approved by Lessor, shall be subject to terms and conditions imposed by a separately negotiated encumbering agreement.

(g) Upon the express written assumption of all obligations and duties under this Lease by an assignee approved by Lessor, the Lessee may be released from all liability under this Lease arising after the effective date of assignment and not associated with Lessee's use, possession or occupation of or activities on the Lease Premises; except as to any hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance manufactured, generated, used, placed, disposed, stored or transported on the Lease Premises during Lessee's tenancy.

(h) If the Lessee files a petition or an order for relief is entered against Lessee, under Chapters 7, 9, 11 or 13 of the Bankruptcy Code (11 USC Sect. 101, et seq.) then the trustee or debtor-in-possession must elect to assume or reject this Lease within sixty (60) days after filing of the petition or appointment of the trustee, or the Lease shall be deemed to have been rejected, and Lessor shall be entitled to immediate possession of the Lease Premises. No assumption or assignment of this Lease shall be effective unless it is in writing and unless the trustee or debtor-in-possession has cured all Defaults under this Lease (monetary and non-monetary) or has provided Lessor with adequate assurances (1) that within ten (10) days from the date of such assumption or assignment, all monetary Defaults under this Lease will be cured; and (2) that within thirty (30) days from the date of such assumption, all non-monetary Defaults under this Lease will be cured; and (3) that all provisions of this Lease will be satisfactorily performed in the future.

(i) In the event of any transfer or assignment, under this Paragraph 11 or by any other means authorized by this Lease, the Lease terms shall be for the remaining years existing on the Lease prior to the transfer or assignment. A transfer or assignment shall not extend the term of this Lease.

## 12. DEFAULT AND REMEDIES

### (a) **Default**

The occurrence of any one or more of the following events shall immediately and without further notice constitute a Default of this Lease:

- (1) Lessee's failure to make any payment of rent, royalty, or other consideration as required under this Lease; or
- (2) Lessee's failure to obtain or maintain liability insurance or a surety bond or other security device as required under this Lease; or
- (3) Lessee's abandonment of the Lease Premises (including the covenant for continuous use as provided for in Paragraph 5(b)) during the Lease term; or
- (4) Lessee's failure to obtain and maintain all necessary governmental permits or other entitlements; or
- (5) The maintenance of the Lease Premises in violation of, or failure to comply with, any applicable provisions of any Regulatory Agency, Environmental Law, or maintenance of the Lease Premises in a condition constituting nuisance; or
- (6) Lessee's Failure to commence to construct and to complete construction of the Improvements authorized by this Lease within the time limits specified in this Lease.
- (7) Lessee is found to sublet or otherwise surrender daily management and control of the Lease Premises to a third party without the knowledge, expressed written consent or authorization of the Lessor.

(b) Lessee's failure to observe or perform any other term, covenant, or condition of this Lease when such failure shall continue for a period of thirty (30) days after Lessor's giving written notice shall constitute a Default of this lease. However, if the nature of Lessee's Default under this paragraph is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in Default if Lessee commences such cure within such thirty (30) day period and diligently proceeds with such cure to completion.

(c) Should Lessee Breach any term, covenant, or condition of this Lease under Paragraph 12(b) above three (3) times in any three hundred and sixty-five (365) day period, the third Breach will be a Default under this Lease and Lessor will be entitled to immediately terminate this Lease, and take other appropriate action. Lessor will provide written notice of each Breach as provided above, and provide written notice that future Breaches will constitute immediate Default with no cure period.

### (d) **Remedies**

In the event of a Default by Lessee and Lessee's failure to cure such Default if such a cure period is applicable, Lessor may at any time and with or without notice do any one or more of the following in addition to any rights or remedies permitted by law:

- (1) Re-enter the Lease Premises, remove all persons and property, and repossess and enjoy such premises; or
- (2) Terminate this Lease and Lessee's right of possession of the Lease Premises by any lawful means. The termination shall not relieve Lessee of any obligation, monetary or otherwise, which has accrued prior to the date of termination. Such termination shall be effective upon Lessor's giving written notice and upon Lessee's receipt of such notice. Lessee shall immediately surrender possession of the Lease Premises to Lessor. Lessor shall be entitled to recover from Lessee all amounts to which Lessor is entitled pursuant to Section 1951.2 of the California Civil Code, or any other provision of law, including any necessary Repair, renovation, alteration, remediation, or removal of Improvements; or
- (3) Maintain this Lease in full force and effect and recover any rent, royalty, or other consideration as it becomes due without terminating Lessee's right of possession regardless of whether Lessee shall have abandoned the Lease Premises, subject to the conditions imposed by Cal. Civil Code § 1951.2; or



(4) Exercise any other right or remedy which Lessor may have at law or equity.

(e) **Determination of Rental Value**

If rent under this Lease is calculated as a percentage of Lessee's income attributable to the Lease Premises and Lessee abandons the Lease Premises during some or all of the applicable period, then the reasonable rental value shall be the percentage of proceeds Lessor would have received had Lessee operated the Lease Premises in the usual and customary manner.

(f) **Waiver of Rights**

The failure or delay of either party to exercise any right or remedy shall not be construed as a waiver of such right or remedy or any Breach by the other party. Lessor's acceptance of any rent shall not be considered a waiver of any preexisting Breach by Lessee other than the failure to pay the particular rent accepted regardless of Lessor's knowledge of the preexisting Breach at the time rent is accepted.

**13. RESTORATION OF LEASE PREMISES AND ENVIRONMENTAL MATTERS**

(a) **Restoration of Lease Premises**

(1) Upon expiration or sooner termination of this Lease, Lessee must immediately surrender possession of the Lease Premises to Lessor. Prior to the time of surrender, Lessee must remove all or any Improvements together with the debris and all parts of any such Improvements at its sole expense and risk, regardless of whether Lessee actually constructed or placed the Improvements on the Lease Premises; or Lessor, at its sole and absolute discretion, may itself remove or have removed all or any portion of such Improvements at Lessee's sole expense. Lessor may waive all or any part of this obligation in its sole discretion if doing so is in the best interests of the State.

(2) As a separate and related obligation, Lessee shall restore the Lease Premises as nearly as possible to the conditions existing prior to the installation or construction of any Improvements. For purposes of this Lease, restoration includes removal of any landscaping; removal of any Hazardous Materials; and to the extent possible, undoing any grading, fill, excavation, or similar alterations of the natural features of the Lease Premises. Lessor may waive all or any part of this obligation in its sole and absolute discretion.

(3) Unless otherwise provided for in this Lease, Lessee shall submit to Lessor no later than one (1) year prior to the expiration of this Lease either: (a) an application and minimum expense deposit for a new lease for the continued use of the Lease Premises, or (b) a plan for the restoration of the Lease Premises to be completed prior to the expiration of the lease term together with a timeline for obtaining all necessary permits and conducting the work prior to the expiration of this Lease.

(4) In removing any or all Improvements, or conducting any restoration work, Lessee shall be required to obtain any permits or other governmental approvals as may then be required by any Regulatory Agency, including, without limitation, any Environmental Law.

(5) Lessor may, upon written notice, in its sole and absolute discretion, accept title to any or all Improvements at the termination of this Lease. Lessor shall notify Lessee that Lessor intends to take title to any or all Improvements within six (6) months of Lessee submitting a plan for restoration under Paragraph 13(a)(3)(b) above. If Lessor elects to take title to any such Improvements, Lessee shall deliver to Lessor such documentation as may be necessary to convey title to such Improvements to Lessor free and clear of any liens, mortgages, loans, or any other encumbrances. Lessor shall not pay, and Lessee shall not be entitled to compensation for Lessor's taking title to such property.

(b) **Environmental Matters**

(1) Lessee's Obligations:

(i) Lessee will not use, occupy, or permit any portion of the Lease Premises to be used or occupied in violation of any Environmental Law. Lessee shall not manufacture or generate or store Hazardous Material on the Lease Premises unless specifically authorized under other terms of this Lease.

(ii) Lessee shall practice conservation of water, energy, and other natural resources.

(iii) Lessee shall notify Lessor and the appropriate governmental emergency response agency, or agencies immediately in the event of any release or threatened release of any Hazardous Material.

(2) Lessor may at any time during the Lease term require Lessee to conduct at its own expense and by a contractor approved

Form 51.16 (Rev. 10/14)

by Lessor an independent environmental site assessment or inspection for the presence or suspected presence of Hazardous Material generated, used, placed, disposed, stored, or transported on the Lease Premises during the term of the Lease. Lessee shall provide the results of the assessment or inspection to Lessor and the appropriate governmental response agency or agencies and shall further be responsible for removing or taking other appropriate remedial action regarding such Hazardous Material in accordance with applicable Environmental Law.

(3) Environmental Indemnity.

Lessee shall indemnify, defend, and hold Lessor and Lessor's, officer, appointees, volunteers, employees, agents, successors and assigns free and harmless from and against all Damages that may at any time be imposed upon, incurred by, or asserted or awarded against Lessor in connection with or arising from any Breach of Lessee's obligations hereunder; or out of any violation by Lessee of any Environmental Law; or resulting in the imposition of any lien or claim for the recovery of any costs for environmental cleanup or other response costs relating to the release or threatened release of Hazardous Materials on the Lease Premises during the Lessee's tenancy. This obligation shall include any prior leases between Lessor and Lessee and will continue through any periods Lessee is in holdover, unlawful detainer, or any subsequent month-to-month tenancies created by operation of law. Lessee's obligations hereunder will survive the expiration or sooner termination of this Lease.

(4) Violation of this section shall constitute grounds for termination of the Lease. Lessor, shall notify Lessee when, in Lessor's opinion, Lessee has violated the provisions of this section. Lessee shall immediately discontinue the conduct and respond within five (5) business days. Lessee shall take all measures necessary to remedy the condition.

#### 14. QUITCLAIM

Lessee shall, upon the early termination of this Lease and at Lessor's request, execute and deliver to Lessor in a form provided by Lessor a good and sufficient release of all rights under this Lease. Should Lessee fail or refuse to deliver such a release, Lessor may record a written notice reciting such failure or refusal. This written notice shall, from the date of its recordation, be conclusive evidence against Lessee of the termination of this Lease and all other claimants.

#### 15. HOLDING-OVER

(a) This Lease shall terminate without further notice upon the expiration of the term of this Lease. Lessee shall have removed any Improvements and completed any restoration as required by Lessor prior to the expiration of this Lease, and shall surrender possession of the Lease Premises. Any failure by the Lessee to remove Improvements, restore the Lease Premises, and/or surrender possession of the Lease Premises at the expiration or sooner termination of this Lease shall not constitute a renewal or extension and shall not give Lessee any rights in or to the Lease Premises or any part thereof except as expressly provided in this Lease. Lessee shall be deemed in unlawful detainer of the Lease Premises and Lessor shall be entitled to all resulting legal remedies.

(b) Lessor may, in its sole discretion, choose to accept Rent for the Lease Premises instead of immediately taking legal action to recover possession of the Lease Premises. Any tenancy created by operation of law on Lessor's acceptance of rent shall be deemed a month-to-month tenancy regardless of what sum or sums Lessee delivers to Lessor. Except as set forth below, any subsequent tenancy created in this manner shall be on the same terms, covenants, and conditions set forth in this Lease insofar as such terms, covenants, and conditions can be applicable to a month-to-month tenancy.

(c) In recognition of the increased accounting, land management, and supervisory staff time required for month-to-month tenancies, the rent for each month or any portion thereof during such holdover period may be an amount equal to one hundred fifty percent (150%) of one-twelfth (1/12) of the total compensation for the most recent year paid. In the event this Lease does not require monetary compensation, Lessor shall have the right to establish rent based on the fair market value of the Lease Premises. The month-to-month tenancy may be terminated by Lessee or Lessor upon thirty (30) calendar days' prior written notice to the other.

#### 16. ADDITIONAL PROVISIONS

(a) **Waiver**

(1) No term, covenant, or condition of this Lease and no omission, neglect, Default or Breach of any such term, covenant or condition shall be deemed to have been waived by Lessor's acceptance of a late or nonconforming performance or otherwise, unless such a waiver is expressly acknowledged by Lessor in writing. No delay or omission of Lessor to exercise any right or power arising from any omission, neglect, Default or Breach of term, covenant, or condition of this Lease shall be construed as a waiver or any acquiescence therein.

(2) Any such waiver shall not be deemed to be a waiver of any other term, covenant or condition; of any successive Breaches of the same term, covenant, or condition; or of any other Default or Breach of any term, covenant or condition of this Lease.

(b) **Time**

Time is of the essence for this Lease and each and all of its terms, covenants or conditions in which performance is a factor.

(c) **Notice**

All notices required to be given under this Lease shall be given in writing, sent by U.S. Mail with postage prepaid, to Lessor at the offices of the State Lands Commission and the Lessee at the address specified in this Lease. Lessee shall give Lessor notice of any change in its name or address.

(d) **Consent**

Where Lessor's consent is required under this Lease its consent for one transaction or event shall not be deemed to be a consent to any subsequent occurrence of the same or any other transaction or event.

(e) **Changes**

This Lease may be terminated and its term, covenants, and conditions amended, revised, or supplemented only by mutual written agreement of the parties.

(f) **Successors**

The terms, covenants, and conditions of this Lease shall extend to and be binding upon and inure to the benefit of the heirs, successors, and assigns of the respective parties.

(g) **Joint and Several Obligation**

If more than one Lessee is a party to this Lease, the obligations of the Lessees shall be joint and several.

(h) **Captions**

The section and paragraph captions used in this Lease are for the convenience of the parties. The captions are not controlling and shall have no effect upon the construction or interpretation of this Lease.

(i) **Severability**

If any term, covenant or condition of this Lease is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall remain valid and enforceable to the fullest extent permitted by law.

(j) **Representations**

Lessee agrees that no representations have been made by Lessor or by any person or agent acting for Lessor. Lessor and Lessee agree and acknowledge that this document contains the entire agreement of the parties, that there are no verbal agreements, representations, warranties or other understandings affecting this Lease, and Lessor and Lessee, as a material part of the consideration of this Lease, waive all claims against the other for rescission, damages, or otherwise by reason of any alleged covenant, agreement or understanding not contained in this Lease.

(k) **Gender and Plurality**

In this Lease, the masculine gender includes both the feminine and neuter, and the singular number includes the plural whenever the context so requires.

(l) **Survival of Certain Covenants**

All covenants pertaining to bond, insurance, indemnification, restoration obligations, Breach, Default, and remedies shall survive the expiration or earlier termination of this Lease until Lessee has fulfilled all obligations to restore the Lease Premises as required by this Lease.

(m) **Counterparts**

This agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

(n) **Delegation of Authority**

Lessor and Lessee acknowledge Lessor as defined herein includes the Commission Members, their alternates or designees, and the staff of the Commission. The ability of staff of the Commission to give consent, or take other discretionary actions described herein will be as described in the then-current delegation of authority to Commission staff. All other powers are reserved to the Commission.

STATE OF CALIFORNIA - STATE LANDS COMMISSION

LEASE NO. PRC 2057.9

This Lease shall become effective only when approved by and executed on behalf of the State Lands Commission of the State of California and a duly executed copy has been delivered to Lessee. The submission of this Lease by Lessor, its agent, or representative for examination by Lessee does not constitute an option or offer to lease the Lease Premises upon the terms and conditions contained herein, or a reservation of the Lease Premises in favor of Lessee. Lessee's submission of an executed copy of this Lease to Lessor shall constitute an offer to Lessor to lease the Lease Premises on the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date hereafter affixed.

**LESSEE(S):**

**SAN JOAQUIN COUNTY**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**STANISLAUS COUNTY**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**LESSOR:**

**STATE OF CALIFORNIA  
STATE LANDS COMMISSION**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Execution of this document was authorized by  
the California State Lands Commission on

\_\_\_\_\_  
(Month Day Year)

**ATTACH ACKNOWLEDGMENT**

APPROVED AS TO FORM:  
STANISLAUS COUNTY COUNSEL

BY 

DATE: 12/11/2015

STATE OF CALIFORNIA - STATE LANDS COMMISSION

LEASE NO. PRC 2057.9

This Lease shall become effective only when approved by and executed on behalf of the State Lands Commission of the State of California and a duly executed copy has been delivered to Lessee. The submission of this Lease by Lessor, its agent, or representative for examination by Lessee does not constitute an option or offer to lease the Lease Premises upon the terms and conditions contained herein, or a reservation of the Lease Premises in favor of Lessee. Lessee's submission of an executed copy of this Lease to Lessor shall constitute an offer to Lessor to lease the Lease Premises on the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date hereafter affixed.

LESSEE(S):

SAN JOAQUIN COUNTY

By: [Signature]

Title: Director of Public Works

Date: 12/14/15

LESSOR:

STATE OF CALIFORNIA  
STATE LANDS COMMISSION

By: [Signature]

Title: Chief  
Land Management Division

Date: MAY 24 2016

STANISLAUS COUNTY

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Execution of this document was authorized by  
the California State Lands Commission on

12/18/15  
(Month Day Year)

ATTACH ACKNOWLEDGMENT

STATE OF CALIFORNIA - STATE LANDS COMMISSION

LEASE NO. PRC 2057.9

This Lease shall become effective only when approved by and executed on behalf of the State Lands Commission of the State of California and a duly executed copy has been delivered to Lessee. The submission of this Lease by Lessor, its agent, or representative for examination by Lessee does not constitute an option or offer to lease the Lease Premises upon the terms and conditions contained herein, or a reservation of the Lease Premises in favor of Lessee. Lessee's submission of an executed copy of this Lease to Lessor shall constitute an offer to Lessor to lease the Lease Premises on the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date hereafter affixed.

LESSEE(S):

SAN JOAQUIN COUNTY

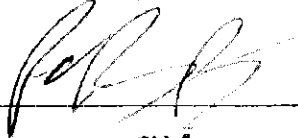
By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

LESSOR:

STATE OF CALIFORNIA  
STATE LANDS COMMISSION

By:  \_\_\_\_\_

Title: **Chief**  
**Land Management Division**

Date: **MAY 24 2016**

STANISLAUS COUNTY

By:  \_\_\_\_\_  
Matthew Machado

Title: Public Works Director

Date: December 16, 2015

Execution of this document was authorized by  
the California State Lands Commission on

12/18/15  
(Month Day Year)

ATTACH ACKNOWLEDGMENT

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Stanislaus

On December 16, 2015 before me, Keimi Espinoza, Notary Public  
(insert name and title of the officer)

personally appeared, Matthew Machado

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/hers/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Keimi Espinoza (Seal)  
Notary Public Signature

**OPTIONAL INFORMATION**

THIS OPTIONAL INFORMATION SECTION IS NOT REQUIRED BY LAW BUT MAY BE BENEFICIAL TO PERSONS RELYING ON THIS NOTARIZED DOCUMENT

TITLE OR TYPE OF DOCUMENT Lease No. PRC 2057.9

DATE OF DOCUMENT \_\_\_\_\_ NUMBER OF PAGES \_\_\_\_\_

SIGNER(S) OTHER THAN NAMED ABOVE \_\_\_\_\_

SIGNER'S NAME \_\_\_\_\_ SIGNER'S NAME \_\_\_\_\_

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

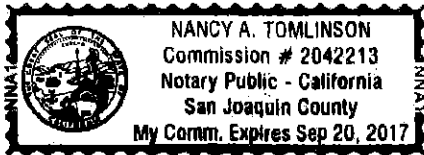
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of San Joaquin )  
On 12/14/15 before me, Nancy A. Tomlinson, Notary Public,  
Date Here Insert Name and Title of the Officer  
personally appeared Krishnamurthy Balaji  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Nancy A. Tomlinson  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: Lease No. PRC 2057.9 Document Date: \_\_\_\_\_  
Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: CA State Lands Commission

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Krishnamurthy Balaji  
 Corporate Officer - Title(s): \_\_\_\_\_  
 Partner -  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: Director of Public Works  
Signer Is Representing: San Joaquin County

Signer's Name: \_\_\_\_\_  
 Corporate Officer - Title(s): \_\_\_\_\_  
 Partner -  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_



**EXHIBIT A**

**PRC 2057.9**

**LAND DESCRIPTION**

A parcel of State owned submerged land situated in the bed of the Stanislaus River, lying adjacent to Sections 16 and 17, Township 2 South, Range 9 East, Mount Diablo Meridian, as shown on the Official U.S. Government Township Plats approved March 1, 1873, Counties of San Joaquin and Stanislaus, State of California and more particularly described as follows:

A strip of land, 207 feet wide, lying 72 feet westerly and 135 feet easterly of the following described line:

COMMENCING at the southwest corner of Section 16, Township 2 South, Range 9 East, Mount Diablo Meridian, said point shown as Monument ID # 55406 on the centerline of McHenry Avenue on that Record of Survey recorded September 16, 2013 in Book 38 of Surveys, at Page 33, Records of San Joaquin County; thence along said centerline North 0° 14' 33" West 1890.00 feet, more or less to the intersection of said centerline with the left bank of said river and POINT OF BEGINNING; thence continuing along said centerline North 0° 14' 33" West 320.00 feet, more or less to the intersection of said centerline with the right bank of said river and TERMINUS of described line.

The sidelines of said strip to be lengthened or shortened as to begin and terminate at the left and right banks of said river.

EXCEPTING THEREFROM any portion lying landward of the ordinary low water marks of the left and right banks of said river.

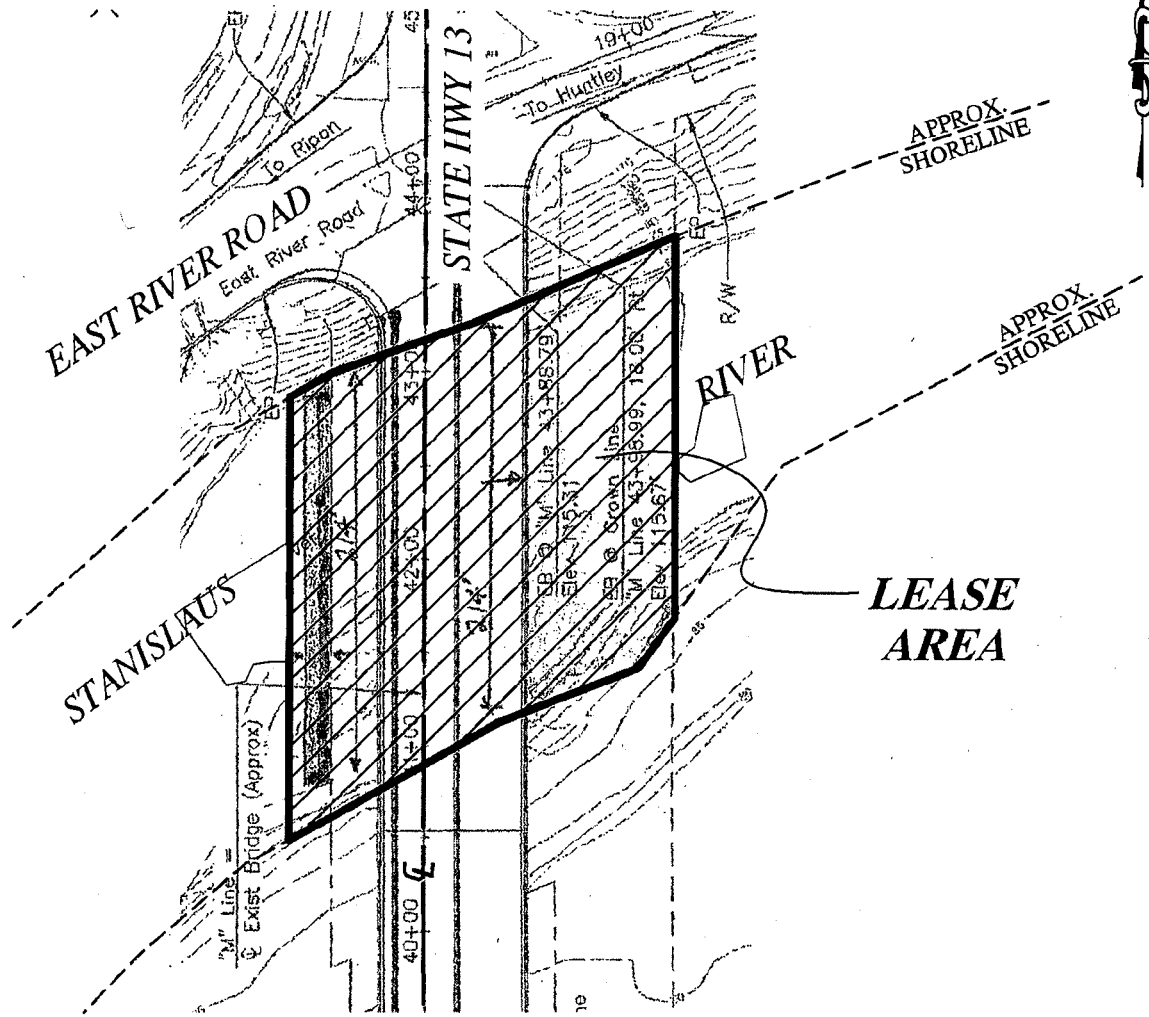
**END OF DESCRIPTION**

Prepared 01/14/15 by the California  
State Lands Commission Boundary Unit



NO SCALE

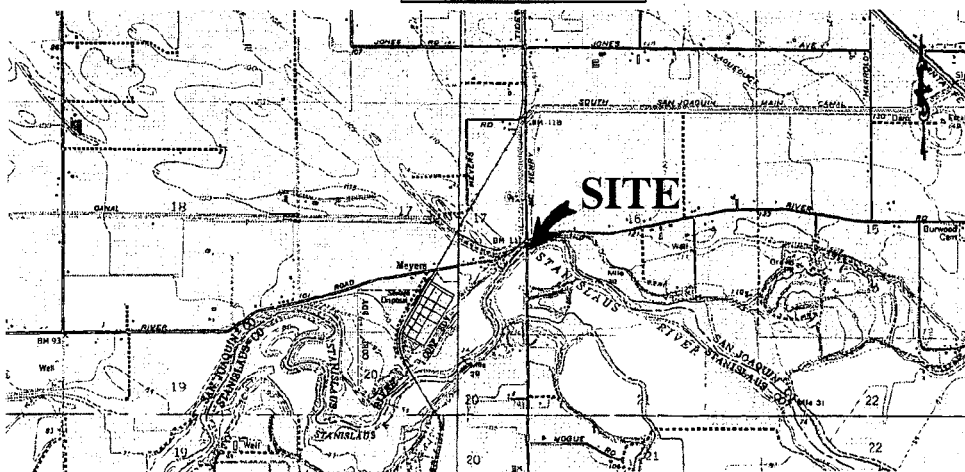
### SITE



STATE HWY 13, MCHENRY AVENUE BRIDGE CROSSING, NEAR CITY OF ESCALON

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 B

PRC 2057.9  
COUNTIES OF SAN JOAQUIN  
& STANISLAUS  
GENERAL LEASE -  
PUBLIC AGENCY USE  
SAN JOAQUIN & STANISLAUS  
COUNTIES



**EXHIBIT C**  
**CALIFORNIA STATE LANDS COMMISSION**  
**MITIGATION MONITORING PROGRAM**  
**MCHENRY AVENUE STANISLAUS RIVER BRIDGE (BRIDGE NO. 38C-0032)**  
**(PRC 2057.9, State Clearinghouse No. 2013032028)**

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The California State Lands Commission (Commission) is a responsible agency under the California Environmental Quality Act (CEQA) for the McHenry Avenue Stanislaus River Bridge (Bridge No. 38C-0032) (Project). The CEQA lead agency for the Project is San Joaquin County.

In conjunction with approval of this Project, the Commission adopts this Mitigation Monitoring Program (MMP) for the implementation of mitigation measures for the portion(s) of the Project located on Commission lands. The purpose of a MMP is to discuss feasible measures to avoid or substantially reduce the significant environmental impacts from a project identified in an Environmental Impact Report (EIR) or a Mitigated Negative Declaration. State CEQA Guidelines section 15097, subdivision (a), states in part:<sup>1</sup>

*In order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented, the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects. A public agency may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation; however, until mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program.*

The lead agency has adopted a MMP for the whole of the Project (see Exhibit C, Attachment C-1) and remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with its program. The Commission's action and authority as a responsible agency apply to the mitigation measures listed in Attachment C-1 except for Mitigation Measure WQ-5, because it relates to the San Joaquin Irrigation Canal, which is outside of the Commission's jurisdiction (See Attachment C-1, p. 237).

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<sup>1</sup> The State CEQA Guidelines are found at California Code of Regulations, Title 14, section 15000 et seq.

**ATTACHMENT C-1**  
**Mitigation Monitoring Program Adopted by the**  
**San Joaquin County**

# Attachment C-1

## Appendix C Minimization and/or Mitigation Summary

	Environmental Commitments	Responsible Party	Timing
	<b>Utilities/Emergency Services</b>		
UTI-1	An easement will be obtained from MID in order to protect the relocated overhead facilities and maintain necessary safety clearances. The County will also submit plans of the proposed construction that will potentially impact overhead facilities to MID, attention Desi Moreno, in order to coordinate further requirements for this project.	San Joaquin County Department of Public Works and construction contractor.	Prior to start of construction
	<b>Traffic</b>		
TRA-1	A Transportation Management Plan would be prepared before starting construction work and implemented by the San Joaquin County Department of Public Works throughout the construction of the project. This plan would include such elements as public information/public awareness, the location of access to the construction site, any driveway turn restrictions, temporary traffic control devices or flaggers, travel time restrictions for construction-related traffic to avoid peak travel periods on selected roadways, and designated parking and stain areas for workers and equipment.	San Joaquin County Department of Public Works and construction contractor.	Before the start of construction
	<b>Visual/Aesthetic Resource</b>		
AES-1	During project construction, construction materials and debris would be stored away from highly visible areas, which would include, but not be limited to, temporary construction easements located outside of the Stanislaus River floodplain.	San Joaquin County Department of Public Works and construction contractor.	Throughout project construction activities
AES-2	During project construction, nighttime construction lighting would be faced downward and away from adjacent occupied properties. In addition, lighting would be directed away from traffic lanes and areas where lighting could disturb passing drivers and/or pedestrians. Adjacent residents would be provided with a County contact number in case nighttime lighting becomes disruptive.	San Joaquin County Department of Public Works and construction contractor.	Throughout project construction activities
AES-3	Bridge design would optimize views to Stanislaus River by bridge users by incorporating semi-transparent vehicle barrier for both new bridges. Solid Caltrans concrete barriers would be avoided where possible (Types 25-80). As appropriate for required roadway design, Caltrans Metal Rail Barriers should be considered with the objective to maintain existing views to Stanislaus River by motorists and cyclists (Caltrans Metal Rail Barriers: ST-30, ST-40, ST-10).	San Joaquin County Department of Public Works and construction contractor.	During project design

	Environmental Commitments	Responsible Party	Timing
AES-4	Lighting poles and signs would be designed to minimize reflection to the extent feasible. All reflective surfaces would be painted with an anti-reflective coating or otherwise treated to reduce light reflection.	San Joaquin County Department of Public Works and construction contractor	During project design
AES-5	Lighting types and shading methods would be incorporated into the project to ensure that lighting impacts are reduced to the greatest extent feasible. Methods may include focusing lighting away from residential properties, using hooded lighting, and reducing the height of the lighting to the extent feasible, in addition to other feasible methods.	San Joaquin County Department of Public Works and construction contractor	During project design
	<b>Cultural Resources</b>		
CUL-1	<p>If cultural materials are discovered during construction, all earth-moving activity within and around the immediate discovery area would be diverted until a qualified archaeologist can assess the nature and significance of the find.</p> <p>If human remains are discovered, State Health and Safety Code Section 7050.5 states that further disturbances and activities would cease in any area or nearby area suspected to overlie remains, and the County Coroner contacted. Pursuant to Public Resources Code Section 5097.98, if the remains are thought to be Native American, the coroner would notify the Native American Heritage Commission (NAHC) who would then notify the Most Likely Descendant (MLD). At this time, the person who discovered the remains would contact Julia Myrah, Environmental MPS / Local Assistance Branch Chief, California Department of Transportation, District 10, so that they may work with the MLD on the respectful treatment and disposition of the remains. Further provisions of PRC 5097.98 are to be followed as applicable.</p>	San Joaquin County Department of Public Works and construction contractor	Throughout project construction
CUL-2	If cultural materials are discovered on or in the tide and submerged lands of California (within the Stanislaus River), all materials are vested in the State and under the jurisdiction of the California State Lands Commission (CSLC). In the event of discovery, CSLC Senior Staff Counsel Pam Griggs will be contacted at (916)574-1854 or Pamela.Griggs@slc.ca.gov.	San Joaquin County Department of Public Works and construction contractor.	Throughout project construction
	<b>Hydrology/Floodplain</b>		
HYD-1	Temporary river diversions would be limited to dry-season months (June 15th to October 15th) to avoid potential for storm event flows to overtop diversion equipment. Additionally, diversion equipment would be designed with adequate capacity to accommodate anticipated river flows during the diversion period.	San Joaquin County Department of Public Works and construction contractor	Throughout project construction

	Environmental Commitments	Responsible Party	Timing
HYD-2	The Central Valley Flood Protection Board "non-permissible work period" for the Stanislaus River is November 1 through April 15. In-water work will be restricted during this period.	San Joaquin County Department of Public Works and construction contractor.	Throughout project construction
	<b>Water Quality/Stormwater</b>		
WQ-1	Construction within the Stanislaus River would be limited to the period between June 15 and October 15.	San Joaquin County Department of Public Works and construction contractor.	Throughout project construction
WQ-2	Material and equipment storage will not be permitted within the Stanislaus River floodway and channel after October 31 of each year. Equipment may enter into the floodway, but must be removed daily and stored outside of the area susceptible to inundation.	San Joaquin County Department of Public Works and construction contractor.	Throughout project construction
WQ-3	The planned temporary embankment/work pads within the Stanislaus River will be constructed of clean, local cobble and gravel substrate material approved both by the U.S. Army Corps of Engineers and the National Marine Fisheries Service.	San Joaquin County Department of Public Works and construction contractor.	During project construction
WQ-4	Diversion methods to be used within the Stanislaus River would be designed to minimize degradation of water quality.	San Joaquin County Department of Public Works and construction contractor.	During project design
WQ-5	Work within the SSJID canal will be restricted to the period between October 15 and February 15, when SSJID is not delivering water to district customers. Dewatering of the canal will not be necessary, since placement of the new culvert will occur when the canal is dry.	San Joaquin County Department of Public Works and construction contractor.	Throughout project construction
WQ-6	Best Management Practices (BMPs) will be implemented for the project in adherence to all applicable NPDES requirements and other water quality regulations to minimize impacts to water quality and beneficial water uses.	San Joaquin County Department of Public Works and construction contractor.	Throughout project construction
WQ-7	As part of the NPDES requirements, the contractor will be required to identify and implement BMPs that would reduce debris or other pollutants from entering the SSJID canal or the Stanislaus River.	San Joaquin County Department of Public Works and construction contractor.	Prior to start of construction, throughout

	Environmental Commitments	Responsible Party	Timing
WQ-8	Treatment BMPs will be implemented to remove pollutants from runoff water to avoid or minimize impacts to the receiving waters.	contractor.	project construction and post construction
WQ-9	The County would avoid or minimize potential construction-related water quality impacts through compliance with the State Water Quality Control Board (SWQCB) National Pollutant Discharge Elimination System (NPDES) General Permit for construction activities. The County would be responsible for filing a Notice of Intent with the SWQCB and the contractor would prepare a storm water pollution prevention program (SWPPP), developed by a qualified SWPPP practitioner, and implement an appropriate suite of temporary construction BMPs.	San Joaquin County Department of Public Works and construction contractor.	Prior to start of construction, throughout project construction, and post construction
WQ-10	The contractor would be responsible for constructing permanent post-construction storm water BMPs in accordance with County standards, which would be identified and incorporated into the SWPPP. The SWPPP requirements would accommodate the additional drainage discharges generated by the project to avoid adverse effects such as off-site erosion, sedimentation, and water quality impairments.	San Joaquin County Department of Public Works and construction contractor	Prior to start and throughout construction activities
WQ-11	The construction contractor would prepare a water diversion plan that complies with all regulatory permits and agreements for any diversion of water necessary for project implementation.	San Joaquin County Department of Public Works and construction contractor	Throughout project construction
WQ-12	All pumped water would be routed to either (1) a sedimentation pond located on a flat stable area above the ordinary high water mark that prevents silt-laden runoff from entering the river, or (2) a sedimentation tank/holding facility that allows only clear water to return to the river and includes disposal of settled solids at an appropriate off-site location.	San Joaquin County Department of Public Works and construction contractor	Prior to project construction
WQ-13	A storm water pollution protection plan (SWPPP) would be created and implemented to ensure the proper installation and maintenance of sediment control measures.	San Joaquin County Department of Public	Throughout project construction



	<b>Environmental Commitments</b>	<b>Responsible Party</b>	<b>Timing</b>
	Implementation of the SWPPP would be phased for the suitable timing for dry-weather protective measures and rainy season protective measures.	Works and construction contractor	project construction
	<b>Hazardous Materials</b>		
HAZ-1	If previously unidentified contaminated soil is encountered during excavation or grading, the construction contractor will stop work and contact an environmental hazardous materials professional to conduct an on-site assessment. If the materials are determined to pose a risk to the public or construction workers, the construction contractor will prepare and submit a remediation plan to the appropriate agency and comply with all federal, state, and local laws	San Joaquin County Department of Public Works and construction contractor	Prior to start of construction
HAZ-2	If previously unidentified asbestos containing materials are identified, at concentrations that could pose a health hazard, in structures to be demolished, those structures will be removed under acceptable engineering methods and work practices. A California Certified Asbestos Consultant will be retained prior to bridge removal, and will prepare and monitor implementation of an asbestos compliance plan.	San Joaquin County Department of Public Works and construction contractor	Prior to start of construction
HAZ-3	All aspects of the project associated with removal, storage, transportation, and disposal of yellow traffic stripes would be in strict accordance with County, State and Federal regulations. Disposal of the stripes would be at a Class I disposal facility if they are found to be hazardous.	San Joaquin County Department of Public Works and construction contractor	Throughout project construction
HAZ-4	A Lead Compliance Plan for worker health and safety will be prepared by a Certified Industrial Hygienist and will be implemented prior to the start of construction activities. This plan is needed to minimize worker exposure to lead and/or lead chromate while handling excess soils and/or yellow and white traffic striping.	San Joaquin County Department of Public Works and construction contractor.	Prior to start of construction activities
	<b>Air Quality</b>		
AIR-1	The construction contractor would comply with Caltrans' Standard Specifications Section 7-1.01F and Section 10 of Caltrans' Standard Specifications (2006).	San Joaquin County Department of Public Works and construction contractor	Throughout project construction
AIR-2	The construction contractor would prepare and submit a Dust Control Plan to the San Joaquin Valley Air Pollution Control District for their approval at least 30 days prior to any earthmoving or construction activities.	San Joaquin County Department of Public Works and construction contractor	At least 30 days prior to the start of any earthmoving or construction

	Environmental Commitments	Responsible Party	Timing
AIR-3	The project would comply with San Joaquin Valley Air Pollution Control District Rule 9510, Indirect Source Review, which requires implementation of control measures and/or purchasing of emissions offsets to mitigate construction-related NOx and PM10 emissions from roadway projects in excess of 2.0 tons. Off-Site Emission Reduction Fees would be calculated, as dictated by Rule 9510, to reduce construction-related NOx emissions by 20 percent and PM10 emissions by 45 percent, compared to the statewide fleet average.	San Joaquin County Department of Public Works and construction contractor	Prior to and throughout project construction
	<b>Noise</b>		
NOI-1	The construction contractor would substitute noise/vibration-generating equipment with equipment or procedures that would generate lower levels of noise/vibration. For instance, in comparison to impact piles, drilled piles or the use of a vibratory pile driver are preferred alternatives where geological conditions would permit their use.	San Joaquin County Department of Public Works and construction contractor	Throughout project construction
NOI-2	Limit noise-generating construction activities, excluding those that would result in a safety concern to workers or the public, to the least noise-sensitive daytime hours. Construction activities would be prohibited on Sundays and federal/state-recognized holidays.	San Joaquin County Department of Public Works and construction contractor	Throughout project construction
NOI-3	All construction equipment would have sound-control devices that are no less effective than those provided on the original equipment. No equipment would have an un muffied exhaust.	San Joaquin County Department of Public Works and construction contractor	Throughout project construction
NOI-4	As directed by Caltrans or San Joaquin County, the contractor would implement appropriate additional noise mitigation measures, including changing the location of stationary construction equipment, turning off idling equipment, rescheduling construction activity, notifying adjacent residents in advance of construction work, and installing acoustic barriers around stationary construction noise sources.	San Joaquin County Department of Public Works and construction contractor	Throughout project construction
	<b>Biological Resource</b>		
BIO-1	The project proposes to mitigate for the permanent loss of 0.45 acre of Valley Foothill Riparian Forest habitat at a 2:1 ratio at a conservation bank approved by the CDFG and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA/NMFS). If a conservation bank is unavailable to satisfy the credit needs for the proposed	San Joaquin County Department of Public Works and construction contractor	Prior to and throughout project construction and post

	<b>Environmental Commitments</b>	<b>Responsible Party</b>	<b>Timing</b>
BIO-2	<p>project, an in-lieu fee program with both the NOAA/NMFS and the CDFG is proposed. If options 1 and 2 above are not deemed acceptable to the resource the County would undertake restoration on site within the Stanislaus River watershed no more than 5 miles from the project study area. Within the mitigation area, riparian habitat greater in size to the area impacted by implementation of the proposed project (minimum 2:1 ratio) would be reestablished and protected in perpetuity through a conservation easement. Plantings would have a minimal survival rate of 80% at the end of the five-year monitoring and maintenance period. If this rate is not met, the plan would require replanting and continued monitoring until a five-year success period is met.</p> <p>For areas of Valley Foothill Riparian Forest habitat that require temporary disturbance, the County would prepare and implement an on-site riparian restoration plan for disturbed riparian habitat. The plan will comply with the re-vegetation requirements established in the environmental permits. The plan will include on-site and/or off-site location(s) for replacement shrubs and trees, protection measures for replacement shrubs and trees that ensure 80 percent of the replacement plantings are alive five years following re-vegetation, and monitoring measures by a qualified biologist.</p>	San Joaquin County Department of Public Works and construction contractor	Prior to and throughout project construction and post construction
BIO-3	<p>Impacts to woodland habitat and mitigation requirements would be addressed in a Habitat Mitigation Plan as described. The County would restore oak woodland at appropriate mitigation area no more than 10 miles from the project study area. Within the mitigation area, oak woodland greater in size to the area impacted by implementation of the proposed project (minimum 3:1 ratio = three acorns/trees planted for every one removed) would be reestablished and protected in perpetuity through a conservation easement. Plantings would have a minimal survival rate of 80% at for five consecutive years. The County may also pay in-lieu fees at an approved mitigation bank instead of undertaking a restoration project. Mitigation bank credits will be purchased prior to the start of construction activities.</p> <p>Table 2.21 below outlines the proposed mitigation. At a minimum, nine acorns/trees consisting of native oak species would be planted as mitigation for the potential impact to three native oaks (tree tags 688, 689, 691) protected under the San Joaquin County oak protection ordinance (Chapter 9 1505; Ordinance 36753).</p>	San Joaquin County Department of Public Works and construction contractor	Prior to and throughout project construction and post construction.
BIO-4	<p>For oaks that would be preserved on-site, construction activities may not compact soil or change grades or drainage near oaks. A fence must be installed during construction. Irrigation and paving near the dripline (area directly located under the outer circumference of the tree branches) would be minimized. Heritage trees may only be</p>	San Joaquin County Department of Public Works and construction	During construction and post

	<b>Environmental Commitments</b>	<b>Responsible Party</b>	<b>Timing</b>
BIO-5	<p>removed in the public interest and must be replaced 5:1 (5 acorns/trees planted for every one removed).</p> <p>For areas of oak woodland that require temporary effects, implementation of an on-site restoration plan to mitigate temporary impacts would take place in accordance with the re-vegetation requirements established in the requirements of the environmental permits. Mitigation ratios, re-vegetation techniques, and success criteria areas must be included in these requirements. A restoration plan would be developed and provided to the appropriate resource agencies prior to implementation of the proposed project..</p>	<p>contractor</p> <p>San Joaquin County Department of Public Works and construction contractor</p>	<p>construction</p> <p>Prior to start and throughout construction and post construction</p>
BIO-6	<p>During project development, the size of the work area limits has been reduced to the smallest amount feasible within sensitive habitat areas.</p>	<p>San Joaquin County Department of Public Works and construction contractor</p>	<p>Prior to project construction.</p>
BIO-7	<p>Impacts to the water quality of the river would be minimized by implementing best management practices and an erosion and sediment control plan that minimize impacts to water quality in the river.</p>	<p>San Joaquin County Department of Public Works and construction contractor</p>	<p>Prior to project construction and throughout project construction.</p>
BIO-8	<p>To reduce potential impacts to vegetation and aquatic habitat associated with accidental spills of pollutants (i.e., fuel, oil, grease, etc.), the construction contractor would implement appropriate hazardous materials management practices to reduce the possibility of chemical spills or releases of contaminants, including any non-storm water discharge.</p>	<p>San Joaquin County Department of Public Works and construction contractor</p>	<p>Throughout project construction.</p>
BIO-9	<p>Construction activities within the Stanislaus River would be limited to the period between June 15 and October 15. To minimize risk of direct take, placement of the temporary in-river fill would be conducted outside of the peak migration period (November through May).</p>	<p>San Joaquin County Department of Public Works and construction contractor</p>	<p>Throughout project construction.</p>
BIO-10	<p>Before any construction activities begin on the project, a qualified biologist would develop, implement, and conduct a Worker Environmental Awareness Program (WEAP) for all construction personnel. At a minimum, the training will brief them on the need to avoid impacts on biological resources and the penalties for not complying with biological mitigation requirements and should include a description of all special-status species that have the potential to occur within the action area, their habitat requirements, the avoidance and minimization measures that are to be implemented and maintained for the conservation of the species, and the limits of</p>	<p>San Joaquin County Department of Public Works and construction contractor</p>	<p>Prior to project construction.</p>

	<b>Environmental Commitments</b>	<b>Responsible Party</b>	<b>Timing</b>
BIO-11	<p>construction/disturbance for the project. An environmental awareness handout describing and illustrating sensitive resources that will be avoided during project construction as well as all relevant permit conditions, will be provided to each person.</p> <p>A fish salvage program will be developed and implemented, which will reduce direct take of fish during the construction and placement of the water bladders, pier placement, and dewatering (temporary fill). Placement of the temporary fill will be done so that fish would be able to pass through the project site at all times. The program shall require a NOAA/NMFS-approved biologist to be on site during in-stream construction to oversee field operations and salvage activities and to determine suitable time(s) and location(s) of release for rescued fish. Rescued fish shall be immediately transferred to an oxygenated holding tank and transported to an appropriate downstream release site for juveniles and an upstream site for adults. The water inside the holding tank shall be the same temperature as the river to reduce shock as the fish are released. The fish shall be released in a manner that will not harm the fish.</p>	San Joaquin County Department of Public Works and construction contractor	Prior to start and throughout project construction.
BIO-12	<p>The construction of the proposed bridge using cast-in-place concrete would require the installation of falsework to support the concrete forms within the active waterway of the Stanislaus River. Installation of falsework piling and access shoring within the active waterway area would be permitted only if a vibratory pile hammer is used. Furthermore, any in-water work would be confined within the work windows proposed in the January 2011 Biological Assessment and the Natural Environment Study.</p>	San Joaquin County Department of Public Works and construction contractor	Throughout project construction.
BIO-13	<p>All refueling, maintenance, and staging of equipment and vehicles would occur at least 60 feet from riparian habitat or water bodies and not in a location from where a spill would drain directly toward aquatic habitat. Any spills of hazardous materials in riverine habitat will be immediately cleaned up and disposed of properly.</p>	San Joaquin County Department of Public Works and construction contractor	Throughout project construction.
BIO-14	<p>All temporary disturbed areas would be restored to pre-construction conditions upon completion of construction using appropriate seed mixes or plantings.</p>	San Joaquin County Department of Public Works and construction contractor	Throughout project construction and post construction.
BIO-15	<p>Additional impacts from habitat disturbance would be avoided by installing protective silt fencing between the aquatic habitats and the construction area limits to prevent accidental disturbance during construction and to protect water quality within the aquatic habitats during construction.</p>	San Joaquin County Department of Public Works and construction contractor	Prior to start of and during project construction.

	Environmental Commitments	Responsible Party	Timing
BIO-16	Standard BMPs would be implemented prior to, during and after construction to protect water quality in sensitive habitat areas during construction.	San Joaquin County Department of Public Works and construction contractor	Throughout project construction
BIO-17	If construction or vegetation removal is proposed during the breeding/nesting season for local bird species (typically February 15 through August 31), a pre-construction focused survey for active nests migratory birds within and in the vicinity of (no less than 250 feet outside project boundaries, where possible) the project site would be conducted by a qualified biologist. Two surveys would be conducted, at least one week apart, with the second survey occurring no more than two days prior to tree removal. If no active nests are found, vegetation removal or construction activities may proceed.	San Joaquin County Department of Public Works and construction contractor	Prior to start of, and during project construction.
BIO-18	If an active nest is located during pre-construction surveys, USFWS and/or CDFG will be notified regarding the status of the nest. Construction activities would be restricted as necessary to avoid disturbance of the nest until it is abandoned or the biologist deems disturbance potential to be minimal. Restrictions may include establishment of exclusion zones (no ingress of personnel or equipment at a minimum radius of 250 feet around an active migratory bird nest) or alteration of the construction schedule.	San Joaquin County Department of Public Works and construction contractor	Prior to and during project construction.
BIO-19	If construction is to begin during the nesting season for swallows and other migratory birds (between February 1 and September 15), a pre-construction survey would be conducted to determine if birds are nesting on the bridge undercrossings. Completed nests discovered between February 1 and September 15 cannot be disturbed without a permit from USFWS or CDFG, as applicable.	San Joaquin County Department of Public Works and construction contractor	Prior to start of and during project construction.

	Environmental Commitments	Responsible Party	Timing
BIO-20	<p>Prior to initiation of construction activity, a bat survey would be performed between March 1 to July 31 in the year prior to the removal of any trees or structures. If bat roosts are identified on site, the County would require that the bats be safely flushed from the sites where roosting habitat is planned to be removed prior to roosting season (typically May to August) of each construction phase prior to the onset of construction activities. If maternity roosts are identified during the maternity roosting season (typically May to August), they must remain undisturbed until a qualified biologist has determined the young bats are no longer roosting. If roosting is found to occur on-site, replacement roost habitat (e.g., bat boxes) would be provided on-site for roosting sites removed. If no bat roosts are detected, then no further action is required if the trees and buildings are removed prior to the next breeding season. If removal is delayed, then an additional pre-demolition survey would be conducted 30 days prior to removal to ensure that a new colony has not established itself. If a female or maternity colony of bats are found within the project study area, a qualified biologist will determine the appropriate time and physical buffer zones to be established so the project can be constructed without the elimination or disturbance of the roosting colony. If an active nursery roost is known to occur on site and the project cannot be conducted outside of the maternity roosting season, bats will be excluded from the site after July 31 and before March 1 to prevent the formation of maternity colonies. Non-breeding bats shall be safely evicted, under the direction of a bat specialist.</p>	<p>San Joaquin County Department of Public Works and construction contractor</p>	<p>Prior to start of and during project construction.</p>
BIO-21	<p>Prior to the start of construction activities, a VELB survey will be conducted, per USFWS (1999) Conservation Guidelines, to verify the stem count has not changed since the issuance of the USFWS BO on June 7, 2011. If the stem count has increased, then Section 7 consultation will be re-initiated with USFWS.</p>	<p>San Joaquin County Department of Public Works</p>	<p>Prior to the start of construction.</p>
BIO-22	<p>Avoidance, minimization, and mitigation measures would be implemented according to the USFWS Conservation Guidelines for the Valley Elderberry Longhorn Beetle (1999). Mitigation compensation would be accomplished in accordance with the USFWS Conservation Guidelines (1999); the County would be responsible for the planting of 266 elderberry seedlings and 270 associated native plants. Planting would be achieved at an USFWS-approved conservation bank or within the project right-of-way, if feasible. Currently, VELB mitigation credits are available at the River Ranch Conservation Bank. The service area of this conservation bank includes the project study area.</p>	<p>San Joaquin County Department of Public Works and construction contractor</p>	<p>Prior to start of and during project construction.</p>
BIO-23	<p>In-water construction would be limited to the period between June 15 and October 15. In addition, any loss of Central Valley steelhead habitat (aquatic) as a result of the proposed project would be compensated at a minimum 6:1 ratio through purchase of</p>	<p>San Joaquin County Department of Public Works and construction</p>	<p>Throughout project construction.</p>

Environmental Commitments	Responsible Party	Timing
<p>credits at a nearby conservation bank for Central Valley steelhead approved by the National Oceanic and Atmospheric Administration/ National Marine Fisheries Service (NOAA/NMFS). Habitat would be mitigated at a minimum 2:1 ratio, either through establishment of a conservation easement or payment of in-lieu fees at an approved conservation bank. Riverine and riparian habitat would be restored to pre-project conditions after project construction is complete.</p>	<p>contractor</p>	
<p>Permanent impacts to essential fish habitat would be mitigated through conservation measures outlined for the Central Valley steelhead. Riverine habitat (temporary impacts) would be restored to pre-project conditions after project construction is complete.</p>	<p>San Joaquin County Department of Public Works and construction contractor</p>	<p>Prior to start of construction, throughout project construction, and post construction</p>
<p>If construction or tree removal is proposed during the breeding/nesting season for Swainson's hawk (typically March 1 through September 15), a focused survey for active nests of raptors and migratory birds within and in the vicinity of (no less than 0.5 mile outside project boundaries, where possible) the project site would be conducted by a qualified biologist. At a minimum, surveys will be completed for, at least, the two survey periods immediately prior to the start of construction activities. For each survey period, three surveys will be completed. No surveys will be conducted in Period IV. If no active nests are found, tree removal or construction activities may proceed.</p> <p>If an active nest is located during pre-construction surveys, the USFWS and/or the CDFG (as appropriate) would be notified regarding the status of the nest. Furthermore, construction activities would be restricted as necessary to avoid disturbance of the nest until it is abandoned or the biologist deems disturbance potential to be minimal. Restrictions may include establishment of exclusion zones (no ingress of personnel or equipment at a minimum radius of 100 feet around an active raptor nest) or alteration of the construction schedule.</p> <p>No action is necessary if no active nests are found or if construction would occur during the non-breeding season (generally September 1 through February 28).</p>	<p>San Joaquin County Department of Public Works and construction contractor</p>	<p>Prior to start of and during project construction.</p>
<p>To prevent impacts to MBTA-protected birds and their nests, removal of trees would be limited to only those necessary to construct the proposed project.</p>	<p>San Joaquin County Department of Public Works and construction contractor</p>	<p>Prior to start of and during project construction</p>

BIO-24

BIO-25

BIO-26



Environmental Commitments	Responsible Party	Timing
<p>The following measures will be taken to minimize the amount and duration of pile driving and its potential impacts on listed salmonids, and to monitor the range and magnitude of compression shock waves generated by pile driving operations:</p> <ol style="list-style-type: none"> <li>1. All in-water pile driving work will occur from June 15 to October 15 each construction year.</li> <li>2. Real-time monitoring will be conducted to ensure underwater sound levels analyzed in the BO do not exceed the established distances described for pile driving construction. Monitoring will follow NMFS standard practices as spelled out in the BO Clarification Letter of December 7, 2012.</li> <li>3. The County will monitor underwater sound during all impact hammer pile driving activities. If underwater sound exceeds the established thresholds at the distances provided in the NMFS BO, then NMFS must be contacted within 24 hours before continuing pile driving activities.</li> <li>4. The County will submit to NMFS a hydroacoustic monitoring report plan for approval at least 60 days prior to the start of construction activities. In addition, the County will submit to NMFS a daily hydroacoustic monitoring report (by close of business of the day following the pile driving) that provides real-time data regarding the distance (actual or estimated using propagation models) to the thresholds stated in the NMFS BO to determine adverse effects to listed species.</li> <li>5. Pile driving will occur only during restricted weekday working hours from 8 am to 5 pm.</li> <li>6. The County will submit to NMFS a final hydroacoustic monitoring summary due 30 days following pile driving events for each temporary structure required for bridge construction. The reports must provide a review of the daily monitoring data and process as well as any problems that were encountered.</li> </ol>	<p>San Joaquin County Department of Public Works and construction contractor</p>	<p>Prior to start and throughout project construction and post construction</p>
<p>The contractor will prepare and implement a demolition containment plan to keep</p>	<p>San Joaquin County</p>	<p>Prior to start of</p>

BIO-27

BIO-28

Environmental Commitments	Responsible Party	Timing
<p>debris from entering the main channel of the river.</p> <p>The following measures will be implemented, by qualified biologists, to reduce the potential for direct take of CV steelhead:</p> <ol style="list-style-type: none"> <li>1. An approximately 20-foot wide section of the river, representing the low flow channel, will be left open during all in-water activities to facilitate upstream/downstream dispersal of fish populations within the Stanislaus River.</li> <li>2. Block nets will be installed around the limits of the in-water work areas, prior to the initiation of construction activities in all years. Netting mesh size will be chosen to provide exclusionary benefits to young-of-the-year CV steelhead.</li> <li>3. Seine nets and/or electrofishers will then be utilized to relocate as many fish as possible within the containment area.</li> <li>4. Collected fish will be relocated to a suitable location within the Stanislaus River either upstream or downstream of the project site.</li> <li>5. Block nets will remain in place until such time as a turbidity/silt curtain (if required) is installed, or cofferdam construction has been completed.</li> <li>6. A qualified biologist, designated by San Joaquin County, will be present to monitor on-site compliance with all minimization measures.</li> </ol>	<p>Department of Public Works and construction contractor</p> <p>San Joaquin County Department of Public Works and construction contractor</p>	<p>construction activities</p> <p>Prior to and throughout construction of project</p>
<p>No insecticides, herbicides, fertilizers, or other chemicals will be applied during construction.</p>	<p>San Joaquin County Department of Public Works and construction contractor</p>	<p>During construction activities</p>
<p>Dust control measures will be implemented to minimize impacts to VELB; however, to avoid attracting Argentine ants, water will not be sprayed within the driplines of elderberry shrubs at any time.</p>	<p>San Joaquin County Department of Public Works and construction contractor</p>	<p>Prior to and during construction</p>

BIO-29

BIO-30

BIO-31

Environmental Commitments	Responsible Party	Timing
<p>Prior to the start of construction activities, the County will ensure a temporary plastic mesh-type construction fence, a minimum of four feet tall, is installed at least 20 feet from the driplines of elderberry shrubs adjacent to the area that will be retained. The exact location of the fencing will be determined by a qualified biologist, with the goal of protecting habitat for VELB. The fencing will be strung tightly on posts set at a maximum interval of 10 feet. The fencing will be installed in a way that prevents equipment from enlarging the work area beyond the delineated area. The fencing will be checked and maintained weekly until all construction is completed. This buffer zone will be marked by signs stating, "This is habitat of the valley elderberry longhorn beetle, a threatened species, and it must not be disturbed. This species is protected by the Endangered Species Act of 1973, as amended. Violators are subject to prosecution, fines, and imprisonment." Signs will be placed at intervals of 50 feet and must be readable at a distance of 20 feet. No construction activity, including grading, will be allowed until this condition is satisfied. No grading, clearing, storing of equipment or machinery, or other disturbance or activity may occur until a representative of the County has inspected and approved all temporary construction fencing. The fencing and a note reflecting this condition will be shown on the construction plans.</p>	<p>contractor</p> <p>San Joaquin County Department of Public Works and construction contractor</p>	<p>activities</p> <p>Prior to and throughout construction activities</p>
<p>Prior to the start of construction activities and the arrival of migratory birds to the project area (generally between September 16 and January 31), all swallow nests should be removed from the sides and underside of the bridge structures. High-powered water and/or a long pole can be used to remove all the nests off the bridge. Once the nests have been removed, exclusionary methods should be installed under the bridge structures. The exclusion should include placing netting on the bridge undercrossings that provides a physical barrier between the birds and the areas of the bridge where they would likely construct new nests. Exclusionary devices will be installed for at least ten calendar days prior to bridge demolition.</p>	<p>San Joaquin County Department of Public Works and construction contractor</p>	<p>Prior to start of construction activities</p>
<p>Vegetation that can be preserved will be identified and flagged or fenced to avoid disturbance.</p>	<p>San Joaquin County Department of Public Works and construction contractor</p>	<p>Prior to start of construction</p>
<p>A Pre-construction survey will be conducted, by a qualified biologist, for Western Pond Turtle three days prior to the start of construction activities adjacent to the Stanislaus River, and every subsequent day while activities occur adjacent to the Stanislaus River.</p>	<p>San Joaquin County Department of Public Works and construction contractor</p>	<p>Prior to and throughout project</p>

BIO-32

BIO-33

BIO-34

BIO-35

Environmental Commitments	Responsible Party	Timing
<p>The survey will encompass a 100-foot radius of the area to be affected. If juvenile or adult turtles are found within the survey area, the individuals will be moved at least 500 feet downstream of the survey area, in suitable habitat. If a turtle nest is found within the survey area, construction activities will not take place within 100 feet of the nest until the turtles have hatched, or the eggs have been moved to an appropriate location.</p>	<p>contractor</p>	<p>construction</p>
<p><b>Invasive Species</b></p>		
<p>Prior to the initiation of construction activities, a Worker Environmental Awareness Program will be developed and implemented. Before any work occurs in the project area, including grading, a qualified biologist will conduct mandatory contractor/worker awareness training for construction personnel. The training will be provided to all construction personnel to brief them on the need to avoid the spread of invasive species, actions to be taken to prevent the release and spread of aquatic and/or terrestrial invasive species, procedures for the safe removal and disposal of any invasive species observed, the avoidance and minimization measures that are to be implemented and maintained, and the limits of construction/disturbance for the project. If new construction personnel are added to the project, the contractor's superintendent will ensure they receive the mandatory training before starting work.</p>	<p>San Joaquin County Department of Public Works and construction contractor</p>	<p>Prior to start of and throughout project construction</p>

INV-1