AMENDMENT OF LEASE NO. PRC 9574.9

WHEREAS, the State of California, acting through the State Lands Commission, hereinafter called Lessor, and City of Sacramento, hereinafter called Lessee have heretofore entered into an agreement designated as Lease No. PRC 9574.9 (Lease), authorized by the State Lands Commission on August 23, 2019, and executed by the State Lands Commission on August 29, 2019, whereby Lessor granted to said Lessee a General Lease – Public Agency Use covering certain State Land situated in Sacramento County; and

WHEREAS, Section 3, Paragraph 15(e) provides that the Lease may be terminated and its terms, covenants and conditions amended, revised, or supplemented only by mutual written agreement of the Lessor and the Lessee (hereinafter referred to as the Parties); and

WHEREAS, by reason of the foregoing, it is now the desire of the Parties to amend the Lease.

NOW THEREFORE, the Parties hereto agree as follows:

1. The existing Exhibit B, Site and Location Map, to the Lease is hereby deleted in its entirety and replaced with Exhibits B-1 through B-10, Site and Location Maps, attached and by reference made a part of the Lease and this Amendment (for reference purposes only).

2. The existing Exhibit A Land Description, to the Lease is hereby deleted in its entirety and replaced with Exhibit A, Land description, attached and by reference made a part of the Lease and this Amendment.

3. Section 1, Basic Provisions, of the Lease is hereby amended to include the following:

   a. LOCATION, to be replaced with: American River, below Nimbus Dam from approximately River Mile (RM) 23 to RM 13, near Rancho Cordova and Fair Oaks, Sacramento County, as described in Exhibit A attached and by this reference made a part hereof.
Section 3, Paragraph 13, Subparagraph (a) is modified to add sub-paragraph (6) as follows: “Notwithstanding the above, any habitat restoration improvements placed under this lease shall not be subject to the removal provisions of Paragraph 13.”

Section 2, Paragraph 12, Subparagraph (c) is replaced with the following: “Within 60 days of completing the activities, Lessee will provide Lessor with photographs, a set of “as-built” plans, and written confirmation that the rehabilitation and restoration of spawning grounds have been completed. Lessor shall then replace Exhibit A (Land Description) and Exhibit B (Site and Location Map) to this Lease as necessary to accurately reflect the final location of the authorized improvements. Once approved by Lessor’s Executive Officer or designee and Lessee, the revised Exhibits shall replace the Exhibits incorporated in the Lease at the time of Lease execution. The revised Exhibits shall be incorporated in this Lease as though fully set forth herein.”

The effective date of this Amendment to the Lease shall be June 23, 2020.

This Amendment is a portion of Lease No. PRC 9574.9 with a beginning date of August 23, 2019, consisting of three sections with a total of 42 pages.

All other terms and conditions of the lease shall remain in full force and effect.

This Agreement will become binding on the Lessor only when duly executed on behalf of the State Lands Commission of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the dates hereafter affixed.

LESSEE:
CITY OF SACRAMENTO

By: ____________________________
Thomas Gohring
Title: Executive Director, Community Services
Date: June 10, 2020

LESSOR:
STATE OF CALIFORNIA
STATE LANDS COMMISSION

By: ____________________________
Robert Brian Bugsch
Title: Chief, Land Management Division
Date: ____________________________

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

(Month  Day  Year)

ATTACH ACKNOWLEDGMENT
EXHIBIT A

LAND DESCRIPTION

A parcel of submerged land situate in the bed of American River in Sacramento County, California, adjacent to on the right bank Rancho Rio De Los Americanos, approved May 29, 1857 and more particularly described as follows:

Bounded on the upstream (east) by a line parallel with and 550 feet westerly from the southerly prolongation of the most westerly line of "Mississippi Bar" having the course S 18° 03 ½' E as shown on "Map of Mississippi Bar" dated February 27, 1912 and filed in Book A, Page 97 of Surveys;

Bounded on the south, southeast, east by the low water mark of the left bank of the American River;

Bounded on the downstream (south) by a line running west from the most westerly corner of Tiffany Farms as shown on that Parcel Map dated December 1973 and filed in Book 16 of Parcel Maps at Page 5;

Bounded on the north, northwest, west by low water mark of the right bank of the American River.

EXCEPTING THEREFROM any portions lying landward of the low water mark of the left and right banks of the American River.

END OF DESCRIPTION

PREPARED 3/25/2020 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT.
NIMBUS BASIN, RIVER MILE 22.75-23.0

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.
LOWER SAILOR BAR, RIVER MILE 20.75-22.25

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.
NO SCALE

SITE 4

PROJECT SITE AREA
GRAVEL AUGMENTATION
APPROX SHORELINE
DOWNSTREAM SIDE CHANNEL
UPSTREAM SIDE CHANNEL

SUNRISE, RIVER MILE 19.75-20.5

NO SCALE

LOCATION

SITE 4 SITE 3 SITE 1
SITE 7
SITE 8 SITE 9
SITE 2 SITE 5 SITE 6
SITE 10

FOLSOM

SACRAMENTO

MAP SOURCE: USGS QUAD

EXHIBIT B-4
PRC 9574.1
CITY OF SACRAMENTO
GENERAL LEASE -
PUBLIC AGENCY USE
SACRAMENTO COUNTY

THIS EXHIBIT IS SOLELY FOR PURPOSES OF GENERALLY DEFINING THE LEASE PREMISES, IS BASED ON UNVERIFIED INFORMATION PROVIDED BY THE LESSEE OR OTHER PARTIES AND IS NOT INTENDED TO BE, NOR SHALL IT BE CONSTRUED AS, A WAIVER OR LIMITATION OF ANY STATE INTEREST IN THE SUBJECT OR ANY OTHER PROPERTY.

MJF 3/23/2020
NO SCALE

SITE 5

LOWER SUNRISE, RIVER MILE 19.25-19.75

NO SCALE

LOCATION

FOLSOM

SITE 4 SITE 3 SITE 1
SITE 7
SITE 8 SITE 9
SITE 2
SITE 5
SITE 6
SITE 10

MAP SOURCE: USGS QUAD

EXHIBIT B-5
PRC 9574.1
CITY OF SACRAMENTO
GENERAL LEASE -
PUBLIC AGENCY USE
SACRAMENTO COUNTY

THIS EXHIBIT IS SOLELY FOR PURPOSES OF GENERALLY DEFINING THE LEASE PREMISES, IS BASED ON UNVERIFIED INFORMATION PROVIDED BY THE LESSEE OR OTHER PARTIES AND IS NOT INTENDED TO BE, NOR SHALL IT BE CONSTRUED AS, A WAIVER OR LIMITATION OF ANY STATE INTEREST IN THE SUBJECT OR ANY OTHER PROPERTY.

MJF 3/23/2020
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.
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.
NO SCALE

APPROX. SHORELINE
SIDE CHANNEL
PROJECT SITE AREA
GRAVEL AUGMENTATION

ANCIL HOFFMAN, RIVER MILE 16.0-16.75

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.

NO SCALE

LOCATION

FOLSOM
SACRAMENTO
SACRAMENTO COUNTY

EXHIBIT B-8
PRC 9574.1
CITY OF SACRAMENTO
GENERAL LEASE - PUBLIC AGENCY USE
SACRAMENTO COUNTY

MAP SOURCE: USGS QUAD

MJF 3/23/2020
RIVERBEND, RIVER MILE 13.25-13.75

EXHIBIT B-10
PRC 9574.1
CITY OF SACRAMENTO
GENERAL LEASE -
PUBLIC AGENCY USE
SACRAMENTO COUNTY

NO SCALE
LOCATION

SITE 4 SITE 3 SITE 1
SITE 7 SITE 5
SITE 8
SITE 9
SITE 2
SITE 6
SITE 10

SACRAMENTO
FOLSOM

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.
LEASE NO. PRC 9574.9

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 Program

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 CITY OF SACRAMENTO, hereinafter referred to as Lessee, 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: City of Sacramento  
Attn.: Lilly Allen  
1330 21st street, Suite 103  
Sacramento, CA 95811

LEASE TYPE: General Lease – Public Agency Use

LAND TYPE: Sovereign

LOCATION: American River, below Nimbus Dam near River Mile 22.5, near Rancho Cordova and Fair Oaks, Sacramento County, as described in Exhibit A attached and by this reference made a part hereof.

LAND USE OR PURPOSE: Replenishment of spawning gravel and establishment of additional side-channel habitat for the rehabilitation and restoration of Chinook salmon and steelhead spawning and rearing habitat.

TERM: 20 years; beginning August 23, 2019; ending August 22, 2039, unless sooner terminated as provided under this Lease.

CONSIDERATION: Public use and benefit with the State reserving the right to fix a different rent, at any time, if the Commission finds such action to be in the State’s best interests.

AUTHORIZED ACTIVITY:

Existing: [ ]

To Be Constructed: [X] Excavating as needed to create a side channel and placement of gravel.

LIABILITY INSURANCE: N/A

SURETY BOND OR OTHER SECURITY: N/A

SECTION 2

SPECIAL PROVISIONS

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

1. All work shall be carried out in conformance with all applicable Federal, State and local regulations and requirements and current industry standards.

2. Lessee acknowledges that the land described in Exhibit A of the Lease is subject to the Public Trust and is presently available to members of the public for recreational, waterborne commerce, navigation, fisheries, open space, or other recognized Public Trust uses and that Lessee’s proposed
activities and use of the Lease Premises shall not interfere or limit Public Trust rights of the public.

3. Lessee acknowledges that the Lease Premises is in an area that may be subject to effects of climate change, including sea-level rise. To prepare for the potential effects of climate change, including flood damage, erosion damage, and damage from waves and storm-created debris, the Lessee acknowledges and agrees to the following:

a. Hazards associated with climate change may require additional maintenance or protection strategies regarding the improvements on the Lease Premises.

b. Consistent with Section 3, Paragraph 8, the Lessee assumes the risks associated with such potential hazards and agrees to be solely responsible for all damages, costs, and liabilities arising as a result of the impacts of such hazards on the Lease Premises. Any additional maintenance or protection strategies necessitated by such hazards may require additional approval by Lessor pursuant to Section 3, Paragraph 5(a) and be subject to environmental review.

4. Lessee agrees to be bound by and fully carry out, implement, and comply with all mitigation measures and reporting obligations identified as Lessee’s, or Responsible Party’s responsibility as set forth in the Mitigation Monitoring Program (MMP) attached hereto as Exhibit C and by this reference made a part of this Lease, or as modified by Lessor as permitted by law.

5. Section 3, General Provisions, Paragraph 9, Insurance, is deleted in its entirety.

6. Section 3, General Provisions, Paragraph 10, Bond, is deleted in its entirety.

7. At least 24 hours prior to and during the activities, Lessee will post signs and barriers to minimize potential hazards to the public.

8. Lessee shall maintain a logbook on all work equipment during work within the Lease Premises utilized in operations conducted under this Lease to keep track of all debris created by objects of any kind that may fall into the water or on the lease premises. 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 debris shall be promptly removed from the Lease Premises.

9. In issuing this Lease and authorizing the placement, use, and maintenance of the proposed improvements, Lessor is relying on the information and data provided by the Lessee in its application and accompanying materials. It is the responsibility of the Lessee 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 11 of this Lease.

10. Lessee shall obtain all necessary approvals prior to the beginning of any construction on the Lease Premises, from all agencies having jurisdiction over this project. Lessee shall submit to Lessor copies of all approvals and/or permits upon Lessor request.
11. Prior to commencement of any construction activities, Lessee shall provide to Lessor a construction schedule timeline chart showing all significant work activities that will take place during the course of the project. Additionally, Lessee shall submit, for Lessor's review and comment, a copy of the construction contractor's work execution plan that provides the details of the manpower, equipment, construction methods and procedures to be employed for each significant activity, safety procedures, etc.

12. Construction of Improvements:

   a. Lessee shall provide a 10-day advance notice to Lessor prior to commencement of construction of the authorized improvements or other project-related activities.

   b. All construction activities shall be carried out in accordance with all applicable safety regulations, permits, and conditions of all other agencies.

   c. Within 60 days of completing the activities, Lessee will provide Lessor with as built, photographs, and written confirmation that the rehabilitation and restoration of spawning grounds have been completed, at no charge to Lessor.

13. This lease does not authorize Lessee to excavate or use excavated materials for purposes of commercial resale, environmental mitigation credits or other private benefit. The excavated materials may not be sold. Excavated materials shall be redeposited at the project site, as authorized by Lessor, or disposed of at an approved disposal site.

14. Any equipment to be used on the Lease Premises is limited to that which is directly required to perform the authorized use and does not include any equipment that may cause damage to the Lease Premises.

15. Lessee shall safely conduct all excavating and disposal operations in accordance with accepted excavating and disposal methods and practices and with due regard for the protection of life and property, preservation of the environment and the conservation of natural resources.

16. Disturbance of the property under the Commission's jurisdiction shall be kept to a minimum area consistent with the nature and purpose of the proposed action, and that the Lessee shall take all necessary and appropriate precautions to prevent littering or pollution on sovereign lands, waterways, and adjoining properties.

17. Lessee shall be responsible for any damage, destruction, or loss occurring to State lands, waterways, adjoining property, the State's lessees, or other members of the public from actions undertaken under this lease by the Lessee, its employees, or contractors.

18. No refueling, maintenance, or repairs to any equipment or vehicles will be permitted on lands subject to the Commission's jurisdiction.

19. All personal property, tools, equipment, or other materials taken onto or placed upon sovereign lands shall remain the property of the Lessee and/or its contractors. Such property shall be promptly removed from these lands upon completion of the project. The Commission does not
accept any responsibility for any damage, including damages to any property, including equipment, tools, machinery, or other materials placed on State-owned land.

[Remainder of page left intentionally blank]
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 prevention 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 §§ 116 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 the 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
I 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, sun decks 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 which
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 possessor 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...
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.
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.
(c) 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 Materials 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 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

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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 claims.

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 Lessee’s 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.
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:

CITY OF SACRAMENTO

By: [Signature]

Thomas Gohring

Title: Executive Director, Community Services

Date: 8-27-2019

LESSOR:

STATE OF CALIFORNIA
STATE LANDS COMMISSION

By: [Signature]

Robert Brian Bugsch

Title: Chief, Land Management Division

Date: AUG 29 2019

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

AUGUST 23, 2019

(Month Day Year)

ATTACH ACKNOWLEDGMENT

See attached notary
CALIFORNIA ACKNOWLEDGMENT  

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 Sacramento  

On 8/27/2019 before me, Svetlana Predybaylo, notary public personally appeared Thomas Gohring  

who proved to me on the basis of satisfactory evidence to be the person(s) whose names are subscribed to the within instrument and acknowledged to me that he/she they executed the same in his/her 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

Place Notary Seal and/or Stamp Above

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

Document Date: 8/27/2019  
Number of Pages: n/a

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name: Thomas Gohring

Signer's Name: n/a

☐ Corporate Officer – Title(s):
☐ Partner – Limited  ☐ General
☐ Individual  ☐ Attorney in Fact
☐ Trustee  ☐ Guardian or Conselor
☐ Other:  
Signer is Representing:

Signer is Representing:

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EXHIBIT A

LAND DESCRIPTION

A parcel of submerged land situate in the bed of American River in Sacramento County, California, adjacent to on the right bank Rancho San Juan, approved May 31, 1858 and more particularly described as follows:

Bounded on the east by the most easterly line of Parcel 3 in judgment recorded in Book 2247, Page 437 of Official Records in said county as shown on that amended record of survey dated July 1971 and filed in Book 29, Page 7 of Surveys, Sacramento County records;
Bounded on the south by the low water mark of the American River;
Bounded on the west by a line lying parallel with and 1500 westerly of said most easterly line of Parcel 3;
Bounded on the north by low water mark of the American River.

EXCEPTING THEREFROM any portions lying landward of the low water mark of the left and right banks of the American River.

END OF DESCRIPTION

PREPARED 8/09/19 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT.
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.
The California State Lands Commission (Commission or CSLC) is a responsible agency under the California Environmental Quality Act (CEQA) for the Lower American River Anadromous Fish Habitat Restoration Project (Project). The CEQA lead agency for the Project is the City of Sacramento.

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 impose 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 (MND). State CEQA Guidelines section 15097, subdivision (a), states in part:

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 adopted an MND, State Clearinghouse No. 2019069088, adopted a Mitigation Monitoring and Reporting Program (MMRP) 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 only to the mitigation measures listed in Table C-1 below. The full text of each mitigation measure, as set forth in the MMRP prepared by the CEQA lead agency and listed in Table C-1, is incorporated by reference in this Exhibit C. Any mitigation measures adopted by the Commission that differ substantially from those adopted by the lead agency are shown as follows:

- Additions to the text of the mitigation measure are underlined; and
- Deletions of the text of the mitigation measure are shown as strikcout or as otherwise noted.

The State CEQA Guidelines are found at California Code of Regulations, title 14, section 15000 et seq.
Table C-1. Project Impacts and Applicable Mitigation Measures

<table>
<thead>
<tr>
<th>Potential Impact</th>
<th>Mitigation Measure (MM)</th>
<th>Difference Between CSLC MMP and Lead Agency MMP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Impact BIO (a)</td>
<td>GEO-1, BIO-1, BIO-2, BIO-3, BIO-4</td>
<td>None</td>
</tr>
<tr>
<td>Impact BIO (c)</td>
<td>GEO-1, BIO-2</td>
<td>None</td>
</tr>
<tr>
<td>Impact BIO (d)</td>
<td>GEO-1, BIO-1, BIO-4</td>
<td>None</td>
</tr>
<tr>
<td>Impact GEO (b)</td>
<td>GEO-1</td>
<td>None</td>
</tr>
<tr>
<td>Impact GEO (f)</td>
<td>GEO-2</td>
<td>See below</td>
</tr>
<tr>
<td>Impact HAZ (a, b)</td>
<td>GEO-1</td>
<td>None</td>
</tr>
<tr>
<td>Impact WQ (a)</td>
<td>GEO-1</td>
<td>None</td>
</tr>
<tr>
<td>Impact WQ (c, ii, iii)</td>
<td>GEO-1</td>
<td>None</td>
</tr>
<tr>
<td>Impact NOI (a)</td>
<td>NOI-1</td>
<td>None</td>
</tr>
<tr>
<td>Impact REC (a, b)</td>
<td>REC-1, REC-2</td>
<td>None</td>
</tr>
<tr>
<td>Impact TCR (a, b)</td>
<td>TCR-1a, TCR-1b</td>
<td>None</td>
</tr>
</tbody>
</table>

Mitigation Measure GEO-2: Conduct Construction Personnel Education, Stop Work if Paleontological Resources are Discovered, Assess the Significance of the Find, and Prepare and Implement a Recovery Plan, as Required.

To minimize the potential for destruction of or damage to potentially unique, scientifically important paleontological resources during project-related earthmoving activities, the City/Water Forum shall require the measures listed below to be implemented to minimize accidental damage to or destruction of unique paleontological resources.

- Before the start of any earthmoving activities, all construction personnel involved with earthmoving activities, including the site superintendent, will be trained regarding the possibility of encountering fossils, the appearance and types of fossils likely to be seen during construction, and proper notification procedures should fossils be encountered.

- If paleontological resources are discovered during earthmoving activities, the construction crew shall notify the City/Water Forum and shall immediately cease work in the vicinity of the find. The City/Water Forum shall retain a qualified paleontologist to evaluate the resource and prepare a recovery plan in accordance with applicable guidelines (Society of Vertebrate Paleontology 1996). The recovery plan may include, but is not limited to, a field survey, construction monitoring, sampling and data recovery procedures, museum storage coordination for any specimen recovered, and a report of findings. Recommendations in the recovery plan that are determined by the Water Forum

2 See Attachment C-1 for the full text of each MM taken from the MMP prepared by the CEQA lead agency.
to be necessary and feasible shall be implemented before construction activities can resume at the site where the paleontological resources were discovered.

- **California State Lands Commission (Commission) staff shall be notified of any paleontological specimens discovered on lands under the jurisdiction of the Commission. The final disposition of any artifacts or specimens including, but not limited to, those of a paleontological nature from such lands must be approved by the Commission.**
ATTACHMENT C-1

Mitigation Monitoring and Reporting Program Adopted by the City of Sacramento
Mitigation Monitoring and Reporting Program
Lower American River Anadromous Fish Habitat Restoration Project

Prepared for:
City of Sacramento

June 2019

Prepared by:
GEI Consultants
Consulting Engineers and Scientists
Mitigation Monitoring and Reporting Program
Lower American River
Anadromous Fish Habitat Restoration Project
SCH# 2019069088

City of Sacramento/Water Forum
1330 21st Street
Sacramento, CA 95811

Contact:
Lilly Allen, Water Forum
Project Coordinator
(916) 608-1983

Prepared by:
GEI Consultants, Inc.
2868 Prospect Park Drive, Suite 400
Sacramento, CA 95670

Contact:
Erica Bishop
Environmental Project Manager
(916) 631-4513

June 2019

Project No. 1804694.1
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Mitigation Monitoring and Reporting Program ......................................................... 1

## Table

Table 1. Lower American River Anadromous Fish Habitat Restoration Project ............... 2
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Mitigation Monitoring and Reporting Program

In accordance with the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation) and City of Sacramento (City), in association with the Sacramento Area Water Forum (Water Forum) prepared an Environmental Assessment/Initial Study/proposed Mitigated Negative Declaration (EA/IS/MND), in June 2019, to provide the public and responsible and trustee agencies with information about the potential environmental impacts associated with implementation of the Lower American River Anadromous Fish Habitat Restoration Project (hereafter referred to as the “project”).

The EA/IS/MND concludes that implementation of the proposed project would generate significant and potentially significant adverse effects on the environment. The EA/IS/MND identifies feasible mitigation measures that avoid, mitigate, or reduce these impacts to a less-than-significant level.

Section 21081.6(a)(1) of the California Public Resources Code (PRC) and Section 15097 of the State CEQA Guidelines require a public agency to adopt a reporting and monitoring program on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental impacts on the physical environment.

This Mitigation Monitoring and Reporting Program (MMRP) will be used by the City/Water Forum to ensure that mitigation measures identified in the MND are implemented as described in the MND and that their implementation is documented.

The MMRP is presented in tabular format. The table columns contain the following information:

Mitigation Number: Lists the mitigation measures by number, as designated in the MND.

Mitigation Measure: Provides the text of the mitigation measures, each of which has been adopted and incorporated into the project.

Timing/Schedule: Lists the time frame in which the mitigation measure is expected to take place.

Implementation Responsibility: Identifies the entity responsible for implementing the mitigation measure.

Completion of Implementation: The City/Water Forum is responsible for reporting on implementation of the mitigation measures. The “Completion of Implementation” column is to be used by SWID to indicate when implementation of a mitigation measure has been completed. SWID, at its discretion, may delegate implementation responsibility or portions thereof to qualified consultants or contractors.
### Table 1. Lower American River Anadromous Fish Habitat Restoration Project Mitigation

<table>
<thead>
<tr>
<th>Mitigation Measure</th>
<th>Biological Resources</th>
<th>Implementation Responsibility</th>
<th>Implementation Schedule</th>
</tr>
</thead>
<tbody>
<tr>
<td>BIO-1</td>
<td>Minimize Injury and Mortality of Special-Status Fish Species.</td>
<td>The City/Water Forum and its construction contractor(s) shall implement the following measures to avoid and minimize direct injury and mortality of special-status fish.</td>
<td>Before and during ground-disturbing activities.</td>
</tr>
<tr>
<td>BIO-2</td>
<td>Avoid and Minimize Impacts on Waters of the United States and Water of the State.</td>
<td>The City/Water Forum and its construction contractor(s) shall implement the following measures to avoid and minimize direct injury and mortality of special-status fish.</td>
<td>Before and during ground-disturbing activities.</td>
</tr>
</tbody>
</table>

#### BIO-1 Mitigation Measure

**Number** 1. Minimize Injury and Mortality of Special-Status Fish Species.

- **In-water work shall be restricted to July 1 through September 30, with consideration of the spatial and temporal distribution of spawning and incubating steelhead and fall-run Chinook salmon. Work past September 30 would be with approval from the National Marine Fisheries Service.**

- Construction may be conducted year-round in areas, such as floodplains and side channels, when flowing water is absent due to separation from the main channel by gravel berms that are either naturally present or artificially created.

- In-water work in floodplains and side channels shall be limited to inlet/outlet areas during the last stage of reconnection to the main channel if working outside of the instream work timing window.

- As gravel is placed, measures such as slow, deliberate equipment operation shall be implemented to alert fish to equipment operation in the channel.

- Before project activities begin, worker awareness training shall be provided to inform agency staff and contractors of the need to avoid and minimize potential impacts on special-status fish. Training shall include, at a minimum, species identification, habitat requirements, and required procedures for fish avoidance and protection measures.

- An appointed representative shall be identified to employees and contractors to ensure that questions regarding avoidance and protection measures are addressed in a timely manner.

- Construction may be conducted year-round in areas, such as floodplains and side channels, when flowing water is absent due to separation from the main channel by gravel berms that are either naturally present or artificially created.

- Instream habitat structures shall be placed when fish do not have access to the affected areas, or within timing windows, as described above.

- Before project activities begin, worker awareness training shall be provided to inform agency staff and contractors of the need to avoid and minimize potential impacts on special-status fish. Training shall include, at a minimum, species identification, habitat requirements, and required procedures for fish avoidance and protection measures.
avoid and limit disturbance to the Lower American River and seasonal wetland habitats and shall provide a 250-foot setback from seasonal wetland habitats, to the extent feasible.

- Before the commencement of construction activities, high-visibility fencing shall be erected to protect areas of the Lower American River at gravel augmentation sites and identified seasonal wetland habitats at borrow sites that are located adjacent to disturbance areas but can be avoided from encroachment of personnel and equipment. The fencing shall be inspected before the start of each work day and shall be removed only when the construction within a given area is completed. Limits of waters of the United States and wetlands shall be incorporated into project bid specifications, along with a requirement for contractors to avoid these areas.

- A qualified biologist shall monitor all construction activities in waters of the United States to ensure that avoidance and minimization measures are being properly implemented and no unauthorized activities occur. The qualified biologist shall be empowered to stop construction activities that threaten to cause unanticipated and/or unauthorized significant adverse project impacts to allow resolution of these potential impacts by the City/Water Forum and U.S. Bureau of Reclamation. Project activity shall not resume until the conflict has been resolved.

- Authorization for direct fill of jurisdictional habitat in the American River and modification of seasonal wetlands at the borrow sites shall be obtained, as required, from the U.S. Army Corps of Engineers (Corps), Central Valley Regional Water Quality Control Board (RWQCB), and CDFW.

  o Clean Water Act (CWA) Section 404: Before any ground-disturbing project activities begin in areas containing wetlands or waters, a qualified biologist shall conduct a formal delineation of waters of the United States for CWA Section 404 permitting. The findings shall be documented in a detailed report as part of the formal Section 404 wetland delineation process.

  o Authorization for fill of jurisdictional waters of the United States shall be secured from the Corps via the Section 404 permitting process before project construction. Any mitigation measures determined necessary during the 404 permitting process shall be implemented during project construction.

  o CWA Section 401: Water quality certification pursuant to Section 401 of the CWA shall be obtained from the Central Valley RWQCB before starting project construction in any areas that may contain waters of the State. Any measures required as part of the issuance of water quality certification shall be implemented.

  o Fish and Game Code Section 1602 or similar agreement: A CDFW lake and streambed alteration agreement or similar approval shall be obtained.
by the City for all activities that will substantially divert or obstruct the natural flow of water; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake. Any conditions of issuance of the lake and streambed alteration agreement, including avoidance, minimization and compensation measures, shall be implemented as part of project implementation.

BIO-3 Minimize Effects to Valley Elderberry Longhorn Beetle.
The City/Water Forum and its construction contractor(s) shall implement the following measures to avoid and minimize potential adverse effects on VELB during project implementation:

<table>
<thead>
<tr>
<th>Mitigation Measure</th>
<th>Timing/Schedule</th>
<th>Implementation Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before and during ground-disturbing activities.</td>
<td>City/Water Forum and Construction Contractor(s)</td>
<td></td>
</tr>
</tbody>
</table>

- All elderberry shrubs on or adjacent to work areas shall be temporarily fenced and designated as environmentally sensitive areas. These areas shall be avoided by all construction personnel. Fencing shall be placed at least 20 feet from the dripline of each shrub, unless otherwise approved by USFWS.
- Dirt roadways and disturbed areas within 100 feet of elderberry shrubs shall be watered at least twice a day to minimize dust emissions.

BIO-4 Minimize Effects on Special-status Species and Nesting Birds.
The City/Water Forum and its construction contractor(s) shall implement the following measures to avoid and minimize potential adverse effects on special-status species and nesting birds during project implementation:

<table>
<thead>
<tr>
<th>Mitigation Measure</th>
<th>Timing/Schedule</th>
<th>Implementation Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before and during ground-disturbing activities.</td>
<td>City/Water Forum and Construction Contractor(s)</td>
<td></td>
</tr>
</tbody>
</table>

- If vegetation removal is required during the bird nesting season (February 1 through August 15), surveys for active bird nests shall be conducted by a qualified...
biologist in areas of suitable nesting vegetation designated for removal. A minimum of one survey shall be conducted no more than 7 days before vegetation removal occurs. If active nests are found, removal of vegetation in which the nests are located shall be delayed until a qualified biologist determines that the young have fledged or the nest site is otherwise no longer in use.

- Preconstruction surveys will be conducted by a certified arborist to identify the species of trees and any sensitive habitats (i.e., nesting, critical habitat designations, etc.), and an acceptable replacement ratio determined in coordination with CDFW.

- Preconstruction surveys for special-status plant species, including Sanford's arrowhead, shall be conducted by a qualified biologist, and the City will coordinate with CDFW if the species is found within the project boundary subject to ground disturbance.

- Preconstruction surveys for special-status reptiles, including Western pond turtle, shall be conducted by a qualified biologist, and the City will coordinate with CDFW if the species is observed within the project boundary subject to ground disturbance.

- Preconstruction surveys for active nests of burrowing owl, Swainson's hawk, white-tailed kite, barn swallow, purple martin, and colonial nesting herons and egrets shall be conducted by a qualified biologist in all areas of suitable nesting habitat that could be disturbed by project activities. A minimum of two surveys shall be conducted within 14 days before project activities begin, including at least one survey no more than 7 days before activities begin.

- Appropriate buffers shall be established and maintained around active nest sites to avoid nest failure from project activities. The appropriate size and shape of the buffers shall be determined by a qualified biologist and may vary depending on the nest location, nest stage, construction activity, and existing disturbance levels. The buffers may be adjusted if a qualified biologist determines it would not be likely to adversely affect the nest. Monitoring shall be conducted to confirm that project activities are not resulting in detectable adverse effects on nesting birds or their young. No project activities shall occur within the buffer areas until a qualified biologist determines that the young have fledged or the nest site is otherwise no longer in use.

<table>
<thead>
<tr>
<th>Mitigation Number</th>
<th>Mitigation Measure</th>
<th>Timing/Schedule</th>
<th>Implementation Responsibility</th>
<th>Completion of Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Table 1. Lower American River Anadromous Fish Habitat Restoration Project</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Geology and Soils

<table>
<thead>
<tr>
<th>GEO-1</th>
<th>Prepare and Implement a Storm Water Pollution Prevention Plan and Associated Best Management Practices.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>When required, the City/Water Forum shall prepare and implement the appropriate Stormwater Pollution Prevention Plan (SWPPP), or Stormwater Management Plan (SWMP), as needed, to prevent and control pollution and to minimize and control runoff and erosion in compliance with state and local laws. The SWPPP or SWMP shall</td>
</tr>
<tr>
<td></td>
<td>Before and during construction.</td>
</tr>
<tr>
<td></td>
<td>City/Water Forum and Construction Contractor(s).</td>
</tr>
</tbody>
</table>
identify the activities that may cause pollutant discharge (including sediment) during storms or strong wind events, techniques to control pollutant discharge, and an erosion control plan. Regardless of the need for a SWPPP or SWMP, construction techniques and BMPs will be identified and implemented, as appropriate to reduce the potential for runoff, exposure to hazardous materials, and manage turbidity. Construction techniques will include minimizing site disturbance, controlling water flow over the construction site, stabilizing bare soil, and ensuring proper site cleanup. BMPs that specify erosion and sedimentation control measures to be implemented, may include silt fences, staked straw bales/wattles, silt/sediment basins and traps, geofabric, trench plugs, trenches, water bars, soil stabilizers re-seeding with native species and mulching to revegetate disturbed areas. If suitable vegetation cannot reasonably be expected to become established, non-erodible material will be used for such stabilization.

If required, the SWPPP or SWMP shall also include a spill prevention, control, and countermeasure plan, and applicable hazardous materials business plans, and shall identify the types of materials used for equipment operation (including fuel and hydraulic fluids), and measures to prevent and materials available to clean up hazardous material and waste spills. The SWPPP or SWMP shall also identify emergency procedures for responding to spills. The SWPPP shall also include dust control practices to prevent wind erosion, sediment tracking, and dust generation by construction equipment, including during gravel processing.

The BMPs presented in either document shall be clearly identified and maintained in good working condition throughout the construction process. The construction contractor shall retain a copy of the approved SWPPP or SWMP on the construction site and modify it as necessary to suit specific site conditions through amendments approved by the Central Valley RWQCB, if necessary.

The City and all contractors will abide by regulations governing hazardous materials transport are included in CCR Title 22, the California Vehicle Code (CCR Title 13), and the State Fire Marshal Regulations (CCR Title 19). Transport of hazardous materials can only be conducted under a registration issued by the California Department of Toxic Substances Control. Construction contractors would be required to use, store, and transport hazardous materials in compliance with federal, state, and local regulations during project construction.

Table 1. Lower American River Anadromous Fish Habitat Restoration Project

<table>
<thead>
<tr>
<th>Mitigation Number</th>
<th>Mitigation Measure</th>
<th>Timing/Schedule</th>
<th>Implementation Responsibility</th>
<th>Completion of Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>GEO-2</td>
<td>Conduct Construction Personnel Education, Stop Work if Paleontological Resources are Discovred, Assess the Significance of the Find, and Prepare and Implement a Recovery Plan, as Required.</td>
<td>During construction.</td>
<td>City/Water Forum and Construction Contractor(s).</td>
<td></td>
</tr>
</tbody>
</table>
Before the start of any earthmoving activities all construction personnel involved with earthmoving activities, including the site superintendent, will be trained regarding the possibility of encountering fossils, the appearance and types of fossils likely to be seen during construction, and proper notification procedures should fossils be encountered.

If paleontological resources are discovered during earthmoving activities, the construction crew shall notify the City/Water Forum and shall immediately cease work in the vicinity of the find. The City/Water Forum shall retain a qualified paleontologist to evaluate the resource and prepare a recovery plan in accordance with applicable guidelines (Society of Vertebrate Paleontology 1996). The recovery plan may include, but is not limited to, a field survey, construction monitoring, sampling and data recovery procedures, museum storage coordination for any specimen recovered, and a report of findings. Recommendations in the recovery plan that are determined by the Water Forum to be necessary and feasible shall be implemented before construction activities can resume at the sites where the paleontological resources were discovered.

### Table 1. Lower American River Anadromous Fish Habitat Restoration Project

<table>
<thead>
<tr>
<th>Mitigation Number</th>
<th>Mitigation Measure</th>
<th>Timing/Schedule</th>
<th>Implementation Responsibility</th>
<th>Completion of Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Noise</strong></td>
<td>Implement Noise Controls.</td>
<td>During construction.</td>
<td>City/Water Forum and Contractor(s).</td>
<td></td>
</tr>
<tr>
<td>NOI-1</td>
<td>The City/Water Forum will implement four BMPs for the control of construction noise levels. Implementation of the following BMPs generally reduces construction-generated noise levels by 15 dB to 25 dB.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Construction operations and the hauling of gravel would be limited to Monday through Friday, except holidays, from 7 a.m. to 6 p.m.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Provide and maintain noise control devices for construction equipment. Construction equipment shall be properly maintained per manufacturers' specifications and fitted with the best available noise suppression devices (i.e., mufflers, silencers, wraps, etc.).</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Coordinate routes and arrange equipment to minimize disturbance to noise-sensitive uses. Construction equipment usage shall be arranged to minimize travel adjacent to occupied residences and turned off during prolonged periods of non-use.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Designate a disturbance coordinator to respond to all public complaints.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Recreation</strong></td>
<td>Prepare and Implement a Trail/Traffic Control and Road Maintenance Plan.</td>
<td>Before, during, and after construction.</td>
<td>City/Water Forum and Contractor(s).</td>
<td></td>
</tr>
<tr>
<td>REC-1</td>
<td>Before the start of project-related construction activities, the City/Water Forum shall prepare and implement a plan to manage expected construction-related traffic to the extent feasible, and to avoid and minimize potential traffic congestion during project-related construction. The traffic control and road maintenance plan shall outline the phasing of activities and the use of specific routes to and from the work site locations to minimize the daily volume of traffic on individual roadways.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The items listed below will be included, as terms of the construction contracts:

- Limit all heavy construction work to occur only between 8:00 am and 6:00 pm on weekdays, avoid hauling on public roads during weekends and holidays, and confine weekend/holiday work to less disruptive tasks using materials previously hauled to the site, to ensure that most construction work occurs when recreational use of the project areas is lightest.
- During construction, ensure that nearby trails are signed, cautioning users that equipment would be crossing.
- Provide a site-specific access plan specifying the roadways on which construction workers are allowed travel to access the work sites.
- Prohibit construction workers from accessing work sites from any locations other than those specified in the plan.
- Provide clearly marked bicycle detours to address bicycle route closures or if bicyclist safety would be otherwise compromised.
- Post warnings about the potential presence of slow-moving vehicles.

Prepare and Implement a Boater Safety Plan.
Recognizing the high recreational use of the Lower American River, the following safety measures will be implemented as part of the Boater Safety Plan to reduce risk during the design and construction of all in-river habitat elements:

- In-river safety personnel will be posted upstream of each site when boater traffic is heavy, typically Fridays and will implement the following safety measures:
  - Verbally communicate with recreational boaters to warn them of ongoing downstream in-river work,
  - Communicate via radio with downstream construction equipment operators to temporarily stop in-river work until boater traffic has safely passed the restoration site, and
  - Post signs upstream of construction areas to warn boaters of the location and schedule of upcoming in-river work.
- Designs for gravel augmentation will ensure that restoration and enhancement activities do not impede navigation within the main channel. The appropriate minimum channel width and depth will be decided on a site-by-site basis during design with the modeling and construction to ensure adequate recreational and emergency access. The City/Water Forum will consult with County Parks to ensure boating access.
- Habitat structures will be placed at the stream margins or within side channels and outside of the main channel flow and thus away from areas where the majority of boater traffic will occur.
The natural wood material will be angled diagonally down river to reduce the chances of hazardous contact with swimmers, boaters, anglers, and material.

If any woody material that is placed in the river is washed downstream and, in the judgment of County Parks, becomes a safety hazard, the Water Forum would coordinate wood removal with County Parks and pay existing County contractors to have it removed or moved to a safe location.

Tribal Cultural Resources

**TCR-1a**

Conduct Cultural Resources and Tribal Cultural Resources Sensitivity and Awareness Training Program Prior to Ground-Disturbing Activities

The City/Water Forum shall require the contractor to provide a cultural resources and tribal cultural resources sensitivity and awareness training program (Worker Environmental Awareness Program [WEAP]) for all personnel involved in project construction, including field consultants and construction workers. The WEAP will be developed in coordination with an archaeologist meeting the Secretary of the Interior's Professional Qualifications Standards for Archaeology, as well as culturally affiliated Native American tribes. The City/Water Forum may invite Native American representatives from interested culturally affiliated Native American tribes to participate. The WEAP shall be conducted before any project-related construction activities begin at the project site. The WEAP will include relevant information regarding sensitive cultural resources and tribal cultural resources, including applicable regulations, protocols for avoidance, and consequences of violating state laws and regulations. The WEAP will also describe appropriate avoidance and impact minimization measures for cultural resources and tribal cultural resources that could be located at the project site and will outline what to do and who to contact if any potential cultural resources or tribal cultural resources are encountered. The WEAP will emphasize the requirement for confidentiality and culturally appropriate treatment of any discovery of significance to Native Americans and will discuss appropriate behaviors and responsive actions, consistent with Native American tribal values.

**TCR-1b**

In the Event that Tribal Cultural Resources Are Discovered During Construction, Implement Avoidance and Minimization Measures to Avoid Significant Impacts and Procedures to Evaluate Resources.

If tribal cultural resources (such as Native American archaeological materials, sacred objects, unusual amounts of bone or shell, artifacts, or human remains and associated objects and materials) are encountered at the project site during construction, work shall be suspended within 100 feet of the find (based on the apparent distribution of cultural materials), and the construction contractor shall immediately notify the project's City/Water Forum representative. Avoidance and preservation in place is the preferred manner of mitigating impacts to cultural resources or tribal cultural resources. This will be accomplished, if feasible, by several alternative means, including:

**Table 1. Lower American River Anadromous Fish Habitat Restoration Project**

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<tr>
<th>Mitigation Number</th>
<th>Mitigation Measure</th>
<th>Timing/Schedule</th>
<th>Implementation Responsibility</th>
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<tr>
<td>TCR-1a</td>
<td>Conduct Cultural Resources and Tribal Cultural Resources Sensitivity and Awareness Training Program Prior to Ground-Disturbing Activities</td>
<td>During construction.</td>
<td>City/Water Forum and Contractor(s).</td>
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<td>TCR-1b</td>
<td>In the Event that Tribal Cultural Resources Are Discovered During Construction, Implement Avoidance and Minimization Measures to Avoid Significant Impacts and Procedures to Evaluate Resources.</td>
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Planning construction to avoid tribal cultural resources, archaeological sites and/or other cultural resources; incorporating cultural resources within parks, green-space or other open space; covering archaeological resources; deeding a cultural resource to a permanent conservation easement; or other preservation and protection methods agreeable to consulting parties and regulatory authorities with jurisdiction over the activity.

Recommendations for avoidance of cultural resources or tribal cultural resources will be reviewed by the City/Water Forum representative, interested culturally affiliated Native American tribes and other appropriate agencies, in light of factors such as costs, logistics, feasibility, design, technology and social, cultural and environmental considerations, and the extent to which avoidance is consistent with project objectives. Avoidance and design alternatives may include realignment within the project site to avoid cultural resources or tribal cultural resources, modification of the design to eliminate or reduce impacts to tribal cultural resources or modification or realignment to avoid highly significant features within a cultural resource or tribal cultural resource.

Native American representatives from interested culturally affiliated Native American tribes will be invited to review and comment on these analyses and shall have the opportunity to meet with the City/Water Forum representative and its representatives who have technical expertise to identify and recommend feasible avoidance and design alternatives, so that appropriate and feasible avoidance and design alternatives can be identified.

If the discovered cultural resource or tribal cultural resource can be avoided, the construction contractor(s), will install protective fencing outside the site boundary; including a 100-foot buffer area, before construction restarts. The boundary of a tribal cultural resource will be determined in consultation with interested culturally affiliated Native American tribes and tribes will be invited to monitor the installation of fencing. Use of temporary and permanent forms of protective fencing will be determined in consultation with Native American representatives from interested culturally affiliated Native American tribes.

The construction contractor(s) will maintain the protective fencing throughout construction to avoid the site during all remaining phases of construction. The area will be demarcated as an "Environmentally Sensitive Area."

If a tribal cultural resource cannot be avoided, the following performance standard shall be met prior to continuance of construction and associated activities that may result in damage to or destruction of tribal cultural resources:

Each resource will be evaluated for California Register of Historical Resources (CRHR) eligibility through application of established eligibility criteria (California Code of Regulations 15064.636), in consultation with consulting Native American Tribes, as applicable.

If a tribal cultural resource is determined to be eligible for listing in the CRHR, the City/Water Forum will avoid damaging effects to the resource in accordance with California Public Resources Code Section 21064.3, if feasible. The City/Water Forum shall coordinate the investigation of the find with a qualified archaeologist (meeting the Secretary of the Interior's Professional Qualifications Standards for Archaeology) approved by the City/Water Forum and with interested culturally affiliated Native.
American tribes that respond to the City's invitation. As part of the site investigation and
resource assessment, the City/Water Forum and the archaeologist shall consult with
interested culturally affiliated Native American tribes to assess the significance of the
find, make recommendations for further evaluation and treatment as necessary and
provide proper management recommendations should potential impacts to the
resources be determined by the City/Water Forum to be significant. A written report
detailing the site assessment, coordination activities, and management
recommendations shall be provided to the City/Water Forum representative by the
qualified archaeologist. These recommendations will be documented in the project
record. For any recommendations made by interested culturally affiliated Native
American tribes that are not implemented, a justification for why the recommendation
was not followed will be provided in the project record.

Native American representatives from interested culturally affiliated Native American
tribes and the City/Water Forum representative will also consult to develop measures
for long-term management of any discovered Native American cultural resources or
tribal cultural resources. Consultation will be limited to actions consistent with the
jurisdiction of the City and taking into account ownership of the subject property. To the
extent that the City has jurisdiction, routine operation and maintenance within tribal
cultural resources retaining tribal cultural integrity shall be consistent with the
avoidance and minimization standards identified in this mitigation measure.

If the City/Water Forum determines that the project may cause a significant impact to a
tribal cultural resource, and measures are not otherwise identified in the consultation
process, the following are examples of mitigation capable of avoiding or substantially
lessening potential significant impacts to a tribal cultural resource or alternatives that
would avoid significant impacts to the resource. These measures may be considered to
avoid or minimize significant adverse impacts and constitute the standard by which an
impact conclusion of less-than significant may be reached:

- Avoid and preserve resources in place, including, but not limited to, planning
  construction to avoid the resources and protect the cultural and natural context, or
  planning greenspace, parks, or other open space, to incorporate the resources
  with culturally appropriate protection and management criteria.

- Treat the resource with culturally appropriate dignity taking into account the Tribal
  cultural values and meaning of the resource, including, but not limited to, the
  following:
    o Protect the cultural character and integrity of the resource.
    o Protect the traditional use of the resource.
    o Protect the confidentiality of the resource.
    o Establish permanent conservation easements or other interests in real
      property, with culturally appropriate management criteria for the purposes
      of preserving or using the resources or places.

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<td>American tribes that respond to the City's invitation. As part of the site investigation and resource assessment, the City/Water Forum and the archaeologist shall consult with interested culturally affiliated Native American tribes to assess the significance of the find, make recommendations for further evaluation and treatment as necessary and provide proper management recommendations should potential impacts to the resources be determined by the City/Water Forum to be significant. A written report detailing the site assessment, coordination activities, and management recommendations shall be provided to the City/Water Forum representative by the qualified archaeologist. These recommendations will be documented in the project record. For any recommendations made by interested culturally affiliated Native American tribes that are not implemented, a justification for why the recommendation was not followed will be provided in the project record. Native American representatives from interested culturally affiliated Native American tribes and the City/Water Forum representative will also consult to develop measures for long-term management of any discovered Native American cultural resources or tribal cultural resources. Consultation will be limited to actions consistent with the jurisdiction of the City and taking into account ownership of the subject property. To the extent that the City has jurisdiction, routine operation and maintenance within tribal cultural resources retaining tribal cultural integrity shall be consistent with the avoidance and minimization standards identified in this mitigation measure. If the City/Water Forum determines that the project may cause a significant impact to a tribal cultural resource, and measures are not otherwise identified in the consultation process, the following are examples of mitigation capable of avoiding or substantially lessening potential significant impacts to a tribal cultural resource or alternatives that would avoid significant impacts to the resource. These measures may be considered to avoid or minimize significant adverse impacts and constitute the standard by which an impact conclusion of less-than significant may be reached: Avoid and preserve resources in place, including, but not limited to, planning construction to avoid the resources and protect the cultural and natural context, or planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria. Treat the resource with culturally appropriate dignity taking into account the Tribal cultural values and meaning of the resource, including, but not limited to, the following: Protect the cultural character and integrity of the resource. Protect the traditional use of the resource. Protect the confidentiality of the resource. Establish permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or using the resources or places.</td>
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The title to all archaeological sites, and historic or cultural resources on or in submerged lands of California is vested in the state and under the jurisdiction of the California State Lands Commission (Pub. Resources Code, § 6315). Additionally, the final disposition of archaeological, historical, and paleontological resources recovered on state lands under the jurisdiction of the California State Lands Commission must be approved by the Commission.

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