CITY OF YUBA CITY
STAFF REPORT

Date: September 20, 2016

To: Honorable Mayor & Members of the City Council

From: Public Works Department

Presentation by: Diana Langley, Public Works Director

Summary

Subject: 5th Street Bridge Replacement Project – Authorization to Enter into a Lease Agreement with the California State Lands Commission

Recommendation: Authorize the City Manager to enter into a lease agreement with the California State Lands Commission for removal of the existing 5th Street Bridge and construction of the new bridge.

Fiscal Impact: None anticipated. Lease conditions are either budgeted for through construction of the 5th Street Bridge Replacement Project (Account No. 921084-65501) or not anticipated to result in a cost to the City.

Purpose:

Obtain approval from the California State Lands Commission for construction and maintenance of the 5th Street Bridge Replacement Project.

Background:

The California State Lands Commission (Commission) claims jurisdiction over the main channel of the Feather River throughout the 5th Street Bridge Replacement Project area as this portion of the river is considered a navigable waterway. The existing 5th Street Bridge has operated under Commission Lease No. PRC 1929.9 since it was accepted by the Sutter County Board of Supervisors on June 3, 1957. On January 26, 2016, the Board of Supervisors quitclaimed the lease back to the State. This quitclaim was requested by the Commission to enable the Commission to grant the City of Yuba City, as lead agency for the 5th Street Bridge Replacement Project, a new lease covering removal of the existing bridge and construction/maintenance of the new bridge.

Analysis:

The attached Lease Agreement is for a term of 25 years beginning October 13, 2016 and ending October 12, 2041. Staff has reviewed the terms of the Lease Agreement and found them to be consistent with other similar bridge projects. The terms of the lease contain provisions allowing the Commission to charge rent and require that the lease be surrendered and the bridge removed at the end of the lease, unless the Commission finds that it is in the State's interest not to do so. However, the Commission will initially waive the rental fee with the finding that it is in the public's interest to do so. Commission staff has indicated that the lease surrender and removal requirements are general conditions that cannot be changed and are intended to

apply to situations where the lessee is not interested in continuing the use of the lease area beyond the term of the lease. In the case of the new bridge, the City will certainly not want to discontinue operations. The Commission will notify the City two years prior to expiration of the lease to work on a renewal of the lease subject to the conditions that are in place at that time.

Fiscal Impact:

The costs associated with most of the terms of the lease agreement are included in the budget for construction of the 5th Street Bridge Replacement Project through Account No. 921084-65501. Certain general conditions, such as the rental fee and the requirement to restore the lease premises upon expiration of the lease unless waived by the Commission if it is determined to be in the best interest of the State, are not expected to result in a cost.

Alternatives:

Direct staff to attempt to renegotiate the terms of the lease with the understanding that the construction schedule could be delayed.

Recommendation:

Authorize the City Manager to enter into a lease agreement with the California State Lands Commission for removal of the existing 5th Street Bridge and construction of the new bridge.

Attachments:

1. Draft Lease Agreement

Prepared by:

/s/ Kevin Bradford
Kevin Bradford
Senior Engineer

Submitted by:

/s/ Steven C. Kroeger
Steven C. Kroeger
City Manager

Reviewed by:

Department Head	DL
Finance	RB
City Attorney	TH by e-mail

STATE OF CALIFORNIA EDMUND G. BROWN JR., *Governor*

CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

JENNIFER LUCCHESI, *Executive Officer*
(916) 574-1800 *Fax* **(916) 574-1810**
California Relay Service TDD Phone **1-800-735-2929**
from Voice Phone **1-800-735-2922**

***Contact Phone:* (916) 574-2320**
***Contact Fax:* (916) 574-1925**

Established in 1938

September 15, 2016

File Ref: PRC 1929.9

Via Electronic and Postal Service Mail

Matthew Griggs
Dokken Engineering
110 Blue Ravine Road, Suite 200
Folsom, CA 95630

Subject: **Yuba City – General Lease – Public Agency Use, for Demolition of the Existing 5th Street Bridge crossing the Feather River and Construction, Use and Maintenance of a new 5th Street Bridge with City-Operated Utility Conduits and a City Water Line, adjacent to 563 2nd Street, Yuba City, Sutter County and River Front Park, City of Marysville, Yuba County**

Dear Mr. Griggs:

The enclosed lease document, in duplicate, states the terms and conditions of a General Lease – Public Agency Use, for the 5th Street Bridge in the Feather River, Sutter and Yuba Counties. If these documents are found to be in order, please have the authorized representative execute ***all copies*** of the lease ***before a notary public*** and return them to my attention at the above-stated address by ***October 7, 2016.***

The application will be scheduled for consideration for approval by the State Lands Commission at the next meeting tentatively scheduled for October 13, 2016. Once approved, a fully-executed lease will be returned to you.

We are recommending the new lease to begin on October 13, 2016.

Thank you for your attention in this matter. If you have any questions, please feel free to contact me at (916) 574-2320 or by e-mail at Marlene.Schroeder@slc.ca.gov.

Sincerely,

Marlene Schroeder
Public Land Management Specialist

Enclosure

c: (on next page)
Kevin Bradford
Public Works Dept.
Yuba City
1201 Civic Center Boulevard
Yuba City, CA 95993

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

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

A.P.N.: 52-490-002, -003 (Sutter); 010-141-002 and 010-143-001 (Yuba)
County: Sutter and Yuba

LEASE NO. PRC 1929.9

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 YUBA CITY**, 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 Yuba City
Department of Public Works
1201 Civic Center Boulevard
Yuba City, CA 95993

LEASE TYPE: General Lease – Public Agency Use

LAND TYPE: Sovereign

LOCATION: Feather River, adjacent to 563 2nd Street, Yuba City, Sutter County and River Front Park, city of Marysville, Yuba County, as described in Exhibit A attached and by this reference made a part hereof.

LAND USE OR PURPOSE: Construction, use, and maintenance of a new bridge with city-operated utility conduits and a 12-inch-diameter city water line at 5th Street on the Feather River; use of a temporary construction easement; temporary use and maintenance of the existing 5th Street Bridge (Bridge No. 18C-0012), also known as the Twin Cities Memorial Bridge; and demolition and removal of the existing bridge and concrete piers.

TERM: 25 years; beginning October 13, 2016; ending October 12, 2041, unless sooner terminated as provided under this Lease.

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

AUTHORIZED IMPROVEMENTS:

EXISTING: 5th Street Bridge (Bridge Number 18C-0012), also known as the Twin Cities Memorial Bridge, a two-lane pre-stressed concrete stringer bridge, approximately 1,865-feet long by 42-feet wide, to be removed during construction of the new bridge.

TO BE CONSTRUCTED: The new bridge is approximately 1,885-feet long in total, with approximately 426.94-feet over State sovereign land, and 76.5-feet wide, with ten spans in three frames. Three spans over the river will be cast-in-place post-tensioned concrete box girder on concrete piers. Each concrete pier includes three seven-foot diameter columns and each column is founded on a ten-foot diameter cast-in-steel-shell or cast-in-drilled-hole concrete pile. The width allows up to four traffic lanes, shoulders on both sides, a median barrier, a pedestrian and bicycle path and barrier on the north side of the bridge, city-operated utility conduits, and a 12-inch-diameter city water line.

SECTION 2
SPECIAL PROVISIONS

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

1. Lessee shall not install, attach, or authorize the placement or expansion of any utilities or other improvements on the bridge or within the Lease Premises, other than the as-planned 12-inch-diameter city water line and the city-operated utilities, without Lessor's prior review and approval. Separate Leases will be required for any utilities to be placed on the bridge or within the Lease Premises.

2. Lessee shall indemnify, hold harmless, and, at the option of Lessor, defend Lessor from all damages, injuries, or claims arising from the installation, maintenance, or operation of Lessee's facilities attached, suspended, or otherwise fixed to the Lessee improvements.

3. Construction in the Feather River may only occur between June 1 and October 1.

4. In issuing this Lease and authorizing the removal and installation, use, and maintenance of the authorized improvements as described in Section 1, 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 13 of this Lease.

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

6. Within 60 days prior to the start of construction, Lessee shall obtain and provide to Lessor all permits and authorizations from all federal, state, and local agencies having jurisdiction over the project.

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

8. Within 60 days prior to commencement of any construction activities, Lessee shall provide to Lessor a construction schedule time line chart showing all significant work activities that will take place during the course of the bridge demolition and construction project. Additionally, Lessee shall submit, for Lessor's staff 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.

9. Within 60 days prior to the start of construction, Lessee shall provide to Lessor a project specific hazardous spill contingency plan, with specific designation, including direct contact information,

of the onsite person who will have responsibility for implementing the plan. The plan will also provide for the call out of additional spill containment and clean up resources in the event of an incident that exceeds the rapid clean up capability of the onsite work force.

10. Within 90 days prior to the start of construction Lessee shall place warning signage and/or buoys clearly visible from the shore and in the water both upstream and downstream of the construction site to provide notice of the new bridge replacement and existing bridge demolition projects, and to advise the public to exercise caution. Such signage shall conform to the requirements specified in California Code of Regulations (CCR) Title 14, Section 7000, et seq. and shall be in place and maintained by Lessee at all times during bridge removal and construction activities.

11. Lessee shall notify the California Department of Parks and Recreation, Division of Boating and Waterways of the location, description, and purpose of such warning signage and/or buoys upon their installation and removal pursuant to CCR Title 14, Section 7003(c).

12. Lessee shall install signs directing the public to the nearby Yuba City Boat Launch facility, Feather River Parkway, and Veterans Memorial Park, which all three are located in the city of Yuba City and the Riverfront Park located in the city of Marysville public recreation areas for public access.

13. Lessee agrees to remove all existing bridge improvements in their entirety and shall immediately notify Lessor in writing should Lessee be unable to completely remove any bridge in-river improvements. Notification shall include a written narrative of the removal efforts, the conditions prohibiting such removal, and the location and a general description of the improvements not removed. In the event any of the improvements cannot be removed completely, Lessee shall remove all portions of the remaining improvements to a minimum depth of five feet below the existing mud line.

14. Lessee expressly acknowledges responsibility to indemnify and hold harmless Lessor, as provided in Section 3, Paragraph 8, INDEMNITY, for any and all liability, claims, damages or injuries of any kind arising from any remaining/abandoned improvements. Lessee's responsibility to indemnify Lessor as aforementioned for any remaining/abandoned improvements will survive the expiration of this Lease and continue indefinitely until such time as such improvements are entirely removed from the Lease Premises.

15. Lessee shall, at its sole risk and expense, remove any or all portions of any improvements not removed if Lessor at any time determines such improvements to be adverse to the public interest. All removal activities shall be carried out in accordance with all applicable safety regulations, permits and conditions of other agencies having jurisdiction in the area of such improvements. Upon notice from Lessor that any improvements not removed are adverse to the public interest and within 90 days following the issuance of all necessary permits and authorizations, Lessee shall complete removal of such improvements, unless such removal period is otherwise extended by Lessor.

16. Within 90 days of written notification as discussed in Section 2, Paragraph 13 herein, Lessee shall submit to Lessor's staff for review and comment an action plan detailing how Lessee will remedy, at Lessor's option, any potential hazards, nuisances, or other conditions arising from or related to any improvements not removed that Lessor determines to be adverse to public interest, including,

but not limited to, the subsequent exposure of any such improvements.

17. Lessee agrees to respond in a responsible and timely manner to any claims arising from or related to any improvements not removed and shall immediately notify Lessor of any accident, injury, casualty, or claim arising out of or related in any way to the bridge removal and replacement project.

18. Historic resources found within the Lease Premises are not to be disturbed. Generally, anything found on the Lease Premises that is artificial or not naturally occurring and is estimated to be over forty-five (45) years old may be a historic resource. If resources are discovered that may be considered historic, please take a photograph and provide GPS coordinates if possible, and report the discovery to Lessor for further guidance.

19. In the event good faith efforts fail to remove all the existing bridge improvements, at Lessors option, Lessee agrees to apply to Lessor for a Lease Amendment to implement an Abandonment Agreement within 90 days of completion of the demolition of the existing bridge as described in Section 1, AUTHORIZED IMPROVEMENTS. Such Amendment and Agreement will require authorization by Lessor and will apply only to that portion of the existing bridge right-of-way as described in Exhibit A.

20. In the event all existing bridge improvements are successfully removed in their entirety during demolition or at any time thereafter, Lessee agrees to apply to Lessor for a Lease Amendment to remove from the Lease Premises that portion of the existing bridge right-of-way as described in Exhibit A, and to submit for Lessor's review and acceptance a Quitclaim Deed relinquishing any right, title, or interest Lessee may possess with respect to that parcel as described in Exhibit A.

21. Lessee shall require the contractor(s) to maintain a logbook during construction operations conducted under the Lease to keep track of all debris created by objects of any kind that fall into the water. The logbook should include the type of debris, date, time, and location to facilitate identification and location of debris for recovery and site clearance verification. All waste material and debris created by Lessee shall be promptly and entirely removed from the Lease Premises and lands subject to Lessor's jurisdiction.

22. Any vehicles, equipment, or machinery to be used on the Lease Premises are limited to those which are directly required to perform the authorized use and shall not include any vehicles, equipment, or machinery that may cause damage to the Lease Premises or lands subject to Lessor's jurisdiction.

23. No vehicle or equipment refueling, maintenance, or repairs will be permitted within the Lease Premises or lands subject to Lessor's jurisdiction.

24. All vehicles, equipment, machinery, tools or other property taken onto or placed within the Lease Premises or lands subject to Lessor's jurisdiction shall remain the property of the Lessee and/or its authorized contractors. Such property shall be promptly and properly removed by Lessee, at its sole risk and expense.

25. Lessor accepts no responsibility for any damages to any property, including any vehicles, equipment, machinery, or tools within the Lease Premises or lands subject to Lessor's jurisdiction.

26. Within 90 days of completion of all bridge construction activities authorized under this Lease, Lessee shall provide a set of as-built construction plans to include the location and depth below the mud line of any improvements not removed within the Lease Premises.

27. All future repairs, structural modifications, or the abandonment/removal of any improvements within the Lease Premises shall require prior review and approval by Lessor. In the event of an urgent repair requiring immediate action, telephone contact can be made through the Lessor's 24-hour emergency response number (562) 590-5201.

28. Lessee acknowledges that the land described in Exhibit A of this Lease is subject to the Public Trust and is presently available to members of the public for recreation, waterborne commerce, navigation, fisheries, open space, and any other recognized Public Trust uses. Lessee also agrees that any proposed construction activities and subsequent use of the Lease Premises shall not unreasonably interfere with or limit Public Trust rights, and shall do so only to the extent necessary to protect public health and safety during construction activities authorized by Lessor, or when imminent threats to public health and safety are present.

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

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SECTION 3

GENERAL PROVISIONS

1. GENERAL

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

2. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

is authorized by this Lease.

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

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

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

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

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

3. **CONSIDERATION**

(a) **Absolute Triple Net Lease**

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

(b) **Rent**

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

(c) **Modification**

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

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

(d) **Penalty and Interest**

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

(e) **Non-Monetary Consideration**

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

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

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

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

4. **BOUNDARIES**

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

5. **LAND USE**

(a) **General**

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

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

(b) **Continuous Use**

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

(c) **Repairs and Maintenance**

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

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

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

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

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

the Lessee's intended use; and

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

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

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

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

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

(e) **Enjoyment**

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

(f) **Discrimination**

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

(g) **Residential Use**

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

(h) **Commercial Use**

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

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

(a) **Reservations**

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

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

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

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

(b) **Encumbrances**

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

7. RULES, REGULATIONS, AND TAXES

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

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

(c) **Taxes**

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

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

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

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

8. INDEMNITY

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

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

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

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

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

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

9. **INSURANCE**

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

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

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

10. **SURETY BOND**

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

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

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

11. **ASSIGNMENT, ENCUMBRANCING OR SUBLETTING**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

future.

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

12. **DEFAULT AND REMEDIES**

(a) **Default**

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

(1) Lessee's failure to make any payment of rent, royalty, or other consideration as required under this Lease; or

(2) Lessee's failure to obtain or maintain liability insurance or a surety bond or other security device as required under this Lease; or

(3) Lessee's abandonment of the Lease Premises (including the covenant for continuous use as provided for in Paragraph 5(b)) during the Lease term; or

(4) Lessee's failure to obtain and maintain all necessary governmental permits or other entitlements; or

(5) The maintenance of the Lease Premises in violation of, or failure to comply with, any applicable provisions of any Regulatory Agency, Environmental Law, or maintenance of the Lease Premises in a condition constituting nuisance; or

(6) Lessee's Failure to commence to construct and to complete construction of the Improvements authorized by this Lease within the time limits specified in this Lease.

(7) Lessee is found to sublet or otherwise surrender daily management and control of the Lease Premises to a third party without the knowledge, expressed written consent or authorization of the Lessor.

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

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

(d) **Remedies**

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

(1) Re-enter the Lease Premises, remove all persons and property, and repossess and enjoy such premises; or

(2) Terminate this Lease and Lessee's right of possession of the Lease Premises by any lawful means. The termination shall not relieve Lessee of any obligation, monetary or otherwise, which has accrued prior to the date of termination. Such termination shall be effective upon Lessor's giving written notice and upon Lessee's receipt of such notice. Lessee shall immediately surrender possession of the Lease Premises to Lessor. Lessor shall be entitled to recover from Lessee all amounts to which Lessor is entitled pursuant to Section 1951.2 of the California Civil Code, or any other provision of law, including any necessary Repair, renovation, alteration, remediation, or removal of Improvements; or

(3) Maintain this Lease in full force and effect and recover any rent, royalty, or other consideration as it becomes due without terminating Lessee's right of possession regardless of whether Lessee shall have abandoned the Lease Premises, subject to the

conditions imposed by Cal. Civil Code § 1951.2; or

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

(e) **Determination of Rental Value**

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

(f) **Waiver of Rights**

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

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

(a) **Restoration of Lease Premises**

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

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

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

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

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

(b) **Environmental Matters**

(1) Lessee's Obligations:

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

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

(iii) Lessee shall notify Lessor and the appropriate governmental emergency response agency, or agencies immediately in

the event of any release or threatened release of any Hazardous Material.

(2) Lessor may at any time during the Lease term require Lessee to conduct at its own expense and by a contractor approved by Lessor an independent environmental site assessment or inspection for the presence or suspected presence of Hazardous Material generated, used, placed, disposed, stored, or transported on the Lease Premises during the term of the Lease. Lessee shall provide the results of the assessment or inspection to Lessor and the appropriate governmental response agency or agencies and shall further be responsible for removing or taking other appropriate remedial action regarding such Hazardous Material in accordance with applicable Environmental Law.

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

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

14. QUITCLAIM

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

15. HOLDING-OVER

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

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

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

16. ADDITIONAL PROVISIONS

(a) **Waiver**

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

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

(b) **Time**

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

(c) **Notice**

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

(d) **Consent**

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

(e) **Changes**

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

(f) **Successors**

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

(g) **Joint and Several Obligation**

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

(h) **Captions**

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

(i) **Severability**

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

(j) **Representations**

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

(k) **Gender and Plurality**

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

(l) **Survival of Certain Covenants**

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

(m) **Counterparts**

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

(n) **Delegation of Authority**

Lessor and Lessee acknowledge Lessor as defined herein includes the Commission Members, their alternates or designees, and the staff of the Commission. The ability of staff of the Commission to give consent, or take other discretionary actions described

herein will be as described in the then-current delegation of authority to Commission staff. All other powers are reserved to the Commission.

STATE OF CALIFORNIA - STATE LANDS COMMISSION

LEASE NO. PRC 1929.9

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

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

LESSEE:

CITY OF YUBA CITY

By: _____

Title: _____

Date: _____

LESSOR:

STATE OF CALIFORNIA
STATE LANDS COMMISSION

By: _____

Title: _____

Date: _____

ATTACH ACKNOWLEDGMENT

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

_____
(Month Day Year)

EXHIBIT A

PRC 1929.9

LAND DESCRIPTION

A strip of submerged land 210.00 feet wide, in the bed of the Feather River, in Sutter County and Yuba County, State of California, lying 80.00 feet northerly and 130.00 feet southerly of the following described centerline;

> COMMENCING at the southeast corner of "Teegarden Addition to the Town of Yuba City", filed in the Office of the County Recorder of Sutter County on June 23, 1888 in Book "T" of Deeds at Page 126, said point being at the intersection of the westerly line of Sutter Street with the northerly line of Bridge Street in said Yuba City; Thence North 49°27'07" East 483.53 feet to the waterline of the Feather River at the westerly bank and being on the arc of a curve concave southeasterly having a radius of 4032.00 feet, a radial line to said point bears North 21°28'57" West, said point being the TRUE POINT OF BEGINNING of the herein described lease; Thence northeasterly along the arc of said curve a distance of 426.94 feet, through a central angle of 06°04'01" to the waterline of the Feather River at the easterly bank and being the POINT OF TERMINATION of this description.

Sidelines of said strip shall be lengthened or shortened so as to terminate at the low water marks of said Feather River

EXCEPTING THEREFROM any portion lying landward of low water marks of said Feather River.

The basis of bearings for the above described parcel of land are referenced to the California Coordinate System, Zone 2 originating from found monuments KS1971 and KS1813 established by the National Geodetic Survey and part of the national readjustment of 2007. All distances are ground measurement.

END OF DESCRIPTION

Prepared by me or under my direction.

Terry Fletcher 9/6/2016

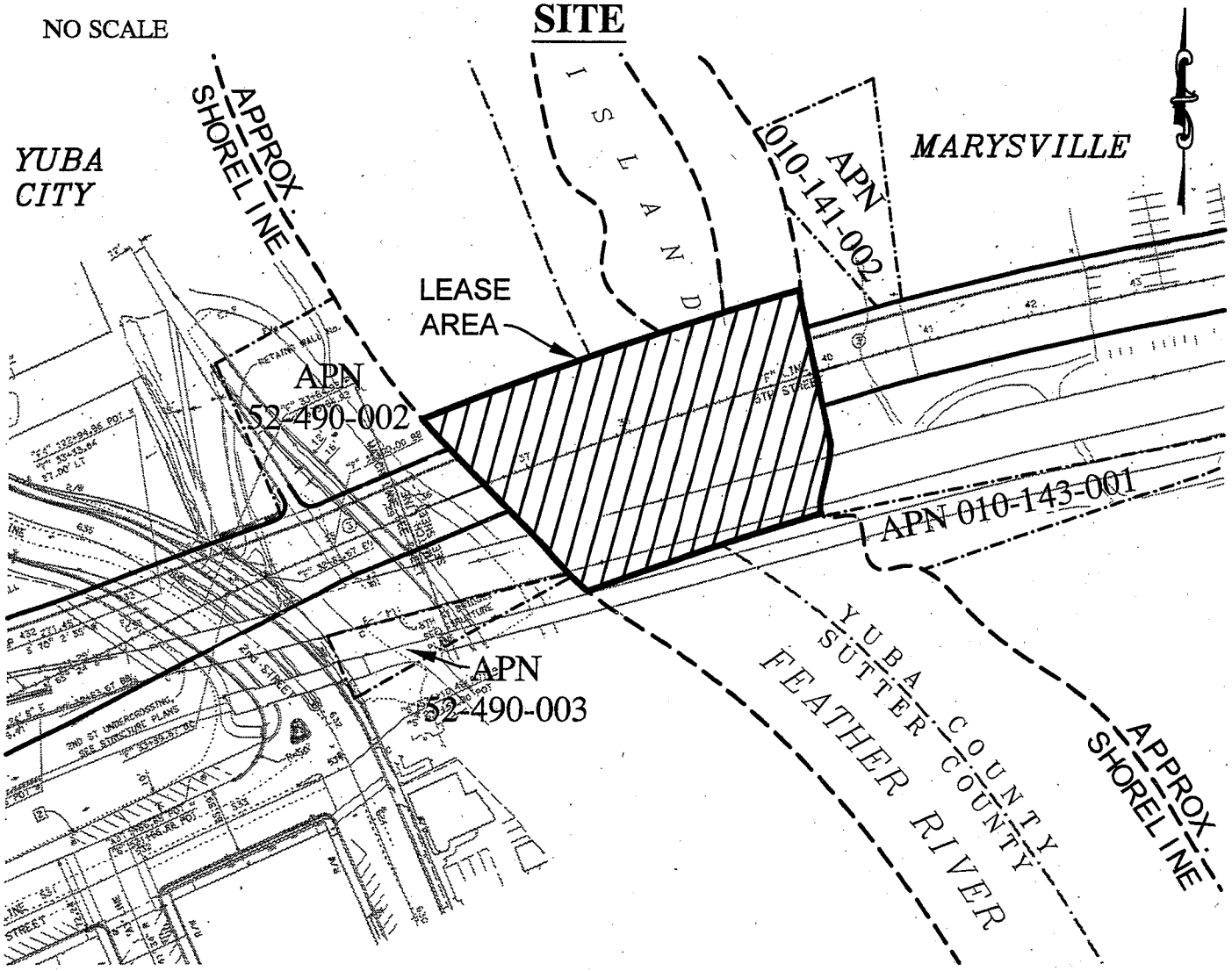
TERRY FLETCHER LS 5834 DATE

My Registration Expires 09-30-2016

LICENSED LAND SURVEYOR
TERRY FLETCHER
No. 5834
Exp. 9-30-16
STATE OF CALIFORNIA

NO SCALE

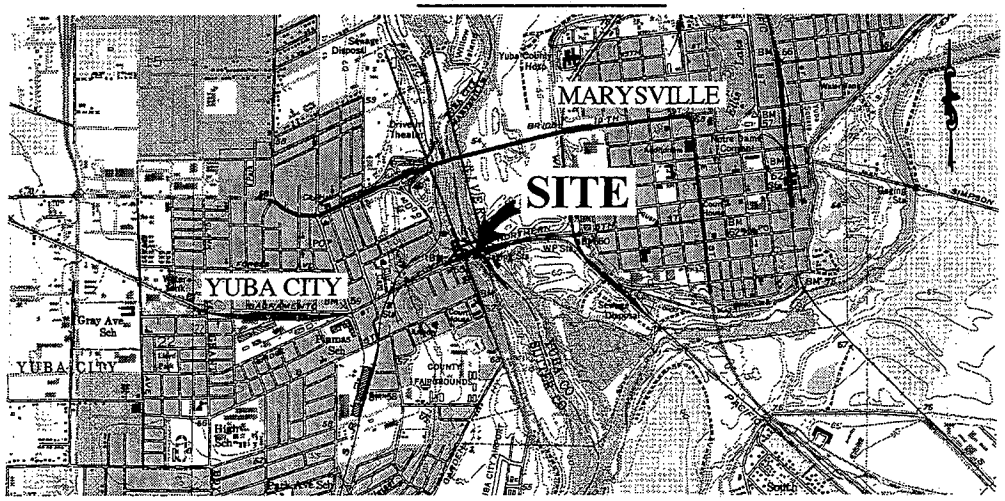
SITE



5TH STREET BRIDGE BETWEEN YUBA CITY AND MARYSVILLE

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit B

PRC 1929.9
YUBA CITY
APN 52-490-002 & 003
APN 010-143-001 & 010-141-002
GENERAL LEASE -
PUBLIC AGENCY USE
SUTTER & YUBA COUNTY

RGB 08/17/16

EXHIBIT C
CALIFORNIA STATE LANDS COMMISSION
MITIGATION MONITORING PROGRAM

5TH STREET BRIDGE REPLACEMENT PROJECT
(PRC 1929.9, State Clearinghouse No. 2013082011)

The California State Lands Commission (Commission) is a responsible agency under the California Environmental Quality Act (CEQA) for the 5th Street Bridge Replacement Project (Project). The CEQA lead agency for the Project is the City of Yuba City.

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

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

The lead agency has adopted an MND; State Clearinghouse No. 2013082011, and adopted an Environmental Commitment Record (Mitigation Monitoring Program or MMP) for the whole of the Project (see Exhibit C, Attachment C-1) and remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with its program. The Commission's action and authority as a responsible agency apply only to the mitigation measures listed in Table C-1 below. The full text of each mitigation measure, as set forth in the MMP prepared by the CEQA lead agency and listed in Table C-1, is incorporated by reference in this Exhibit C.

[1] 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*

Potential Impact	Mitigation Measure (MM)[2]
Impacts from asbestos	HW-1
Impacts from lead	HW-2, HW-3
Impacts from contaminated soil excavation	HW-7
Impacts to residences	NOI-1
Impacts from construction	NOI-2, NOI-3, NOI-4
Impacts to natural communities	BIO-1, BIO-3, BIO-4, BIO-21
Impacts to trees	BIO-2, BIO-3, BIO-18
Impacts to waters of the State	BIO-5
Impacts to nesting birds	BIO-6, BIO-7, BIO-8
Impacts to western pond turtle	BIO-9, BIO-10, BIO-11
Impacts to special status fish species	BIO-12, BIO-13, BIO-14, BIO-15, BIO-16, BIO-17, BIO-18, BIO-19, BIO-20, BIO-22, BIO-23, BIO-24
Impacts from invasive species	BIO-32, BIO-33
Impacts to water-based recreation	PRF-6
Impacts to water quality	SWR-1, SWR-2, BIO-17
Impacts to air quality	AQ-1

*The lead agency adopted measures to lessen both potentially significant impacts and less-than-significant impacts. The lead agency determined that the project would have no significant adverse impacts, with mitigation incorporated, on hazardous materials, noise, and biological resources and those mitigation measures are listed first in Table C-1.

[2] See Attachment C-1 for the full text of each MM taken from the MMP prepared by the CEQA lead agency.

ATTACHMENT C-1

Mitigation Monitoring Program Adopted by the

City of Yuba City

Appendix E Environmental Commitment Record

Yuba City, as the lead agency under the California Environmental Quality Act (CEQA), has developed an Environmental Commitment Record for the 5th Street Bridge Replacement Project. This list is designed to ensure that the mitigation measures identified in the project's Initial Study/Environmental Assessment are implemented prior to, during, and after completion of construction.

The following table contains a list of the avoidance, minimization, and/or mitigation measures. For each measure, the table identifies timing of implementation, party responsible for implementation, completion check box, and space for initials.

Yuba City is responsible for ensuring the implementation of all measures in this Environmental Commitment Record.

Task and Brief Description	Timing	Responsible Party	Completed	Initials	Notes (optional)
Parks and Recreational Facilities					
Measure PRF-1: Construction activities that temporarily impact the adjacent soccer field and associated parking spaces will be limited to one season of the Yuba Sutter Youth Soccer League fall season (August through November). Project construction will be staged to ensure that no area of the park's recreational features is impacted for more than 6 months total.	Prior to construction	Yuba City	☐	_____	
Measure PRF-2: The City of Yuba City and the City of Marysville will coordinate with the Yuba Sutter Youth Soccer League prior to construction to ensure that construction activities and closure of one soccer field will minimally affect the main soccer season scheduled in the fall.	Prior to construction	Yuba City / Marysville	☐	_____	
Measure PRF-3: Temporary, and, if necessary, permanent replacement parking will be provided at an alternative location to ensure adequate parking is provided for all major organized park activities. No permanent loss of parking would occur in the park as a result of construction of this project. The City of Marysville will coordinate to organize and direct parking through the use of signage.	During construction	Resident Engineer	☐	_____	
Measure PRF-4: A temporary chain link fence will be installed by the construction contractor to provide a safety barrier between construction activities and recreational activities.	During construction	Resident Engineer	☐	_____	
Measure PRF-5: After construction activities that would affect the soccer fields have been completed, the City of Marysville will relocate the one soccer field that was temporarily closed during construction to the north approximately 10 feet. This relocation is to provide adequate safety for soccer players in terms of the field's proximity to the new bridge column.	During construction	Resident Engineer	☐	_____	

Task and Brief Description	Timing	Responsible Party	Completed	Initials	Notes (optional)
Measure PRF-6: During construction activities that take place in or nearby the live Feather River Channel, the following measures shall be implemented to improve safety for the public engaged in recreation along the Feather River: • Buoys and signage shall be implemented both on the bridge and in the river to alert watercraft users of construction activities and to help watercraft navigate safe passage. • Nighttime navigational lighting shall be used as necessary to alert watercraft of changed in the river conditions during construction. • Containment or a protective cover (netting) shall be installed along the live channel used to ensure that falling debris does not endanger the public during construction activities.	During construction	Resident Engineer	☐	_____	
Community Character and Cohesion					
Measure CCC-1: Where feasible, temporary signage will be installed notifying the public of closures or detours and the expected duration of the closure.	Prior to construction	Yuba City	☐	_____	
Measure CCC-2: Temporary disruptions to access for businesses in the project area will be minimized by coordinating construction to provide alternative access points and by ensuring that all businesses have at least one open driveway during construction.	During construction	Resident Engineer	☐	_____	
Measure CCC-3: Pedestrian and bicycle access will be maintained, where facilities are currently present, on at least one side of the roadway through the project area during construction.	During construction	Resident Engineer	☐	_____	
Relocation					
Measure RLC-1: Property owners shall be compensated in accordance with fair market values based on appraisals. The City of Yuba City will use the Caltrans standard Relocation Assistance Program to provide relocation advisory assistance to any person, business, farm or non-profit organization displaced as a result of acquisition of real property for public use.	Prior to construction	Yuba City	☐	_____	

Task and Brief Description	Timing	Responsible Party	Completed	Initials	Notes (optional)
Measure RLC-2: All efforts would be made to identify relocation opportunities for affected businesses. Wherever feasible, assistance would be made available in identifying suitable relocation sites within the service area of existing businesses.	Prior to construction	Yuba City	☐	_____	
Utilities/Emergency Services					
Measure UTL/ES-1: To minimize interruptions of service to utility customers, a series of coordination letters shall be sent to all impacted utility companies to identify utilities within the proposed project. Letters will indicate where utility relocations are to be performed and the required time to relocate them. Design plans will be sent to involved utility owners during the project development phase. Meetings will be arranged with utility companies as necessary to discuss impacts and relocation plans.	Prior to construction (prepare) / During construction (implement)	Yuba City / Resident Engineer	☐	_____	
Measure UTL/ES-2: A Transportation Management Plan shall be prepared. It will ensure that there is appropriately designed access for emergency services onto all roads involved in the proposed project. The transportation coordination plan will be provided to emergency public services (including fire, police, and hospital facilities).	Prior to construction (prepare) / During construction (implement)	Yuba City / Resident Engineer	☐	_____	
Measure UTL/ES-3: Emergency public services, local law enforcement agencies, and local businesses will be notified of the proposed project and of any temporary lane closures one month before construction begins.	Prior to construction	Yuba City	☐	_____	
Traffic and Transportation/Pedestrian and Bicycle Facilities					
Measure TRAF-1: All existing non-motorized facilities shall be maintained to ADA standards.	During construction	Resident Engineer	☐	_____	
Measure TRAF-2: To minimize the temporary effects to travelers, a Traffic Management Plan will be prepared. Such strategies might include public information campaigns, motorist information, incident management, and inclusion of night work for construction activities.	Prior to construction (prepare) / During construction (implement)	Yuba City / Resident Engineer	☐	_____	

Task and Brief Description	Timing	Responsible Party	Completed	Initials	Notes (optional)
Water Quality and Stormwater Runoff					
Measure SWR-1: For project areas exceeding one acre, NPDES guidelines necessitate the development of a SWPPP by the contractor prior to construction to establish project-specific permanent and temporary BMPs. During the design phase, a SWPPP will be prepared to determine the minimum control requirements to be included in the project. A Notice of Intent or Notice of Construction will be submitted to the SWRCB along with the completed SWPPP.	Prior to construction	Yuba City	☐	_____	
Measure SWR-2: BMPs include any facilities and methods used to remove, reduce, or prevent storm water runoff pollutants from entering receiving waters. Erosion control methods, temporary and permanent BMPs, and improvement of drainage facilities along the roadway would minimize impacts from storm water runoff. The SWPPP and NPDES compliance measures would ensure no adverse impacts would occur to water quality associated with the Build Alternative.	Prior to construction (prepare) / During construction (implement)	Yuba City / Resident Engineer	☐	_____	
Hazardous Waste or Materials					
Measure HW-1: Prior to the start of construction, asbestos surveys shall be conducted to identify presence of asbestos related materials within the project area. Surveys will include the 5th Street Bridge and any other buildings or structures that would be modified or demolished during construction.	Prior to construction	Yuba City	☐	_____	
Measure HW-2: Pavement striping within the project area shall be removed in accordance with Caltrans Standard Special Provision 15-300 REMOVE TRAFFIC AND PAVEMENT MARKINGS.	During construction	Resident Engineer	☐	_____	
Measure HW-3: Prior to the start of construction, lead based paint surveys shall be conducted to identify presence of lead related materials within the project area. Surveys will include the 5th Street Bridge and any other buildings or structures that would be modified or demolished during construction.	Prior to construction (prepare) / During construction (implement)	Yuba City / Resident Engineer	☐	_____	

Task and Brief Description	Timing	Responsible Party	Completed	Initials	Notes (optional)
Measure HW-4: Any leaking transformers observed during the course of the project should be considered a potential polychlorinated biphenyl (PCB) hazard. Should leaks from electrical transformers (that will either remain within the construction limits or will require removal and/or relocation) be encountered during construction, the transformer fluid should be sampled and analyzed by qualified personnel for detectable levels of PCB's. Should PCBs be detected, the transformer should be removed and disposed of in accordance with the appropriate regulatory agency. Any stained soil encountered below electrical transformers with detectable levels of PCB's should also be handled and disposed of in accordance with the appropriate regulatory agency.	Prior to construction (prepare) / During construction (implement)	Yuba City / Resident Engineer	☐	_____	
Measure HW-5: Prior to the start of construction, a review of the most current results of the groundwater monitoring wells associated with the existing NTG, GasMax and Chevron gas stations for potentially elevated levels of petroleum hydrocarbons and MTBE contamination shall be conducted. Based on review of the groundwater monitoring well data results, if elevated levels of petroleum hydrocarbons or MTBE are detected in groundwater monitoring wells that are within or immediately adjacent to the project limits a limited Phase II Site Assessment should be performed at those locations. The Phase II Site Assessment should consist of subsurface sampling and laboratory analysis and be of sufficient quantity to define the extent and concentration of contamination within the areal extent and depths of planned construction activities adjacent to the NTG, GasMax and/or Chevron gas stations. The Phase II Site Assessment should also provide both a Health and Safety Plan for worker safety and a Work Plan for handling and disposing contaminated soil during construction.	Prior to construction (prepare) / During construction (implement)	Yuba City / Resident Engineer	☐	_____	
Measure HW-6: Prior to the start of construction, a preliminary investigation and screening for potentially elevated levels of petroleum hydrocarbon contamination, grease and oils, in the surface and near-surface soils along the project segments within 50 feet of the existing Union Pacific Railroad and former Sacramento Northern Railroad alignments shall be conducted. The investigation should include a remediation plan for handling and/or removal/disposal of contaminated soil, if encountered.	Prior to construction (prepare) / During construction (implement)	Yuba City / Resident Engineer	☐	_____	

Task and Brief Description	Timing	Responsible Party	Completed	Initials	Notes (optional)
Measure HW-7: As is the case for any project that proposes excavation, the potential exists for unknown hazardous contamination to be revealed during project construction (such as previously undetected petroleum hydrocarbon contamination from nearby sources or potential explosive threat if a gas pipeline is ruptured during construction). For any previously unknown hazardous waste/material encountered during construction, Yuba City will follow the procedures outlined in the Caltrans Hazards Procedures for Construction.	Prior to construction (prepare) / During construction (implement)	Yuba City / Resident Engineer	☐	_____	
Air Quality					
Measure AQ-1: The construction contractor shall comply with Caltrans' Standard Specifications in Section 14 (2010). • Section 14-9.01 specifically requires compliance by the contractor with all applicable laws and regulations related to air quality, including air pollution control district and air quality management district regulations and local ordinances. • Section 14-9.02 is directed at controlling dust. If dust palliative materials other than water are to be used, material specifications are contained in Section 18.	During construction	Resident Engineer	☐	_____	
Noise					
Measure NOI-1: Yuba City intends to incorporate noise abatement in the form of (a) barrier(s) at R24, a property located southwest of 5th Street and J Street in Marysville, with respective lengths and average heights of 170 feet length and 10 feet height. Calculations based on preliminary design data indicate that the barrier(s) would reduce noise levels by at least 7 dBA for five residences at a cost of $78,029. If during final design conditions have substantially changed, noise abatement may not be necessary. The final decision of the noise abatement will be made upon completion of the project design and the public involvement processes.	During construction	Resident Engineer	☐	_____	

Task and Brief Description	Timing	Responsible Party	Completed	Initials	Notes (optional)
Measure NOI-2: Yuba City will ensure that the construction contractor shall comply with Caltrans Standard Specifications Section 14-8.02, "Noise Control". Section 14-8.02 provides information that can be considered in determining whether construction would result in adverse noise impacts. The specification states: • Do not exceed 86 dBA at 50 feet from the job site activities from 9 p.m. to 6 a.m. • Use an alternative warning method instead of a sound signal unless required by safety laws. • Construction vehicles shall equip internal combustion engines with the manufacturer recommended muffler.	During construction	Resident Engineer	☐	_____	
Measure NOI-3: Substantial noise-generating construction activities, such as pile driving, shall be limited to daytime hours.	During construction	Resident Engineer	☐	_____	
Measure NOI-4: Substantial noise-generating construction activities during periods of intensive park usage (concerts, soccer tournaments, etc.), shall be avoided.	During construction	Resident Engineer	☐	_____	
Biological Environment					
Natural Communities					
Measure BIO-1: Prior to the start of construction, Environmentally Sensitive Area (ESA) fencing shall be installed along the construction limits to protect riparian habitat associated with the Feather River from construction activities.	Prior to construction	Yuba City	☐	_____	
Measure BIO-2: All trees to remain in place within and adjacent to proposed ground disturbances shall be designated as ESA and shall be temporarily fenced with orange plastic construction (exclusion) fencing throughout all grading and construction activities. To the extent feasible, the exclusion fencing shall be installed along the dripline of trees greater than 6 inches diameter at breast height. The fencing is intended to prevent equipment operations in the proximity of protected trees that may compact soil, crush roots, or collide with the tree trunk and/or overhanging branches.	Prior to construction (prepare) / During construction (implement)	Yuba City / Resident Engineer	☐	_____	

Task and Brief Description	Timing	Responsible Party	Completed	Initials	Notes (optional)
Measure BIO-3: In order to ensure that vegetated areas are restored to their pre-construction conditions, a landscaping plan will be prepared during design of the project. This plan will include all necessary landscaping to ensure that the Riverfront Park grasses are replaced and that any other landscaping areas impacted by construction will be restored.	During construction	Resident Engineer	☐	_____	
Wetlands and Other Waters					
Measures BIO-4: Prior to initiating construction, Environmentally Sensitive Area (ESA) fence shall be installed along the construction limits to prevent encroachment into the riparian areas adjacent to the construction site.	Prior to construction (prepare) / During construction (implement)	Yuba City / Resident Engineer	☐	_____	
Measures BIO-5: Prior to start of construction activities, the City of Yuba City will obtain all necessary regulatory permits for this project. These permits are expected to include a CWA Section 401 Water Quality Certification from the RWQCB, a CWA Section 402 NPDES Compliance Permit from the SWRCB, a CWA Section 404 Nationwide 14 Permit from the USACE, a Fish and Wildlife Code Section 1602 Streambed Alteration Agreement from the CDFW, and an Floodplain Encroachment Permit from the Central Valley Flood Protection Board. These permits will require appropriate mitigation for impacts to waters of the U. S. and State.	During construction	Resident Engineer	☐	_____	
Animal Species					
Measures BIO-6: To ensure compliance with MBTA and CFG code, vegetation removal and initiation of construction activities should not occur during the nesting season (defined as February 15 – August 31). If this is not possible and vegetation removal or initiation of work is to occur during the nesting season, a pre-construction survey will be required. The pre-construction survey shall be performed by a qualified biologist, to determine the presence of nesting birds and ensure active nests are not directly or indirectly impacted during construction. The pre-construction survey area will include the limits of the project impact area plus a 500-foot buffer. If work is planned to begin during the nesting season (February 15 – August 31), all vegetation removal shall be completed within two weeks of the nesting survey where the survey determines no active nests are present. If the nest of a protected bird is found, the perimeter shall be flagged and a qualified biologist will	Prior to construction (prepare) / During construction (implement)	Yuba City / Resident Engineer	☐	_____	

Task and Brief Description	Timing	Responsible Party	Completed	Initials	Notes (optional)
coordinate with USFWS and CDFW to determine an appropriate buffer distance from construction to ensure protection of the nest. The contractor shall stop work in the nesting area and is prohibited from conducting work that could disturb the nesting birds until the buffer is established (as determined by the project biologist in coordination with wildlife agencies). The buffer shall remain in the protected area until the biologist has determined that nesting activities are complete.					
Measures BIO-7: Construction activities shall not disturb nesting swallows. A qualified biologist shall coordinate with CDFW and USFWS to determine what construction activities, if any, can occur once nesting activities commence.	During construction	Resident Engineer	☐	_____	
Measures BIO-8: If demolition of the existing 5th Street Bridge is planned to occur during the nesting season, measures shall be taken to avoid impacts to migratory swallows. To protect migratory swallows, unoccupied nests will be removed from the existing bridge structure prior to the nesting season (February 15 – August 31). During the nesting season, the bridge structure shall be maintained free from nests either through use of exclusion devices and/or the active removal of partially constructed nests. After a nest is completed, it can no longer be removed until an approved biologist has determined that all birds have fledged and the nest is no longer being used.	During construction	Resident Engineer	☐	_____	
Measures BIO-9: An environmental awareness training shall be conducted prior to the onset of construction activities with construction personnel to brief them on how to recognize western pond turtle and whom to contact should any turtles be found in the work area.	During construction	Resident Engineer	☐	_____	
Measures BIO-10: A preconstruction survey for western pond turtle shall be conducted by a qualified biologist within 24 hours of the start of construction activities. If western pond turtles are located within the construction area, the turtles shall be relocated out of the area and exclusion fencing shall be installed to prevent the movement of turtles back into the construction area.	During construction	Resident Engineer	☐	_____	
Measure BIO-11: If any western pond turtles are found at any time during project work, construction shall stop and the animal allowed to leave the project area, or would be actively relocated by CDFW approved biologist.	Prior to construction	Yuba City	☐	_____	

Task and Brief Description	Timing	Responsible Party	Completed	Initials	Notes (optional)
Threatened or Endangered Species					
Measure BIO-12: All construction work that will take place in the live channel shall occur between June 1-October 1 during the summer low-flow period to minimize potential exposure of juveniles to pile driving noise/vibration, and to minimize fish entrapment within cofferdams.	During construction	Resident Engineer	☐	_____	
Measure BIO-13: A qualified biologist shall prepare and implement a fish salvage plan to recover any individuals entrapped in cofferdams. The fish salvage plan shall receive approval from NMFS prior to initiating any in-channel work. At a minimum, the plan will incorporate the following: • Provide for the collection, transfer, and release of all entrapped sensitive fish by a qualified biologist to a designated location downstream of project activities; • A record of the electrical conductivity, temperature (water and air), and pH within both the enclosure and within the free flowing river; and, • Ensure all rescued sensitive fish be kept in aerated water and at appropriate temperatures at all times prior to release. At a minimum, four fish rescues will be implemented as described in the prepared fish salvage plan above, and must be provided during the following activities: • Season 1 – After partial dewatering, a rescue event following construction of each temporary encasement at Pier 2 (to include each column, three total, at Pier 2) and a rescue event at Pier 3 (to include each column, 3 total, at Pier 3); and • Season 2 – After partial dewatering, a rescue for each of the temporary water diversions (Phase 1 and Phase 2)	Prior to construction (prepare) / During construction (implement)	Yuba City / Resident Engineer	☐	_____	
Measure BIO-14: To minimize the potential for accidental spills of materials hazardous to the aquatic environment, a Spill Prevention Control and Countermeasure Plan shall be prepared.	Prior to construction	Yuba City	☐	_____	

Task and Brief Description	Timing	Responsible Party	Completed	Initials	Notes (optional)
Measure BIO-15: Any piles driven into the river channel for use as a temporary construction trestle shall be installed using vibratory driving to the greatest extent possible. If use of an impact hammer cannot be avoided, a hydraulic hammer shall be used. The force of the hammer blow can be controlled with hydraulic hammers, and reducing the impact force would reduce the intensity of the resulting sound.	During construction	Resident Engineer	☐	_____	
Measure BIO-16: Prior to construction, an acoustical monitoring plan shall be prepared by a qualified biologist. The acoustical monitoring plan shall receive approval from NMFS prior to in-channel work and shall be implemented during all vibratory and impact pile driving activities. At a minimum, the plan will incorporate the following: • Daily acoustical monitoring by a qualified biologist during all pile driving activities; • Measurement of underwater background levels using current NMFS methodology; • Require equipment for underwater sound monitoring (hydrophone, signal amplifier, and calibrator) to utilize current National Institute of Standards and Technology traceable calibration methodology; • Require a minimum recordation distance of 10 meters from each pile being monitored; and, • The monitoring biologist may stop work if observed migrating fish are stunned or otherwise directly impacted by noise and vibration from pile driving. Work shall not resume until the fish clears the construction area under its own power, or through collection and release by the qualified fish biologist.	Prior to construction	Yuba City	☐	_____	

Task and Brief Description	Timing	Responsible Party	Completed	Initials	Notes (optional)
Measure BIO-17: Contract specifications will include the following BMPs, where applicable, to reduce erosion during construction. • Implementation of the Project will also require approval of a site-specific SWPPP that would implement effective measures to protect water quality, which may include a hazardous spill prevention plan and additional erosion prevention techniques. • Scheduling. A specific work schedule will be implemented to coordinate the timing of land disturbing activities and the installation of erosion and sedimentation control practices to reduce on-site erosion and off-site sedimentation. • Preservation of Existing Vegetation. In addition to measures #5 above, existing vegetation shall be protected in place where feasible to provide an effective form of erosion and sediment control, as well as watershed protection, landscape beautification, dust control, pollution control, noise reduction, and shade. • Mulching. Loose bulk materials shall be applied to the soil surface as a temporary cover to reduce erosion by protecting bare soil from rainfall impact, increasing infiltration, and reducing runoff. • Soil Stabilizers. Stabilizing materials shall be applied to the soil surface to prevent the movement of dust from exposed soil surfaces on construction sites as a result of wind, traffic, and grading activities. • Slope Roughening/Terracing/Rounding. Roughening and terracing will be implemented to create unevenness on bare soil through the construction of furrows running across a slope, creation of stair steps, or by utilization of construction equipment to track the soil surface. Surface roughening or terracing reduces erosion potential by decreasing runoff velocities, trapping sediment, and increasing infiltration of water into the soil, aiding in the establishment of vegetative cover from seed.	Prior to construction (prepare) / During construction (implement)	Yuba City / Resident Engineer	☐	_____	

Task and Brief Description	Timing	Responsible Party	Completed	Initials	Notes (optional)
Measure BIO-18: The City shall prepare a riparian restoration plan to be reviewed and approved by CDFW, the CVFPB, and any other applicable agencies. This plan will include restoration of areas impacted by the proposed project, as well as areas that have been disturbed from previous activities or events.	Prior to construction	Yuba City	☐	_____	
Measure BIO-19: In-channel work shall not be conducted at night to afford fish quiet, unobstructed passage during night time migratory hours.	During construction	Resident Engineer	☐	_____	
Measure BIO-20: The number and size of piles will be limited to the minimum necessary to meet the engineering and design requirements of the project.	Prior to construction	Yuba City	☐	_____	
Measure BIO-21: Prior to initiating construction, environmentally sensitive area fencing will be installed along the construction limits to prevent encroachment into the riparian areas adjacent to the construction site.	Prior to construction	Yuba City	☐	_____	
Measure BIO-22: Project activities that may affect the flow of the river through placement of fill, bridge construction, or dewatering of the channel must comply with the 2001 *NMFS Guidelines for Salmonid Passage at Stream Crossings*, where applicable. The guidelines include but are not limited to: • A minimum water depth (12 inches for adults and six inches for juveniles) at low fish passage; • A maximum hydraulic drop of one foot for adults and six inches for juveniles; • Avoidance of abrupt changes in water surface and velocities; and, • Structures shall be aligned with the stream, with no abrupt changes in flow direction upstream or downstream of the crossing.	During construction	Resident Engineer	☐	_____	

Task and Brief Description	Timing	Responsible Party	Completed	Initials	Notes (optional)
Measure BIO-23: All water pumped or otherwise withdrawn from the river must comply with *1997 NMFS Fish Screening Criteria for Anadromous Salmonids*, where applicable, to avoid entrapment of the fish. The criteria include but are not limited to the following: • Screen design must provide for uniform flow distribution over the surface of the screen; • Screen material openings must not exceed 3/32 inch for fry sized salmonids and shall not exceed ¼ inch for fingerling sized salmonids; • Where physically practical, the screen must be constructed at the diversion entrance. The screen face should be generally parallel to river flow and aligned with the adjacent bankline; and, • The design approach velocity must not exceed 0.33 feet per second for fry sized salmonids or 0.8 feet per second for fingerling sized salmonids; and the screen design must provide for uniform flow distribution over the surface of the screen. It is anticipated that the exact specification requirements for fish screening equipment will be determined by the on-site fish biologist monitor in accordance with the 1997 NMFS criteria described above.	During construction	Resident Engineer	☐	_____	
Measure BIO-24: A bubble curtain shall be utilized to attenuate noise and vibration when other, more effective attenuation cannot be provided (such as a dewatered coffer dam).	During construction	Resident Engineer	☐	_____	
Measure BIO-25: The City of Yuba City will compensate for the effects of the proposed project on the beetle by transplanting 12 elderberry shrubs during the recommended transplant window, November 1 to February 15. The shrubs will be transplanted to the River Ranch Conservation Bank, or another USFWS approved conservation bank, and a total of 10 VELB mitigation credits will be purchased.	Prior to construction (prepare) / During construction (implement)	Yuba City / Resident Engineer	☐	_____	
Measure BIO-26: If any of the 12 elderberry shrubs that are proposed for transplantation are unlikely to survive transplantation because of poor condition or if any of the shrubs cannot be safely removed due to access problems since they are in such close association with the existing 5th Street Bridge, the proposed compensation ratios will be doubled (for that individual shrub) to offset the additional habitat loss.	Prior to construction (prepare) / During construction (implement)	Yuba City / Resident Engineer	☐	_____	

Task and Brief Description	Timing	Responsible Party	Completed	Initials	Notes (optional)
Measure BIO-27: Due to the proximity of the 13 avoided elderberry shrubs to the existing bridge and railroad structure, a 20-foot construction zone will not be feasible during demolition activities. Therefore, a modified construction zone will be installed by placing fencing around each elderberry shrub. The fencing will be placed at the drip line of each shrub in closest proximity to the existing bridge or railroad structure and will taper out to the 20-foot zone recommended for the remainder. A USFWS approved biologist will be present during the installation of fencing.	During construction	Resident Engineer	☐	_____	
Measure BIO-28: Prior to the commencement of construction activities, fencing will be installed along Environmentally Sensitive Area (ESA) boundaries to prevent encroachment into the riparian areas adjacent to the construction site.	Prior to construction	Yuba City	☐	_____	
Measure BIO-29: Contractors will be provided with environmental awareness training, which will brief them on the need to avoid damage to the elderberry shrubs and the possible penalties for not complying with these requirements.	Prior to construction	Yuba City	☐	_____	
Measure BIO-30: A USFWS approved biologist will periodically monitor construction activities to ensure elderberry shrubs within the action area are not disturbed.	During construction	Resident Engineer	☐	_____	
Measure BIO-31: Elderberry shrubs within 100 feet of construction activities will be rinsed with clean water once each week, or when necessary to remove dust caused by construction activities.	During construction	Resident Engineer	☐	_____	
Invasive Species					
Measures BIO-32: All landscaping and revegetation shall consist of Yuba City approved plants or seed mixes from native, locally adapted species.	Prior to construction (prepare) / During restoration (implement)	Yuba City	☐	_____	
Measures BIO-33: Prior to arrival at the project site and prior to leaving the project site, construction equipment that may contain invasive plants and/or seeds shall be cleaned to reduce the spreading of noxious weeds.	During Construction	Yuba City	☐	_____	
Climate Change under the California Environmental Quality Act					
Measure GHG-1: Energy efficient lighting, such as LED traffic signals and street lights, will be used when possible.	Prior to construction (prepare) / During construction (implement)	Yuba City / Resident Engineer	☐	_____	