June 28, 2005

TO: Mayor and City Council

FROM: Steve Pinkerton, Director
Housing and Redevelopment Department

SUBJECT: RESOLUTION: LEASE WITH THE STATE LANDS COMMISSION FOR A STORM WATER OUTFALL – PIXLEY SLOUGH/SPANOS PARK WEST

RECOMMENDATION

It is recommended that the Council adopt a resolution authorizing a twenty-year lease with the State Lands Commission.

SUMMARY

There is a future park site located at Mokelumne Circle and Cosumnes Drive in Spanos Park West. At the southerly area of the park there is storm water pumping site, north of Pixley Slough. As part of this operation, drainage lines need to go through the levee and drain into the slough. These lines terminate on the south side of the levee, in an outfall structure. In order to place the outfall in the levee, a lease is required from the State Lands Commission (see attached map). There is no rent for the lease because it is for a public purpose.

DISCUSSION

There is considerable subdivision development in Spanos Park West, south of Eight Mile Road and west of Interstate 5. One of the infrastructure developments is a storm water pump site. The pump site is located south of a future park site located at Mokelumne Circle and Cosumnes Drive and is on the north side of Pixie Slough.

As part of the pump site operation, the drainage lines need to go through the levee and drain into the slough. These lines terminate on the south side of the levee, in an outfall structure. In order to place the outfall in the levee, a lease is required from the State Lands Commission. The term of the lease is twenty years and there is no rent for the lease because it is for a public purpose.
ENVIRONMENTAL CLEARANCE

This project is categorically exempt under the State CEQA Guidelines (Section: 15061 (B)(3) as specified on the attached Notice of Exemption. In accordance with Section 65402 of the Government Code, this activity/project has been determined to conform with the City's General Plan designation.

FINANCIAL SUMMARY

Presently, there are no costs associated with this action. If the State Lands Commission finds it necessary in the future, it can establish a rental rate.

Respectfully submitted,

 STEVEN J. PINKERTON, DIRECTOR
HOUSING AND REDEVELOPMENT DEPARTMENT

SJP/MW:myb

Attachments

APPROVED BY THE CITY MANAGER:

MARK LEWIS, CITY MANAGER
RESOLUTION APPROVING A TWENTY-YEAR LEASE WITH THE STATE OF CALIFORNIA, ACTING BY AND THROUGH THE CALIFORNIA STATE LANDS COMMISSION—PIXLEY SLOUGH/SPANOS PARK WEST

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. That certain Lease (Lease PRC 8305.9) between the City of Stockton and the State of California, acting by and through the California State Lands Commission, is hereby approved.

2. That the City Manager is hereby authorized and directed to execute said Lease, a copy of which is attached as Exhibit A and by reference made a part hereof, on behalf of the City of Stockton.

3. That said Lease will have a term of 20 years (June 14, 2001–June 13, 2021: rent-no fee).

4. That with regard to environmental clearance, it has been determined that this action/project is exempt from the requirements of the California Environmental Quality Act (CEQA) since this type of action/project has been granted a "Categorical Exemption" under Section 15061(B)(3) of the State CEQA Guidelines, Notice of Exemption.

5. In accordance with Section 65402 of the Government Code, it has been determined that this action conforms with the City's General Plan designation.

PASSED, APPROVED and ADOPTED ____________________________

ATTEST: EDWARD J. CHAVEZ, Mayor
          of the City of Stockton

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton

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DATE JUN 21 2005
LEASE PRC 8305.9

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 4
Section 3  Description of Lease Premises
Section 4  General Provisions

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 STOCKTON
DEPARTMENT OF MUNICIPAL UTILITIES

hereinafter referred to as Lessee:

WHOSE MAILING ADDRESS IS:  2500 Navy Street
Stockton, CA 95206
those certain lands described in Section 3 subject to the reservations, terms, covenants and conditions of this Lease.

LEASE TYPE: General Lease - Public Agency

LAND TYPE: Sovereign

LOCATION: Pixley Slough, near the city of Stockton, San Joaquin County

LAND USE OR PURPOSE: The continued use and maintenance of a storm water outfall and bank protection

TERM: Twenty (20) years; beginning June 14, 2001; ending June 13, 2021, unless sooner terminated as provided under this Lease.

CONSIDERATION: The public use and benefit; with the State reserving the right to at any time to set a monetary rent if the Commission finds such action to be in the State's best interest.

Subject to modification by Lessor as specified in Paragraph 2(b) of Section 4 - General Provisions.

AUTHORIZED IMPROVEMENTS: A storm water outfall consisting of five (5) 36-inch diameter steel discharge lines and one (1) 12-inch diameter steel discharge line and bank protection

X. EXISTING:

N/A TO BE CONSTRUCTED; CONSTRUCTION MUST BEGIN BY:

AND BE COMPLETED BY:

LIABILITY INSURANCE: N/A

SURETY BOND OR OTHER SECURITY: N/A

SECTION 2
SPECIAL PROVISIONS

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

NO ADDITIONAL CONDITIONS

/ / / / / /
LEGAL DESCRIPTION
LEASE PARCEL FROM THE
STATE LANDS COMMISSION

All that certain real property situate, lying and being in the City of Stockton, County of San Joaquin, State of California, described as follows:

Being a portion of Section 1, Township 2 North, Range 5 East, Mount Diablo Base and Meridian and being more particularly described as follows:

Commencing at Southeast corner of said Section 1, as shown on the map of A.G. SPANOS PARK, UNIT NO. 9, filed in Book 32, of Maps and Plats, at Page 77, San Joaquin County Records; thence North 66°19'35" West, 2450.67 feet to the TRUE POINT OF BEGINNING of this description; thence South 07°00'02" East 60.00 feet; thence South 82°59'58" West 100.00 feet; thence North 07°00'02" West 60.00 feet; thence North 82°59'58" East 100.00 feet to the point of beginning.

Containing 6000 Sq. Ft. or 0.138 acres

The basis of bearings for the above description is a bearing of North 11°10'39" West between City of Stockton control monuments 1001 and 0162, as calculated from data shown on City of Stockton Horizontal Control System Phases XII and XIII, filed in Book 33 of Surveys, at Page 20, San Joaquin County Records.
6000' s.f. parcel

GENERAL LEASE - PUBLIC AGENCY USE

LOCATION MAP

SECTION 3-2
W 25699
PORTION OF S1/2 OF
SEC. 1, T2N, R5E MDM
PIXLEY SLOUGH
SAN JOAQUIN COUNTY

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

MAP SOURCE - USGS TERMINOUS QUAD
SECTION 4

SPECIAL PROVISIONS

1. GENERAL
These provisions are applicable to all leases, permits, rights-of-way, easements, or licenses or other interests in real property conveyed by the State Lands Commission.

2. CONSIDERATION
(a) Categories
(1) Rental
Lessee shall pay the annual rental as stated in this Lease to Lessor without deduction, delay or offset, on or before the beginning date of this Lease and on or before each anniversary of its beginning date during each year of the Lease term.

(2) 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 State Lands Commission, at its sole discretion, determines that such action is in the best interest of the State.

(b) 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. No such modification shall become effective unless Lessee is given at least thirty (30) days notice prior to the effective date.

(c) Penalty and Interest
Any installments of rental accruing under this Lease not paid when due shall be subject to a penalty and shall bear interest as specified in Public Resources Code Section 6224 and the Lessor’s then existing administrative regulations governing penalty and interest.

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

4. LAND USE
(a) General
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. Lessee shall notify Lessor within ten (10) days after commencing the construction of authorized improvements and within sixty (60) days after completing them. Lessee’s discontinuance of such use for a period of ninety (90) days shall be conclusively presumed to be an abandonment.

(b) Continuous Use
Lessee’s use of the Lease Premises shall be continuous from commencement of the Lease until its expiration.

(c) Repairs and Maintenance
Lessee shall, at its own expense, keep and maintain the Lease Premises and all improvements in good order and repair and in safe condition. Lessor shall have no obligation for such repair and maintenance.

(d) Additions, Alterations and Removal
(1) Additions - 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.

(2) Alteration or Removal - Except as provided under this Lease, no alteration or removal of improvements on or natural features of the Lease Premises shall be undertaken without the prior written consent of Lessor.

(e) Conservation
Lessee shall practice conservation of water, energy, and other natural resources and shall prevent pollution and harm to the environment. Lessee shall not violate any law or regulation whose purpose is to conserve resources or to protect the environment. Violation of this section shall constitute grounds for termination of the Lease. Lessor, by its executive officer, shall notify Lessee, when in his or her opinion, Lessee has violated the provisions of this section and Lessee shall respond and discontinue the conduct or remedy the condition within 30 days.

(f) Toxics
Lessee shall not manufacture or generate hazardous wastes on the Lease Premises unless specifically authorized under other terms of this Lease. Lessee shall be fully responsible for any hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored, or transported on the Lease Premises during the Lease term and shall comply with and be bound by applicable provisions of such federal, state or local regulation or ordinance dealing with such wastes, substances or materials. Lessee shall notify Lessor and the appropriate governmental emergency response agency(ies) immediately in the event of any release or threatened release of any such wastes, substances or materials.
(g) Enjoyment
Subject to the provisions of paragraph 5 (a) (2) below, nothing in this Lease shall preclude Lessee from excluding persons from the Lease Premises when their presence or activity constitutes a material interference with Lessee’s use and enjoyment of the Lease Premises as provided under this Lease.

(h) Discrimination
Lessee in its use of the Lease Premises shall not discriminate against any person or class of persons on the basis of race, color, creed, religion, national origin, sex, age, or handicap.

(i) Residential Use
No portion of the Lease Premises shall be used as a location for a residence or for the purpose of mooring a structure which is used as a residence. For purposes of this Lease, a residence or floating residence includes but is not limited to boats, barges, houseboats, trailers, cabins or combinations of such facilities or other such structures which provide overnight accommodations to the Lessee or others.

5. 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 and minerals as defined under Public Resources Code Sections 6401 and 6407, as well as the right to grant leases in and over the Lease Premises for the extraction of such natural resources; however, 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 purpose 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
This Lease 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.

6. 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 other governmental agency or entity having lawful authority and jurisdiction.

(b) Lessee understands and agrees that a necessary condition for the granting and continued existence of this Lease is that Lessee obtain and maintain all permits or other entitlements.

(c) Lessee accepts responsibility for and agrees to pay any and all possessory interest taxes, assessments, user fees or service charges imposed on or associated with the leasehold interest, improvements or the Lease Premises, and such payment shall not reduce rental due Lessor under this Lease and Lessor shall have no liability for such payment.

7. INDEMNITY
(a) Lessor shall not be liable and Lessee shall indemnify, hold harmless and, at the option of Lessor, defend Lessor, its officers, agents, and employees against and for any and all liability, claims, damages or injuries of any kind and from any cause, arising out of or connected in any way with the issuance, enjoyment or breach of this Lease or Lessee’s use of the Lease Premises except for any such liability, claims, damage or injury solely caused by the negligence of Lessor, its officers, agents and employees.

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

8. 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, insuring Lessee and Lessor 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 or policies shall name the State of California, its officers, employees and volunteers as insureds as to the Lease Premises and shall identify the Lease by its assigned number. Lessee shall provide Lessor with a certificate of such insurance and shall keep such certificate current. The policy (or endorsement) must provide that the insurer will not cancel the insured’s coverage without thirty (30) days prior written notice to Lessor. Lessor will not be responsible for any premiums or other assessments on the
policy. The coverage provided by the insured (Lessee) shall be primary and non-contributing.

(c) The insurance coverage specified in this Lease shall be in effect at all times during the Lease term and subsequently until all of the Lease Premises have been either accepted as improved, by Lessor, or restored by Lessee as provided elsewhere in this Lease.

9. **SURETY BOND**

(a) Lessee shall provide a surety bond or other security device acceptable to Lessor, for the specified amount, and naming the State of California 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, alterations or purposes and any modification of consideration.

(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 all of the Lease Premises have been either accepted as improved, by Lessor, or restored by Lessee as provided elsewhere in this Lease.

10. **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.

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

1. If Lessee is a corporation, any dissolution, merger, consolidation or other reorganization of Lessee or sale or other transfer of a percentage of capital stock of Lessee which results in a change of controlling persons, or the sale or other transfer of substantially all the assets of Lessee;

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, it shall be appurtenant to adjoining littoral or riparian land and 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 prior written notice to Lessor;

2. Provide the name and complete business organization and operational structure 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. If the proposed assignee, sublessee or secured third party is a general or limited partnership, or a joint venture, provide a copy of the partnership agreement or joint venture agreement, as applicable;

3. Provide the terms and conditions of the proposed assignment, sublease, or encumbrancing 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.

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.

(f) Lessee's mortgage or hypothecation of this Lease, if approved by Lessor, shall be subject to terms and conditions found in a separately drafted standard form (Agreement and Consent to Encumbrancing of Lease) available from Lessor upon request.

(g) Upon the express written assumption of 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.

(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 Sct. 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.

11. 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 or breach of the Lease by Lessee:

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

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

(3) Lessee's vacation or abandonment of the Lease Premises (including the covenant for continuous use as provided for in paragraph 4) during the Lease term;

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

(5) Lessee's failure to comply with all applicable provisions of federal, state or local law, regulation or ordinance dealing with hazardous waste, substances or materials as defined under such law;

(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; and/or

(7) Lessee's failure to comply with applicable provisions of federal, state or local laws or ordinances relating to issues of Health and Safety, or whose purpose is to conserve resources or to protect the environment.

(b) Lessee's failure to observe or perform any other term, covenant or condition of this Lease to be observed or performed by the Lessee when such failure shall continue for a period of thirty (30) days after Lessor's giving written notice; however, if the nature of Lessee's default or breach 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 or breach if Lessee commences such cure within such thirty (30) day period and diligently proceeds with such cure to completion.

(c) Remedies

In the event of a default or breach by Lessee and Lessee's failure to cure such default or breach, Lessor may at any time and with or without notice do any one or more of the following:

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

(2) Terminate this Lease and Lessee's right of possession of the Lease Premises. Such termination shall be effective upon Lessor's giving written notice and upon receipt of such notice Lessor shall immediately surrender possession of the Lease Premises to Lessor;

(3) Maintain this Lease in full force and effect and recover any rental, 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; and/or

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

12. RESTORATION OF LEASE PREMISES

(a) Upon expiration or sooner termination of this Lease, Lessor upon written notice may take title to any or all improvements, including fills, or Lessor may require Lessee to remove all or any such improvements at its sole expense and risk; or Lessor may itself remove or have removed all or any portion of such improvements at Lessee's sole expense. 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.

(b) In removing any such improvements Lessee shall restore the Lease Premises as nearly as possible to the conditions existing prior to their installation or construction.

(c) All plans for and subsequent removal and restoration shall be to the satisfaction of Lessor and shall be completed within ninety (90) days after the expiration or sooner termination of this Lease or after compliance with paragraph 12(d), whichever is the lesser.

(d) In removing any or all the improvements Lessee shall be required to obtain any permits or other governmental approvals as may then be required by lawful authority.
(e) 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 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 the term of the Lease. Lessee shall provide the results of the assessment or inspection to Lessor and the appropriate governmental response agency(ies) and shall further be responsible for removing or taking other appropriate remedial action regarding such wastes, substances or materials in accordance with applicable federal, state or local law regulation or ordinance.

13. QUITCLAIM

Lessee shall, within ninety (90) days of the expiration or sooner termination of this Lease, 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, a written notice by Lessor reciting such failure or refusal shall, from the date of its recording, be conclusive evidence against Lessee of the termination of this Lease and all other claims.

14. HOLDING-OVER

Any holding-over by Lessee after the expiration of the Lease term, with or without the express or implied consent of Lessor, shall constitute a tenancy from month to month and not an extension of the Lease term and shall be on the terms, covenants, and conditions of this Lease, except that the annual rental then in effect shall be increased by twenty-five percent (25%).

15. ADDITIONAL PROVISIONS

(a) Waiver

(1) No term, covenant, or condition of this Lease and no 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.

(2) Any such waiver shall not be deemed to be a waiver of any other term, covenant or condition of any other default or breach of any term, covenant or condition of this Lease.

(b) Time

Time is of the essence of 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, 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 captions of this Lease are not controlling and shall have no effect upon its construction or interpretation.

(i) Severability

If any term, covenant or condition of this Lease is determined by a court of competent jurisdiction to be invalid, it shall be considered deleted and shall not invalidate any of the remaining terms, covenants or conditions.
STATE OF CALIFORNIA - STATE LANDS COMMISSION

LEASE P.R.C. NO. 8305.9

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.

CITY OF STOCKTON

By: ____________________________

Date: ____________________________

STATE OF CALIFORNIA
STATE LANDS COMMISSION

By: ____________________________

Title: ____________________________

Date: ____________________________

ACKNOWLEDGEMENT

This Lease was authorized by the California State Lands Commission on

(Month  Day  Year)

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

By: ____________________________

DEPUTY CITY ATTORNEY
CITY OF STOCKTON
NOTICE OF EXEMPTION

TO: COUNTY CLERK
    COUNTY OF SAN JOAQUIN
    6 South El Dorado Street, 2nd Floor
    Stockton, CA 95202

FROM: Lead Agency
    City of Stockton
c/o Community Development Dept.
    Planning Division
    425 North El Dorado Street
    Stockton, CA 95202-1997

APR 18 2005

NOTICE OF EXEMPTION PURSUANT TO PUBLIC RESOURCES CODE SECTION 21152(B) AND CALIFORNIA
CODE OF REGULATIONS TITLE 14, SECTION 15062

PROJECT DATA
Project Title: Acquisition of lease from the State Lands Commission for storm water outfall – Pixley Slough/Spanos
Park
CEQA Exemption File No.: CE82-05
Applicant: City of Stockton Housing and Redevelopment Department
Project Description/Location: Acquisition of lease from the State Lands Commission for storm water outfall – Pixley
Slough/Spanos Park (HRD/mw).

DETERMINATION/FINDING OF EXEMPTION
The above-described activity/project is exempt from the environmental assessment requirements of the California
Environmental Quality Act (CEQA) pursuant to the following section(s) of the State CEQA Guidelines (California Code
of Regulations, Title 14):

X The activity is not a "project" as defined in Section 15378.
X The activity is exempt under the "general rule" that CEQA applies only to projects which have the potential for
  causing significant environmental effects, as specified in Section 15061(B)(3).
    The project has been granted a "Statutory Exemption" under Article 18 and, specifically, by Section(s):

BASIS FOR FINDING OF EXEMPTION
X The activity does not qualify as a project and/or clearly could not have a significant effect on the environment
and, therefore, CEQA does not apply.
    The activity constitutes a discretionary project under the City's jurisdiction and qualifies as a project which has
been determined not to have a significant effect on the environment and, therefore, is exempt from the
provisions of CEQA under the above-noted statutory or categorical exemption(s).

JAMES E. GLASER, DIRECTOR
COMMUNITY DEVELOPMENT DEPARTMENT

April 13, 2005
DATE OF PREPARATION

MARK MARTIN, PROJECT MANAGER II

DATE OF FINAL APPROVAL

AFFIDAVIT OF FILING AND POSTING
I declare that on the date stamped above, I received and posted this notice or included it on a list of such notices which
was posted as required by California Public Resources Code Section 21152(B). Said notice or list of notices will
remain posted for 35 days from the filing date.

Signature

Posting Period Ending Date

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Rev. 7-19-02

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LEASE PRC 8305.9

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 4
Section 3  Description of Lease Premises
Section 4  General Provisions

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 STOCKTON
DEPARTMENT OF MUNICIPAL UTILITIES

hereinafter referred to as Lessee:

WHOSE MAILING ADDRESS IS:  2500 Navy Street
                               Stockton, CA 95206
those certain lands described in Section 3 subject to the reservations, terms, covenants and conditions of this Lease.

**LEASE TYPE:** General Lease - Public Agency

**LAND TYPE:** Sovereign

**LOCATION:** Pixley Slough, near the city of Stockton, San Joaquin County

**LAND USE OR PURPOSE:** The continued use and maintenance of a storm water outfall and bank protection

**TERM:** Twenty (20) years; beginning June 14, 2001; ending June 13, 2021, unless sooner terminated as provided under this Lease.

**CONSIDERATION:** The public use and benefit; with the State reserving the right to at any time to set a monetary rent if the Commission finds such action to be in the State's best interest.

Subject to modification by Lessor as specified in Paragraph 2(b) of Section 4 - General Provisions.

**AUTHORIZED IMPROVEMENTS:** A storm water outfall consisting of five (5) 36-inch diameter steel discharge lines and one (1) 12-inch diameter steel discharge line and bank protection

**EXISTING:**

**N/A** TO BE CONSTRUCTED; CONSTRUCTION MUST BEGIN BY:

AND BE COMPLETED BY:

**LIABILITY INSURANCE:** N/A

**SURETY BOND OR OTHER SECURITY:** N/A

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**SECTION 2**

**SPECIAL PROVISIONS**

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

NO ADDITIONAL CONDITIONS
LEGAL DESCRIPTION
LEASE PARCEL FROM THE
STATE LANDS COMMISSION

All that certain real property situate, lying and being in the City of Stockton, County of San Joaquin, State of California, described as follows:

Being a portion of Section 1, Township 2 North, Range 5 East, Mount Diablo Base and Meridian and being more particularly described as follows:

Commencing at Southeast corner of said Section 1, as shown on the map of A.G. SPANOS PARK, UNIT NO. 9, filed in Book 32, of Maps and Plats, at Page 77, San Joaquin County Records; thence North 66°19'35" West, 2450.67 feet to the TRUE POINT OF BEGINNING of this description; thence South 07°00'02" East 60.00 feet; thence South 82°59'58" West 100.00 feet; thence North 07°00'02" West 60.00 feet; thence North 82°59'58" East 100.00 feet to the point of beginning.

Containing 6000 Sq. Ft. or 0.138 acres

The basis of bearings for the above description is a bearing of North 11°10'39" West between City of Stockton control monuments 1001 and 0162, as calculated from data shown on City of Stockton Horizontal Control System Phases XII and XIII, filed in Book 33 of Surveys, at Page 20, San Joaquin County Records.
SECTION 4

SPECIAL PROVISIONS

1. GENERAL
   These provisions are applicable to all leases, permits, rights-of-way, easements, or licenses or other interests in real property conveyed by the State Lands Commission.

2. CONSIDERATION
   (a) Categories
   (1) Rental
       Lessee shall pay the annual rental as stated in this Lease to Lessor without deduction, delay or offset, on or before the beginning date of this Lease and on or before each anniversary of its beginning date during each year of the Lease term.
   
   (2) 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 State Lands Commission, at its sole discretion, determines that such action is in the best interest of the State.

   (b) 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. No such modification shall become effective unless Lessee is given at least thirty (30) days notice prior to the effective date.

   (c) Penalty and Interest
       Any installments of rental accruing under this Lease not paid when due shall be subject to a penalty and shall bear interest as specified in Public Resources Code Section 6224 and the Lessor's then existing administrative regulations governing penalty and interest.

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

4. LAND USE
   (a) General
       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. Lessee shall notify Lessor within ten (10) days after commencing the construction of authorized improvements and within sixty (60) days after completing them. Lessee's discontinuance of such use for a period of ninety (90) days shall be conclusively presumed to be an abandonment.

   (b) Continuous Use
       Lessee's use of the Lease Premises shall be continuous from commencement of the Lease until its expiration.

   (c) Repairs and Maintenance
       Lessee shall, at its own expense, keep and maintain the Lease Premises and all improvements in good order and repair and in safe condition. Lessor shall have no obligation for such repair and maintenance.

   (d) Additions, Alterations and Removal
       (1) Additions - 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.
       
       (2) Alteration or Removal - Except as provided under this Lease, no alteration or removal of improvements on or natural features of the Lease Premises shall be undertaken without the prior written consent of Lessor.

   (e) Conservation
       Lessee shall practice conservation of water, energy, and other natural resources and shall prevent pollution and harm to the environment. Lessee shall not violate any law or regulation whose purpose is to conserve resources or to protect the environment. Violation of this section shall constitute grounds for termination of the Lease. Lessor, by its executive officer, shall notify Lessee, when in his or her opinion, Lessee has violated the provisions of this section and Lessee shall respond and discontinue the conduct or remedy the condition within 30 days.

   (f) Toxics
       Lessee shall not manufacture or generate hazardous wastes on the Lease Premises unless specifically authorized under other terms of this Lease. Lessee shall be fully responsible for any hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored, or transported on the Lease Premises during the Lease term and shall comply with and be bound by applicable provisions of such federal, state or local law, regulation or ordinance dealing with such wastes, substances or materials. Lessee shall notify Lessor and the appropriate governmental emergency response agency(ies) immediately in the event of any release or threatened release of any such wastes, substances or materials.
(g) Enjoyment
Subject to the provisions of paragraph 5 (a) (2) below, nothing in this Lease shall preclude Lessee from excluding persons from the Lease Premises when their presence or activity constitutes a material interference with Lessee's use and enjoyment of the Lease Premises as provided under this Lease.

(h) Discrimination
Lessee in its use of the Lease Premises shall not discriminate against any person or class of persons on the basis of race, color, creed, religion, national origin, sex, age, or handicap.

(i) Residential Use
No portion of the Lease Premises shall be used as a location for a residence or for the purpose of mooring a structure which is used as a residence. For purposes of this Lease, a residence or floating residence includes but is not limited to boats, barges, houseboats, trailers, cabins or combinations of such facilities or other such structures which provide overnight accommodations to the Lessee or others.

5. 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 and minerals as defined under Public Resources Code Sections 6401 and 6407, as well as the right to grant leases in and over the Lease Premises for the extraction of such natural resources; however, 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 purpose 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
This Lease 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.

6. 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 other governmental agency or entity having lawful authority and jurisdiction.

(b) Lessee understands and agrees that a necessary condition for the granting and continued existence of this Lease is that Lessee obtain and maintain all permits or other entitlements.

(c) Lessee accepts responsibility for and agrees to pay any and all possessory interest taxes, assessments, user fees or service charges imposed on or associated with the leasehold interest, improvements or the Lease Premises, and such payment shall not reduce rental due Lessor under this Lease and Lessor shall have no liability for such payment.

7. INDEMNITY
(a) Lessor shall not be liable and Lessee shall indemnify, hold harmless and, at the option of Lessor, defend Lessor, its officers, agents, and employees against and for any and all liability, claims, damages or injuries of any kind and from any cause, arising out of or connected in any way with the issuance, enjoyment or breach of this Lease or Lessee's use of the Lease Premises except for any such liability, claims, damages or injuries solely caused by the negligence of Lessor, its officers, agents and employees.

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

8. 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, insuring Lessee and Lessor 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 or policies shall name the State of California, its officers, employees and volunteers as insureds as to the Lease Premises and shall identify the Lease by its assigned number. Lessee shall provide Lessor with a certificate of such insurance and shall keep such certificate current. The policy (or endorsement) must provide that the insurer will not cancel the insured's coverage without thirty (30) days prior written notice to Lessor. Lessor will not be responsible for any premiums or other assessments on the
policy. The coverage provided by the insured (Lessee) shall be primary and non-contributing.

(c) The insurance coverage specified in this Lease shall be in effect at all times during the Lease term and subsequently until all of the Lease Premises have been either accepted as improved, by Lessor, or restored by Lessee as provided elsewhere in this Lease.

9. SURETY BOND
(a) Lessee shall provide a surety bond or other security device acceptable to Lessor, for the specified amount, and naming the State of California 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, alterations or purposes and any modification of consideration.

(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 all of the Lease Premises have been either accepted as improved, by Lessor, or restored by Lessee as provided elsewhere in this Lease.

10. 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.

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

(1) If Lessee is a corporation, any dissolution, merger, consolidation or other reorganization of Lessee or sale or other transfer of a percentage of capital stock of Lessee which results in a change of controlling persons, or the sale or other transfer of substantially all the assets of Lessee;

(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, it shall be appurtenant to adjoining littoral or riparian land and 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 prior written notice to Lessor;

(2) Provide the name and complete business organization and operational structure 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. If the proposed assignee, sublessee or secured third party is a general or limited partnership, or a joint venture, provide a copy of the partnership agreement or joint venture agreement, as applicable;

(3) Provide the terms and conditions of the proposed assignment, sublease, or encumbrancing 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.

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.

(f) Lessee's mortgage or hypothecation of this Lease, if approved by Lessor, shall be subject to terms and conditions found in a separately drafted standard form (Agreement and Consent to Encumbrancing of Lease) available from Lessor upon request.

(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.

(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.

11. 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 or breach of the Lease by Lessee:

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

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

(3) Lessee's vacation or abandonment of the Lease Premises (including the covenant for continuous use as provided for in paragraph 4) during the Lease term;

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

(5) Lessee's failure to comply with all applicable provisions of federal, state or local law, regulation or ordinance dealing with hazardous waste, substances or materials as defined under such law;

(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; and/or

(7) Lessee's failure to comply with applicable provisions of federal, state or local laws or ordinances relating to issues of Health and Safety, or whose purpose is to conserve resources or to protect the environment.

(b) Lessee's failure to observe or perform any other term, covenant or condition of this Lease to be observed or performed by the Lessee when such failure shall continue for a period of thirty (30) days after Lessor's giving written notice; however, if the nature of Lessee's default or breach 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 or breach if Lessee commences such cure within such thirty (30) day period and diligently proceeds with such cure to completion.

(c) Remedies
In the event of a default or breach by Lessee and Lessee's failure to cure such default or breach, Lessor may at any time and with or without notice do any one or more of the following:

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

(2) Terminate this Lease and Lessor's right of possession of the Lease Premises. Such termination shall be effective upon Lessor's giving written notice and upon receipt of such notice Lessee shall immediately surrender possession of the Lease Premises to Lessor;

(3) Maintain this Lease in full force and effect and recover any rental, 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; and/or

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

12. RESTORATION OF LEASE PREMISES
(a) Upon expiration or sooner termination of this Lease, Lessor upon written notice may take title to any or all improvements, including fills, or Lessor may require Lessee to remove all or any such improvements at its sole expense and risk; or Lessor may itself remove or have removed all or any portion of such improvements at Lessee's sole expense. 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.

(b) In removing any such improvements Lessee shall restore the Lease Premises as nearly as possible to the conditions existing prior to their installation or construction.

(c) All plans for and subsequent removal and restoration shall be to the satisfaction of Lessor and shall be completed within ninety (90) days after the expiration or sooner termination of this Lease or after compliance with paragraph 12(d), whichever is the lesser.

(d) In removing any or all the improvements Lessee shall be required to obtain any permits or other governmental approvals as may then be required by lawful authority.
(c) 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 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 the term of the Lease. Lessee shall provide the results of the assessment or inspection to Lessor and the appropriate governmental response agency(ies) and shall further be responsible for removing or taking other appropriate remedial action regarding such wastes, substances or materials in accordance with applicable federal, state or local law regulation or ordinance.

13. QUITCLAIM
Lessee shall, within ninety (90) days of the expiration or sooner termination of this Lease, 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, a written notice by Lessor reciting such failure or refusal shall, from the date of its recordation, be conclusive evidence against Lessee of the termination of this Lease and all other claimants.

14. HOLDING-OVER
Any holding-over by Lessee after the expiration of the Lease term, with or without the express or implied consent of Lessor, shall constitute a tenancy from month to month and not an extension of the Lease term and shall be on the terms, covenants, and conditions of this Lease, except that the annual rental then in effect shall be increased by twenty-five percent (25%).

15. ADDITIONAL PROVISIONS
(a) Waiver
(1) No term, covenant, or condition of this Lease and no 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.

(2) Any such waiver shall not be deemed to be a waiver of any other term, covenant or condition of any other default or breach of any term, covenant or condition of this Lease.

(b) Time
Time is of the essence of 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, 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 captions of this Lease are not controlling and shall have no effect upon its construction or interpretation.

(i) Severability
If any term, covenant or condition of this Lease is determined by a court of competent jurisdiction to be invalid, it shall be considered deleted and shall invalidate any of the remaining terms, covenants and conditions.
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.

CITY OF STOCKTON

Title: __________________________
Date: __________________________

STATE OF CALIFORNIA
STATE LANDS COMMISSION

By: ____________________________
Title: __________________________
Date: __________________________

ACKNOWLEDGEMENT

This Lease was authorized by the California State Lands Commission on

(Month  Day  Year)

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

By: ____________________________
DEPUTY CITY ATTORNEY

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