

APPENDIX A. EXISTING SAND MINING LEASES

RECORDED AT THE REQUEST OF

AND WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA

California State Lands Commission
Attn: Title Unit

100 Howe Ave., 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

County: San Francisco, Marin,

LEASE NO. PRC 709.1

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	Site and Location Map
Exhibit B	Land Description
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 **Hanson Marine Operations, Inc.**, hereinafter referred to as Lessee, those certain lands described in **Exhibit B** subject to the reservations, terms, covenants, and conditions of this Lease.

MAILING ADDRESS: 12667 Alcosta Blvd., Suite 400
San Ramon, CA 94583

LEASE TYPE: General Lease – Mineral Extraction

LAND TYPE: Sovereign Lands

LOCATION: Those certain parcels of land situated in San Francisco Bay, County of San Francisco, State of California, more particularly described in **Exhibit "B"** attached hereto and by this reference made a part hereof and subsequently referred to as the "Lease Premises"

LAND USE OR PURPOSE: Exclusive right to remove up to a maximum of **290,331** cubic yards of Sand and Gravel annually

TERM: 10 years; beginning January 1, 2013; ending December 31, 2022, unless sooner terminated as provided under this Lease.

CONSIDERATION:

- a) Annual Land Rent: Two dollars (\$2.00) per acre for a total of **one thousand six hundred sixty-one dollars (\$1,661)** on January 1, 2013 and on January 1 of each lease year thereafter.
- b) Minimum Biannual Royalty: Non-refundable minimum biannual royalty as stated in Section 2, Paragraph 2.
- c) Royalty: The greater of a Biannual Royalty as calculated in Section 2, Paragraph 2 or the Minimum Biannual Royalty stated in Section 2, Paragraph 2.

LIABILITY INSURANCE:

\$1,500,000 for personal liability and property damage insurance (combined single limit) and \$1,500,000 for insurance policy for protection of water quality and the environment.

SURETY BOND OR OTHER SECURITY: Notwithstanding Section 3, paragraph 9, Lessee shall furnish at the commencement of this Lease, and shall maintain throughout the term of this Lease, a bond or other security device in favor of Lessor and of the State of California in the amount of **\$75,850 for the period January 1, 2013 through December 31, 2022**, to guarantee the faithful performance by Lessee of the requirements, terms, covenants and conditions of this Lease, the provisions of the Public Resources Code and the rules and regulations of the State. The bond or other security amount shall be equal to the then current Minimum Biannual Royalty and one half of the annual land rent, rounded to the nearest dollar. At any time, Lessor may require an increase in the amount of the bond or other security device to cover any additionally authorized improvements, alterations or activities or any modification of consideration.

[Remainder of Page Intentionally Left Blank]

SECTION 2
SPECIAL PROVISIONS

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

1. **DEFINITIONS:** For the purposes of this lease the following definitions apply:

- A. Sand and Gravel: Sand, gravel and fill material.
- B. Biannual Periods: Each lease year shall consist of two biannual periods. The first biannual period shall be the period of January 1 through June 30 and the second biannual period shall extend from July 1 through December 31.
- C. Biannual Royalty: The royalty due Lessor for a biannual period for Sand and Gravel mined from the Leased Premises as calculated in Section 2, Paragraph 2.
- D. Minimum Biannual Royalty: The minimum royalty due Lessor for each biannual period regardless of whether there is mining of Sand and Gravel from the Leased Premises. The amount is specified in Section 2, Paragraph 2.B.
- E. Lease Year: A lease year shall be the first twelve (12) consecutive months following the commencement date of this Lease, and every twelve-month period thereafter.
- F. Producer Price Index: Producer Price Index for finished goods, not seasonally adjusted, as published in the Producer Price Index-Commodities, Series ID: WPUSOP3000 as it appears in the Bureau of Labor Statistics.
- G. Base Index: The Base Index is 185.1, a constant, and is equal to the Producer Price Index for the month of July 2008.
- H. Current Index: The Current Index is the Producer Price Index of the most recent July month or the most recent Producer Price Index if the July index is not available.

2. **Consideration:** Lessee shall pay royalty according to the following:

A. **Biannual Royalty Calculation:** Commencing on January 1, 2013 and continuing throughout the term of this Lease, Lessee shall pay to Lessor without deduction, delay or offset a Biannual Royalty determined according to the following formula:

- 1) Lessee shall calculate and pay the Biannual Royalty (R), in US Dollars, as the product of the cubic yardage of Sand and Gravel mined from the Lease Premises during the biannual period (Y) multiplied by the applicable Annually Adjusted Royalty Rate (A):

$$R = (Y)(A)$$

- 2) Commencing January 1, 2013 and annually thereafter on the lease anniversary date, the Annually Adjusted Royalty Rate (A) shall be recalculated effective January 1 of each lease year, upward or downward, based upon the annual change of the Current Index. If the July

index is not available at the time of calculation, the most current available index value shall be used.

- 3) The Adjusted Royalty Rate shall be calculated and rounded up to the nearest cent as follows:

$$\text{Annually Adjusted Royalty Rate (A)} = \left(\frac{(\text{Current Index} - \text{Base Index})}{\text{Base Index}} + 1 \right) \times \$2.09/\text{Cubic Yard}$$

- (a) *For hypothetical purposes only, assume that the royalty payment for the January 1, 2013 through June 30, 2013 biannual period is due. Because the current year is 2013, the Current Index is the July 2012 Producer Price Index (the latest July PPI index). Assume the July 2012 index is 191.0. Assume the Base Index is a constant and is 183.9. The Annually Adjusted Royalty Rate for the biannual period of January 1, 2013 through June 30, 2013, is therefore calculated as follows:*

$((191.0 - 183.9/183.9) + 1)$ multiplied by \$2.09/CY = \$2.17 per cubic yard (rounded to the nearest cent).

The Annually Adjusted Royalty Rate for the biannual period of January 1, 2013 through June 30, 2013, is therefore \$2.17 per cubic yard. Because the Annually Adjusted Royalty Rate only changes on January 1 of each calendar year, the Annually Adjusted Royalty Rate for the biannual period of July 1, 2013 through December 31, 2013 is also \$2.17 per cubic yard.

B. Minimum Biannual Royalty: The Minimum Biannual Royalty shall be **sixty thousand six hundred eighty dollars (\$60,680) for the period January 1, 2013 through December 31, 2017; seventy-five thousand eight hundred fifty dollars (\$75,850) for the period January 1, 2018 through December 31, 2022.** Minimum Biannual Royalty payments shall be credited against total royalties due during the biannual period. However, it shall not be credited against land rent, nor carried forward and applied as a credit against the Biannual Royalty obligations accruing under the Lease during any subsequent biannual period.

C. Royalty Payment Dates:

- 1) The initial Minimum Biannual Royalty shall be due and payable on January 1, 2013. Subsequent Minimum Biannual Royalty payments for each biannual period shall be due and payable in advance on January 1 and July 1 or the first business day of each biannual period whether or not Sand and Gravel is mined from the Lease Premises.
- 2) Biannual Royalties in excess of the Minimum Biannual Royalty for the immediately preceding biannual period shall be due and payable on or before the 25th day of February and August following the respective biannual period.

3. **Increase in Mining Volume:** The maximum mining volume stated in Section 1 – Land Use or Purpose above is based on the volume analyzed in Environmental Impact Report CSLC EIR No.

2007072036 and is the amount found in the "Environmentally Superior Alternative" or "Reduced Project Alternative." The authorized maximum mining volume shall be increased to the Proposed Project Mining Volume of **340,000** cubic yards provided that Lessee shall first provide to Lessor the following documentation:

- A. A copy of Lessee's Incidental Take Permit issued by the California Department of Fish and Game for the increased volume.
- B. A letter to Lessor from Lessee reciting Lessee's submittal to the California Air Resources Board (CARB) of its Compliance Plan and Demonstration of Compliance to Operate under Title 17, California Code of Regulations, section 93118.5. If requested by Lessor, Lessee shall provide documentation demonstrating such compliance within 15 days of such request.

Upon Lessee's request and presentation of the above documentation and if the documentation is sufficient to confirm Lessee's compliance with all requirements, Lessor's staff shall issue a letter authorizing the mining of the increased volume.

4. Mining Records and Reports:

- A. On or before the 25th day of each February and August, Lessee shall deliver to Lessor a Financial Sand Mining Report in the form prescribed by Lessor showing the work performed on the Lease Premises and on any other land Lessor deems necessary for it to make a determination of the amount, quality and value of all Sand and Gravel mined, shipped or sold, or whether any work was performed on the Lease Premises during the preceding biannual period. At the request of the Lessor, the Lessee shall provide all additional reasonable information necessary to interpret and evaluate the contents of Lessee's Sand Mining Report.
- B. All Financial Sand Mining Reports, royalty statements and sales and mining data shall be subject to audit by the Lessor or its duly appointed agent. Upon reasonable advance notice from Lessor to the Lessee, Lessee shall make available to Lessor, during business hours, Lessee's books, records, calculations and other materials that are directly related to the Lease Premises and any other land joined with the Lease Premises under Lessee's plan of operation and the contents of its Sand Mining Reports.
- C. Lessee waives any rights or objections it may have and consents to the examination, inspection and audit of the books and records of Lessee and any other party associated with the Sand and Gravel mining activities.
- D. Lessee shall, within 30 days of the Lessor's request, provide copies of all data arising from Lessee's operation on the Lease Premises including, but not limited to, surveys of the Lease Premises conducted by or for Lessee before and after Sand and Gravel mining under this Lease. All proprietary information and trade secrets shall be held in confidence by the State.
- E. Global Positioning System: Commencing January 1, 2013 and continuously thereafter during the term of this Lease, Lessee will employ an automated Global Positioning System, as approved by Lessor, to account for the number and location of all mining episodes conducted on the Lease Premises during the term of this Lease and will provide the Global Positioning Report to Lessor with the following written data and information:

- 1) The number of mining episodes that took place during the preceding calendar quarter; and
 - 2) The track line of each mining episode with the start and end point of each mining episode that took place during the preceding calendar quarter mapped on the most currently available NOAA chart, including a scale and north arrow, with the boundaries of the Leases overlaid on the chart. The name and registration number of such mining episode should be identified to correspond to each track line. All data shall be reported in a font of sufficient size so that it is readily legible and the track line can be easily discerned.
 - 3) The track lines will provide the location of the actual mining event and differentiate between the traveling or maneuvering periods of a mining episode and the actual Sand and Gravel mining periods. The recording equipment for the mining episode must meet the minimum reporting accuracy of ten feet (horizontal control) during all loading and transportation operations, and shall record position, at a maximum time interval of 10 seconds while within 2,000 feet of the lease area, and at one minute intervals otherwise.
 - 4) Plotting and raw data from the automated system shall also be made available for electronic download through the internet and by compact disc on a format such as "PDF" files as approved by Lessor's staff. If the information is provided via the internet by the required report date, the compact disc copy can be provided in a timely manner after the required reporting date.
 - 5) All data collected under subparagraphs 4.E.1) – 4.E.4) shall be submitted quarterly.
5. **Waiver of Use of Data:** Lessee waives any statutory or other right or objection to prevent disclosure to Lessor or a duly authorized employee or representative of Lessor of any information, reports, data or studies of any kind, filed by Lessee with any federal, State or local agency relating to the Lease Premises, or any operations carried out in connection with the Lease, irrespective of whether such information, reports, data or studies contain sensitive, proprietary or confidential information or trade secrets. All information, reports, data or studies filed by Lessee with any federal, State or local agency pursuant to this Lease, shall be available at all times for the use of Lessor or its duly authorized representatives for any purpose. Any information, reports, data or studies obtained by the State from any public agency which are not otherwise public records shall be deemed to have been "obtained in confidence" for purposes of Government Code Section 6254(e) and may be disclosed to other persons only with the written consent of Lessee or upon a determination by Lessor that such disclosure is in the public interest.
6. **In Place Sales:** Lessee, its operator(s), subcontractors and/or subleases shall not conduct any sales in place; that is, Lessee, its operator(s), subcontractors and/or sublessees shall conduct all operations on the Lease Premises and shall not permit purchaser of its products to engage in the mining of or purchase of Sand and Gravel at the mine site without the prior written consent of Lessor.
7. **Preservation of Property and Environmental Impact:**
- A. Lessee agrees to be bound by and fully carry out, implement, and comply with all mitigation measures and reporting obligations identified as Lessee's or Applicant's responsibility as set

forth in the Mitigation Monitoring Program (MMP), attached hereto as **Exhibit C**, and by reference made a part of this Lease, or as modified by Lessor as permitted by law.

- B. (1) Lessee shall reimburse Lessor for all reasonable and particular costs and expenditures incurred by Lessor in monitoring and enforcing Lessee's compliance with the MMP as described in the Reimbursement Agreement that the parties shall enter into for the purposes of implementing mitigation monitoring. These particular costs shall include, but not be limited to, reasonable expenditures for staff time and/or consultants, equipment, travel, and associated actual operating costs incurred by Lessor and any agency thereof in monitoring and ensuring compliance with and enforcing any and all mitigation measures in the MMP. For any and every quarter in which such costs are incurred, Lessor shall provide Lessee a quarterly itemization of all such costs, which shall be paid by Lessee within thirty (30) days of receipt of the itemization. Payment by Lessee shall be in a form and manner designated by the Commission Staff, is consistent with the requirements of State law, and will ensure efficiency and reasonable cost to Lessee.
- (2) In the event Lessee believes any claims for reimbursement under this Section are unreasonable and is not able to settle the dispute with the Commission Staff, Lessee may appeal the claim to the Commission, which shall hear the appeal at the earliest available publically noticed meeting.
- C. Lessee shall comply with all modifications of equipment and plans deemed necessary by Lessor, and with all conditions and restrictions established by other agencies having jurisdiction over Lessee's operations including, but not limited to, the Regional Water Quality Control Board, San Francisco Bay Conservation and Development Commission, California Department of Fish and Game, U.S. Coast Guard, National Marine Fisheries, U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers.
- D. Lessee shall perform all work under this Lease with due regard for the preservation of the Lease Premises and to the environmental impact of its operations in accordance with the following terms and conditions:
- 1) Pollution of rivers, lakes and other bodies of water, and impairment of and interference with navigation in such waters are prohibited. No refuse of any kind, except for normal oversize Sand and Gravel screenings, from any extraction or production activities shall be permitted to be deposited on or pass into waters of any rivers, lakes and other bodies of water without specific written authorization by Lessor.
 - 2) Access to mining sites by the public shall be controlled by Lessee to prevent accidents or injury to persons and/or property.
 - 3) The above are in addition to, and are not to be construed as limitations upon, all rules, regulations, restrictions, mitigation measures and all other measures designed to restrict, limit, modify or minimize the environmental impact of operations carried out pursuant to this Lease.
- E. Lessee hereby agrees to any and all restrictions, mitigation measures and other conditions adopted by the State or Federal agencies related to authorized Sand and Gravel mining

activities. Furthermore, Lessee agrees to comply with such other terms and conditions or limitations on its operations under this Lease which are considered necessary by the State.

F. Lessee shall use all reasonable precautions to prevent waste of, damage to, or loss of mineral resources, fisheries, wildlife and the environment on or in the Lease Premises and shall be liable to State for any such waste, damage or loss to the extent that such waste, damage, or loss is caused by:

- 1) The intentional or negligent acts of Lessee, its employees, servants, agents, or contractors;
- 2) The breach of any provision of this Lease by Lessee, its employees, servants, agents, or contractors; or
- 3) The noncompliance of the Lessee, its employees, servants, agents, or contractors, with applicable statutes or rules and regulations of State provided, however, that nothing herein shall diminish any other rights or remedies which State may have in connection with any such negligence, breach or noncompliance.

G. **Conduct of Operations:** Lessee shall safely conduct all mining operations in accordance with generally accepted mining methods and practices and with due regard for the protection of life and property, preservation of the environment and the conservation of natural resources.

H. **Suspension of Operations:** Lessor may temporarily suspend mining or any other operation by Lessee under this Lease whenever Lessor finds that the operation or operations, unless suspended, may pose an immediate and serious threat to life, health, property or natural resources or are otherwise not in the State's best interests. The suspension shall be effective immediately upon either oral or written notice by Lessor to Lessee. Any oral notice shall be followed by written confirmation. Lessor shall lift the suspension when Lessor finds, on the basis of evidence submitted by Lessee or otherwise available, that resumption of the suspended operation or operations no longer pose an immediate and serious threat to life, health, property or natural resources. No suspension ordered or approved shall relieve Lessee from any obligation under this Lease unless specifically provided.

8. **Covenants Regarding Pollution Legal Liability Insurance, Indemnification And Remediation:**

- A. Lessee agrees to purchase or amend an existing pollution legal liability insurance policy in the amount of \$1,500,000 which will expressly name Lessor as an additional insured and will cover Lessor for any and all claims and liability that might arise from environmental contamination traceable to Lessee's operations on or use of the Lease Premises
- B. Lessee further covenants to release Lessor from, and not seek contribution or cost recovery from Lessor for remediation costs or any other costs, damages, or other claims related to or arising from environmental contamination traceable to the operations on or use of the Lease Premises nor assign any and all such rights or claims to another person or entity.
- C. Lessee covenants that it will undertake the complete remediation of the Lease Premises from any environmental contamination traceable to Lessee's operations on or use of the Lease Premises upon the issuance of any order by any agency having jurisdiction over

such remediation and will release, hold harmless, defend and indemnify Lessor from liability for, and not seek contribution or cost recovery from Lessor for remediation costs or any other costs, damages, or any other claims related to or arising from environmental contamination traceable to Lessee's operations on or use of the Lease Premises nor assign any and all such rights or claims to another party or entity.

9. **Surface Mining and Reclamation Act of 1975:** Any reclamation plan drafted under the Surface Mining and Reclamation Act (Public Resources Code Section 2770 et seq.) or any subsequently issued plan shall be incorporated into this Lease. Lessee shall comply with the terms of this plan during Lessee's operations on the Lease Premises and upon any partial or total quitclaim, surrender, forfeiture or cancellation of this Lease.

10. **Challenges To Lease Or Environmental Review:**

- A. Lessee shall reimburse Lessor in full for all reasonable costs and attorney's fees, including, but not limited to, those charged it by the California Office of the Attorney General, that Lessor incurs in connection with the defense of any action brought against Lessor challenging the issuance of this Lease, any provision of this Lease, the environmental review upon which the issuance of this Lease is based, the interpretation or enforcement of the conditions of this Lease or any other matter related to this Lease, its issuance or enforcement. In addition, Lessee shall reimburse Lessor for any court costs and reasonable attorney fees that Lessor may be required by a court to pay as a result of such action.
- B. Lessee may participate in the defense of the action, but its participation shall not relieve it of its obligations under this Section 2, Paragraph 10.
- C. The provisions of this Section 2, Paragraph 10 shall not apply to any claims, litigation or other actions which may be brought by either Lessee or Lessor against each other and shall not apply to the extent that any such obligation under this Paragraph 10 is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Lease.
- D. Nothing in this Section 2, Paragraph 10 shall be construed to require Lessor to defend itself against all or any aspect of any challenge to this Lease or to 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.

11. **Holding Over:** Unless Lessee has complied in a timely manner with Section 2, Paragraph 15 – Application for New Lease - below, 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 or renewal of the lease term, and shall be subject to the terms, covenants, and conditions of this Lease. Upon request of Lessee, Lessor shall confirm in writing Lessee's hold-over status. Biannual Royalties, Minimum Biannual Royalties and annual land rents shall be increased by 125% of the applicable rate in the last biannual period and paid on the first day of each month at the rate of 1/12th of the applicable amount. This 125% holding-over increase is separate, distinct, in addition to, and does not preclude Lessor from ongoing annual increases in the Biannual Royalties Minimum Biannual Royalties and annual land rent as outlined in this Lease, during the holding over period.

12. **Multiple Use:** This Lease is entered into with the understanding that its purposes are and its administration shall be consistent with the principle of multiple use of public lands and resources. This Lease shall allow coexistence of other permits or leases of the same lands for deposits of mineral resources other than Sand and Gravel under applicable laws, and the existence of this Lease shall not preclude other uses of the Leased Premises. However, operations under such other permits or Leases or other such uses shall not unreasonably interfere with or endanger operations under this Lease, nor shall operations under this Lease unreasonably interfere with or endanger operations under any permit, lease or other entitlement for use issued pursuant to the provisions of any other act. This Lease shall not be construed as superseding the authority which any State department or agency has with respect to the management, protection, and utilization, of the lands and resources under its jurisdiction. Lessor may prescribe those conditions it deems necessary for the protection of other mineral resources.

13. **NOTICES:** All notices, statements, demands, correspondence or other communications required or permitted to be given hereunder shall be in writing and shall be given (i) personally, (ii) by certified or registered mail, postage prepaid, return receipt requested or (iii) by overnight or other courier or delivery service, freight prepaid, addressed as follows:

To Lessor: State Lands Commission
Attn.: Chief, Land Management Division
100 Howe Ave., Suite 100 South
Sacramento, CA 95825

To Lessee: Hanson Marine Operations
12667 Alcosta Blvd., Suite 400
San Ramon, CA 94583

Notices delivered by hand shall be deemed received when delivered, notices sent by certified or registered mail shall be deemed delivered and received four (4) days after deposit in the United States mail and notices sent by overnight courier or delivery service shall be deemed delivered on the business day following the day they were deposited with such overnight courier or delivery service. The addresses to which notices hereunder shall be mailed may be changed by written notice given by one Party to the other as provided above.

14. Quitclaim of Lease Prior to Expiration:

- A. Notwithstanding Section 3, Paragraph 13 of this Lease, at any time prior to the expiration of this Lease or its termination pursuant to Section 3, Paragraph 11, Lessee may file with Lessor a written request for Lessor to accept a quitclaim or relinquishment of all or any portion of the Lease Premises. A quitclaim or relinquishment shall be effective upon completion of any required abandonment of facilities and required reclamation of the Lease Premises as specified in this Lease or by any agency having jurisdiction over the lease activities and as approved by Lessor. Until that time, Lessee shall comply with all terms of this Lease including the payment of all rentals and royalties that have accrued.
- B. Lessee's request for Lessor's acceptance of a quitclaim or relinquishment of all or any portion of the Lease Premises shall be heard at Lessor's next regularly scheduled public meeting for which the request may be properly reviewed and noticed. Upon acceptance by Lessor, Lessee

shall be released from all obligations accruing under the Lease with respect to the lands quitclaimed or relinquished. Acceptance of a quitclaim by Lessor shall not release Lessee or Lessee's surety from liability for breach of any obligation of the lease for which the Lessee is in default at the time of acceptance.

C. There shall be no proration of rents and royalties paid prior to the acceptance of the quitclaim.

15. APPLICATION FOR NEW LEASE: If Lessee desires to continue to occupy and use the Lease Premises after expiration of this Lease, Lessee agrees to submit no later than two years prior to the expiration of this lease an application and minimum expense deposit for a new lease for the continued use of the Lease Premises. Failure to submit the application and minimum expense deposit shall be deemed a default of this Lease.

In the event of any conflict between the provisions of Section 2 and Section 3 of this Lease, the provisions of Section 2 shall prevail.

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
California State Lands Commission
Attn: Title Unit
100 Howe Ave., 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

County: San Francisco, Marin,

LEASE NO. PRC 2036.1

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	Site and Location Map
Exhibit B	Land Description
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 **Hanson Marine Operations, Inc.**, hereinafter referred to as Lessee, those certain lands described in **Exhibit B** subject to the reservations, terms, covenants, and conditions of this Lease.

MAILING ADDRESS: 12667 Alcosta Blvd., Suite 400
San Ramon, CA 94583

LEASE TYPE: General Lease – Mineral Extraction

LAND TYPE: Sovereign Lands

LOCATION: Those certain parcels of land situated in San Francisco Bay, County of San Francisco, State of California, more particularly described in **Exhibit "B"** attached hereto and by this reference made a part hereof and subsequently referred to as the "Lease Premises"

LAND USE OR PURPOSE: Exclusive right to remove up to a maximum of **252,637** cubic yards of Sand and Gravel annually

TERM: 10 years; beginning January 1, 2013; ending December 31, 2022, unless sooner terminated as provided under this Lease.

CONSIDERATION:

- a) Annual Land Rent: Two dollars (\$2.00) per acre for a total of **four hundred sixty-four dollars (\$464)** on January 1, 2013 and on January 1 of each lease year thereafter.
- b) Minimum Biannual Royalty: Non-refundable minimum biannual royalty as stated in Section 2, Paragraph 2.
- c) Royalty: The greater of a Biannual Royalty as calculated in Section 2, Paragraph 2 or the Minimum Biannual Royalty stated in Section 2, Paragraph 2.

LIABILITY INSURANCE:

\$1,500,000 for personal liability and property damage insurance (combined single limit)
and
\$1,500,000 for insurance policy for protection of water quality and the environment.

SURETY BOND OR OTHER SECURITY: Notwithstanding Section 3, paragraph 9, Lessee shall furnish at the commencement of this Lease, and shall maintain throughout the term of this Lease, a bond or other security device in favor of Lessor and of the State of California in the amount of **\$66,000 for the period January 1, 2013 through December 31, 2022**, to guarantee the faithful performance by Lessee of the requirements, terms, covenants and conditions of this Lease, the provisions of the Public Resources Code and the rules and regulations of the State. The bond or other security amount shall be equal to the then current Minimum Biannual Royalty and one half of the annual land rent, rounded to the nearest dollar. At any time, Lessor may require an increase in the amount of the bond or other security device to cover any additionally authorized improvements, alterations or activities or any modification of consideration.

[Remainder of Page Intentionally Left Blank]

SECTION 2
SPECIAL PROVISIONS

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

1. **DEFINITIONS:** For the purposes of this lease the following definitions apply:
 - A. Sand and Gravel: Sand, gravel and fill material.
 - B. Biannual Periods: Each lease year shall consist of two biannual periods. The first biannual period shall be the period of January 1 through June 30 and the second biannual period shall extend from July 1 through December 31.
 - C. Biannual Royalty: The royalty due Lessor for a biannual period for Sand and Gravel mined from the Leased Premises as calculated in Section 2, Paragraph 2.
 - D. Minimum Biannual Royalty: The minimum royalty due Lessor for each biannual period regardless of whether there is mining of Sand and Gravel from the Leased Premises. The amount is specified in Section 2, Paragraph 2.B.
 - E. Lease Year: A lease year shall be the first twelve (12) consecutive months following the commencement date of this Lease, and every twelve-month period thereafter.
 - F. Producer Price Index: Producer Price Index for finished goods, not seasonally adjusted, as published in the Producer Price Index-Commodities, Series ID: WPUSOP3000 as it appears in the Bureau of Labor Statistics.
 - G. Base Index: The Base Index is 185.1, a constant, and is equal to the Producer Price Index for the month of July 2008.
 - H. Current Index: The Current Index is the Producer Price Index of the most recent July month or the most recent Producer Price Index if the July index is not available.
2. **Consideration:** Lessee shall pay royalty according to the following:
 - A. **Biannual Royalty Calculation:** Commencing on January 1, 2013 and continuing throughout the term of this Lease, Lessee shall pay to Lessor without deduction, delay or offset a Biannual Royalty determined according to the following formula:
 - 1) Lessee shall calculate and pay the Biannual Royalty (R), in US Dollars, as the product of the cubic yardage of Sand and Gravel mined from the Lease Premises during the biannual period (Y) multiplied by the applicable Annually Adjusted Royalty Rate (A):
$$R = (Y)(A)$$
 - 2) Commencing January 1, 2013 and annually thereafter on the lease anniversary date, the Annually Adjusted Royalty Rate (A) shall be recalculated effective January 1 of each lease year, upward or downward, based upon the annual change of the Current Index. If the July

index is not available at the time of calculation, the most current available index value shall be used.

- 3) The Adjusted Royalty Rate shall be calculated and rounded up to the nearest cent as follows:

Annually Adjusted Royalty Rate (A) =

$$\left(\frac{(\text{Current Index} - \text{Base Index})}{\text{Base Index}} + 1 \right) \times \$2.09/\text{Cubic Yard}$$

- (a) *For hypothetical purposes only, assume that the royalty payment for the January 1, 2013 through June 30, 2013 biannual period is due. Because the current year is 2013, the Current Index is the July 2012 Producer Price Index (the latest July PPI index). Assume the July 2012 index is 191.0. Assume the Base Index is a constant and is 183.9. The Annually Adjusted Royalty Rate for the biannual period of January 1, 2013 through June 30, 2013, is therefore calculated as follows:*

$((191.0 - 183.9/183.9) + 1)$ multiplied by $\$2.09/\text{CY} = \2.17 per cubic yard (rounded to the nearest cent).

The Annually Adjusted Royalty Rate for the biannual period of January 1, 2013 through June 30, 2013, is therefore $\$2.17$ per cubic yard. Because the Annually Adjusted Royalty Rate only changes on January 1 of each calendar year, the Annually Adjusted Royalty Rate for the biannual period of July 1, 2013 through December 31, 2013 is also $\$2.17$ per cubic yard.

- B. **Minimum Biannual Royalty:** The Minimum Biannual Royalty shall be **fifty-two thousand eight hundred dollars (\$52,800) for the period January 1, 2013 through December 31, 2017; sixty-six thousand dollars (\$66,000) for the period January 1, 2018 through December 31, 2022.** Minimum Biannual Royalty payments shall be credited against total royalties due during the biannual period. However, it shall not be credited against land rent, nor carried forward and applied as a credit against the Biannual Royalty obligations accruing under the Lease during any subsequent biannual period.

C. **Royalty Payment Dates:**

- 1) The initial Minimum Biannual Royalty shall be due and payable on January 1, 2013. Subsequent Minimum Biannual Royalty payments for each biannual period shall be due and payable in advance on January 1 and July 1 or the first business day of each biannual period whether or not Sand and Gravel is mined from the Lease Premises.
- 2) Biannual Royalties in excess of the Minimum Biannual Royalty for the immediately preceding biannual period shall be due and payable on or before the 25th day of February and August following the respective biannual period.

3. **Increase in Mining Volume:** The maximum mining volume stated in Section 1 – Land Use or Purpose above is based on the volume analyzed in Environmental Impact Report CSLC EIR No. 2007072036 and is the amount found in the “Environmentally Superior Alternative” or “Reduced Project Alternative.” The authorized maximum mining volume shall be increased to the Proposed

Project Mining Volume of **450,000** cubic yards provided that Lessee shall first provide to Lessor the following documentation:

- A. A copy of Lessee's Incidental Take Permit issued by the California Department of Fish and Game for the increased volume.
- B. A letter to Lessor from Lessee reciting Lessee's submittal to the California Air Resources Board (CARB) of its Compliance Plan and Demonstration of Compliance to Operate under Title 17, California Code of Regulations, section 93118.5. If requested by Lessor, Lessee shall provide documentation demonstrating such compliance within 15 days of such request.

Upon Lessee's request and presentation of the above documentation and if the documentation is sufficient to confirm Lessee's compliance with all requirements, Lessor's staff shall issue a letter authorizing the mining of the increased volume.

4. Mining Records and Reports:

- A. On or before the 25th day of each February and August, Lessee shall deliver to Lessor a Financial Sand Mining Report in the form prescribed by Lessor showing the work performed on the Lease Premises and on any other land Lessor deems necessary for it to make a determination of the amount, quality and value of all Sand and Gravel mined, shipped or sold, or whether any work was performed on the Lease Premises during the preceding biannual period. At the request of the Lessor, the Lessee shall provide all additional reasonable information necessary to interpret and evaluate the contents of Lessee's Sand Mining Report.
- B. All Financial Sand Mining Reports, royalty statements and sales and mining data shall be subject to audit by the Lessor or its duly appointed agent. Upon reasonable advance notice from Lessor to the Lessee, Lessee shall make available to Lessor, during business hours, Lessee's books, records, calculations and other materials that are directly related to the Lease Premises and any other land joined with the Lease Premises under Lessee's plan of operation and the contents of its Sand Mining Reports.
- C. Lessee waives any rights or objections it may have and consents to the examination, inspection and audit of the books and records of Lessee and any other party associated with the Sand and Gravel mining activities.
- D. Lessee shall, within 30 days of the Lessor's request, provide copies of all data arising from Lessee's operation on the Lease Premises including, but not limited to, surveys of the Lease Premises conducted by or for Lessee before and after Sand and Gravel mining under this Lease. All proprietary information and trade secrets shall be held in confidence by the State.
- E. Global Positioning System: Commencing January 1, 2013 and continuously thereafter during the term of this Lease, Lessee will employ an automated Global Positioning System, as approved by Lessor, to account for the number and location of all mining episodes conducted on the Lease Premises during the term of this Lease and will provide the Global Positioning Report to Lessor with the following written data and information:

- 1) The number of mining episodes that took place during the preceding calendar quarter; and

- 2) The track line of each mining episode with the start and end point of each mining episode that took place during the preceding calendar quarter mapped on the most currently available NOAA chart, including a scale and north arrow, with the boundaries of the Leases overlaid on the chart. The name and registration number of such mining episode should be identified to correspond to each track line. All data shall be reported in a font of sufficient size so that it is readily legible and the track line can be easily discerned.
 - 3) The track lines will provide the location of the actual mining event and differentiate between the traveling or maneuvering periods of a mining episode and the actual Sand and Gravel mining periods. The recording equipment for the mining episode must meet the minimum reporting accuracy of ten feet (horizontal control) during all loading and transportation operations, and shall record position, at a maximum time interval of 10 seconds while within 2,000 feet of the lease area, and at one minute intervals otherwise.
 - 4) Plotting and raw data from the automated system shall also be made available for electronic download through the internet and by compact disc on a format such as "PDF" files as approved by Lessor's staff. If the information is provided via the internet by the required report date, the compact disc copy can be provided in a timely manner after the required reporting date.
 - 5) All data collected under subparagraphs 4.E.1) – 4.E.4) shall be submitted quarterly.
5. **Waiver of Use of Data:** Lessee waives any statutory or other right or objection to prevent disclosure to Lessor or a duly authorized employee or representative of Lessor of any information, reports, data or studies of any kind, filed by Lessee with any federal, State or local agency relating to the Lease Premises, or any operations carried out in connection with the Lease, irrespective of whether such information, reports, data or studies contain sensitive, proprietary or confidential information or trade secrets. All information, reports, data or studies filed by Lessee with any federal, State or local agency pursuant to this Lease, shall be available at all times for the use of Lessor or its duly authorized representatives for any purpose. Any information, reports, data or studies obtained by the State from any public agency which are not otherwise public records shall be deemed to have been "obtained in confidence" for purposes of Government Code Section 6254(e) and may be disclosed to other persons only with the written consent of Lessee or upon a determination by Lessor that such disclosure is in the public interest.
6. **In Place Sales:** Lessee, its operator(s), subcontractors and/or subleases shall not conduct any sales in place; that is, Lessee, its operator(s), subcontractors and/or sublessees shall conduct all operations on the Lease Premises and shall not permit purchaser of its products to engage in the mining of or purchase of Sand and Gravel at the mine site without the prior written consent of Lessor.
7. **Preservation of Property and Environmental Impact:**
- A. Lessee agrees to be bound by and fully carry out, implement, and comply with all mitigation measures and reporting obligations identified as Lessee's or Applicant's responsibility as set forth in the Mitigation Monitoring Program (MMP), attached hereto as **Exhibit C**, and by reference made a part of this Lease, or as modified by Lessor as permitted by law.

B. (1) Lessee shall reimburse Lessor for all reasonable and particular costs and expenditures incurred by Lessor in monitoring and enforcing Lessee's compliance with the MMP as described in the Reimbursement Agreement that the parties shall enter into for the purposes of implementing mitigation monitoring. These particular costs shall include, but not be limited to, reasonable expenditures for staff time and/or consultants, equipment, travel, and associated actual operating costs incurred by Lessor and any agency thereof in monitoring and ensuring compliance with and enforcing any and all mitigation measures in the MMP. For any and every quarter in which such costs are incurred, Lessor shall provide Lessee a quarterly itemization of all such costs, which shall be paid by Lessee within thirty (30) days of receipt of the itemization. Payment by Lessee shall be in a form and manner designated by the Commission Staff, is consistent with the requirements of State law, and will ensure efficiency and reasonable cost to Lessee.

(2) In the event Lessee believes any claims for reimbursement under this Section are unreasonable and is not able to settle the dispute with the Commission Staff, Lessee may appeal the claim to the Commission, which shall hear the appeal at the earliest available publically noticed meeting.

C. Lessee shall comply with all modifications of equipment and plans deemed necessary by Lessor, and with all conditions and restrictions established by other agencies having jurisdiction over Lessee's operations including, but not limited to, the Regional Water Quality Control Board, San Francisco Bay Conservation and Development Commission, California Department of Fish and Game, U.S. Coast Guard, National Marine Fisheries, U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers.

D. Lessee shall perform all work under this Lease with due regard for the preservation of the Lease Premises and to the environmental impact of its operations in accordance with the following terms and conditions:

- 1) Pollution of rivers, lakes and other bodies of water, and impairment of and interference with navigation in such waters are prohibited. No refuse of any kind, except for normal oversize Sand and Gravel screenings, from any extraction or production activities shall be permitted to be deposited on or pass into waters of any rivers, lakes and other bodies of water without specific written authorization by Lessor.
- 2) Access to mining sites by the public shall be controlled by Lessee to prevent accidents or injury to persons and/or property.
- 3) The above are in addition to, and are not to be construed as limitations upon, all rules, regulations, restrictions, mitigation measures and all other measures designed to restrict, limit, modify or minimize the environmental impact of operations carried out pursuant to this Lease.

E. Lessee hereby agrees to any and all restrictions, mitigation measures and other conditions adopted by the State or Federal agencies related to authorized Sand and Gravel mining activities. Furthermore, Lessee agrees to comply with such other terms and conditions or limitations on its operations under this Lease which are considered necessary by the State.

F. Lessee shall use all reasonable precautions to prevent waste of, damage to, or loss of mineral resources, fisheries, wildlife and the environment on or in the Lease Premises and shall be liable to State for any such waste, damage or loss to the extent that such waste, damage, or loss is caused by:

- 1) The intentional or negligent acts of Lessee, its employees, servants, agents, or contractors;
- 2) The breach of any provision of this Lease by Lessee, its employees, servants, agents, or contractors; or
- 3) The noncompliance of the Lessee, its employees, servants, agents, or contractors, with applicable statutes or rules and regulations of State provided, however, that nothing herein shall diminish any other rights or remedies which State may have in connection with any such negligence, breach or noncompliance.

G. **Conduct of Operations:** Lessee shall safely conduct all mining operations in accordance with generally accepted mining methods and practices and with due regard for the protection of life and property, preservation of the environment and the conservation of natural resources.

H. **Suspension of Operations:** Lessor may temporarily suspend mining or any other operation by Lessee under this Lease whenever Lessor finds that the operation or operations, unless suspended, may pose an immediate and serious threat to life, health, property or natural resources or are otherwise not in the State's best interests. The suspension shall be effective immediately upon either oral or written notice by Lessor to Lessee. Any oral notice shall be followed by written confirmation. Lessor shall lift the suspension when Lessor finds, on the basis of evidence submitted by Lessee or otherwise available, that resumption of the suspended operation or operations no longer pose an immediate and serious threat to life, health, property or natural resources. No suspension ordered or approved shall relieve Lessee from any obligation under this Lease unless specifically provided.

8. **Covenants Regarding Pollution Legal Liability Insurance, Indemnification And Remediation:**

- A. Lessee agrees to purchase or amend an existing pollution legal liability insurance policy in the amount of \$1,500,000 which will expressly name Lessor as an additional insured and will cover Lessor for any and all claims and liability that might arise from environmental contamination traceable to Lessee's operations on or use of the Lease Premises
- B. Lessee further covenants to release Lessor from, and not seek contribution or cost recovery from Lessor for remediation costs or any other costs, damages, or other claims related to or arising from environmental contamination traceable to the operations on or use of the Lease Premises nor assign any and all such rights or claims to another person or entity.
- C. Lessee covenants that it will undertake the complete remediation of the Lease Premises from any environmental contamination traceable to Lessee's operations on or use of the Lease Premises upon the issuance of any order by any agency having jurisdiction over such remediation and will release, hold harmless, defend and indemnify Lessor from liability for, and not seek contribution or cost recovery from Lessor for remediation costs or any other costs, damages, or any other claims related to or arising from environmental

contamination traceable to Lessee's operations on or use of the Lease Premises nor assign any and all such rights or claims to another party or entity.

9. **Surface Mining and Reclamation Act of 1975:** Any reclamation plan drafted under the Surface Mining and Reclamation Act (Public Resources Code Section 2770 et seq.) or any subsequently issued plan shall be incorporated into this Lease. Lessee shall comply with the terms of this plan during Lessee's operations on the Lease Premises and upon any partial or total quitclaim, surrender, forfeiture or cancellation of this Lease.

10. **Challenges To Lease Or Environmental Review:**

- A. Lessee shall reimburse Lessor in full for all reasonable costs and attorney's fees, including, but not limited to, those charged it by the California Office of the Attorney General, that Lessor incurs in connection with the defense of any action brought against Lessor challenging the issuance of this Lease, any provision of this Lease, the environmental review upon which the issuance of this Lease is based, the interpretation or enforcement of the conditions of this Lease or any other matter related to this Lease, its issuance or enforcement. In addition, Lessee shall reimburse Lessor for any court costs and reasonable attorney fees that Lessor may be required by a court to pay as a result of such action.
- B. Lessee may participate in the defense of the action, but its participation shall not relieve it of its obligations under this Section 2, Paragraph 10.
- C. The provisions of this Section 2, Paragraph 10 shall not apply to any claims, litigation or other actions which may be brought by either Lessee or Lessor against each other and shall not apply to the extent that any such obligation under this Paragraph 10 is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Lease.
- D. Nothing in this Section 2, Paragraph 10 shall be construed to require Lessor to defend itself against all or any aspect of any challenge to this Lease or to 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.

11. **Holding Over:** Unless Lessee has complied in a timely manner with Section 2, Paragraph 15 - Application for New Lease - below, 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 or renewal of the lease term, and shall be subject to the terms, covenants, and conditions of this Lease. Upon request of Lessee, Lessor shall confirm in writing Lessee's hold-over status. Biannual Royalties, Minimum Biannual Royalties and annual land rents shall be increased by 125% of the applicable rate in the last biannual period and paid on the first day of each month at the rate of 1/12th of the applicable amount. This 125% holding-over increase is separate, distinct, in addition to, and does not preclude Lessor from ongoing annual increases in the Biannual Royalties Minimum Biannual Royalties and annual land rent as outlined in this Lease, during the holding over period.

12. **Multiple Use:** This Lease is entered into with the understanding that its purposes are and its administration shall be consistent with the principle of multiple use of public lands and resources. This Lease shall allow coexistence of other permits or leases of the same lands for deposits of

mineral resources other than Sand and Gravel under applicable laws, and the existence of this Lease shall not preclude other uses of the Leased Premises. However, operations under such other permits or Leases or other such uses shall not unreasonably interfere with or endanger operations under this Lease, nor shall operations under this Lease unreasonably interfere with or endanger operations under any permit, lease or other entitlement for use issued pursuant to the provisions of any other act. This Lease shall not be construed as superseding the authority which any State department or agency has with respect to the management, protection, and utilization, of the lands and resources under its jurisdiction. Lessor may prescribe those conditions it deems necessary for the protection of other mineral resources.

13. **NOTICES:** All notices, statements, demands, correspondence or other communications required or permitted to be given hereunder shall be in writing and shall be given (i) personally, (ii) by certified or registered mail, postage prepaid, return receipt requested or (iii) by overnight or other courier or delivery service, freight prepaid, addressed as follows:

To Lessor: State Lands Commission
Attn.: Chief, Land Management Division
100 Howe Ave., Suite 100 South
Sacramento, CA 95825

To Lessee: Hanson Marine Operations
12667 Alcosta Blvd., Suite 400
San Ramon, CA 94583

Notices delivered by hand shall be deemed received when delivered, notices sent by certified or registered mail shall be deemed delivered and received four (4) days after deposit in the United States mail and notices sent by overnight courier or delivery service shall be deemed delivered on the business day following the day they were deposited with such overnight courier or delivery service. The addresses to which notices hereunder shall be mailed may be changed by written notice given by one Party to the other as provided above.

14. Quitclaim of Lease Prior to Expiration:

- A. Notwithstanding Section 3, Paragraph 13 of this Lease, at any time prior to the expiration of this Lease or its termination pursuant to Section 3, Paragraph 11, Lessee may file with Lessor a written request for Lessor to accept a quitclaim or relinquishment of all or any portion of the Lease Premises. A quitclaim or relinquishment shall be effective upon completion of any required abandonment of facilities and required reclamation of the Lease Premises as specified in this Lease or by any agency having jurisdiction over the lease activities and as approved by Lessor. Until that time, Lessee shall comply with all terms of this Lease including the payment of all rentals and royalties that have accrued.
- B. Lessee's request for Lessor's acceptance of a quitclaim or relinquishment of all or any portion of the Lease Premises shall be heard at Lessor's next regularly scheduled public meeting for which the request may be properly reviewed and noticed. Upon acceptance by Lessor, Lessee shall be released from all obligations accruing under the Lease with respect to the lands quitclaimed or relinquished. Acceptance of a quitclaim by Lessor shall not release Lessee or

Lessee's surety from liability for breach of any obligation of the lease for which the Lessee is in default at the time of acceptance.

C. There shall be no proration of rents and royalties paid prior to the acceptance of the quitclaim.

15. APPLICATION FOR NEW LEASE: If Lessee desires to continue to occupy and use the Lease Premises after expiration of this Lease, Lessee agrees to submit no later than two years prior to the expiration of this lease an application and minimum expense deposit for a new lease for the continued use of the Lease Premises. Failure to submit the application and minimum expense deposit shall be deemed a default of this Lease.

In the event of any conflict between the provisions of Section 2 and Section 3 of this Lease, the provisions of Section 2 shall prevail.

RECORDED AT THE REQUEST OF

AND WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
California State Lands Commission
Attn: Title Unit
100 Howe Ave., 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

County: San Francisco, Marin,

LEASE NO. PRC 7779.1

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	Site and Location Map
Exhibit B	Land Description
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 **Hanson Marine Operations, Inc.**, hereinafter referred to as Lessee, those certain lands described in **Exhibit B** subject to the reservations, terms, covenants, and conditions of this Lease.

MAILING ADDRESS: 12667 Alcosta Blvd., Suite 400
San Ramon, CA 94583

LEASE TYPE: General Lease – Mineral Extraction

LAND TYPE: Sovereign Lands

LOCATION: Those certain parcels of land situated in San Francisco Bay, County of San Francisco, State of California, more particularly described in **Exhibit "B"** attached hereto and by this reference made a part hereof and subsequently referred to as the "Lease Premises"

LAND USE OR PURPOSE: Exclusive right to remove up to a maximum of **390,440** cubic yards of Sand and Gravel annually

TERM: 10 years; beginning January 1, 2013; ending December 31, 2022, unless sooner terminated as provided under this Lease.

CONSIDERATION:

- a) Annual Land Rent: Two dollars (\$2.00) per acre for a total of **two thousand five hundred fifty-two dollars (\$2,552)** on January 1, 2013 and on January 1 of each lease year thereafter.
- b) Minimum Biannual Royalty: Non-refundable minimum biannual royalty as stated in Section 2, Paragraph 2.
- c) Royalty: The greater of a Biannual Royalty as calculated in Section 2, Paragraph 2 or the Minimum Biannual Royalty stated in Section 2, Paragraph 2.

LIABILITY INSURANCE:

\$1,500,000 for personal liability and property damage insurance (combined single limit) and \$1,500,000 for insurance policy for protection of water quality and the environment.

SURETY BOND OR OTHER SECURITY: Notwithstanding Section 3, paragraph 9, Lessee shall furnish at the commencement of this Lease, and shall maintain throughout the term of this Lease, a bond or other security device in favor of Lessor and of the State of California in the amount of **\$102,000 for the period January 1, 2013 through December 31, 2022**, to guarantee the faithful performance by Lessee of the requirements, terms, covenants and conditions of this Lease, the provisions of the Public Resources Code and the rules and regulations of the State. The bond or other security amount shall be equal to the then current Minimum Biannual Royalty and one half of the annual land rent, rounded to the nearest dollar. At any time, Lessor may require an increase in the amount of the bond or other security device to cover any additionally authorized improvements, alterations or activities or any modification of consideration.

[Remainder of Page Intentionally Left Blank]

SECTION 2
SPECIAL PROVISIONS

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

1. **DEFINITIONS:** For the purposes of this lease the following definitions apply:
 - A. Sand and Gravel: Sand, gravel and fill material.
 - B. Biannual Periods: Each lease year shall consist of two biannual periods. The first biannual period shall be the period of January 1 through June 30 and the second biannual period shall extend from July 1 through December 31.
 - C. Biannual Royalty: The royalty due Lessor for a biannual period for Sand and Gravel mined from the Leased Premises as calculated in Section 2, Paragraph 2.
 - D. Minimum Biannual Royalty: The minimum royalty due Lessor for each biannual period regardless of whether there is mining of Sand and Gravel from the Leased Premises. The amount is specified in Section 2, Paragraph 2.B.
 - E. Lease Year: A lease year shall be the first twelve (12) consecutive months following the commencement date of this Lease, and every twelve-month period thereafter.
 - F. Producer Price Index: Producer Price Index for finished goods, not seasonally adjusted, as published in the Producer Price Index-Commodities, Series ID: WPUSOP3000 as it appears in the Bureau of Labor Statistics.
 - G. Base Index: The Base Index is 185.1, a constant, and is equal to the Producer Price Index for the month of July 2008.
 - H. Current Index: The Current Index is the Producer Price Index of the most recent July month or the most recent Producer Price Index if the July index is not available.
2. **Consideration:** Lessee shall pay royalty according to the following:
 - A. **Biannual Royalty Calculation:** Commencing on January 1, 2013 and continuing throughout the term of this Lease, Lessee shall pay to Lessor without deduction, delay or offset a Biannual Royalty determined according to the following formula:
 - 1) Lessee shall calculate and pay the Biannual Royalty (R), in US Dollars, as the product of the cubic yardage of Sand and Gravel mined from the Lease Premises during the biannual period (Y) multiplied by the applicable Annually Adjusted Royalty Rate (A):
$$R = (Y)(A)$$
 - 2) Commencing January 1, 2013 and annually thereafter on the lease anniversary date, the Annually Adjusted Royalty Rate (A) shall be recalculated effective January 1 of each lease year, upward or downward, based upon the annual change of the Current Index. If the July

index is not available at the time of calculation, the most current available index value shall be used.

- 3) The Adjusted Royalty Rate shall be calculated and rounded up to the nearest cent as follows:

Annually Adjusted Royalty Rate (A) =

$$\left(\frac{(\text{Current Index} - \text{Base Index})}{\text{Base Index}} + 1 \right) \times \$2.09/\text{Cubic Yard}$$

- (a) *For hypothetical purposes only, assume that the royalty payment for the January 1, 2013 through June 30, 2013 biannual period is due. Because the current year is 2013, the Current Index is the July 2012 Producer Price Index (the latest July PPI index). Assume the July 2012 index is 191.0. Assume the Base Index is a constant and is 183.9. The Annually Adjusted Royalty Rate for the biannual period of January 1, 2013 through June 30, 2013, is therefore calculated as follows:*

$((191.0 - 183.9/183.9) + 1)$ multiplied by $\$2.09/\text{CY} = \2.17 per cubic yard (rounded to the nearest cent).

The Annually Adjusted Royalty Rate for the biannual period of January 1, 2013 through June 30, 2013, is therefore $\$2.17$ per cubic yard. Because the Annually Adjusted Royalty Rate only changes on January 1 of each calendar year, the Annually Adjusted Royalty Rate for the biannual period of July 1, 2013 through December 31, 2013 is also $\$2.17$ per cubic yard.

- B. **Minimum Biannual Royalty:** The Minimum Biannual Royalty shall be **eighty-one thousand six hundred dollars (\$81,600) for the period January 1, 2013 through December 31, 2017; one hundred two thousand dollars (\$102,000) for the period January 1, 2018 through December 31, 2022.** Minimum Biannual Royalty payments shall be credited against total royalties due during the biannual period. However, it shall not be credited against land rent, nor carried forward and applied as a credit against the Biannual Royalty obligations accruing under the Lease during any subsequent biannual period.

C. **Royalty Payment Dates:**

- 1) The initial Minimum Biannual Royalty shall be due and payable on January 1, 2013. Subsequent Minimum Biannual Royalty payments for each biannual period shall be due and payable in advance on January 1 and July 1 or the first business day of each biannual period whether or not Sand and Gravel is mined from the Lease Premises.
 - 2) Biannual Royalties in excess of the Minimum Biannual Royalty for the immediately preceding biannual period shall be due and payable on or before the 25th day of February and August following the respective biannual period.
3. **Increase in Mining Volume:** The maximum mining volume stated in Section 1 – Land Use or Purpose above is based on the volume analyzed in Environmental Impact Report CSLC EIR No. 2007072036 and is the amount found in the “Environmentally Superior Alternative” or “Reduced Project Alternative.” The authorized maximum mining volume shall be increased to the Proposed

Project Mining Volume of **550,000** cubic yards provided that Lessee shall first provide to Lessor the following documentation:

- A. A copy of Lessee's Incidental Take Permit issued by the California Department of Fish and Game for the increased volume.
- B. A letter to Lessor from Lessee reciting Lessee's submittal to the California Air Resources Board (CARB) of its Compliance Plan and Demonstration of Compliance to Operate under Title 17, California Code of Regulations, section 93118.5. If requested by Lessor, Lessee shall provide documentation demonstrating such compliance within 15 days of such request.

Upon Lessee's request and presentation of the above documentation and if the documentation is sufficient to confirm Lessee's compliance with all requirements, Lessor's staff shall issue a letter authorizing the mining of the increased volume.

4. Mining Records and Reports:

- A. On or before the 25th day of each February and August, Lessee shall deliver to Lessor a Financial Sand Mining Report in the form prescribed by Lessor showing the work performed on the Lease Premises and on any other land Lessor deems necessary for it to make a determination of the amount, quality and value of all Sand and Gravel mined, shipped or sold, or whether any work was performed on the Lease Premises during the preceding biannual period. At the request of the Lessor, the Lessee shall provide all additional reasonable information necessary to interpret and evaluate the contents of Lessee's Sand Mining Report.
- B. All Financial Sand Mining Reports, royalty statements and sales and mining data shall be subject to audit by the Lessor or its duly appointed agent. Upon reasonable advance notice from Lessor to the Lessee, Lessee shall make available to Lessor, during business hours, Lessee's books, records, calculations and other materials that are directly related to the Lease Premises and any other land joined with the Lease Premises under Lessee's plan of operation and the contents of its Sand Mining Reports.
- C. Lessee waives any rights or objections it may have and consents to the examination, inspection and audit of the books and records of Lessee and any other party associated with the Sand and Gravel mining activities.
- D. Lessee shall, within 30 days of the Lessor's request, provide copies of all data arising from Lessee's operation on the Lease Premises including, but not limited to, surveys of the Lease Premises conducted by or for Lessee before and after Sand and Gravel mining under this Lease. All proprietary information and trade secrets shall be held in confidence by the State.
- E. Global Positioning System: Commencing January 1, 2013 and continuously thereafter during the term of this Lease, Lessee will employ an automated Global Positioning System, as approved by Lessor, to account for the number and location of all mining episodes conducted on the Lease Premises during the term of this Lease and will provide the Global Positioning Report to Lessor with the following written data and information:
 - 1) The number of mining episodes that took place during the preceding calendar quarter; and

- 2) The track line of each mining episode with the start and end point of each mining episode that took place during the preceding calendar quarter mapped on the most currently available NOAA chart, including a scale and north arrow, with the boundaries of the Leases overlaid on the chart. The name and registration number of such mining episode should be identified to correspond to each track line. All data shall be reported in a font of sufficient size so that it is readily legible and the track line can be easily discerned.
 - 3) The track lines will provide the location of the actual mining event and differentiate between the traveling or maneuvering periods of a mining episode and the actual Sand and Gravel mining periods. The recording equipment for the mining episode must meet the minimum reporting accuracy of ten feet (horizontal control) during all loading and transportation operations, and shall record position, at a maximum time interval of 10 seconds while within 2,000 feet of the lease area, and at one minute intervals otherwise.
 - 4) Plotting and raw data from the automated system shall also be made available for electronic download through the internet and by compact disc on a format such as "PDF" files as approved by Lessor's staff. If the information is provided via the internet by the required report date, the compact disc copy can be provided in a timely manner after the required reporting date.
 - 5) All data collected under subparagraphs 4.E.1) – 4.E.4) shall be submitted quarterly.
5. **Waiver of Use of Data:** Lessee waives any statutory or other right or objection to prevent disclosure to Lessor or a duly authorized employee or representative of Lessor of any information, reports, data or studies of any kind, filed by Lessee with any federal, State or local agency relating to the Lease Premises, or any operations carried out in connection with the Lease, irrespective of whether such information, reports, data or studies contain sensitive, proprietary or confidential information or trade secrets. All information, reports, data or studies filed by Lessee with any federal, State or local agency pursuant to this Lease, shall be available at all times for the use of Lessor or its duly authorized representatives for any purpose. Any information, reports, data or studies obtained by the State from any public agency which are not otherwise public records shall be deemed to have been "obtained in confidence" for purposes of Government Code Section 6254(e) and may be disclosed to other persons only with the written consent of Lessee or upon a determination by Lessor that such disclosure is in the public interest.
6. **In Place Sales:** Lessee, its operator(s), subcontractors and/or subleases shall not conduct any sales in place; that is, Lessee, its operator(s), subcontractors and/or sublessees shall conduct all operations on the Lease Premises and shall not permit purchaser of its products to engage in the mining of or purchase of Sand and Gravel at the mine site without the prior written consent of Lessor.
7. **Preservation of Property and Environmental Impact:**
- A. Lessee agrees to be bound by and fully carry out, implement, and comply with all mitigation measures and reporting obligations identified as Lessee's or Applicant's responsibility as set forth in the Mitigation Monitoring Program (MMP), attached hereto as **Exhibit C**, and by reference made a part of this Lease, or as modified by Lessor as permitted by law.

- B. (1) Lessee shall reimburse Lessor for all reasonable and particular costs and expenditures incurred by Lessor in monitoring and enforcing Lessee's compliance with the MMP as described in the Reimbursement Agreement that the parties shall enter into for the purposes of implementing mitigation monitoring. These particular costs shall include, but not be limited to, reasonable expenditures for staff time and/or consultants, equipment, travel, and associated actual operating costs incurred by Lessor and any agency thereof in monitoring and ensuring compliance with and enforcing any and all mitigation measures in the MMP. For any and every quarter in which such costs are incurred, Lessor shall provide Lessee a quarterly itemization of all such costs, which shall be paid by Lessee within thirty (30) days of receipt of the itemization. Payment by Lessee shall be in a form and manner designated by the Commission Staff, is consistent with the requirements of State law, and will ensure efficiency and reasonable cost to Lessee.
- (2) In the event Lessee believes any claims for reimbursement under this Section are unreasonable and is not able to settle the dispute with the Commission Staff, Lessee may appeal the claim to the Commission, which shall hear the appeal at the earliest available publically noticed meeting.
- C. Lessee shall comply with all modifications of equipment and plans deemed necessary by Lessor, and with all conditions and restrictions established by other agencies having jurisdiction over Lessee's operations including, but not limited to, the Regional Water Quality Control Board, San Francisco Bay Conservation and Development Commission, California Department of Fish and Game, U.S. Coast Guard, National Marine Fisheries, U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers.
- D. Lessee shall perform all work under this Lease with due regard for the preservation of the Lease Premises and to the environmental impact of its operations in accordance with the following terms and conditions:
- 1) Pollution of rivers, lakes and other bodies of water, and impairment of and interference with navigation in such waters are prohibited. No refuse of any kind, except for normal oversize Sand and Gravel screenings, from any extraction or production activities shall be permitted to be deposited on or pass into waters of any rivers, lakes and other bodies of water without specific written authorization by Lessor.
 - 2) Access to mining sites by the public shall be controlled by Lessee to prevent accidents or injury to persons and/or property.
 - 3) The above are in addition to, and are not to be construed as limitations upon, all rules, regulations, restrictions, mitigation measures and all other measures designed to restrict, limit, modify or minimize the environmental impact of operations carried out pursuant to this Lease.
- E. Lessee hereby agrees to any and all restrictions, mitigation measures and other conditions adopted by the State or Federal agencies related to authorized Sand and Gravel mining activities. Furthermore, Lessee agrees to comply with such other terms and conditions or limitations on its operations under this Lease which are considered necessary by the State.

F. Lessee shall use all reasonable precautions to prevent waste of, damage to, or loss of mineral resources, fisheries, wildlife and the environment on or in the Lease Premises and shall be liable to State for any such waste, damage or loss to the extent that such waste, damage, or loss is caused by:

- 1) The intentional or negligent acts of Lessee, its employees, servants, agents, or contractors;
- 2) The breach of any provision of this Lease by Lessee, its employees, servants, agents, or contractors; or
- 3) The noncompliance of the Lessee, its employees, servants, agents, or contractors, with applicable statutes or rules and regulations of State provided, however, that nothing herein shall diminish any other rights or remedies which State may have in connection with any such negligence, breach or noncompliance.

G. **Conduct of Operations:** Lessee shall safely conduct all mining operations in accordance with generally accepted mining methods and practices and with due regard for the protection of life and property, preservation of the environment and the conservation of natural resources.

H. **Suspension of Operations:** Lessor may temporarily suspend mining or any other operation by Lessee under this Lease whenever Lessor finds that the operation or operations, unless suspended, may pose an immediate and serious threat to life, health, property or natural resources or are otherwise not in the State's best interests. The suspension shall be effective immediately upon either oral or written notice by Lessor to Lessee. Any oral notice shall be followed by written confirmation. Lessor shall lift the suspension when Lessor finds, on the basis of evidence submitted by Lessee or otherwise available, that resumption of the suspended operation or operations no longer pose an immediate and serious threat to life, health, property or natural resources. No suspension ordered or approved shall relieve Lessee from any obligation under this Lease unless specifically provided.

8. **Covenants Regarding Pollution Legal Liability Insurance, Indemnification And Remediation:**

- A. Lessee agrees to purchase or amend an existing pollution legal liability insurance policy in the amount of \$1,500,000 which will expressly name Lessor as an additional insured and will cover Lessor for any and all claims and liability that might arise from environmental contamination traceable to Lessee's operations on or use of the Lease Premises
- B. Lessee further covenants to release Lessor from, and not seek contribution or cost recovery from Lessor for remediation costs or any other costs, damages, or other claims related to or arising from environmental contamination traceable to the operations on or use of the Lease Premises nor assign any and all such rights or claims to another person or entity.
- C. Lessee covenants that it will undertake the complete remediation of the Lease Premises from any environmental contamination traceable to Lessee's operations on or use of the Lease Premises upon the issuance of any order by any agency having jurisdiction over such remediation and will release, hold harmless, defend and indemnify Lessor from liability for, and not seek contribution or cost recovery from Lessor for remediation costs or any other costs, damages, or any other claims related to or arising from environmental

contamination traceable to Lessee's operations on or use of the Lease Premises nor assign any and all such rights or claims to another party or entity.

9. **Surface Mining and Reclamation Act of 1975:** Any reclamation plan drafted under the Surface Mining and Reclamation Act (Public Resources Code Section 2770 et seq.) or any subsequently issued plan shall be incorporated into this Lease. Lessee shall comply with the terms of this plan during Lessee's operations on the Lease Premises and upon any partial or total quitclaim, surrender, forfeiture or cancellation of this Lease.

10. **Challenges To Lease Or Environmental Review:**

- A. Lessee shall reimburse Lessor in full for all reasonable costs and attorney's fees, including, but not limited to, those charged it by the California Office of the Attorney General, that Lessor incurs in connection with the defense of any action brought against Lessor challenging the issuance of this Lease, any provision of this Lease, the environmental review upon which the issuance of this Lease is based, the interpretation or enforcement of the conditions of this Lease or any other matter related to this Lease, its issuance or enforcement. In addition, Lessee shall reimburse Lessor for any court costs and reasonable attorney fees that Lessor may be required by a court to pay as a result of such action.
- B. Lessee may participate in the defense of the action, but its participation shall not relieve it of its obligations under this Section 2, Paragraph 10.
- C. The provisions of this Section 2, Paragraph 10 shall not apply to any claims, litigation or other actions which may be brought by either Lessee or Lessor against each other and shall not apply to the extent that any such obligation under this Paragraph 10 is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Lease.
- D. Nothing in this Section 2, Paragraph 10 shall be construed to require Lessor to defend itself against all or any aspect of any challenge to this Lease or to 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.

11. **Holding Over:** Unless Lessee has complied in a timely manner with Section 2, Paragraph 15 – Application for New Lease - below, 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 or renewal of the lease term, and shall be subject to the terms, covenants, and conditions of this Lease. Upon request of Lessee, Lessor shall confirm in writing Lessee's hold-over status. Biannual Royalties, Minimum Biannual Royalties and annual land rents shall be increased by 125% of the applicable rate in the last biannual period and paid on the first day of each month at the rate of 1/12th of the applicable amount. This 125% holding-over increase is separate, distinct, in addition to, and does not preclude Lessor from ongoing annual increases in the Biannual Royalties Minimum Biannual Royalties and annual land rent as outlined in this Lease, during the holding over period.

12. **Multiple Use:** This Lease is entered into with the understanding that its purposes are and its administration shall be consistent with the principle of multiple use of public lands and resources. This Lease shall allow coexistence of other permits or leases of the same lands for deposits of

Lessee's surety from liability for breach of any obligation of the lease for which the Lessee is in default at the time of acceptance.

C. There shall be no proration of rents and royalties paid prior to the acceptance of the quitclaim.

15. **APPLICATION FOR NEW LEASE:** If Lessee desires to continue to occupy and use the Lease Premises after expiration of this Lease, Lessee agrees to submit no later than two years prior to the expiration of this lease an application and minimum expense deposit for a new lease for the continued use of the Lease Premises. Failure to submit the application and minimum expense deposit shall be deemed a default of this Lease.

In the event of any conflict between the provisions of Section 2 and Section 3 of this Lease, the provisions of Section 2 shall prevail.

RECORDED AT THE REQUEST OF

AND WHEN RECORDED MAIL TO:

STATE OF CALIFORNIA

California State Lands Commission

Attn: Title Unit

100 Howe Ave., 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

County: San Francisco, Marin,

LEASE NO. PRC 7780.1

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	Site and Location Map
Exhibit B	Land Description
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 **Hanson Marine Operations, Inc.**, hereinafter referred to as Lessee, those certain lands described in **Exhibit B** subject to the reservations, terms, covenants, and conditions of this Lease.

MAILING ADDRESS: 12667 Alcosta Blvd., Suite 400
San Ramon, CA 94583

LEASE TYPE: General Lease – Mineral Extraction

LAND TYPE: Sovereign Lands

LOCATION: Those certain parcels of land situated in San Francisco Bay, County of San Francisco, State of California, more particularly described in **Exhibit "B"** attached hereto and by this reference made a part hereof and subsequently referred to as the "Lease Premises"

LAND USE OR PURPOSE: Exclusive right to remove up to a maximum of **127,248** cubic yards of Sand and Gravel annually

TERM: 10 years; beginning January 1, 2013; ending December 31, 2022, unless sooner terminated as provided under this Lease.

CONSIDERATION:

- a) Annual Land Rent: Two dollars (\$2.00) per acre for a total of **five hundred twenty-four dollars (\$524)** on January 1, 2013 and on January 1 of each lease year thereafter.
- b) Minimum Biannual Royalty: Non-refundable minimum biannual royalty as stated in Section 2, Paragraph 2.
- c) Royalty: The greater of a Biannual Royalty as calculated in Section 2, Paragraph 2 or the Minimum Biannual Royalty stated in Section 2, Paragraph 2.

LIABILITY INSURANCE:

\$1,500,000 for personal liability and property damage insurance (combined single limit) and \$1,500,000 for insurance policy for protection of water quality and the environment.

SURETY BOND OR OTHER SECURITY: Notwithstanding Section 3, paragraph 9, Lessee shall furnish at the commencement of this Lease, and shall maintain throughout the term of this Lease, a bond or other security device in favor of Lessor and of the State of California in the amount of **\$33,250 for the period January 1, 2013 through December 31, 2022**, to guarantee the faithful performance by Lessee of the requirements, terms, covenants and conditions of this Lease, the provisions of the Public Resources Code and the rules and regulations of the State. The bond or other security amount shall be equal to the then current Minimum Biannual Royalty and one half of the annual land rent, rounded to the nearest dollar. At any time, Lessor may require an increase in the amount of the bond or other security device to cover any additionally authorized improvements, alterations or activities or any modification of consideration.

[Remainder of Page Intentionally Left Blank]

SECTION 2
SPECIAL PROVISIONS

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

1. **DEFINITIONS:** For the purposes of this lease the following definitions apply:

- A. Sand and Gravel: Sand, gravel and fill material.
- B. Biannual Periods: Each lease year shall consist of two biannual periods. The first biannual period shall be the period of January 1 through June 30 and the second biannual period shall extend from July 1 through December 31.
- C. Biannual Royalty: The royalty due Lessor for a biannual period for Sand and Gravel mined from the Leased Premises as calculated in Section 2, Paragraph 2.
- D. Minimum Biannual Royalty: The minimum royalty due Lessor for each biannual period regardless of whether there is mining of Sand and Gravel from the Leased Premises. The amount is specified in Section 2, Paragraph 2.B.
- E. Lease Year: A lease year shall be the first twelve (12) consecutive months following the commencement date of this Lease, and every twelve-month period thereafter.
- F. Producer Price Index: Producer Price Index for finished goods, not seasonally adjusted, as published in the Producer Price Index-Commodities, Series ID: WPUSOP3000 as it appears in the Bureau of Labor Statistics.
- G. Base Index: The Base Index is 185.1, a constant, and is equal to the Producer Price Index for the month of July 2008.
- H. Current Index: The Current Index is the Producer Price Index of the most recent July month or the most recent Producer Price Index if the July index is not available.

2. **Consideration:** Lessee shall pay royalty according to the following:

A. **Biannual Royalty Calculation:** Commencing on January 1, 2013 and continuing throughout the term of this Lease, Lessee shall pay to Lessor without deduction, delay or offset a Biannual Royalty determined according to the following formula:

- 1) Lessee shall calculate and pay the Biannual Royalty (R), in US Dollars, as the product of the cubic yardage of Sand and Gravel mined from the Lease Premises during the biannual period (Y) multiplied by the applicable Annually Adjusted Royalty Rate (A):

$$R = (Y)(A)$$

- 2) Commencing January 1, 2013 and annually thereafter on the lease anniversary date, the Annually Adjusted Royalty Rate (A) shall be recalculated effective January 1 of each lease year, upward or downward, based upon the annual change of the Current Index. If the July

index is not available at the time of calculation, the most current available index value shall be used.

- 3) The Adjusted Royalty Rate shall be calculated and rounded up to the nearest cent as follows:

$$\text{Annually Adjusted Royalty Rate (A)} = \left(\frac{(\text{Current Index} - \text{Base Index})}{\text{Base Index}} + 1 \right) \times \$2.09/\text{Cubic Yard}$$

- (a) *For hypothetical purposes only, assume that the royalty payment for the January 1, 2013 through June 30, 2013 biannual period is due. Because the current year is 2013, the Current Index is the July 2012 Producer Price Index (the latest July PPI index). Assume the July 2012 index is 191.0. Assume the Base Index is a constant and is 183.9. The Annually Adjusted Royalty Rate for the biannual period of January 1, 2013 through June 30, 2013, is therefore calculated as follows:*

((191.0 - 183.9/183.9) + 1) multiplied by \$2.09/CY = \$2.17 per cubic yard (rounded to the nearest cent).

The Annually Adjusted Royalty Rate for the biannual period of January 1, 2013 through June 30, 2013, is therefore \$2.17 per cubic yard. Because the Annually Adjusted Royalty Rate only changes on January 1 of each calendar year, the Annually Adjusted Royalty Rate for the biannual period of July 1, 2013 through December 31, 2013 is also \$2.17 per cubic yard.

- B. Minimum Biannual Royalty:** The Minimum Biannual Royalty shall be **twenty-six thousand dollars (\$26,600) for the period January 1, 2013 through December 31, 2017; thirty-three thousand two hundred fifty dollars (\$33,250) for the period January 1, 2018 through December 31, 2022.** Minimum Biannual Royalty payments shall be credited against total royalties due during the biannual period. However, it shall not be credited against land rent, nor carried forward and applied as a credit against the Biannual Royalty obligations accruing under the Lease during any subsequent biannual period.

C. Royalty Payment Dates:

- 1) The initial Minimum Biannual Royalty shall be due and payable on January 1, 2013. Subsequent Minimum Biannual Royalty payments for each biannual period shall be due and payable in advance on January 1 and July 1 or the first business day of each biannual period whether or not Sand and Gravel is mined from the Lease Premises.
- 2) Biannual Royalties in excess of the Minimum Biannual Royalty for the immediately preceding biannual period shall be due and payable on or before the 25th day of February and August following the respective biannual period.

3. **Increase in Mining Volume:** The maximum mining volume stated in Section 1 – Land Use or Purpose above is based on the volume analyzed in Environmental Impact Report CSLC EIR No. 2007072036 and is the amount found in the “Environmentally Superior Alternative” or “Reduced

Project Alternative." The authorized maximum mining volume shall be increased to the Proposed Project Mining Volume of **200,000** cubic yards provided that Lessee shall first provide to Lessor the following documentation:

- A. A copy of Lessee's Incidental Take Permit issued by the California Department of Fish and Game for the increased volume.
- B. A letter to Lessor from Lessee reciting Lessee's submittal to the California Air Resources Board (CARB) of its Compliance Plan and Demonstration of Compliance to Operate under Title 17, California Code of Regulations, section 93118.5. If requested by Lessor, Lessee shall provide documentation demonstrating such compliance within 15 days of such request.

Upon Lessee's request and presentation of the above documentation and if the documentation is sufficient to confirm Lessee's compliance with all requirements, Lessor's staff shall issue a letter authorizing the mining of the increased volume.

4. Mining Records and Reports:

- A. On or before the 25th day of each February and August, Lessee shall deliver to Lessor a Financial Sand Mining Report in the form prescribed by Lessor showing the work performed on the Lease Premises and on any other land Lessor deems necessary for it to make a determination of the amount, quality and value of all Sand and Gravel mined, shipped or sold, or whether any work was performed on the Lease Premises during the preceding biannual period. At the request of the Lessor, the Lessee shall provide all additional reasonable information necessary to interpret and evaluate the contents of Lessee's Sand Mining Report.
- B. All Financial Sand Mining Reports, royalty statements and sales and mining data shall be subject to audit by the Lessor or its duly appointed agent. Upon reasonable advance notice from Lessor to the Lessee, Lessee shall make available to Lessor, during business hours, Lessee's books, records, calculations and other materials that are directly related to the Lease Premises and any other land joined with the Lease Premises under Lessee's plan of operation and the contents of its Sand Mining Reports.
- C. Lessee waives any rights or objections it may have and consents to the examination, inspection and audit of the books and records of Lessee and any other party associated with the Sand and Gravel mining activities.
- D. Lessee shall, within 30 days of the Lessor's request, provide copies of all data arising from Lessee's operation on the Lease Premises including, but not limited to, surveys of the Lease Premises conducted by or for Lessee before and after Sand and Gravel mining under this Lease. All proprietary information and trade secrets shall be held in confidence by the State.
- E. Global Positioning System: Commencing January 1, 2013 and continuously thereafter during the term of this Lease, Lessee will employ an automated Global Positioning System, as approved by Lessor, to account for the number and location of all mining episodes conducted on the Lease Premises during the term of this Lease and will provide the Global Positioning Report to Lessor with the following written data and information:

- 1) The number of mining episodes that took place during the preceding calendar quarter; and
 - 2) The track line of each mining episode with the start and end point of each mining episode that took place during the preceding calendar quarter mapped on the most currently available NOAA chart, including a scale and north arrow, with the boundaries of the Leases overlaid on the chart. The name and registration number of such mining episode should be identified to correspond to each track line. All data shall be reported in a font of sufficient size so that it is readily legible and the track line can be easily discerned.
 - 3) The track lines will provide the location of the actual mining event and differentiate between the traveling or maneuvering periods of a mining episode and the actual Sand and Gravel mining periods. The recording equipment for the mining episode must meet the minimum reporting accuracy of ten feet (horizontal control) during all loading and transportation operations, and shall record position, at a maximum time interval of 10 seconds while within 2,000 feet of the lease area, and at one minute intervals otherwise.
 - 4) Plotting and raw data from the automated system shall also be made available for electronic download through the internet and by compact disc on a format such as "PDF" files as approved by Lessor's staff. If the information is provided via the internet by the required report date, the compact disc copy can be provided in a timely manner after the required reporting date.
 - 5) All data collected under subparagraphs 4.E.1) – 4.E.4) shall be submitted quarterly.
5. **Waiver of Use of Data:** Lessee waives any statutory or other right or objection to prevent disclosure to Lessor or a duly authorized employee or representative of Lessor of any information, reports, data or studies of any kind, filed by Lessee with any federal, State or local agency relating to the Lease Premises, or any operations carried out in connection with the Lease, irrespective of whether such information, reports, data or studies contain sensitive, proprietary or confidential information or trade secrets. All information, reports, data or studies filed by Lessee with any federal, State or local agency pursuant to this Lease, shall be available at all times for the use of Lessor or its duly authorized representatives for any purpose. Any information, reports, data or studies obtained by the State from any public agency which are not otherwise public records shall be deemed to have been "obtained in confidence" for purposes of Government Code Section 6254(e) and may be disclosed to other persons only with the written consent of Lessee or upon a determination by Lessor that such disclosure is in the public interest.
6. **In Place Sales:** Lessee, its operator(s), subcontractors and/or subleases shall not conduct any sales in place; that is, Lessee, its operator(s), subcontractors and/or sublessees shall conduct all operations on the Lease Premises and shall not permit purchaser of its products to engage in the mining of or purchase of Sand and Gravel at the mine site without the prior written consent of Lessor.
7. **Preservation of Property and Environmental Impact:**
- A. Lessee agrees to be bound by and fully carry out, implement, and comply with all mitigation measures and reporting obligations identified as Lessee's or Applicant's responsibility as set forth in the Mitigation Monitoring Program (MMP), attached hereto as **Exhibit C**, and by reference made a part of this Lease, or as modified by Lessor as permitted by law.

B. (1) Lessee shall reimburse Lessor for all reasonable and particular costs and expenditures incurred by Lessor in monitoring and enforcing Lessee's compliance with the MMP as described in the Reimbursement Agreement that the parties shall enter into for the purposes of implementing mitigation monitoring. These particular costs shall include, but not be limited to, reasonable expenditures for staff time and/or consultants, equipment, travel, and associated actual operating costs incurred by Lessor and any agency thereof in monitoring and ensuring compliance with and enforcing any and all mitigation measures in the MMP. For any and every quarter in which such costs are incurred, Lessor shall provide Lessee a quarterly itemization of all such costs, which shall be paid by Lessee within thirty (30) days of receipt of the itemization. Payment by Lessee shall be in a form and manner designated by the Commission Staff, is consistent with the requirements of State law, and will ensure efficiency and reasonable cost to Lessee.

(2) In the event Lessee believes any claims for reimbursement under this Section are unreasonable and is not able to settle the dispute with the Commission Staff, Lessee may appeal the claim to the Commission, which shall hear the appeal at the earliest available publically noticed meeting.

- C. Lessee shall comply with all modifications of equipment and plans deemed necessary by Lessor, and with all conditions and restrictions established by other agencies having jurisdiction over Lessee's operations including, but not limited to, the Regional Water Quality Control Board, San Francisco Bay Conservation and Development Commission, California Department of Fish and Game, U.S. Coast Guard, National Marine Fisheries, U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers.
- D. Lessee shall perform all work under this Lease with due regard for the preservation of the Lease Premises and to the environmental impact of its operations in accordance with the following terms and conditions:
- 1) Pollution of rivers, lakes and other bodies of water, and impairment of and interference with navigation in such waters are prohibited. No refuse of any kind, except for normal oversize Sand and Gravel screenings, from any extraction or production activities shall be permitted to be deposited on or pass into waters of any rivers, lakes and other bodies of water without specific written authorization by Lessor.
 - 2) Access to mining sites by the public shall be controlled by Lessee to prevent accidents or injury to persons and/or property.
 - 3) The above are in addition to, and are not to be construed as limitations upon, all rules, regulations, restrictions, mitigation measures and all other measures designed to restrict, limit, modify or minimize the environmental impact of operations carried out pursuant to this Lease.
- E. Lessee hereby agrees to any and all restrictions, mitigation measures and other conditions adopted by the State or Federal agencies related to authorized Sand and Gravel mining activities. Furthermore, Lessee agrees to comply with such other terms and conditions or limitations on its operations under this Lease which are considered necessary by the State.

F. Lessee shall use all reasonable precautions to prevent waste of, damage to, or loss of mineral resources, fisheries, wildlife and the environment on or in the Lease Premises and shall be liable to State for any such waste, damage or loss to the extent that such waste, damage, or loss is caused by:

- 1) The intentional or negligent acts of Lessee, its employees, servants, agents, or contractors;
- 2) The breach of any provision of this Lease by Lessee, its employees, servants, agents, or contractors; or
- 3) The noncompliance of the Lessee, its employees, servants, agents, or contractors, with applicable statutes or rules and regulations of State provided, however, that nothing herein shall diminish any other rights or remedies which State may have in connection with any such negligence, breach or noncompliance.

G. **Conduct of Operations:** Lessee shall safely conduct all mining operations in accordance with generally accepted mining methods and practices and with due regard for the protection of life and property, preservation of the environment and the conservation of natural resources.

H. **Suspension of Operations:** Lessor may temporarily suspend mining or any other operation by Lessee under this Lease whenever Lessor finds that the operation or operations, unless suspended, may pose an immediate and serious threat to life, health, property or natural resources or are otherwise not in the State's best interests. The suspension shall be effective immediately upon either oral or written notice by Lessor to Lessee. Any oral notice shall be followed by written confirmation. Lessor shall lift the suspension when Lessor finds, on the basis of evidence submitted by Lessee or otherwise available, that resumption of the suspended operation or operations no longer pose an immediate and serious threat to life, health, property or natural resources. No suspension ordered or approved shall relieve Lessee from any obligation under this Lease unless specifically provided.

8. **Covenants Regarding Pollution Legal Liability Insurance, Indemnification And Remediation:**

- A. Lessee agrees to purchase or amend an existing pollution legal liability insurance policy in the amount of \$1,500,000 which will expressly name Lessor as an additional insured and will cover Lessor for any and all claims and liability that might arise from environmental contamination traceable to Lessee's operations on or use of the Lease Premises
- B. Lessee further covenants to release Lessor from, and not seek contribution or cost recovery from Lessor for remediation costs or any other costs, damages, or other claims related to or arising from environmental contamination traceable to the operations on or use of the Lease Premises nor assign any and all such rights or claims to another person or entity.
- C. Lessee covenants that it will undertake the complete remediation of the Lease Premises from any environmental contamination traceable to Lessee's operations on or use of the Lease Premises upon the issuance of any order by any agency having jurisdiction over such remediation and will release, hold harmless, defend and indemnify Lessor from liability for, and not seek contribution or cost recovery from Lessor for remediation costs or any other costs, damages, or any other claims related to or arising from environmental

contamination traceable to Lessee's operations on or use of the Lease Premises nor assign any and all such rights or claims to another party or entity.

9. **Surface Mining and Reclamation Act of 1975:** Any reclamation plan drafted under the Surface Mining and Reclamation Act (Public Resources Code Section 2770 et seq.) or any subsequently issued plan shall be incorporated into this Lease. Lessee shall comply with the terms of this plan during Lessee's operations on the Lease Premises and upon any partial or total quitclaim, surrender, forfeiture or cancellation of this Lease.

10. **Challenges To Lease Or Environmental Review:**

- A. Lessee shall reimburse Lessor in full for all reasonable costs and attorney's fees, including, but not limited to, those charged it by the California Office of the Attorney General, that Lessor incurs in connection with the defense of any action brought against Lessor challenging the issuance of this Lease, any provision of this Lease, the environmental review upon which the issuance of this Lease is based, the interpretation or enforcement of the conditions of this Lease or any other matter related to this Lease, its issuance or enforcement. In addition, Lessee shall reimburse Lessor for any court costs and reasonable attorney fees that Lessor may be required by a court to pay as a result of such action.
- B. Lessee may participate in the defense of the action, but its participation shall not relieve it of its obligations under this Section 2, Paragraph 10.
- C. The provisions of this Section 2, Paragraph 10 shall not apply to any claims, litigation or other actions which may be brought by either Lessee or Lessor against each other and shall not apply to the extent that any such obligation under this Paragraph 10 is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Lease.
- D. Nothing in this Section 2, Paragraph 10 shall be construed to require Lessor to defend itself against all or any aspect of any challenge to this Lease or to 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.
11. **Holding Over:** Unless Lessee has complied in a timely manner with Section 2, Paragraph 15 – Application for New Lease - below, 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 or renewal of the lease term, and shall be subject to the terms, covenants, and conditions of this Lease. Upon request of Lessee, Lessor shall confirm in writing Lessee's hold-over status. Biannual Royalties, Minimum Biannual Royalties and annual land rents shall be increased by 125% of the applicable rate in the last biannual period and paid on the first day of each month at the rate of 1/12th of the applicable amount. This 125% holding-over increase is separate, distinct, in addition to, and does not preclude Lessor from ongoing annual increases in the Biannual Royalties Minimum Biannual Royalties and annual land rent as outlined in this Lease, during the holding over period.
12. **Multiple Use:** This Lease is entered into with the understanding that its purposes are and its administration shall be consistent with the principle of multiple use of public lands and resources. This Lease shall allow coexistence of other permits or leases of the same lands for deposits of

mineral resources other than Sand and Gravel under applicable laws, and the existence of this Lease shall not preclude other uses of the Leased Premises. However, operations under such other permits or Leases or other such uses shall not unreasonably interfere with or endanger operations under this Lease, nor shall operations under this Lease unreasonably interfere with or endanger operations under any permit, lease or other entitlement for use issued pursuant to the provisions of any other act. This Lease shall not be construed as superseding the authority which any State department or agency has with respect to the management, protection, and utilization, of the lands and resources under its jurisdiction. Lessor may prescribe those conditions it deems necessary for the protection of other mineral resources.

13. **NOTICES:** All notices, statements, demands, correspondence or other communications required or permitted to be given hereunder shall be in writing and shall be given (i) personally, (ii) by certified or registered mail, postage prepaid, return receipt requested or (iii) by overnight or other courier or delivery service, freight prepaid, addressed as follows:

To Lessor: State Lands Commission
Attn.: Chief, Land Management Division
100 Howe Ave., Suite 100 South
Sacramento, CA 95825

To Lessee: Hanson Marine Operations
12667 Alcosta Blvd., Suite 400
San Ramon, CA 94583

Notices delivered by hand shall be deemed received when delivered, notices sent by certified or registered mail shall be deemed delivered and received four (4) days after deposit in the United States mail and notices sent by overnight courier or delivery service shall be deemed delivered on the business day following the day they were deposited with such overnight courier or delivery service. The addresses to which notices hereunder shall be mailed may be changed by written notice given by one Party to the other as provided above.

14. **Quitclaim of Lease Prior to Expiration:**

- A. Notwithstanding Section 3, Paragraph 13 of this Lease, at any time prior to the expiration of this Lease or its termination pursuant to Section 3, Paragraph 11, Lessee may file with Lessor a written request for Lessor to accept a quitclaim or relinquishment of all or any portion of the Lease Premises. A quitclaim or relinquishment shall be effective upon completion of any required abandonment of facilities and required reclamation of the Lease Premises as specified in this Lease or by any agency having jurisdiction over the lease activities and as approved by Lessor. Until that time, Lessee shall comply with all terms of this Lease including the payment of all rentals and royalties that have accrued.
- B. Lessee's request for Lessor's acceptance of a quitclaim or relinquishment of all or any portion of the Lease Premises shall be heard at Lessor's next regularly scheduled public meeting for which the request may be properly reviewed and noticed. Upon acceptance by Lessor, Lessee shall be released from all obligations accruing under the Lease with respect to the lands quitclaimed or relinquished. Acceptance of a quitclaim by Lessor shall not release Lessee or

Lessee's surety from liability for breach of any obligation of the lease for which the Lessee is in default at the time of acceptance.

C. There shall be no proration of rents and royalties paid prior to the acceptance of the quitclaim.

15. **APPLICATION FOR NEW LEASE:** If Lessee desires to continue to occupy and use the Lease Premises after expiration of this Lease, Lessee agrees to submit no later than two years prior to the expiration of this lease an application and minimum expense deposit for a new lease for the continued use of the Lease Premises. Failure to submit the application and minimum expense deposit shall be deemed a default of this Lease.

In the event of any conflict between the provisions of Section 2 and Section 3 of this Lease, the provisions of Section 2 shall prevail.

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
California State Lands Commission
Attn: Title Unit
100 Howe Ave., 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

County: Solano, Sacramento, Contra Costa

LEASE NO. PRC 7781.1

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 **Suisun Associates, A Joint Venture**, hereinafter referred to as Lessee, those certain lands described in **Exhibit A**, hereinafter referred to as the Lease Premises, subject to the reservations, terms, covenants, and conditions of this Lease.

MAILING ADDRESS: c/o Hanson Marine Operations
12667 Alcosta Blvd., Suite 400

San Ramon, CA 94583

LEASE TYPE: General Lease – Mineral Extraction

LAND TYPE: Sovereign Lands

LOCATION: Those certain parcels of land situated in Suisun Bay, counties of Solano, Sacramento and Contra Costa, State of California, more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof and subsequently referred to as the "Lease Premises"

LAND USE OR PURPOSE: Exclusive right to remove up to a maximum of **85,746** cubic yards of Sand and Gravel annually

TERM: 10 years; beginning January 1, 2013; ending December 31, 2022, unless sooner terminated as provided under this Lease.

CONSIDERATION:

- a) Annual Land Rent: Two dollars (\$2.00) per acre for a total of **one thousand eight hundred seventy-two dollars (\$1,872)** on January 1, 2013 and on January 1 of each lease year thereafter.
- b) Minimum Biannual Royalty: Non-refundable minimum biannual royalty as stated in Section 2, Paragraph 2.
- c) Royalty: The greater of a Biannual Royalty as calculated in Section 2, Paragraph 2 or the Minimum Biannual Royalty stated in Section 2, Paragraph 2.

LIABILITY INSURANCE:

\$1,500,000 for personal liability and property damage insurance (combined single limit) and \$1,500,000 for insurance policy for protection of water quality and the environment.

SURETY BOND OR OTHER SECURITY: Notwithstanding Section 3, paragraph 9, Lessee shall furnish at the commencement of this Lease, and shall maintain throughout the term of this Lease, a bond or other security device in favor of Lessor and of the State of California in the amount of **\$10,720 for the period January 1, 2013 through December 31, 2022**, to guarantee the faithful performance by Lessee of the requirements, terms, covenants and conditions of this Lease, the provisions of the Public Resources Code and the rules and regulations of the State. The bond or other security amount shall be equal to the then current Minimum Biannual Royalty and one half of the annual land rent, rounded to the nearest dollar. At any time, Lessor may require an increase in the amount of the bond or other security device to cover any additionally authorized improvements, alterations or activities or any modification of consideration.

[Remainder of Page Intentionally Left Blank]

SECTION 2
SPECIAL PROVISIONS

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

1. **DEFINITIONS:** For the purposes of this lease the following definitions apply:

- A. Sand and Gravel: Sand, gravel and fill material.
- B. Biannual Periods: Each lease year shall consist of two biannual periods. The first biannual period shall be the period of January 1 through June 30 and the second biannual period shall extend from July 1 through December 31.
- C. Biannual Royalty: The royalty due Lessor for a biannual period for Sand and Gravel mined from the Leased Premises as calculated in Section 2, Paragraph 2.
- D. Minimum Biannual Royalty: The minimum royalty due Lessor for each biannual period regardless of whether there is mining of Sand and Gravel from the Leased Premises. The amount is specified in Section 2, Paragraph 2.B.
- E. Lease Year: A lease year shall be the first twelve (12) consecutive months following the commencement date of this Lease, and every twelve-month period thereafter.
- F. Producer Price Index: Producer Price Index for finished goods, not seasonally adjusted, as published in the Producer Price Index-Commodities, Series ID: WPUSOP3000 as it appears in the Bureau of Labor Statistics.
- G. Base Index: The Base Index is 193.2, a constant, and is equal to the Producer Price Index for the month of July 2012.
- H. Current Index: The Current Index is the Producer Price Index of the most recent July month or the most recent Producer Price Index if the July index is not available.
- I. Base Royalty Rate (B) shall be \$1.00 per cubic yard.

2. **Consideration:** Lessee shall pay royalty according to the following:

A. **Biannual Royalty Calculation:** The Biannual Royalty for Sand and Gravel extracted from the Leased Lands shall be determined according to the following formula:

- 1) Commencing January 1, 2013, Lessee shall calculate and pay the Biannual Royalty (R), in US Dollars, as the product of the cubic yardage of Sand and Gravel mined from the Lease Premises during the biannual period (Y) multiplied by the Base Royalty Rate (B):

$$R = (Y)(B)$$

- 2) Commencing January 1, 2014 and annually thereafter on the lease anniversary date, the Lessee shall calculate and pay royalty (R) in US Dollars, as the product of the cubic

yardage of Sand and Gravel mined from the Leased Lands during the biannual period (Y), multiplied by the applicable Adjusted Royalty Rate (A):

$$R = (Y)(A)$$

The Annually Adjusted Royalty Rate (A) shall be recalculated effective January 1 of each lease year, upward or downward, based upon the annual change of the Current Index. If the July index is not available at the time of calculation, the most current available index value shall be used.

- 3) The Adjusted Royalty Rate shall be calculated and rounded up to the nearest cent as follows:

Annually Adjusted Royalty Rate (A) =

$$\left(\frac{(\text{Current Index} - \text{Base Index})}{\text{Base Index}} + 1 \right) \times \$1.00/\text{Cubic Yard}$$

- (a) *For hypothetical purposes only, assume that the royalty payment for the January 1, 2014 through June 30, 2014 biannual period is due. Because the current year is 2014, the Current Index is the July 2013 Producer Price Index (the latest July PPI index). Assume the July 2013 index is 197.0. The Base Index is a constant and is 193.2. The Annually Adjusted Royalty Rate for the biannual period of January 1, 2014 through June 30, 2014, is therefore calculated as follows:*

$((197.0 - 193.2)/193.2) + 1$ multiplied by \$1.00/CY = \$1.02 per cubic yard (rounded to the nearest cent).

The Annually Adjusted Royalty Rate for the biannual period of January 1, 2014 through June 30, 2014, is therefore \$1.02 per cubic yard. Because the Annually Adjusted Royalty Rate only changes on January 1 of each calendar year, the Annually Adjusted Royalty Rate for the biannual period of July 1, 2014 through December 31, 2014 is also \$1.02 per cubic yard.

- B. Minimum Biannual Royalty:** The Minimum Biannual Royalty shall be **eight thousand five hundred seventy-five dollars (\$8,575) for the period January 1, 2013 through December 31, 2017; ten thousand seven hundred twenty dollars (\$10,720) for the period January 1, 2018 through December 31, 2022.** Minimum Biannual Royalty payments shall be credited against total royalties due during the biannual period. However, it shall not be credited against land rent, nor carried forward and applied as a credit against the Biannual Royalty obligations accruing under the Lease during any subsequent biannual period.

C. Royalty Payment Dates:

- 1) The initial Minimum Biannual Royalty shall be due and payable on January 1, 2013. Subsequent Minimum Biannual Royalty payments for each biannual period shall be due and payable in advance on January 1 and July 1 or the first business day of each biannual period whether or not Sand and Gravel is mined from the Lease Premises.

- 2) Biannual Royalties in excess of the Minimum Biannual Royalty for the immediately preceding biannual period shall be due and payable on or before the 25th day of February and August following the respective biannual period.
3. **Increase in Mining Volume:** The maximum mining volume stated in Section 1 – Land Use or Purpose above is based on the volume analyzed in Environmental Impact Report CSLC EIR No. 2007072036 and is the amount found in the “Environmentally Superior Alternative” or “Reduced Project Alternative.” The authorized maximum mining volume shall be increased to the Proposed Project Mining Volume of **300,000** cubic yards provided that Lessee shall first provide to Lessor the following documentation:
 - A. A copy of Lessee’s Incidental Take Permit issued by the California Department of Fish and Game for the increased volume.
 - B. A letter to Lessor from Lessee reciting Lessee’s submittal to the California Air Resources Board (CARB) of its Compliance Plan and Demonstration of Compliance to Operate under Title 17, California Code of Regulations, section 93118.5. If requested by Lessor, Lessee shall provide documentation demonstrating such compliance within 15 days of such request.

Upon Lessee’s request and presentation of the above documentation and if the documentation is sufficient to confirm Lessee’s compliance with all requirements, Lessor’s staff shall issue a letter authorizing the mining of the increased volume.

4. **Mining Records and Reports:**

- A. On or before the 25th day of each February and August, Lessee shall deliver to Lessor a Financial Sand Mining Report in the form prescribed by Lessor showing the work performed on the Lease Premises and on any other land Lessor deems necessary for it to make a determination of the amount, quality and value of all Sand and Gravel mined, shipped or sold, or whether any work was performed on the Lease Premises during the preceding biannual period. At the request of the Lessor, the Lessee shall provide all additional reasonable information necessary to interpret and evaluate the contents of Lessee’s Sand Mining Report.
- B. All Financial Sand Mining Reports, royalty statements and sales and mining data shall be subject to audit by the Lessor or its duly appointed agent. Upon reasonable advance notice from Lessor to the Lessee, Lessee shall make available to Lessor, during business hours, Lessee’s books, records, calculations and other materials that are directly related to the Lease Premises and any other land joined with the Lease Premises under Lessee’s plan of operation and the contents of its Sand Mining Reports.
- C. Lessee waives any rights or objections it may have and consents to the examination, inspection and audit of the books and records of Lessee and any other party associated with the Sand and Gravel mining activities.
- D. Lessee shall, within 30 days of the Lessor’s request, provide copies of all data arising from Lessee’s operation on the Lease Premises including, but not limited to, surveys of the Lease Premises conducted by or for Lessee before and after Sand and Gravel mining under this Lease. All proprietary information and trade secrets shall be held in confidence by the State.

E. **Global Positioning System:** Commencing January 1, 2013 and continuously thereafter during the term of this Lease, Lessee will employ an automated Global Positioning System, as approved by Lessor, to account for the number and location of all mining episodes conducted on the Lease Premises during the term of this Lease and will provide the Global Positioning Report to Lessor with the following written data and information:

- 1) The number of mining episodes that took place during the preceding calendar quarter; and
- 2) The track line of each mining episode with the start and end point of each mining episode that took place during the preceding calendar quarter mapped on the most currently available NOAA chart, including a scale and north arrow, with the boundaries of the Leases overlaid on the chart. The name and registration number of such mining episode should be identified to correspond to each track line. All data shall be reported in a font of sufficient size so that it is readily legible and the track line can be easily discerned.
- 3) The track lines will provide the location of the actual mining event and differentiate between the traveling or maneuvering periods of a mining episode and the actual Sand and Gravel mining periods. The recording equipment for the mining episode must meet the minimum reporting accuracy of ten feet (horizontal control) during all loading and transportation operations, and shall record position, at a maximum time interval of 10 seconds while within 2,000 feet of the lease area, and at one minute intervals otherwise.
- 4) Plotting and raw data from the automated system shall also be made available for electronic download through the internet and by compact disc on a format such as "PDF" files as approved by Lessor's staff. If the information is provided via the internet by the required report date, the compact disc copy can be provided in a timely manner after the required reporting date.
- 5) All data collected under subparagraphs 4.E.1) – 4.E.4) shall be submitted quarterly.

5. **Waiver of Use of Data:** Lessee waives any statutory or other right or objection to prevent disclosure to Lessor or a duly authorized employee or representative of Lessor of any information, reports, data or studies of any kind, filed by Lessee with any federal, State or local agency relating to the Lease Premises, or any operations carried out in connection with the Lease, irrespective of whether such information, reports, data or studies contain sensitive, proprietary or confidential information or trade secrets. All information, reports, data or studies filed by Lessee with any federal, State or local agency pursuant to this Lease, shall be available at all times for the use of Lessor or its duly authorized representatives for any purpose. Any information, reports, data or studies obtained by the State from any public agency which are not otherwise public records shall be deemed to have been "obtained in confidence" for purposes of Government Code Section 6254(e) and may be disclosed to other persons only with the written consent of Lessee or upon a determination by Lessor that such disclosure is in the public interest.

6. **In Place Sales:** Lessee, its operator(s), subcontractors and/or subleases shall not conduct any sales in place; that is, Lessee, its operator(s), subcontractors and/or sublessees shall conduct all operations on the Lease Premises and shall not permit purchaser of its products to engage in the mining of or purchase of Sand and Gravel at the mine site without the prior written consent of Lessor.

7. Preservation of Property and Environmental Impact:

- A. Lessee agrees to be bound by and fully carry out, implement, and comply with all mitigation measures and reporting obligations identified as Lessee's or Applicant's responsibility as set forth in the Mitigation Monitoring Program (MMP), attached hereto as **Exhibit C**, and by reference made a part of this Lease, or as modified by Lessor as permitted by law.
- B. (1) Lessee shall reimburse Lessor for all reasonable and particular costs and expenditures incurred by Lessor in monitoring and enforcing Lessee's compliance with the MMP as described in the Reimbursement Agreement that the parties shall enter into for the purposes of implementing mitigation monitoring. These particular costs shall include, but not be limited to, reasonable expenditures for staff time and/or consultants, equipment, travel, and associated actual operating costs incurred by Lessor and any agency thereof in monitoring and ensuring compliance with and enforcing any and all mitigation measures in the MMP. For any and every quarter in which such costs are incurred, Lessor shall provide Lessee a quarterly itemization of all such costs, which shall be paid by Lessee within thirty (30) days of receipt of the itemization. Payment by Lessee shall be in a form and manner designated by the Commission Staff, is consistent with the requirements of State law, and will ensure efficiency and reasonable cost to Lessee.
- (2) In the event Lessee believes any claims for reimbursement under this Section are unreasonable and is not able to settle the dispute with the Commission Staff, Lessee may appeal the claim to the Commission, which shall hear the appeal at the earliest available publically noticed meeting.
- C. Lessee shall comply with all modifications of equipment and plans deemed necessary by Lessor, and with all conditions and restrictions established by other agencies having jurisdiction over Lessee's operations including, but not limited to, the Regional Water Quality Control Board, San Francisco Bay Conservation and Development Commission, California Department of Fish and Game, U.S. Coast Guard, National Marine Fisheries, U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers.
- D. Lessee shall perform all work under this Lease with due regard for the preservation of the Lease Premises and to the environmental impact of its operations in accordance with the following terms and conditions:
- 1) Pollution of rivers, lakes and other bodies of water, and impairment of and interference with navigation in such waters are prohibited. No refuse of any kind, except for normal oversize Sand and Gravel screenings, from any extraction or production activities shall be permitted to be deposited on or pass into waters of any rivers, lakes and other bodies of water without specific written authorization by Lessor.
 - 2) Access to mining sites by the public shall be controlled by Lessee to prevent accidents or injury to persons and/or property.
 - 3) The above are in addition to, and are not to be construed as limitations upon, all rules, regulations, restrictions, mitigation measures and all other measures designed to restrict,

limit, modify or minimize the environmental impact of operations carried out pursuant to this Lease.

- E. Lessee hereby agrees to any and all restrictions, mitigation measures and other conditions adopted by the State or Federal agencies related to authorized Sand and Gravel mining activities. Furthermore, Lessee agrees to comply with such other terms and conditions or limitations on its operations under this Lease which are considered necessary by the State.
- F. Lessee shall use all reasonable precautions to prevent waste of, damage to, or loss of mineral resources, fisheries, wildlife and the environment on or in the Lease Premises and shall be liable to State for any such waste, damage or loss to the extent that such waste, damage, or loss is caused by:
 - 1) The intentional or negligent acts of Lessee, its employees, servants, agents, or contractors;
 - 2) The breach of any provision of this Lease by Lessee, its employees, servants, agents, or contractors; or
 - 3) The noncompliance of the Lessee, its employees, servants, agents, or contractors, with applicable statutes or rules and regulations of State provided, however, that nothing herein shall diminish any other rights or remedies which State may have in connection with any such negligence, breach or noncompliance.

G. **Conduct of Operations:** Lessee shall safely conduct all mining operations in accordance with generally accepted mining methods and practices and with due regard for the protection of life and property, preservation of the environment and the conservation of natural resources.

H. **Suspension of Operations:** Lessor may temporarily suspend mining or any other operation by Lessee under this Lease whenever Lessor finds that the operation or operations, unless suspended, may pose an immediate and serious threat to life, health, property or natural resources or are otherwise not in the State's best interests. The suspension shall be effective immediately upon either oral or written notice by Lessor to Lessee. Any oral notice shall be followed by written confirmation. Lessor shall lift the suspension when Lessor finds, on the basis of evidence submitted by Lessee or otherwise available, that resumption of the suspended operation or operations no longer pose an immediate and serious threat to life, health, property or natural resources. No suspension ordered or approved shall relieve Lessee from any obligation under this Lease unless specifically provided.

8. **Covenants Regarding Pollution Legal Liability Insurance, Indemnification And Remediation:**

- A. Lessee agrees to purchase or amend an existing pollution legal liability insurance policy in the amount of \$1,500,000 which will expressly name Lessor as an additional insured and will cover Lessor for any and all claims and liability that might arise from environmental contamination traceable to Lessee's operations on or use of the Lease Premises
- B. Lessee further covenants to release Lessor from, and not seek contribution or cost recovery from Lessor for remediation costs or any other costs, damages, or other claims related to or arising from environmental contamination traceable to the operations on or use of the

Lease Premises nor assign any and all such rights or claims to another person or entity.

- C. Lessee covenants that it will undertake the complete remediation of the Lease Premises from any environmental contamination traceable to Lessee's operations on or use of the Lease Premises upon the issuance of any order by any agency having jurisdiction over such remediation and will release, hold harmless, defend and indemnify Lessor from liability for, and not seek contribution or cost recovery from Lessor for remediation costs or any other costs, damages, or any other claims related to or arising from environmental contamination traceable to Lessee's operations on or use of the Lease Premises nor assign any and all such rights or claims to another party or entity.

9. **Surface Mining and Reclamation Act of 1975:** Any reclamation plan drafted under the Surface Mining and Reclamation Act (Public Resources Code Section 2770 et seq.) or any subsequently issued plan shall be incorporated into this Lease. Lessee shall comply with the terms of this plan during Lessee's operations on the Lease Premises and upon any partial or total quitclaim, surrender, forfeiture or cancellation of this Lease.

10. Challenges To Lease Or Environmental Review:

- A. Lessee shall reimburse Lessor in full for all reasonable costs and attorney's fees, including, but not limited to, those charged it by the California Office of the Attorney General, that Lessor incurs in connection with the defense of any action brought against Lessor challenging the issuance of this Lease, any provision of this Lease, the environmental review upon which the issuance of this Lease is based, the interpretation or enforcement of the conditions of this Lease or any other matter related to this Lease, its issuance or enforcement. In addition, Lessee shall reimburse Lessor for any court costs and reasonable attorney fees that Lessor may be required by a court to pay as a result of such action.
- B. Lessee may participate in the defense of the action, but its participation shall not relieve it of its obligations under this Section 2, Paragraph 10.
- C. The provisions of this Section 2, Paragraph 10 shall not apply to any claims, litigation or other actions which may be brought by either Lessee or Lessor against each other and shall not apply to the extent that any such obligation under this Paragraph 10 is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Lease.
- D. Nothing in this Section 2, Paragraph 10 shall be construed to require Lessor to defend itself against all or any aspect of any challenge to this Lease or to 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.

11. **Holding Over:** Unless Lessee has complied in a timely manner with Section 2, Paragraph 15 – Application for New Lease - below, 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 or renewal of the lease term, and shall be subject to the terms, covenants, and conditions of this Lease. Upon request of Lessee, Lessor shall confirm in writing Lessee's hold-over status. Biannual Royalties, Minimum Biannual Royalties and annual land rents shall be increased by 125% of the applicable rate in the last biannual period and paid on

the first day of each month at the rate of 1/12th of the applicable amount. This 125% holding-over increase is separate, distinct, in addition to, and does not preclude Lessor from ongoing annual increases in the Biannual Royalties Minimum Biannual Royalties and annual land rent as outlined in this Lease, during the holding over period.

12. **Multiple Use:** This Lease is entered into with the understanding that its purposes are and its administration shall be consistent with the principle of multiple use of public lands and resources. This Lease shall allow coexistence of other permits or leases of the same lands for deposits of mineral resources other than Sand and Gravel under applicable laws, and the existence of this Lease shall not preclude other uses of the Leased Premises. However, operations under such other permits or Leases or other such uses shall not unreasonably interfere with or endanger operations under this Lease, nor shall operations under this Lease unreasonably interfere with or endanger operations under any permit, lease or other entitlement for use issued pursuant to the provisions of any other act. This Lease shall not be construed as superseding the authority which any State department or agency has with respect to the management, protection, and utilization, of the lands and resources under its jurisdiction. Lessor may prescribe those conditions it deems necessary for the protection of other mineral resources.
13. **NOTICES:** All notices, statements, demands, correspondence or other communications required or permitted to be given hereunder shall be in writing and shall be given (i) personally, (ii) by certified or registered mail, postage prepaid, return receipt requested or (iii) by overnight or other courier or delivery service, freight prepaid, addressed as follows:

To Lessor: State Lands Commission
Attn.: Chief, Land Management Division
100 Howe Ave., Suite 100 South
Sacramento, CA 95825

To Lessee: Suisun Associates, a Joint Venture
c/o Hanson Marine Operations
12667 Alcosta Blvd., Suite 400
San Ramon, CA 94583

Notices delivered by hand shall be deemed received when delivered, notices sent by certified or registered mail shall be deemed delivered and received four (4) days after deposit in the United States mail and notices sent by overnight courier or delivery service shall be deemed delivered on the business day following the day they were deposited with such overnight courier or delivery service. The addresses to which notices hereunder shall be mailed may be changed by written notice given by one Party to the other as provided above.

14. Quitclaim of Lease Prior to Expiration:

- A. Notwithstanding Section 3, Paragraph 13 of this Lease, at any time prior to the expiration of this Lease or its termination pursuant to Section 3, Paragraph 11, Lessee may file with Lessor a written request for Lessor to accept a quitclaim or relinquishment of all or any portion of the Lease Premises. A quitclaim or relinquishment shall be effective upon completion of any required abandonment of facilities and required reclamation of the Lease Premises as specified in this Lease or by any agency having jurisdiction over the lease activities and as approved by

Lessor. Until that time, Lessee shall comply with all terms of this Lease including the payment of all rentals and royalties that have accrued.

B. Lessee's request for Lessor's acceptance of a quitclaim or relinquishment of all or any portion of the Lease Premises shall be heard at Lessor's next regularly scheduled public meeting for which the request may be properly reviewed and noticed. Upon acceptance by Lessor, Lessee shall be released from all obligations accruing under the Lease with respect to the lands quitclaimed or relinquished. Acceptance of a quitclaim by Lessor shall not release Lessee or Lessee's surety from liability for breach of any obligation of the lease for which the Lessee is in default at the time of acceptance.

C. There shall be no proration of rents and royalties paid prior to the acceptance of the quitclaim.

15. APPLICATION FOR NEW LEASE: If Lessee desires to continue to occupy and use the Lease Premises after expiration of this Lease, Lessee agrees to submit no later than two years prior to the expiration of this lease an application and minimum expense deposit for a new lease for the continued use of the Lease Premises. Failure to submit the application and minimum expense deposit shall be deemed a default of this Lease.

In the event of any conflict between the provisions of Section 2 and Section 3 of this Lease, the provisions of Section 2 shall prevail.

SECTION 3

GENERAL PROVISIONS

1. GENERAL

These provisions are applicable to all commercial sand mining leases with the State Lands Commission.

2. CONSIDERATION

(a) Royalty

Lessee shall pay the rent and royalty as stated in this Lease to Lessor without deduction, delay, or offset, as stated in this Lease.

(b) Penalty and Interest

Any installments of rent and royalty 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 issued upon the application of Lessee and is entered into without a formal title determination. This Lease is not intended to establish the State's boundaries and shall in no way be construed as establishing the extent of the State's claim of title to any real property. The State makes no warranty as to title or rights of possession or quiet enjoyments of the Leased Premises. This Lease 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 expressly authorized uses in this Lease.

(b) Limitations

This Lease does not authorize the construction or placement of any improvements or fixtures, including but not limited to groins, jetties, sea walls, breakwaters, and bulkheads on the Lease Premises.

(c) Conservation

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.

(d) Toxics

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 all 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.

(f) 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.

5. RESERVATIONS, ENCUMBRANCES, AND RIGHTS-OF-WAY

(a) Reservations

(1) Except as otherwise granted in this Lease, 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 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.

(3) Lessee agrees to allow the State, the State's easement holders, permittees or lessees to enter upon the Lease Premises in order to conduct authorized activities; provided that such parties shall provide Lessee with reasonable advance notice of their entry on the Lease Premises and the contemplated activities while on the Lease Premises. The State shall require such parties to indemnify, defend and hold Lessee harmless from and against any loss, cost, charge, cause of action or other liability of any kind whatsoever that arises out of such parties activities on, in or associated with the Lease Premises.

(4) 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.

(5) 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 all applicable laws, regulations and rules of the United States, the State of California and counties or cities now or hereafter enacted or promulgated, including, without limitations, all applicable provisions of the Public Resources Code, the California Administrative Code, and the Statutes of California, regardless of which agency or government body may have jurisdiction with respect to enforcement. Lessee also agrees that in its employment practice hereunder, it shall not discriminate against any person because of race, color, religion, sex, ancestry, national origin, physical disability, sexual orientation, AIDS or AIDS related condition, marital status or age.

(a) 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.

(c) In accepting this Lease, Lessee understands that the interest created herein may be subject to a possessory interest tax imposed by a local or county tax assessor and accepts responsibility for and agrees to pay any and all possessory interest taxes and other assessments, user fees or service charges imposed on or associated with the leasehold interest, improvements or the Lease Premises. Any such possessory interest tax imposed shall not reduce any rent or royalty due hereunder and payment of the tax shall be the liability of the Lessee. 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 in Section 1 of this Lease, 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) Lessee shall obtain and maintain in full force and effect during the term of this Lease pollution liability 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 in Section 1 of this Lease, insuring Lessee and Lessor against any and all claims or liability arising out of its use, occupancy or activities on the Lease Premises.

(c) 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.

(d) 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.

(e) Workers Compensation: Lessee shall at all times in any and all of its operations hereunder and any works in and upon the Lease Premises, carry full and complete workers compensation insurance covering all of its employees.

(f) At any time, Lessor may require an increase in the amount of insurance or require additional types of insurance coverage to cover any additional authorized improvements, alterations, activities, amendments, modifications or previously unanticipated liabilities that may develop during the lease term.

9. SURETY BOND

(a) 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 by Lessor, or restored by Lessee as provided elsewhere in this Lease.

(b) Said bond shall require the surety to give at least 120 days written notice of its intention to cease acting as guarantor. If a surety gives notice of its intention to cease acting as a guarantor, the Lessee shall provide to State within 30 days of such notice a replacement bond of equal value to become effective upon the expiration of the existing bond. Failure to provide such a replacement bond within the required time shall constitute a default entitling State to levy against the entire amount of the existing bond. Lessee agrees that in no event shall the amount of the bond be construed as a limitation on its liability. This requirement shall be separate from any other bonding provisions of the Public Resources Code and the regulations of the State of California or any other State, local or federal requirement.

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) Employment of operators and/or subcontractors by Lessee shall not be considered a sublease or assignment of this Lease; provided, however, that Lessee shall first notify Lessor of any intended operator and/or subcontractors and obtain Lessor's approval of the use of an operator and/or subcontractor. In the event of any subcontracting, Lessee shall remain liable for the operator's and/or subcontractor's activities including the payment of royalties.

(c) 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.

(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 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.

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 approval of an assignment by State the covenants and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of all of the parties hereto; and all parties hereto shall be jointly and severally liable hereunder.

(h) 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.

(i) 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 with no opportunity to cure such default or breach and Lessor shall have an immediate right to avail itself to any of the remedies in subparagraph (c) below:

- (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 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) Failure of the Lessee to comply with any provisions of this Lease or with the laws, regulations, or rules applicable thereto shall immediately and without further notice constitute a default or breach of the Lease by Lessee.

(b) Lessee's failure to observe or perform any other term, covenant, or condition of this Lease or when such failure shall continue for a period of thirty (30) days after Lessor's giving written notice; provided, 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, 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. INDEPENDENT SITE ASSESSMENT

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. 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 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 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 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.

LESSEE(S):

SUISUN ASSOCIATES, A JOINT VENTURE

M. J. Kelly
V. P.
3.22.13

LESSOR:

STATE OF CALIFORNIA
 STATE LANDS COMMISSION

By: [Signature]
 Title: Chief
Land Management Division
 Date: MAY 06 2013

ACKNOWLEDGEMENT

This Lease was authorized by the
 California State Lands Commission on

2 / 22 / 13
 (Month Day Year)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of Contra Costa

On 3/22/13
Date

before me, Christine Mazzer
Here Insert Name and Title of the Officer

personally appeared

Michael F. Roth
Name(s) of Signer(s)



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

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

WITNESS my hand and official seal.

Signature:

Christine Mazzer
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Lease No. PRC 7781.1

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Michael F. Roth

☒ Corporate Officer — Title(s): _____

- ☐ Individual
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

- ☐ Individual
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

EXHIBIT A

PRC 7781.1

LAND DESCRIPTION

Two parcels of tide and submerged land lying in the bed of the Suisun Bay, Solano, Sacramento and Contra Costa Counties, State of California, being more particularly described as follows:

PARCEL 1 (West Parcel):

BEGINNING at a point having NAD 1983 coordinate of 38° 03' 01.0" North Latitude, 121° 56' 16.0" West Longitude, thence in a clockwise direction through the following 3 points:

1. 38° 03' 08.0" North Latitude, 121° 56' 13.0" West Longitude;
2. 38° 02' 53.0" North Latitude, 121° 55' 21.0" West Longitude;
3. 38° 02' 46.0" North Latitude, 121° 55' 23.0" West Longitude to the POINT OF BEGINNING.

PARCEL 2 (East Parcel):

BEGINNING at a point having NAD 1983 coordinate of 38° 02' 47.0" North Latitude, 121° 55' 10.0" West Longitude, thence in a clockwise direction through the following 10 points:

1. 38° 02' 55.0" North Latitude, 121° 55' 06.0" West Longitude;
2. 38° 03' 00.0" North Latitude, 121° 53' 38.0" West Longitude;
3. 38° 03' 38.0" North Latitude, 121° 52' 10.0" West Longitude;
4. 38° 04' 01.0" North Latitude, 121° 51' 23.0" West Longitude;
5. 38° 04' 06.0" North Latitude, 121° 50' 56.0" West Longitude;
6. 38° 02' 08.0" North Latitude, 121° 50' 02.0" West Longitude;
7. 38° 01' 59.0" North Latitude, 121° 50' 12.0" West Longitude;
8. 38° 03' 54.0" North Latitude, 121° 51' 05.0" West Longitude;
9. 38° 03' 49.0" North Latitude, 121° 51' 32.0" West Longitude;
10. 38° 02' 52.0" North Latitude, 121° 53' 04.0" West Longitude to the POINT OF BEGINNING.

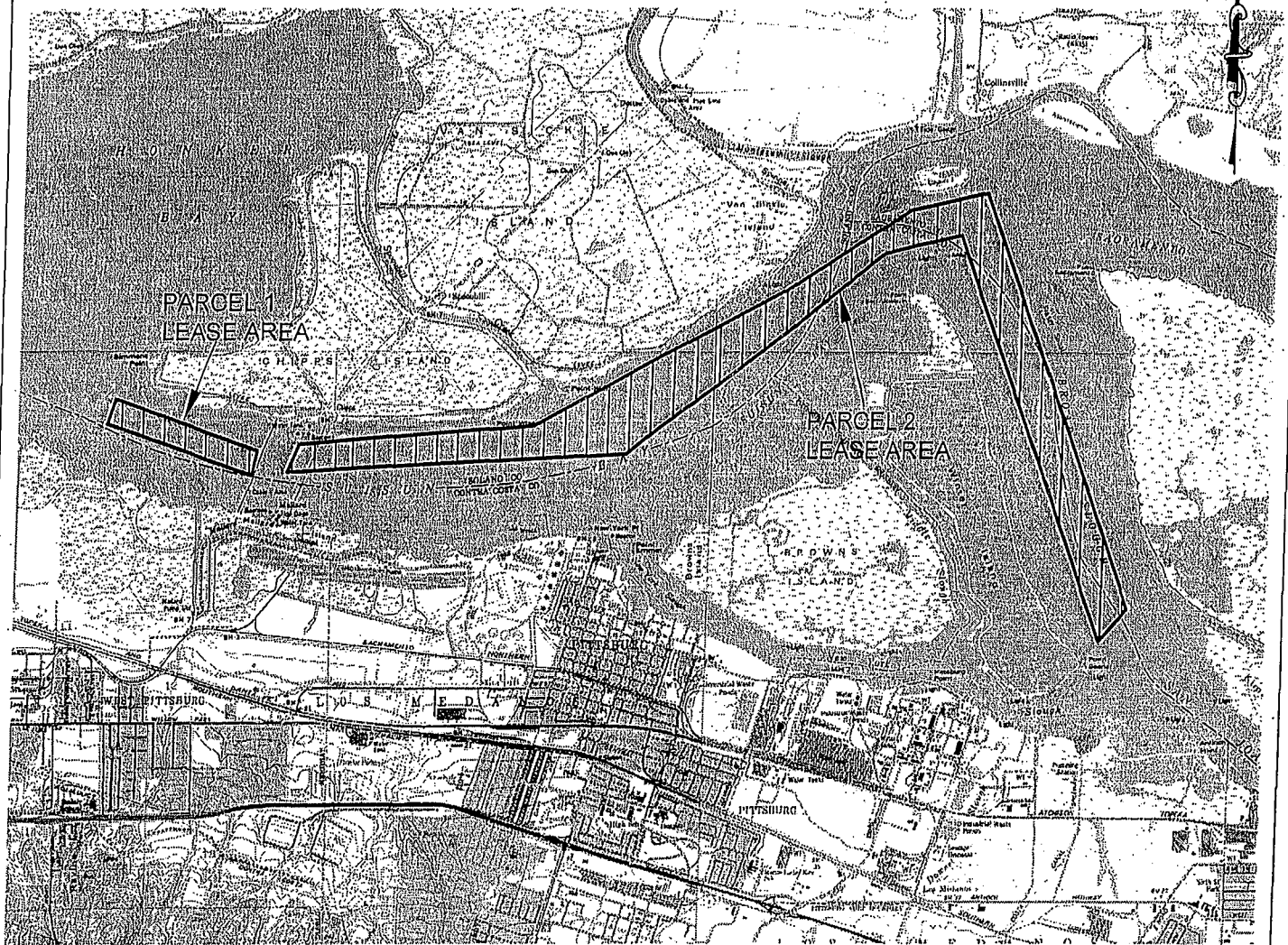
END OF DESCRIPTION

Prepared 06/13/2012 by the California State
Lands Commission Boundary Unit.



NO SCALE

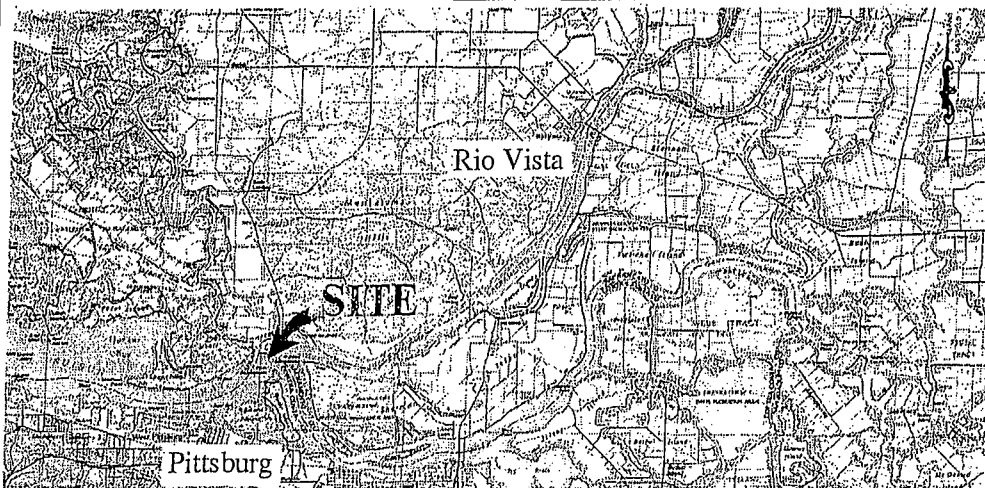
SITE



SUISUN BAY, BROAD SLOUGH & SACRAMENTO RIVER

NO SCALE

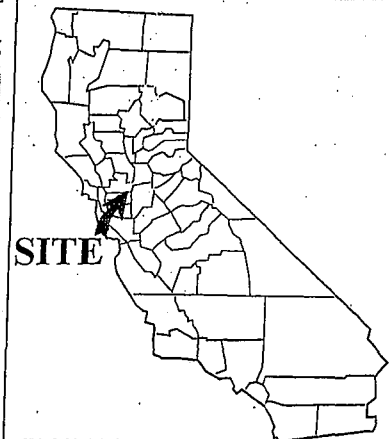
LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 7781.1
SUISUN ASSOCIATES
SAND MINING LEASE
SOLANO, SACRAMENTO &
CONTRA COSTA COUNTIES



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.

TS 06/12/12

MITIGATION MONITORING PROGRAM

As the Lead Agency under the California Environmental Quality Act (CEQA), the California State Lands Commission (CSLC) is required to adopt a program for reporting or monitoring regarding the implementation of mitigation measures (MMs) for the proposed San Francisco Bay and Delta Sand Mining Project (Project), if it is approved, to ensure that the adopted MMs are implemented as defined in this Environmental Impact Report (EIR). This Lead Agency responsibility originates in Public Resources Code section 21081.6(a) (Findings, Mitigation Monitoring and Reporting), and the State CEQA Guidelines sections 15091(d) (reporting on or monitoring mitigation) and 15097 (Mitigation Monitoring or Reporting).

MONITORING AUTHORITY

The purpose of a Mitigation Monitoring Program (MMP) is to ensure that measures adopted to mitigate or avoid significant impacts are implemented. A MMP can be a working guide to facilitate not only the implementation of mitigation measures by the Project proponents, but also the monitoring, compliance and reporting activities of the CSLC and any monitors it may designate.

The CSLC may delegate duties and responsibilities for monitoring to other environmental monitors or consultants as deemed necessary, and some monitoring responsibilities may be assumed by responsible agencies, such as affected jurisdictions and cities, and the California Department of Fish and Wildlife (CDFW), formerly the California Department of Fish and Game (CDFG). The number of monitors assigned to the project will depend on the number of concurrent mining activities and their locations. The CSLC or its designee(s), however, will ensure that each person delegated any duty or responsibility is qualified to monitor compliance.

Any mitigation measure that requires the approval of the CSLC must allow at least 60 days for adequate review time. When a MM requires that a mitigation program be developed during the design phase of the project, the Applicant must submit the final program to CSLC for review and approval for at least 60 days before mining begins. Other agencies and jurisdictions may require additional review time. It is the responsibility of the environmental monitor assigned to each measure to ensure that appropriate agency reviews and approvals are obtained.

The CSLC or its designee will also ensure that any deviation from the procedures identified under the monitoring program is approved by the CSLC. Any deviation and its correction shall be reported immediately to the CSLC or its designee by the environmental monitor assigned to the mining event.

ENFORCEMENT RESPONSIBILITY

The CSLC is responsible for enforcing the procedures adopted for monitoring through the environmental monitor assigned to each mining event. Any assigned environmental monitor shall note problems with monitoring, notify appropriate agencies or individuals about any problems, and report the problems to the CSLC or its designee.

MITIGATION COMPLIANCE RESPONSIBILITY

The Applicant is responsible for successfully implementing all the mitigation measures in the MMP, and is responsible for assuring that these requirements are met by all of its mining contractors and field personnel. Standards for successful mitigation also are implicit in many MMs that include such requirements as obtaining permits or avoiding a specific impact entirely. Other MMs include detailed success criteria. Additional mitigation success thresholds will be established by applicable agencies with jurisdiction through the permit process and through the review and approval of specific plans for the implementation of the MMs.

GENERAL MONITORING PROCEDURES

Environmental Monitors. Monitoring procedures will be conducted during the mining events. The CSLC and the environmental monitor(s) are responsible for integrating the mitigation monitoring procedures into the mining events in coordination with the Applicant. To oversee the monitoring procedures and to ensure success, the environmental monitor assigned to each mining event must be on site during that portion of an event that has the potential to create a significant environmental impact or other impact for which mitigation is required. The environmental monitor is responsible for ensuring that all procedures specified in the monitoring program are followed.

General Reporting Procedures. Site visits and specified monitoring procedures performed by other individuals will be reported to the environmental monitor assigned to the relevant mining events. A monitoring record form will be submitted to the environmental monitor by the individual conducting the visit or procedure so that details of the visit can be recorded and progress tracked by the environmental monitor. A checklist will be

developed and maintained by the environmental monitor to track all procedures required for each MM and to ensure that the timing specified for the procedures is adhered to. The environmental monitor will note any problems that may occur and take appropriate action to rectify the problems.

Public Access to Records. The public is allowed access to records and reports used to track the monitoring program. Monitoring records and reports will be made available for public inspection by the CSLC or its designee on request.

MITIGATION MONITORING TABLES

The following mitigation monitoring tables list the following information for each significant impact:

- Impact (impact number, title, and impact class);
- Mitigation Measure (summary text of the measure);
- Location (where the impact occurs and the mitigation measure should be applied);
- Monitoring/reporting action (the action to be taken by the monitor or Lead Agency);
- Effectiveness criteria (how the agency can know if the measure is effective);
- Responsible agency; and
- Timing (during operation, etc.).

Mitigation Monitoring Program

Table 7-1. Mitigation Monitoring Program – Biological Resources

Impact	Mitigation Measure	Location	Monitoring / Reporting Action	Effectiveness Criteria	Responsible Agency	Timing
BIO-8: Regular operation of sand mining activities will cause entrainment and mortality of delta and longfin smelt. (Class I)	<p>BIO-8a: Applicants shall implement operational measures to minimize the potential for entrainment and mortality of delta and longfin smelt.</p> <ul style="list-style-type: none"> Timing of dredging relative to X2; <p>To protect delta and longfin smelt and potentially eggs and young larvae from mortality related to entrainment, sand mining activities shall be restricted upstream of the X2 location (i.e., the location of 2 parts per thousand (ppt) salinity) from December 1 through June 30 each year. This location changes during the water year in response to river flows and its location is tracked on the following website: http://cdec.water.ca.gov/cgi-progs/queryDaily?X2. The degree and duration of mining restrictions, and the specific locations where mining should be restricted during this sensitive seasonal period will be based on factors including the specific location of X2 relative to mining activities, species presence and relative abundance in the Project area based on sampling data from the nearest survey stations, and the overall status of the species (population trend). Specific seasonal restrictions will be set through consultation with the California Department of Fish and Wildlife (CDFW) and would likely be a requirement of any Incidental Take Permit that may be issued for</p>	Suisan Bay and Western Delta lease areas, including Middle Ground Shoal and Suisun Associates; Central Bay.	Applicants shall submit to CSLC written documentation that they have obtained an Incidental Take Permit and have complied with the conditions contained in the permit.	Evidence of a CDFW approved Incidental Take Permit and compliance with its conditions. <u>BCDC would be unable to issue new permits for sand mining – needed for the Project to proceed – prior to the CDFW issuing an Incidental Take Permit for the Project.</u>	CSLC / CDFW	Within 12 months of issuance of new leases approval.

Table 7-1. Mitigation Monitoring Program – Biological Resources

Impact	Mitigation Measure	Location	Monitoring / Reporting Action	Effectiveness Criteria	Responsible Agency	Timing
	<p>the Project.</p> <ul style="list-style-type: none"> Current restrictions on sand mining operations; <p>As specified in the National Marine Fisheries Service Biological Opinion (NMFS 2006) and the U.S. Fish and Wildlife Service Letter of Concurrence (USFWS 2006), serve to avoid and minimize take of delta smelt. Currently there are no Federal restrictions on longfin smelt. Due to similar life stages, however, State delta smelt restrictions and conditions will be applied to both smelt species. These conditions include restrictions on pump priming, limiting the total mining volume, prohibiting mining in areas of shallow water depth and in proximity to shorelines, restricting mining to the designated lease areas which are away from sensitive habitat, and monitoring and reporting the location of each mining event.</p> <ul style="list-style-type: none"> Additional requirements and restrictions to minimize and avoid take. <p>Will be set through consultation with the CDFW and would likely be a requirement of any Incidental Take Permit that may be issued for the Project. To further minimize take, the Applicants shall keep the end of the pipe and drag head as close to the bottom as possible, and no</p>					

Mitigation Monitoring Program

Table 7-1. Mitigation Monitoring Program – Biological Resources

Impact	Mitigation Measure	Location	Monitoring / Reporting Action	Effectiveness Criteria	Responsible Agency	Timing
	more than three feet from the bottom, whenever feasible when priming the pump or clearing the pipe. Additional requirements and restrictions may be set through consultation with CDFW.					
	BIO-8b: Applicants shall provide off-site mitigation to compensate for the impacts of the taking that may be unavoidable.	Suisan Bay and Western Delta lease areas, including Middle Ground Shoal and Suisun Associates; Central Bay.	Applicants shall submit to CSLC written documentation that they have obtained an Incidental Take Permit and have complied with the conditions contained in the permit.	Evidence of a CDFW approved Incidental Take Permit and compliance with its conditions. <u>BCDC would be unable to issue new permits for sand mining – needed for the Project to proceed – prior to the CDFW issuing an Incidental Take Permit for the Project.</u>	CSLC / CDFW	Within 12 months of issuance of new leases approval.
BIO-9: Green sturgeon, Chinook salmon, and steelhead trout will be impacted during sand mining. (Class II)	BIO-9a: Sand mining halted during peak Chinook salmon migration.	Suisan Bay and Western Delta lease areas, including Middle Ground Shoal and Suisun Associates.	Beginning March 1 of each year that the sand mining leases are in effect, the applicants shall communicate weekly with USFWS and CSLC to determine the timing of that year's outmigration peak. CSLC shall confirm in writing, based on physical inspection and/or electronic tracking data (E-trac data) that no sand mining occurs during the peak outmigration period.	Evidence that no sand mining has taken place during the peak outmigration period, as defined and reported by USFWS.	CSLC	Sand mining closure period to be determined prior to April 1 of each year. Confirmation of closure by June 1 of each year.
	BIO-9b: Sand mining limited to daylight hours from January 1 to May 31.	Suisan Bay and Western Delta lease areas,	Applicant to submit quarterly E-trac data, including time of mining	Evidence that sand mining has taken place only during daylight	CSLC	Quarterly E-trac data to be submitted within

Table 7-1. Mitigation Monitoring Program – Biological Resources

Impact	Mitigation Measure	Location	Monitoring / Reporting Action	Effectiveness Criteria	Responsible Agency	Timing
		including Middle Ground Shoal and Suisun Associates.	events. CSLC to confirm in writing that all mining events in Suisun Bay and Western Delta lease areas have occurred only during daylight hours from January 1-May 31 of each year.	hours during the period peak outmigration period January 1-May 31 of each year.		one month of end of each quarter. CSLC written confirmation of compliance within two months of the end of each quarter.

Table 7-2. Mitigation Monitoring Program – Hazards and Hazardous Materials

Impact	Mitigation Measure	Location	Monitoring / Reporting Action	Effectiveness Criteria	Responsible Agency	Timing
HAZ-1: Potential for accidental leak or spill of hazardous materials. (Class II)	HAZ-1: Provide a California Non-tank Vessel Contingency Plan (CANTVCP) to the CSLC.	Not applicable	Jerico to provide evidence of CDFW approval of CANTVCP.	Evidence of approved CANTVCP.	CDFW/CSLC	Within three months of certification of the EIR.

Table 7-3. Mitigation Monitoring Program – Air Quality

Impact	Mitigation Measure	Location	Monitoring / Reporting Action	Effectiveness Criteria	Responsible Agency	Timing
AIR-2: Potential impacts on climate change. (Class II)	AIR-2: Prepare and implement a Greenhouse Gas Reduction Plan.	Project area	Applicants to submit and CSLC to review and approve GHG Reduction Plan. Applicants to provide annual evidence of confirmed GHG inventory and report of GHG Reduction Plan implementation.	Confirmed annual GHG inventories must demonstrate reduction or offset of GHG emissions to target level.	CSLC	Within three months of lease issuance.

Table 7-4. Mitigation Monitoring Program – Cultural Resources

Impact	Mitigation Measure	Location	Monitoring / Reporting Action	Effectiveness Criteria	Responsible Agency	Timing
CUL-1: Inadvertent discovery	CUL-1: Cease operations and	Project area	Applicants to provide	Evidence of appropriate	CSLC	Ongoing during

Mitigation Monitoring Program

Table 7-4. Mitigation Monitoring Program – Cultural Resources

Impact	Mitigation Measure	Location	Monitoring / Reporting Action	Effectiveness Criteria	Responsible Agency	Timing
of historical resources or "unique archaeological resources." (Class II)	notify California State Lands Commission and Army Corps of Engineers.		immediate notification of any inadvertent discovery and evidence that operations have ceased in the immediate area of the discovery. Applicants to provide annual report of all inadvertent discoveries and responses.	response to inadvertent discovery, including reporting and ceasing operations in the vicinity of the discovery.		lease period; annual reports to be submitted by January 31 of each year.
CUL-3: Inadvertent discovery of human remains. (Class II)	CUL-3: Cease operations and notify County Coroner.	Same as CUL-1	Same as CUL-1	Same as CUL-1	Same as CUL-1	Same as CUL-1

Table 7-5. Mitigation Monitoring Program – Land Use and Recreation

Impact	Mitigation Measure	Location	Monitoring / Reporting Action	Effectiveness Criteria	Responsible Agency	Timing
LU-4: Conflicts with regional or local land use plans or policies. (Class II)	LU-4. Implement MM BIO-8a, BIO-8b, BIO-9a, BIO-9b, HAZ-1, AIR-2, CUL-1, and CUL-3.	Varies	See specific actions above for each mitigation measure.	See criteria above for each mitigation measure.	See responsible agencies above for each mitigation measure.	See above for each mitigation measure.