

ASSIGNMENT AND ASSUMPTION AGREEMENT (PRIVATE)

**RECORDING REQUESTED BY AND
WHEN RECORDED, PLEASE MAIL TO:**

Department of Transportation
Environmental Enhancement and Mitigation Program
Attn: Susan Harrington, Coordinator
1120 N Street (95814)
P. O. Box 942874 - MS 1
Sacramento, CA 94274-0001

Recorder stamp:
Applicant must record or funds are at risk.

ASSIGNMENT AND ASSUMPTION AGREEMENT (PRIVATE)

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (AAA) is entered into, effective this _____ day of _____, 2003, by and between the _____ ("Assignor"), the STATE OF CALIFORNIA, ACTING BY AND THROUGH THE DEPARTMENT OF TRANSPORTATION ("Department") and the _____ ("Assignee").

RECITALS

- A. Assignor executed an Environmental Enhancement and Mitigation Agreement _____, dated _____, to acquire certain portions of real property located _____ County, California, more particularly described on Exhibit AAA-A (the "Property"), attached hereto and incorporated herein by this reference. Assignor, as the applicant for conservation land funds through the Environmental Enhancement and Mitigation Program administered by Department, has received or will receive funding which will allow Assignor to acquire the Property, and subsequently, convey the Property to Assignees. The Property is the total land _____ acquired by Assignor with funds from the Environmental Enhancement and Mitigation Program (the "Overall Project"). However, Assignor will convey property title as follows:
- B. As set forth in the Environmental Enhancement and Mitigation Program. Application submitted by Assignor, as "Applicant", (the "Application") attached hereto together with Exhibit of the Application, as Exhibit B, incorporated herein by reference, the purposes for acquiring the Property are broad. Furthermore, it is understood by Assignee that all uses, operations and maintenance of the Property will be to ensure in perpetuity the preservation, enhancement and protection of these stated Purposes.
- C. As a condition to Assignor's receipt of funds from the Environmental Enhancement and Mitigation Program for Overall Project, Assignor entered into an Applicant-State Agreement No. _____ Environmental Enhancement and Mitigation (EEM) Program, executed n _____, with Department, hereinafter referred to as "EEM Agreement". That EEM Agreement set forth provisions for the fund transfers and cost sharing of Applicant for the Overall Project, as described by Assignor, in the Application. As specified in Article XII, Paragraph 14 of the EEM Agreement, certain

provisions survive beyond the EEM Agreement termination date, and as such, Assignee will assume such obligations and responsibilities upon assignment thereof relative to the Property acquired by Assignee. Those provisions are set forth in Exhibit AAA-C, attached hereto and incorporated herein by this reference. If any reimbursement is required pursuant to Article VI of Exhibit AAA-C, said reimbursement amount shall be calculated at the same proportional rate as the ratio between the Property and the Overall Project.

- D. As another condition to Assignor's receipt of such funds from Department, Assignor executed an Agreement Declaring Restrictive Covenants (ADRC) dated _____, with Department. The ADRC provides among other things, that any owner of the Property will enter into covenant and agree to operate and maintain the Property pursuant to conditions and obligations described therein, and as set forth in the Application and EEM Agreement. The ADRC shall be recorded concurrently, with Assignor's acquisition of the Property as an encumbrance on the Property. After its acquisition, Assignor will convey the Property to Assignees, subject to the terms and conditions of the ADRC, and therefore, wishes to assign the obligations contained in the ADRC Application and surviving provisions in the EEM Agreement as set forth in Exhibit AAA-C and Paragraph C above, to Assignees upon Assignees' acquisition of the fee interest in the Property.
- E. The ADRC provides that Assignor may assign the ADRC, its rights and obligations thereunder to Assignees, subject to the written consent of Department. Assignor desires hereby to assign the ADRC, the Application and surviving provisions in the EEM Agreement as set forth in Exhibit AAA-C and Paragraph C above, and its rights and obligations thereunder to Assignees, and Assignees' desires to assume Assignor's rights and obligations under the ADRC, the Application and surviving provisions in the EEM Agreement as set forth in Exhibit AAA-C and Paragraph C above.
- F. All capitalized terms used in this AAA and not otherwise defined herein shall have the meanings attributed to them in the ADRC.

NOW, THEREFORE, in consideration of the mutual promises of the parties hereunder and the mutual agreements set forth herein, the parties hereby agree as follows:

1. Assignor hereby assigns, transfers and conveys to Assignees all of Assignor's rights, title and interest as "Applicant" in and to the ADRC, the Application and EEM Agreement, specifically, those provisions of the EEM Agreement set forth in Exhibit AAA-C and Paragraph C above. Assignees hereby assumes and agrees to completely and timely perform, comply with and discharge, each and every obligation, covenant, representation, warranty, indemnification, duty and liability of Assignor under the ADRC, the Application and the EEM Agreement, specifically, those provisions of the EEM Agreement set forth in Exhibit AAA-C and Paragraph C above, in order to preserve, enhance and protect in perpetuity those Purposes stated above and identified in the EEM Application.

2. Department hereby consents to the assignment by Assignor and assumption by Assignee of Assignor's rights and obligations under the ADRC, the Application and EEM Agreement, specifically, those provisions of the EEM Agreement set forth in Exhibit AAA-C and Paragraph C above.

3. This AAA shall be recorded immediately following the recordation of the ADRC, which shall be recorded prior to the Grant Deed executed by MAS conveying the Property to Assignee being recorded.

4. If any party commences an action against another party arising out of, or in connection with this AAA, the prevailing party shall be entitled to recover from the losing party or parties its court costs and attorneys' fees and costs.

5. This AAA shall be governed by and construed in accordance with the laws of the State of California. Time is of the essence of this AAA. This AAA shall be binding upon and shall inure to the benefit of the parties and their successors and assigns. This AAA constitutes the entire agreement of the parties hereto on the matters covered. The invalidity or unenforceability of any provision(s) of this AAA shall not render any other provision(s) invalid or unenforceable.

6. This AAA may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute but one agreement.

IN WITNESS of the foregoing provisions the parties have signed this AAA as of the date set forth below.

ASSIGNOR

By: _____

Title: _____

Date: _____

ASSIGNEE:

By: _____

Title: _____

Date: _____

CONSENTED AND AGREED TO:

STATE OF CALIFORNIA, DEPARTMENT
OF TRANSPORTATION

By: _____

Title: _____

Date: _____

Notary Acknowledgments

LEGAL DESCRIPTION OF THE PROPERTY

(See attached)

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**ENVIRONMENTAL ENHANCEMENT AND MITIGATION PROGRAM ORIGINAL
APPLICATION**

(See attached)

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