

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Public Works *alal*

BOARD AGENDA # \*C-2

Urgent  Routine

AGENDA DATE April 17, 2012

CEO Concurs with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval of Purchase Agreement to Acquire Road Right-of-Way for the State Route 99/State Route 219 (Kiernan Avenue) Interchange Project, Parcel Owner California Almond Growers Exchange, APN: 135-042-020

STAFF RECOMMENDATIONS:

1. Approve the purchase agreement for the subject acquisition.
2. Authorize the Chairman of the Board to execute the agreement.
3. Authorize the Director of Public Works to sign the Certificate of Acceptance and cause to record the Grant Deed on behalf of Stanislaus County as authorized by Board Resolution dated March 8, 2011 and Government Code 27281.

(Continued on Page 2)

FISCAL IMPACT:

The total estimated construction cost for the SR 99/SR 219 (Kiernan Avenue) Interchange project is approximately \$34,000,000. The \$49,000 for the purchase of this right-of-way is funded 100% by Proposition 1B funds (available in the current year's Road Projects budget) and consists of \$47,000 for the purchase of the right-of-way, and \$2,000 for estimated escrow and title insurance fees.

BOARD ACTION AS FOLLOWS:

No. 2012-165

On motion of Supervisor Chiesa, Seconded by Supervisor Withrow

and approved by the following vote,

Ayes: Supervisors: Chiesa, Withrow, Monteith, De Martini, and Chairman O'Brien

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1)  Approved as recommended

2)  Denied

3)  Approved as amended

4)  Other:

MOTION:

*Christine Ferraro*

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval of Purchase Agreement to Acquire Road Right-of-Way for the State Route 99/State Route 219 (Kiernan Avenue) Interchange Project, Parcel Owner California Almond Growers Exchange, APN: 135-042-020

4. Direct the Auditor-Controller to issue a warrant in the total amount of \$49,000 payable to First American Title Company, for the purchase amount of \$47,000 and \$2,000 for estimated escrow fees and title insurance.

**DISCUSSION:**

Stanislaus County, in cooperation with Caltrans District 10, proposes to reconstruct the SR 99/SR 219 (Kiernan Avenue) interchange in the community of Salida. This project will help facilitate future growth, help alleviate traffic congestion, and will improve the operation of this interchange. Increasing the efficiency of the interchange will also encourage the free flow of goods and services for the region and the State. Two build alternatives and the no-build alternative were proposed and studied for this interchange. Alternative #1 was the preferred alternative and has been estimated to cost approximately \$38 million (in today's dollars) for construction, right-of-way acquisitions, and utility relocations. The project is proposed for funding by the Stanislaus County Public Facilities Fees, Proposition 1B local street and road funds, environmental mitigation fees, and the State Route 99 Bond Savings funds. The Bond Savings funds will provide up to \$34 million toward the construction phase of the project.

The proposed interchange improvements include reconstruction of the existing interchange to provide improved operations for turning movements to and from State Route (SR) 99, as well as associated local road improvements at adjacent intersections.

The interchange is located in the north part of Stanislaus County and on the northern edge of the City of Modesto, providing access to commercial and residential properties in the community of Salida.

Stanislaus County Public Works has completed the planning and environmental phases of the project, which were funded with contributions from developers in conjunction with the Salida Community Plan and the voluntary regional transportation contribution received from Kaiser Permanente.

To accomplish the SR 99/SR 219 (Kiernan Avenue) Interchange project, the County will need to acquire a sliver of the California Almond Growers Exchange parcel on the southeast corner of the SR 219 (Kiernan Avenue) and Sisk Road intersection. The property owner has agreed to accept the following compensation:

Property Owner: California Almond Growers Exchange  
Amount of Compensation: \$47,000  
Assessor's Parcel Number: 135-042-020  
Right-of-Way Area: 0.086 acres+/- (3,750 +/- SF)  
Temporary Construction Easement 0.042 acres+/- (1,851 +/- SF)

The amount of compensation has been determined to be within the range of just compensation by an independent appraiser hired by the County.

Approval of Purchase Agreement to Acquire Road Right-of-Way for the State Route 99/State Route 219 (Kiernan Avenue) Interchange Project, Parcel Owner California Almond Growers Exchange, APN: 135-042-020

**POLICY ISSUES:**

The SR 99/SR 219 (Kiernan Avenue) Interchange project supports the Board's priorities by providing A Safe Community, A Healthy Community and A Well Planned Infrastructure System by reducing traffic congestion on the County road system.

**STAFFING IMPACT:**

There is no staffing impact associated with this item.

**CONTACT PERSON:**

Matt Machado, Public Works Director. Telephone: (209) 525-4130.  
Chris Brady, Public Works Construction Manager.

CB:lc

L:\ROADS\9207 - Hwy 99 @ Kiernan Interchange\PS&E\Right of Way\Blue Diamond\Board Report - CA Almond Growers FINAL.pdf



RECORDING REQUESTED BY:

First American Title Company

WHEN RECORDED RETURN TO:

County of Stanislaus  
1021 I Street, Suite 100  
Modesto, Ca 95354-0847

Attn: County Clerk Recorder

No Fee Document – per Government code 6103  
No Document Transfer Tax – Per R&T Code 11922

Space above this line for Recorder's Use

# CORPORATION GRANT DEED

APN: 135-042-020


Caltrans District	County	Route	Post Mile	Assessors' Parcel Number
10	Stanislaus	Kiernan Avenue SR 219	0.0/0.3	135-042-020

California Almond Growers Exchange Corporation (GRANTOR) does hereby GRANT to the County of Stanislaus, a California municipal corporation of the State of California (GRANTEE) all that real property in the City of Salida County of Stanislaus, State of California, described as:

**SEE EXHIBIT "A", LEGAL DESCRIPTION, AND EXHIBIT "A-1", PLAT MAP ACCOMPANING  
LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF**

GRANTORS further understand that the present intention of GRANTEE is to construct and maintain public roadway improvements and appurtenances on the lands hereby conveyed in fee and the GRANTOR'S, for themselves, their successors and assigns, hereby waive any claims for any and all damages to GRANTOR'S remaining property (if applicable) contiguous to the property hereby conveyed by reason of the location, construction, landscaping or maintenance of said roadway.

Date: March 8, 2012.

By:   
\_\_\_\_\_

Grantor

By:   
\_\_\_\_\_

Grantor

## Exhibit A Legal Description

Being a portion of the lands described in the deed to California Almond Growers Exchange, a California Cooperative Corporation, Recorded June 14, 2007 at Document No.2007-0079123, situate in the County of Stanislaus, also being a portion of Parcel B as said Parcel is shown on that certain Parcel Map filed for Record on April 14, 1967 in Book 3 of Parcel Maps, at Page 57 Official Records of said County, State of California and located in the northeast quarter of Section 3, Township 3 South, Range 8 East, M.D.B & M. more particularly described as follows:

Commencing at a 2" iron pipe with brass cap, in monument well, marking the North Quarter corner of said Section 3, from which the Northwest corner of said Section 3 bears South 89°33'45" West, a distance of 2,641.34 feet and is marked by a 2" iron pipe with Stanislaus County brass disk, in monument well, as both corners are shown on the Record of Survey filed in Book 27 of Surveys at Page 50, Stanislaus County Records;

Thence along the centerline of said Section 3, South 00°13'46" East a distance of 95.19 feet;

Thence leaving said centerline North 74°33'02" East a distance of 61.68 feet to a point on the southerly right of way line of Kiernan Avenue and the Point of Beginning;

Thence continuing along said southerly line North 74°33'02" East a distance of 24.77 feet;

Thence leaving said southerly line of Kiernan Avenue South 42°50'00" West, 44.73 feet;

Thence South 00°11'04" East, 199.73 feet;

Thence South 09°28'43" West, 80.29 feet to a point on the easterly right-of-way line of Sisk Road and lands described in the Deed to the State of California, recorded June 14, 2007, as Instrument No. 2007-079123;

Thence along said easterly right-of-way line North 00°17'49" West, 276.34 feet;

Thence North 35°30'44" East, 35.36 feet to the Point of Beginning.

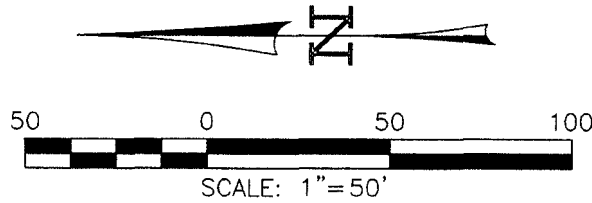
Said Parcel contains 3,750± square feet of land, more or less.

All bearings and distances used in this description are on the California Coordinate System of 1983, Zone 3. Multiply distances by 1.00006860 to convert to ground distances.

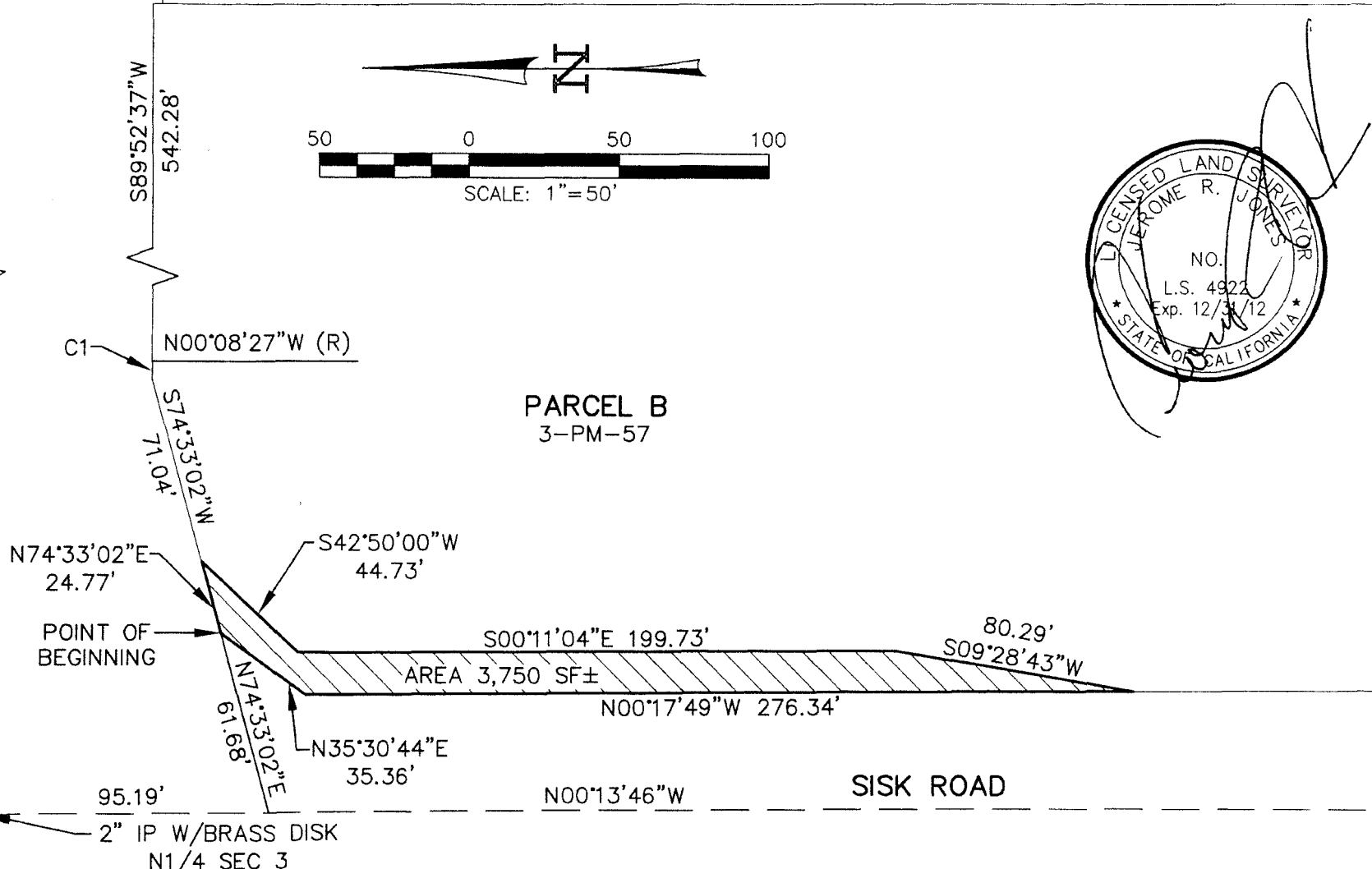


CURVE TABLE

C1 R=949.39' L=6.27' Δ=0°22'42"



KIERNAN AVENUE / SR 219



**NOLTE**

BEYOND ENGINEERING

2486 NATOMAS PARK DRIVE, 4TH FLOOR, SACRAMENTO, CA. 95833  
916.641.8100 TEL 916.641.8222 FAX WWW.NOLTE.COM

DATE: \_\_\_\_\_ TIME: \_\_\_\_\_  
 NETWORK: \_\_\_\_\_  
 PATH: \_\_\_\_\_  
 DWG NAME: \_\_\_\_\_  
 PLOT VIEW: \_\_\_\_\_  
 DESIGNER: \_\_\_\_\_ MGR: \_\_\_\_\_

**"EXHIBIT B"- PARCEL 16522-1**

RIGHT OF WAY ACQUISITION  
 COUNTY OF STANISLAUS, STATE OF CALIFORNIA

PREPARED FOR: COUNTY OF STANISLAUS

DATE SUBMITTED: 01/2012

SHEET NUMBER

1

OF 1 SHEETS

JOB NUMBER  
 SAB041001

XREFS:

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

CIVIL CODE § 1189

State of California

County of Sacramento }

On 03-08-12 before me, KATHLEEN LOUISE GUERERE NOTARY PUBLIC  
Date Here Insert Name and Title of the Officer

personally appeared Bruce Lish  
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: Kathleen Louise Guerere  
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: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- Corporate Officer — Title(s): \_\_\_\_\_
- Individual
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Corporate Officer — Title(s): \_\_\_\_\_
- Individual
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: \_\_\_\_\_

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

CIVIL CODE § 1189

State of California

County of Sacramento }

On 03/13/12 before me, KATHLEEN LOUISE GUERERE, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Dean LaVallee  
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.

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- Other: \_\_\_\_\_

**RIGHT THUMBPRINT OF SIGNER**

Top of thumb here

Signer Is Representing: \_\_\_\_\_



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**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed to the County of Stanislaus, by the within instrument, the provisions of which are incorporated by this reference as though fully set forth in this Certification, is hereby accepted by the undersigned officer(s) on behalf of the County, and the Grantee consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Matt Machado  
Director of Public Works  
Stanislaus County

\*\*\*\*\*

District	County	Route	P.M.	E. A.	Caltrans Parcel No.	Federal Reference No.	Name	APN
10	STAN	Kiernan Ave. SR219	0.0/0.3	10-OL3309 BRI 10118	16522-1 16522-2	10-0000-0100	California Almond Growers Exchange	135-042-020

Sacramento, California

March 8, 2012

California Almond Growers Exchange

Grantor

### COUNTY OF STANISLAUS RIGHT OF WAY CONTRACT

Document number 10-16522-1, in the form of a Grant Deed with attached Legal Description Granting to the County of Stanislaus (County) covering the property as delineated on the Appraisal Map, and particularly described in the above referenced Instruments and Plat Map labeled "Exhibit A" attached hereto and made a part hereof, along with Document number 16522-2 in the form of a Temporary Construction Easement (TCE) with attached Legal Description and Plat Map labeled "Exhibit B," have been executed and delivered to, Tom Ganyon, Senior Right of Way Agent, acting as Agent for the County of Stanislaus California, by California Almond Growers Exchange (Grantor).

In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed as follows:

1. (A) The parties have herein set forth the whole of their agreement. The performance of this agreement constitutes the entire consideration for said document and shall relieve County of all further obligations or claims on this account, or on account of the location, grade or construction of the proposed public improvement.
  - (B) County requires said property described in Exhibits "A and B" for roadway purposes, a public use for which the County has the authority to exercise the power of eminent domain. Grantor is compelled to sell, and County is compelled to acquire the property.
  - (C) Grantor acknowledges that this transaction is a negotiated settlement in lieu of condemnation and agree that the Purchase Price to be paid herein is in full settlement of any claims for compensation or damages that may have arisen, including, but not limited to, attorney fees, pre-condemnation damages, severance damages, business goodwill, or any other claim regarding the acquisition of the Property or construction of improvements thereon. Both Grantor and County recognize the expense, time, effort, and risk to both parties in determining the compensation for the property by eminent domain litigation. The compensation set forth herein for the property is in compromise and settlement, in lieu of such litigation.
2. County of Stanislaus shall:
    - A. Pay the undersigned Grantor the sum of \$6,563.00 for the property or interests therein conveyed by the above document number 10-16522-1, when title to said property vests in County free and clear of all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded) and taxes, except:
      - a. Taxes for the tax year in which this escrow closes shall be cleared and paid in the manner required by Section 5086 of the Revenue and Taxation Code, if unpaid at the close of escrow.
      - b. Covenants, conditions, restrictions and reservations of record, or contained in the above-referenced document.
      - c. Easements or rights of way over said land for public or quasi-public utility or public street purposes, if any.
    - B. Pay the undersigned Grantor the sum of \$874.00 for the property or interests therein conveyed by the above document number 10-16522-2 in the form of a Temporary Construction Easement.
    - C. Pay the undersigned Grantor the sum of \$39,563 for relocation and/or restoration of improvements situated within the area affected by acquisition of a portion of Grantors property.

----- No Obligation Other Than Those Set Forth Herein Will Be Recognized -----

D. Pay all escrow and recording fees for this transaction, and if title insurance in the amount of \$7,600.00 is desired by County, the premium charged therefore. Said escrow and recording charges shall not, however, include documentary transfer tax. This transaction will be handled through an escrow with First American Title Company located at 1506 H Street, Modesto CA 95354, Escrow No. 5005-3918864.

E. Have the authority to deduct and pay from the amount shown on Clause 2(A) above, any amount necessary to satisfy any bond demands and delinquent taxes due in any year except the year in which this escrow closes, together with penalties and interest thereon, and/or delinquent and unpaid non-delinquent assessments which have become a lien at the close of escrow.

F. Grantor agrees that if claims are submitted by lien-holders, the County is hereby authorized to honor such claims and deduct the amount of said claims from the amount to be paid to the property owner. The County will notify the Grantor of any such claims prior to payment.

3. It is agreed and understood that County's valuation of the subject property located at 4800 Sisk Road, situated within the limits of the Town of Salida, Stanislaus County, California further identified as APN 135-042-020 is based on a Market Approach to Value. The valuation including land and improvements is segregated as follows:

\$ 6,563.00	Fee Simple Land = 3,750± square feet (0.09± acres)
\$ 874.00	Temporary Construction Easement 1,851± square feet (or 0.04± acres)
<u>\$39,563.00</u>	Improvements affected by acquisition
\$47,000.00	Total

4. Any monies payable under this contract up to and including the total amount of unpaid principal and interest on note(s) secured by mortgage(s) or deed(s) of trust, if any, and all other amounts due and payable in accordance with terms and conditions of said trust deed(s) or mortgage(s), shall upon demand(s) be made payable to the mortgagee(s) or beneficiary(ies) entitled thereunder; said mortgagee(s) or beneficiary(ies) to furnish grantor with good and sufficient receipt showing said monies credited against indebtedness secured by said mortgage(s) or deed(s) of trust.

5. It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this contract, the right of possession and use of the subject property by County, including the right to remove and dispose of improvements, if applicable, shall commence on the date of the close of the escrow controlling this transaction. It is further agreed and confirmed by the parties that the amount shown in Clause 2(A) herein includes, but is not limited to, full payment for such possession and use, including all improvements on and to the property being acquired including those improvements described in the fair market value appraisal of the property.

6. Grantor warrants that there are no oral or written leases on all or any portion of the property being acquired either permanently or temporarily exceeding a period of one month, and Grantor agrees to hold County harmless and reimburse County for any and all of its losses and expenses occasioned by reason of any lease of said property held by any Tenant of Grantor for a period exceeding one month. Grantor acknowledges that a quitclaim deed will be required from any lessee that has a lease term exceeding one month. Said quitclaim deeds are to be provided to Title Company's Escrow Agent by Grantor, prior to the close of escrow.

7. County agrees to indemnify and hold harmless the undersigned Grantor from any liability arising out of County's operations under this agreement. County further agrees to assume responsibility for any damages proximately caused by reason of County's operations under this agreement and County will, at its option, either repair or pay for such damage.

8. County agrees that Grantor will have access to their remainder property during construction with said access maintained in such a way so that it does not impact or interfere with normal business operations. Additionally County or County's contractor will provide and install and maintain temporary fencing during construction to protect Grantor's remainder property. County will also notify Grantor at least 30-days prior to start of construction.

9. Grantor hereby represents and warrants that during the period of Grantor's ownership of the Property, there have been no disposals or releases of hazardous substances on, from, or under the Property. Grantor further represents

-----**No Obligation Other Than Those Set Forth Herein Will Be Recognized**-----

and warrants that Grantor has no knowledge of any disposal or release of hazardous substances, on, from, or under the Property which may have occurred prior to Grantor taking title to the Property.

10. Purchase Price of the Property reflects the fair market value of the Property without the presence of contamination. If the Property is found to be contaminated by the presence of hazardous substances which requires mitigation under Federal or County law, County reserves the right to recover its clean-up costs from those who caused or contributed to the contamination.
11. It is further understood and agreed between the parties to this contract that any work required to restore and/or replace; existing property fencing, driveway approach (s) and or landscaping items removed or otherwise damaged by County's Roadway Contractor during the course of the project will be the responsibility of County, and work required to repair or replace in like-kind, will be performed under separate contract at County/Project expense.
12. Grantor understands and agrees that the compensation in the amount of \$7,600 offered in this Agreement is subject to and contingent upon approval of the Stanislaus County Board of Supervisors by adopting a Resolution authorizing the execution of the Agreement at their March 27, 2012 meeting. Should Grantor agree to sell to County, and County is unable to approve funding of the purchase of this property by December 31, 2013, this Agreement becomes null and void, and County shall have no further obligation to Grantor. If Grantor agrees to sell, and County approves funding by said date, all terms and condition of this Agreement apply. County shall deliver the Purchase Price no later than 45 days after Board of Supervisors approval and after delivery and execution of all necessary transfer documents.
13. Escrow Agent shall deliver payment under this contract to Grantor when title to the property vests in County's name, free and clear of all liens, encumbrances, assessments, easements, leases (recorded and/or unrecorded), and taxes unless otherwise indicated in Escrow Instructions as executed by the parties and submitted to Escrow Agent.
14. It is understood and agreed by and between the parties hereto that this Agreement inures to the benefit of, and is binding on, the parties, their respective heirs, personal representatives, successors, and or assignees.

IN WITNESS WHEREOF, the parties have executed this Agreement on April 8, 2012 as follows:

COUNTY OF STANISLAUS

By: William O'Brien  
William O'Brien  
Chairman of the Board of Supervisors

GRANTOR

By: [Signature]  
By: [Signature]

ATTEST:  
Christine Ferraro Tallman  
Clerk of the Board of Supervisors of the  
County of Stanislaus, State of California

By: [Signature]  
Deputy Clerk

APPROVED AS TO CONTENT:  
Department of Public Works

By: [Signature]  
Matt Machado  
Public Works Director

APPROVED AS TO FORM:  
John P. Doering, County Counsel

By: [Signature]  
Thomas E. Boze  
Deputy County Counsel