

## PURCHASE AND SALES AGREEMENT

DEPARTMENT OF PARKS AND RECREATION (DPR)  
Hidden Lake Boulevard, Friant, Madera County, CA  
A.P.N. 051-121-010-000  
STATE SURPLUS PARCEL NO. SSL 924

This Purchase and Sales Agreement (**Agreement**) is made and entered into on this XXth day of MONTH, 2012 (Effective Date), by and between the STATE OF CALIFORNIA, acting by and through the Department of General Services (**STATE**) and the VESTING NAME OF BUYER (**BUYER**), collectively "**PARTIES**".

### RECITAL

- A. The **STATE** owns that certain real property identified as A.P.N. 051-121-010-000 and located at Millerton Lake on Hidden Lake Boulevard, Friant, California, Madera County, and more particularly described in EXHIBIT A, which is incorporated herein as if fully set forth ("Property"), and, which the California Legislature authorized for disposal pursuant to Chapter 178 of the Statutes of 2011 (AB 1272, Butler). The Property includes all land and buildings, appurtenances, improvements, easements, rights-of-way, and all associated rights located on or related to the land.
- B. **BUYER** has submitted the offer to purchase the Property, deemed most acceptable to the **STATE**, from multiple offers received in response to **STATE'S** invitation to bid.

### AGREEMENT

In consideration of the foregoing Recitals which are incorporated herein as if fully set forth and for other good and valuable consideration, the **PARTIES** agree as follows:

#### 1. PROPERTY

- 1.1. **Property.** **STATE** agrees to sell and convey to **BUYER**, and **BUYER** agrees to purchase from **STATE**, the Property subject to the terms and conditions set forth in this Agreement.

#### 2. PURCHASE PRICE

- 2.1. **Purchase Price.** The total purchase price to be paid by **BUYER** to **STATE** for Property shall be PURCHASE PRICE AND NO/100 DOLLARS (\$X,000,000.00).
- 2.2. **Deposit.** **BUYER** has made a deposit of DEPOSIT AMOUNT DOLLARS (\$XX,000.00) which shall be held by **STATE** in a suspense account. If **STATE** fails to execute this Agreement, the aforementioned funds shall be refunded to **BUYER** subject to the conditions stated

- 3.3. **Rejection of Offers.** STATE reserves the right to reject any or all offers and to waive any informality or irregularity in any offer, and/or to accept any offer deemed to be in the best interest of STATE.
- 3.4. **Title and Escrow.** Within SEVEN (7) business days of BUYER'S acceptance of the Property as defined in paragraph 6.4, BUYER must deposit the balance of the purchase price identified in paragraph 2.1, less the deposit retained by STATE identified in paragraph 2.2, with Escrow Holder. Title to said Property shall pass immediately upon close of escrow. The issuance of any escrow instructions shall be the sole responsibility of the STATE.

State opened an escrow with the North American Title Company, 6425 N. Palm Avenue, Suite 101, Fresno, CA 93704. The escrow account established for this transaction is Escrow No. 1080928. On November 18, 2011, the North American Title Company, 6425 N. Palm Avenue, Suite 101, Fresno, CA 93704, issued a Preliminary Report (Amendment III) prepared under Order No. 1080928 indicating exceptions to title. The Preliminary Report, attached as EXHIBIT B, is by this reference incorporated herein.

- 3.5. **Close of Escrow.** The date upon which BUYER accepts the condition of the property, in accordance with the provisions of paragraph 6.4, shall constitute the commencement of the SEVEN (7) day timeframe within which BUYER shall complete the purchase of the Property by closing escrow.
- 3.6. **Buyer's Costs.** BUYER shall pay all recording fees, documentary transfer taxes, escrow fees, policies of title insurance, and any other costs connected with the closing of this transaction.
- 3.7. **As-Is Purchase.** BUYER acknowledges that BUYER is purchasing the Property solely in reliance on BUYER'S own investigations. Except as provided in paragraph 4.4, BUYER specifically acknowledges and agrees that STATE will sell and BUYER will purchase the Property on an "as-is" with all faults basis, and that BUYER, having been given the opportunity to inspect the Property and review information and documentation affecting the Property, including any investigations, studies or documents identified under paragraph 6.5 below. BUYER will not rely on any representations or warranty of any kind whatsoever, express or implied, from STATE or its agents as to any matters concerning the Property, including without limitation: (i.) the quality, nature, adequacy, and physical condition of the Property including soils, geology, and any groundwater; (ii.) the existence, quality, nature, adequacy, and physical condition of utilities serving the Property; (iii.) the development potential of the Property and the Property's use, merchantability, fitness, suitability, value, or adequacy of the Property for any particular purpose; (iv.) the zoning or other legal status of the Property or any other

- 3.8.1. **No Buyer Exceptions.** BUYER agrees that if a CLTA title policy will be issued by the title company in accordance with the title exceptions identified in the Preliminary Report, that there are no conditions or contingencies related to title.
- 3.9. **Further Documents and Assurances.** BUYER and STATE shall each, diligently and in good faith, undertake all actions and procedures reasonably required to place the escrow in condition for closing as and when required by this Agreement. BUYER and STATE agree to execute and deliver all further documents and instruments reasonably required by Title Company. STATE shall deliver or cause to be delivered to Escrow Holder in time for delivery to BUYER at the closing an original ink-signed and notarized Quitclaim Deed, conveying fee title to the Property to BUYER, in the form attached hereto as EXHIBIT C.
- 3.10. **Applicable Law.** These provisions shall in all respects be governed by the laws of the State of California and any action to enforce the terms of these provisions shall be commenced and maintained in the Superior Court of the County of Sacramento.
- 3.11. **Professional Fees and Costs.** STATE shall be entitled to recover from BUYER all its fees and costs for all attorneys, auditors, accountants, and any other professional services needed to enforce the provisions in this Agreement if STATE is the prevailing party in such action.
- 3.12. **Continuing Obligations.** All terms and conditions in this Agreement which represent continuing obligations and duties of the parties that have not been satisfied prior to close of escrow shall survive close of escrow and transfer of title to BUYER and shall continue to be binding on the respective obligated party in accordance with their terms.
- 3.13. **Failure of Condition.** Notwithstanding anything to the contrary in this Agreement, in the event that a material condition to closing for BUYER'S benefit fails, BUYER shall have the right to terminate this Agreement and receive a refund of the entire deposit. In such an event, neither party shall have any further obligations to each other, except for the PARTIES' obligations to return funds and documents, any indemnification obligations contained herein, and any rights or obligations relating to a default hereunder.
- 3.14. **Liquidated Damages.** PROVIDED BUYER HAS NOT ELECTED TO TERMINATE THIS AGREEMENT PURSUANT TO ANY OF BUYER'S RIGHTS TO DO SO CONTAINED HEREIN, IF BUYER COMMITS A DEFAULT UNDER THIS AGREEMENT AND THE CLOSE OF ESCROW FAILS TO OCCUR SOLELY BY REASON OF SUCH DEFAULT, THEN ESCROW HOLDER MAY BE INSTRUCTED BY STATE TO CANCEL THE ESCROW AND STATE SHALL THEREUPON BE RELEASED FROM ITS OBLIGATIONS HEREUNDER. BUYER AND STATE AGREE THAT BASED UPON THE CIRCUMSTANCES NOW EXISTING, KNOWN AND UNKNOWN, IT

- 4.4. **Disclosures.** BUYER acknowledges that BUYER is purchasing the Property solely in reliance on BUYER'S own investigations and except as otherwise expressly set forth herein, no representations or warranties of any kind whatsoever, expressed or implied, have been made by STATE, STATE'S agents, or brokers (if any), including any investigations, studies, or documents identified under paragraph 6.5 below.
- 4.5. **Broker.** STATE has not retained the services of a broker in regard to the transaction contemplated under this Agreement. STATE does not pay real estate broker's commissions to licensed real estate brokers or agents for bringing STATE a buyer and any commission agreed to between BUYER and a broker or agent shall be the sole responsibility of BUYER.
- 4.6. **Absence of Fraud and Misleading Statements.** To the best of STATE'S knowledge, no statement of STATE in this Agreement or in any document, certificate, or schedule furnished or to be furnished to BUYER pursuant hereto or in connection with the transaction contemplated hereby contains any untrue statement of material fact.

## 5. **BUYER'S REPRESENTATIONS AND WARRANTIES**

In addition to any express agreements of BUYER contained herein, the following constitute representations and warranties of BUYER to STATE in this Agreement.

### 5.1. **Representations Regarding Buyer's Authority.**

- 5.1.1. BUYER has the legal power, right and authority to enter into this Agreement and the instruments referenced herein and to consummate the transactions contemplated in this Agreement.
- 5.1.2. The individuals executing this Agreement and the instruments referenced herein on behalf of BUYER have the legal power, right, and actual authority to bind BUYER to the terms and conditions hereof and thereof.
- 5.1.3. This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by BUYER in connection with this Agreement are and shall be, duly authorized, executed and delivered by BUYER and shall be valid, legally binding obligations of and enforceable against BUYER in accordance with their terms.
- 5.1.4. No further approvals or actions are required for BUYER to consummate the transactions contemplated in this Agreement and BUYER has the funds necessary to consummate the transactions contemplated in this Agreement.

cost, upon request of **STATE**, complete copies of all inspection reports and findings obtained by **BUYER** concerning the property.

**BUYER** shall provide to **STATE** in writing the identity (name), license, and telephone number, of the contractor(s) or entity(ies) conducting the inspections and the nature and scope of the inspections for inclusion in the ROE. **STATE PROHIBITS ENTRY ONTO THE PROPERTY WITHOUT AN EXECUTED ROE**. Subject to the terms of the ROE, the **BUYER**, its representatives, authorized agents, or contractors may enter on the Property to make such inspections of the Property provided that **BUYER** keeps the Property free of liens and repairs all damage to the Property resulting from such inspections(s). **BUYER** intends to conduct the following investigations or studies of the property:

1. **FOR EACH CONTRACTOR, LIST NAME, CONTACT INFORMATION, STUDIES/INSPECTIONS TO BE CONDUCTED, AND EQUIPMENT TO BE USED OR STORED ON THE PROPERTY.**

6.3. **Buyer's Inspection Period.** The Due Diligence Period shall continue for a period of no more than NUMBER (X) calendar days, commencing on the Effective Date of this Agreement and ending on DATE. **BUYER** may conduct those investigations and/or studies identified in paragraph 6.2 of this Agreement. **BUYER** may waive all or any portion of the Due Diligence period by informing **STATE** of such waiver IN WRITING.

6.4. **Buyer's Removal or Waiver of Contingencies.** **BUYER** shall, within TWO (2) business days after the end of **BUYER'S** inspection period, described in paragraph 6.3, identify to **STATE** IN WRITING any conditions related to the Property that **BUYER** desires **STATE** to resolve before close of escrow. Transmission of the written conditions to **STATE** shall be made via email to [Karen.Patche@dgs.ca.gov](mailto:Karen.Patche@dgs.ca.gov). **STATE** will notify **BUYER** IN WRITING via email within FIVE (5) business days after receipt of notice from **BUYER** what conditions related to the Property identified by **BUYER** the **STATE** is willing and able to resolve.

6.4.1. If **STATE** is unwilling or unable to resolve some or all of the conditions identified by **BUYER**, then **BUYER** must either remove or waive any and all of **BUYER'S** contingencies based on such conditions, if any, IN WRITING and submit such written notification to **STATE** by email to [Karen.Patche@dgs.ca.gov](mailto:Karen.Patche@dgs.ca.gov) within TWO (2) business days after receipt of **STATE'S** notification of unwillingness or inability to resolve some or all of the conditions identified by **BUYER** or elect to terminate this Agreement.

6.4.2. If **BUYER** has elected to terminate this Agreement, then **BUYER** shall deliver to **STATE** a WRITTEN TERMINATION NOTICE no later than FIVE (5) business days, after **STATE** notifies **BUYER** of **STATE'S** unwillingness and/or inability to resolve **BUYER'S** identified conditions. Upon termination, **BUYER** and **STATE** shall be released from any obligation to proceed with the terms of this Agreement and neither party shall

storage tanks, waste disposal sites, electromagnetic fields, and other substances, materials, products, or conditions.

6.5.9. **Geologic conditions.** Geologic/seismic conditions soil stability/suitability, and drainage.

6.5.10. **Neighborhood, area, subdivision requirements.** Neighborhood or area conditions including schools; proximity and adequacy of law enforcement; proximity to commercial, industrial, or agricultural activities; crime statistics; fire protection; other governmental services; existing and proposed transportation; construction and development which may affect noise, view or traffic; airport noise; and noise or odor from any source, wild or domestic.

6.5.11. **Matters of record.** Covenants, conditions, and restrictions; deed restrictions; easements; and other title encumbrances of record.

6.5.12. **Other matters.** Any and all other matters such as leases and licenses affecting the Property and the availability of suitable public infrastructure, assessment, other special service districts, and soil or other conditions on the Property, not herein listed, which are or may be pertinent to **BUYER'S** purpose for acquiring the Property.

6.6. **Risk of Loss.** During the period prior to close of escrow, the risk of loss for any and all improvements on the Property, including but not limited to any dwellings, plumbing and electrical systems, shall be on **BUYER. STATE** shall be under no obligation to repair, replace, or maintain in good working order the improvements on the Property. **BUYER** may, at its sole cost, acquire insurance to cover the risk of loss or damage.

## 7. **INDEMNIFICATION**

**BUYER** shall defend, indemnify, and hold **STATE** harmless from and against any and all claims, liabilities, obligations, losses, damages, costs, and expenses, including, but not limited to, attorney's fees, court costs, and litigation expenses that **STATE** may incur or sustain by reason of or in connection with any misrepresentation made by **BUYER** pursuant to this Agreement or by **BUYER'S** representatives, authorized agents, or contractors exercise of rights under Section 6 of this Agreement.

## 8. **MINERAL RESERVATIONS**

As to any surplus state real property sold and or exchanged pursuant to Government Code section 11011.1, consisting of 15 acres or less, the Director shall except and reserve to **STATE** all mineral deposits, as defined in Section 6407 of the Public Resources Code, below a depth of 500 feet, without surface rights of entry.

**14. AMENDMENTS**

This Agreement may not be modified or amended except in writing by the **PARTIES**.

**15. APPLICABLE LAW**

The **PARTIES** hereto acknowledge that this Agreement has been negotiated and entered into in the State of California. The **PARTIES** hereto expressly agree that this Agreement shall in all respects be governed by the laws of the State of California and any action to enforce the terms of this Agreement shall be commenced and maintained in the Superior Court of the County of Sacramento.

**16. SEVERABILITY**

Nothing contained herein shall be construed as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present statute, law, ordinance or regulation as to which the **PARTIES** have no legal right to contract, the latter shall prevail, but the affected provisions of this Agreement shall be limited only to the extent necessary to bring them within the requirements of such law.

**17. SEPARATE COUNTERPARTS**

This Agreement may be executed in separate counterparts, each of which when so executed shall be deemed to be an original. Such counterparts shall, together, constitute and be one and the same instrument.

**18. EXHIBITS**

The following Exhibits are attached to this Agreement and incorporated by reference herein.

EXHIBIT A	Property Description
EXHIBIT B	Preliminary Report
EXHIBIT C	Quitclaim Deed
EXHIBIT D	Right of Entry

**19. SURVIVAL**

All terms and conditions in this Agreement, which represent continuing obligations and duties of the **PARTIES**, that have not been satisfied prior to close of escrow shall survive close of escrow and transfer of title to **BUYER** and shall continue to be binding on the respective obligated party in accordance with their terms. All representations and warranties and statements made by the respective parties contained herein or made in writing pursuant to this Agreement are intended to be, and shall remain, true and correct as of the close of escrow, shall be deemed to be material, and, together with all conditions, covenants and indemnities made by the respective parties contained herein or made in writing pursuant to this Agreement (except as otherwise expressly limited or expanded by the terms of this Agreement), shall survive the execution and delivery of this Agreement