

**AGREEMENT OF PURCHASE AND SALE OF REAL ESTATE**

by and between

State of California, Department of Transportation

as Seller

and

City of Albany

as Buyer

For the purchase and sale of:

Pierce Street Property, approximately 4.5 acres  
Albany, California

November 15, 2010

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## **AGREEMENT OF PURCHASE AND SALE OF REAL ESTATE**

THIS AGREEMENT OF PURCHASE AND SALE OF REAL ESTATE ("Agreement") dated for reference purposes only as of November 15, 2010, is by and between State of California, Department of Transportation (collectively, "State"), and the City of Albany ("City"). IN CONSIDERATION of the payment of the refundable deposit (Deposit) of One Hundred Ninety Five Thousand Dollars (\$195,000.00) by CITY, the receipt of which is hereby acknowledged by State, and the respective agreements contained herein below, State and CITY agree as follows:

### **Article 1 - PURCHASE AND SALE**

#### **1.1 Property Included in Sale.**

State agrees to sell and convey to CITY, and CITY agrees to purchase from State, subject to the terms, covenants and conditions hereinafter set forth, the following:

(a) the real property consisting of approximately 4.54 acres of land, located in the City of Albany, commonly known as the Pierce Street Property and more particularly described in Exhibit A attached hereto (the "Land");

(b) all improvements located on the Land (collectively, the "Improvements");  
and

(c) any and all of State's rights, privileges, and easements incidental or appurtenant to the Land or Improvements, including, without limitation, any and all minerals, oil, gas and other hydrocarbon substances on and under the Land, as well as any and all development rights, air rights, water, water rights, riparian rights and water stock relating to the Land, and any and all easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Land or Improvements, and any and all of State's right, title and interest in and to all roads and alleys adjoining or servicing the Land or Improvements, but excluding any title exceptions approved by CITY during the Due Diligence Period (collectively, the "Appurtenances").

All of the items referred to in subparagraphs (a), (b), and (c) above are collectively referred to as the "Property."

### **Article 2 - PURCHASE PRICE**

#### **2.1 Purchase Price.**

The total purchase price for the Property is One Million Nine Hundred and Fifty Thousand Dollars (\$1,950,000.00) (the "Purchase Price").

2.2 Payment.

On the Closing Date (as defined in Section 5.2 [Closing Date]), CITY shall pay the full Purchase Price, adjusted pursuant to the Deposit and provisions of Article 6 [Expenses and Taxes).

2.3 Funds.

All payments made by any party hereto shall be in legal tender of the United States of America, paid by CITY warrant or in cash or by wire transfer of immediately available funds to Title Company (as defined below), as escrow agent.

2.4 Contingencies and Approval of the California Transportation Commission

The sale of the property is subject to the approval of the California Transportation Commission (CTC). The State shall undertake all tasks necessary to obtain the CTC approval using due diligence, and the CITY shall cooperate to obtain approvals from the CTC.

This Agreement is contingent upon the State and CITY entering into an air lease rights agreement that enables the CITY to use adjacent State property under the freeway, as more particularly described in Exhibit A, attached hereto. State will prepare and deliver by January 31, 2011 a lease for CITY's review and approval, said approval at CITY's sole discretion.

CITY will not proceed to secure its financing until CITY determines during its due diligence contingency period that the Property has been determined to be contamination free. If CITY has discovered and determines that hazardous materials exist on the Property, CITY can request a reasonable extension of the close of escrow or the CITY can terminate this Agreement. If CITY determines that the Property's condition is acceptable, then CITY will secure its funding for this transaction for a closing to be no later than March 1, 2011.

**Article 3 - TITLE TO THE PROPERTY**

3.1 Conveyance of Title to the Property.

At the Closing State shall convey to CITY, or its nominee, marketable and insurable fee simple title to the Land, the Improvements and the Appurtenances, by duly executed and acknowledged Director's Deed in the form attached hereto as Exhibit B (the "Deed"), subject to the Accepted Conditions of Title (as defined in Section 4.3(a) [Title Insurance]).

3.2 Title Insurance.

Delivery of title in accordance with the preceding Section shall be evidenced by the commitment of **First American Title Insurance Company** (the "Title Company") to issue to CITY an ALTA extended coverage owner's policy of title insurance (Form B - 1970 amended 4-6-90) (the "Title Policy") in the amount of the Purchase Price, insuring fee simple title to the Land, the Appurtenances and the Improvements in CITY, free of the liens of any and all deeds of trust, mortgages, assignments of rents, financing statements, creditors' claims, rights of tenants or other occupants, and all other exceptions, liens and

encumbrances except solely for the Accepted Conditions of Title. The Title Policy shall provide full coverage against mechanics' and materialmen's liens arising out of the construction, repair or alteration of any of the Property, shall not contain any exclusion from coverage for creditor's rights or bankruptcy, and shall contain an affirmative endorsement that there are no violations of restrictive covenants, if any, affecting the Property and such special endorsements as CITY may reasonably request. The Title Policy shall also provide for reinsurance with direct access with such companies and in such amounts as CITY may reasonably request.

#### **Article 4 - CITY'S DUE DILIGENCE INVESTIGATIONS**

##### **4.1 Due Diligence and Time for Satisfaction of Conditions.**

CITY has been given or will be given before the end of the Due Diligence Period (as defined below), full opportunity to investigate the Property, either independently or through agents of CITY's own choosing, including, without limitation, the opportunity to conduct such appraisals, inspections, tests, audits, verifications, inventories, investigations and other due diligence regarding the economic, physical, environmental, title and legal conditions of the Property as CITY deems fit.. CITY shall perform any and all such investigations in a manner not unreasonably disruptive to the business on State's property. CITY and its Agents may commence due diligence investigations on the Property on or after the date this Agreement is executed by both parties hereto. The period for completion of all such investigations shall expire on the date that is ninety (90) days after the effective date of the Council resolution approving this Agreement (the "Due Diligence Period"), subject to the terms and conditions provided below. State agrees to deliver to CITY all of the Documents and other items described in Sections 4.3(d) within five (5) days after the date hereof, provided that if State fails to do so, then the expiration of the Due Diligence Period shall be extended by the number of days after the end of such 5-day delivery period that State delivers all such items to CITY.

##### **4.2 Entry.**

During the Due Diligence Period and at all times prior to the Closing Date State shall afford CITY and its Agents reasonable access to the Property and all books and records located therein for the purposes of satisfying CITY with respect to the representations, warranties and covenants of State contained herein and the satisfaction of the Conditions Precedent (as defined in Section 4.3 below) including, without limitation, the drilling of test wells and the taking of soil borings. In the event this Agreement is terminated for any reason other than State's default hereunder, CITY shall restore the Property to substantially the condition it was found subject to applicable laws.

##### **4.3 CITY's Conditions to Closing.**

The following are conditions precedent to CITY's obligation to purchase the Property (collectively, "Conditions Precedent"):

(a) CITY shall have reviewed and approved title to the Property, as follows:

(i) Within thirty days (30) days after the date CITY and State execute this Agreement, CITY shall procure a current extended coverage preliminary report on the Real

Property, issued by Title Company, accompanied by copies of all documents referred to in the report (collectively, the "Preliminary Report");

(ii) Within the period referred to in clause (i) above, State shall deliver to CITY copies of any existing or proposed easements, covenants, restrictions, agreements or other documents that affect the Property, and are not disclosed by the Preliminary Report; and

(iii) CITY may at its option and sole cost arrange for an "as-built" survey of the Real Property and Improvements prepared by a licensed surveyor (the "Survey"). Such survey shall be acceptable to, and certified to, CITY and Title Company and in sufficient detail to provide the basis for the Title Policy without boundary, encroachment or survey exceptions.

CITY shall advise State, prior to the end of the Due Diligence period, what exceptions to title, if any, CITY is willing to accept (the "Accepted Conditions of Title"). CITY's failure to so advise State within such period shall be deemed disapproval of title. State shall have ten (10) days after receipt of CITY's notice of any objections to title to give CITY: (i) evidence satisfactory to CITY of the removal of all objectionable exceptions from title or that such exceptions will be removed or cured on or before the Closing; or (ii) notice that State elects not to cause such exceptions to be removed. If State gives notice under clause (ii), CITY shall have ten (10) business days to elect to proceed with the purchase or terminate this Agreement. If CITY shall fail to give Seller notice of its election within such ten (10) days, CITY shall be deemed to have elected to terminate this Agreement. If State gives notice pursuant to clause (i) and fails to remove any such objectionable exceptions from title prior to the Closing Date, and CITY is unwilling to take title subject thereto, State shall be in default hereunder and CITY shall have the rights and remedies provided herein or at law or in equity.

(b) CITY's review and approval, within the Due Diligence Period, of the physical and environmental conditions of the Property, including, without limitation, structural, mechanical, electrical and other physical conditions of the Property. Such review may include an examination for the presence or absence of any Hazardous Material (as defined in Section 7.1(j) below).

If any of CITY's investigations reveal any contamination of the Property with any Hazardous Material, then CITY may, at its sole election, by written notice to State on or before the end of the Due Diligence Period: (i) extend the Due Diligence Period and the Closing Date to a specified date to allow State, if State so chooses, to cleanup, remove, contain, treat, stabilize, monitor or otherwise control the contamination in compliance with all governmental laws, rules, regulations and requirements and otherwise in a manner acceptable to CITY; (ii) terminate this Agreement; or (iii) negotiate with State a mutually acceptable reduction in the Purchase Price and proceed to Closing. If the Due Diligence Period is extended under clause (i) above and State fails to remediate the contamination within the allotted time, CITY may again choose any of the three options listed above.

(c) CITY's review and approval, within the Due Diligence Period, of the compliance of the Property with all applicable laws, regulations, permits and approvals.

(d) CITY's review and approval, within the Due Diligence Period, of (i) the following documents, all to the extent such documents exist and are either in the possession or control of State, or any affiliate of State, or may be obtained by State through the exercise of commercially reasonable efforts: site plans; recent inspection reports by State's consultants and engineers; utility contracts; certificates of occupancy; any and all correspondence with governmental or quasi-governmental agencies relating to the physical and environmental condition of the Property; any litigation or threatened litigation affecting the Property; environmental reports, studies, surveys, tests and assessments; soils and geotechnical reports; and any other contracts or documents of significance to the Property (collectively, the "Documents"); and (ii) such other information relating to the Property that is specifically requested by CITY of State in writing during the Due Diligence Period (collectively, the "Other Information").

(e) State shall not be in default in the performance of any covenant or agreement to be performed by State under this Agreement, and all of State's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct when made and shall be true and correct as of the Closing Date. At the Closing State shall deliver to CITY a certificate certifying that each of State's representations and warranties contained in Section 7.1, Representations and Warranties of Seller, below are true and correct as of the Closing Date.

(f) The physical condition of the Property shall be substantially the same on the Closing Date as on the date of CITY's execution of this Agreement, reasonable wear and tear and loss by casualty excepted (subject to the provisions of Section 8.1 [Risk of Loss]), provided, State shall have removed all personal property, vehicles, and equipment from the Property, and, as of the Closing Date, there shall be no litigation or administrative agency or other governmental proceeding, pending or threatened, which after the Closing would materially adversely affect the value of the Property or the ability of CITY to operate the Property for its intended use, and no proceedings shall be pending or threatened which could or would cause the change, redesignation or other modification of the zoning classification of, or of any building or environmental code requirements applicable to, any of the Property.

(g) Title Company shall be committed at the Closing to issue to CITY, or its nominee, the Title Policy as provided in Section 3.2 [Title Insurance].

(h) The CITY shall have enacted a resolution or ordinance approving, adopting and authorizing this Agreement and the transactions contemplated herein.

(i) State shall have delivered the items described in Section 5.3 below [Seller's Delivery of Documents] on or before the Closing.

(j) State shall deliver to CITY, within (1) one month of the Effective Date, documentation of any certificates of site closure, permits or approvals that reflect the removal of hazardous materials. These documents shall include, but are not limited to, "no further action letter" and Remediation Completion Certificate issued by Alameda County or other State Agency.



(k) The Property shall be in a good and clean condition. The Property shall be free of debris or materials located on the property, equipment, and occupants or tenants, on the day before the Closing Date, as approved by CITY following a scheduled walk-through of the Property on such day.

The Conditions Precedent contained in the foregoing subsections (a) through (j) are solely for the benefit of CITY. If any Condition Precedent is not satisfied, CITY shall have the right in its sole discretion either to waive in writing the Condition Precedent in question and proceed with the purchase or, in the alternative, terminate this Agreement, provided that the Condition Precedent described in item (h) above may not be waived. The waiver of any Condition Precedent shall not relieve State of any liability or obligation with respect to any representation, warranty, covenant or agreement of State, if any. If CITY shall not have approved or waived in writing all of the Conditions Precedent in items (a) through (e) by the end of the Due Diligence Period, then this Agreement shall automatically terminate. In addition, the Closing Date may be extended, at CITY's option, for a reasonable period of time specified by CITY, to allow such Conditions Precedent to be satisfied, subject to CITY's further right to terminate this Agreement upon the expiration of the period of any such extension if all such Conditions Precedent have not been satisfied. In the event the sale of the Property is not consummated because of a default under this Agreement on the part of State or if a Condition Precedent cannot be fulfilled because State frustrated such fulfillment by some affirmative act or negligent omission, CITY may, at its sole election, either (1) terminate this Agreement by delivery of notice of termination to State, whereupon State shall pay to CITY any title, escrow, legal and inspection fees incurred by CITY and any other expenses incurred by CITY in connection with the performance of its due diligence review of the Property, and neither party shall have any further rights or obligations hereunder, or (2) continue this Agreement pending CITY's action for specific performance and/or damages hereunder, including, without limitation, CITY's costs and expenses incurred hereunder.

#### 4.4 Cooperation with CITY.

State shall cooperate with CITY and do all acts as may be reasonably requested by CITY with regard to the fulfillment of any Conditions Precedent including, without limitation, execution of any documents, applications or permits, and providing to CITY all documents in State's possession or the possession of any agent of State related to the physical condition of the Property. State hereby irrevocably authorizes CITY and its Agents to make all inquiries with and applications to any person or entity, including, without limitation, any regulatory authority with jurisdiction as CITY may reasonably require to complete its due diligence investigations.

### **Article 5 - ESCROW AND CLOSING**

#### 5.1 Opening of Escrow.

On or before the Effective Date (as defined in Section 10.20, Effective Date), the parties shall open escrow by depositing an executed counterpart of this Agreement with Title Company, and this Agreement shall serve as instructions to Title Company as the escrow holder for consummation of the purchase and sale contemplated hereby. State and CITY

agree to execute such additional or supplementary instructions as may be appropriate to enable the escrow holder to comply with the terms of this Agreement and close the transaction; provided, however, that in the event of any conflict between the provisions of this Agreement and any additional supplementary instructions, the terms of this Agreement shall control.

## 5.2 Closing Date.

(a) The consummation of the purchase and sale contemplated hereby (the "Closing") shall be held and delivery of all items to be made at the Closing under the terms of this Agreement shall be made at the offices of First American Title Insurance Company on the date that is ninety (90) days (if not a business day, then the next business day) after the Effective Date of a resolution or ordinance of the CITY approving this Agreement, or on such earlier date as CITY and State may mutually agree (the "Closing Date"), subject to the provisions of Section 4.3, CITY's Condition to Closing. The Closing Date may not be extended without the prior written approval of both State and CITY, except as otherwise expressly provided in this Agreement. In the event the Closing does not occur on or before the Closing Date, Title Company shall, unless it is notified by both parties to the contrary within five (5) days after the Closing Date, return to the depositor thereof items which may have been deposited hereunder. Any such return shall not, however, limit the provisions hereof or otherwise relieve either party hereto of any liability it may have for its wrongful failure to close.

(b) On the day before the scheduled Closing Date, State and any tenants or occupants of the Property shall have vacated the premises, removed all personal equipment (fencing excepted), debris, and vehicles, and left the Property in a good and clean condition. CITY shall perform a walk-through of the Property on such day to confirm that the Property is in the condition required above. As set forth in Section 3.3(j) above, CITY's approval of the Property on this walk-through is a condition to CITY's obligation to purchase the Property, and State's failure to deliver the Property in this condition shall be a breach of this Agreement.

## 5.3 Seller's Delivery of Documents.

At or before the Closing, State shall deliver to CITY, through escrow, the following:

- (a) a duly executed and acknowledged Deed;
- (b) originals of the Documents, and any other items relating to the ownership or operation of the Property not previously delivered to CITY;
- (c) such resolutions, authorizations, or other documents or agreements relating to State as Agency or the Title Company may reasonably require to demonstrate the authority of State to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individuals executing any documents or other instruments on behalf of State to act for and bind State;
- (d) a closing statement in form and content satisfactory to CITY and State; and

5.4 CITY's Delivery of Documents and Funds.

At or before the Closing, CITY shall deliver to State through escrow the following:

- (a) an acceptance of the Deed executed by CITY's authorized body or officer;
- (b) a closing statement in form and content satisfactory to CITY and State; and
- (c) the Purchase Price, as provided in Article 2 hereof.

5.5 Other Documents.

State and CITY shall each deposit such other instruments as are reasonably required by Title Company as escrow holder or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof, including, without limitation, an agreement (the "Designation Agreement") designating Title Company as the "Reporting Person" for the transaction pursuant to Section 6045(e) of the Federal Tax Code and the regulations promulgated thereunder, and executed by State, CITY and Title Company. The Designation Agreement shall be substantially in the form attached hereto as Exhibit D and, in any event, shall comply with the requirements of Section 6045(e) of the Federal Tax Code and the regulations promulgated thereunder.

## **Article 6 - EXPENSES AND TAXES**

6.1 Utility Charges.

State shall cause all the utility meters, if any, to be read on the Closing Date, and will be responsible for the cost of all utilities used prior to the Closing Date. All utility deposits paid by State shall remain the property of State and CITY shall reasonably cooperate to cause such deposits to be returned to State to the extent State is entitled thereto.

6.2 Closing Costs.

CITY shall pay all recording fees, documentary stamp taxes, or other real estate transaction taxes or fees by whatever name known, including escrow fees or brokers commission, if any, and personal property sales taxes where applicable.

6.3 Real Estate Taxes and Special Assessments. N/A, on assumption neither agency is liable for any property taxes or assessments. If there are any such taxes or assessments, those shall be prorated as of the date of close of escrow.

6.4 Post-Closing Reconciliation.

6.5 Survival.

The provisions of this Article shall survive the Closing.

## **Article 7 - REPRESENTATIONS AND WARRANTIES AND OBLIGATIONS**

### 7.1 Representations and Warranties and Obligations of Seller.

State represents and warrants to and covenants with CITY as follows:

(a) To the best of State's knowledge, there are now, and at the time of the closing will be, no material physical or mechanical defects of the Property, and no violations of any laws, rules or regulations applicable to the Property.

(b) The Documents and Other Information furnished to CITY are all of the relevant documents and information pertaining to the condition and operation of the Property to the extent available to State, and are and at the time of Closing will be true, correct and complete copies of such documents. State has made available to CITY copies of any and all environmental reports, studies, assessments, and data in its possession and/or under its control.

(c) State does not have knowledge of any condemnation, either instituted or planned to be instituted by any governmental or quasi-governmental agency, which could detrimentally affect the use, operation or value of the Property.

(d) To State's knowledge, all water, sewer, gas, electric, telephone, and drainage facilities, if any, and all other utilities required by law or by State's normal use and operation of the Property are and at the time of Closing will be installed to the property lines of the Property and are and at the time of Closing will be adequate for State's uses of the Property.

(e) There are no easements or rights of way which have been acquired by prescription or which are otherwise not of record with respect to the Property, and there are no easements, rights of way, permits, licenses or other forms of agreement which afford third parties the right to traverse any portion of the Property to gain access to other real property except as set forth in the preliminary title report for the Property [to be prepared by Title Company, dated February 4, 2011] There are no disputes with regard to the location of any fence or other monument of the Property's boundary nor any claims or actions involving the location of any fence or boundary.

(f) There is no litigation pending or, after due and diligent inquiry, to the best of State's knowledge, threatened, against State or any basis therefore that arises out of the ownership of the Property or that might detrimentally affect the use or operation of the Property for its intended purpose or the value of the Property or the ability of State to perform its obligations under this Agreement.

(g) State is the legal and equitable owner of the Property, with full right to convey the same, and without limiting the generality of the foregoing, State has not granted any option or right of first refusal or first opportunity to any third party to acquire any interest in any of the Property. State has not leased all or any part of the Property, and has not entered into any contract affecting all or any part of the Property, that will survive the Closing Date. All leases and contracts affecting the Property will be terminated on or before

the Closing Date, and State shall deliver the Property to CITY free from the rights of any other party, including tenants.

(h) This Agreement and all documents executed by State which are to be delivered to CITY at the Closing are or will be duly authorized, executed and delivered by State, and at the Closing will be, legal, valid and binding obligations of State, enforceable against State in accordance with their respective terms. The documents delivered to CITY at the Closing will be sufficient to convey good and marketable title (if they purport to do so), and do not, and at the Closing will not, violate any provision of any agreement or judicial order to which State is a party or to which State or the Property is subject.

(i) State knows of no facts nor has State failed to disclose any fact that would prevent CITY from utilizing the Land for offices, and corporation yard, or housing after Closing.

(j) State hereby represents and warrants to and covenants with CITY that, except as disclosed by State, the following statements are true and correct and will be true and correct as of the Closing Date: (i) neither the Property nor to the best of State's knowledge any real estate in the vicinity of the Property is in violation of any Environmental Laws; (ii) the Property to the extent it has ever been used in any manner for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Material; (iii) there has been no release and there is no threatened release of any Hazardous Material in, on, under or about the Property except those documented in State's Environmental Disclosures; (iv) there have not been and there are not now any underground storage tanks, septic tanks or wells or any aboveground storage tanks at any time used to store Hazardous Material located in, on or under the Property, or if there have been or are any such tanks or wells located on the Property, their location, type, age and content has been specifically identified in State's Environmental Disclosure, they have been properly registered with all appropriate authorities, they are in full compliance with all applicable statutes, ordinances and regulations, and they have not resulted in the release or threatened release of any Hazardous Material into the environment; (v) the Property does not consist of any landfill or of any building materials that contain Hazardous Material; (vi) the Property is not subject to any claim by any governmental regulatory agency or third party related to the release or threatened release of any Hazardous Material, and there is no inquiry by any governmental agency with respect to the presence of Hazardous Material in, on, under or about the Property, or the migration of Hazardous Material from or to other property. The undefined terms used in this section shall have the meanings set forth in Section 7.5, Definitions, below; (v) all environmental disclosures will conform to and be made consistent with the provisions of Health and Safety Code Section 25359.7; (vi) (k) There are now, and at the time of Closing will be, no leases or other occupancy agreements affecting any of the Property. At the time of Closing there will be no outstanding written or oral contracts made by State for any of the Improvements that have not been fully paid for and State shall cause to be discharged all mechanics' or materialmen's liens arising from any labor or materials furnished to the Property prior to the time of Closing. There are no obligations in connection with the Property which will be binding upon CITY after Closing.

(l) State is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code.

7.2 Indemnity.

7.3 CITY's Investigation.

CITY, on behalf of itself, its successors and assigns, acknowledges that by the terms of this Agreement, has been given a full opportunity to investigate the Property and to conduct appraisals, inspections, tests, audits, investigations and other due diligence, including, without limitation, due diligence on the environmental condition of the Property, and during CITY's due diligence period, CITY shall have received from State documentation of any tests, assessments, or studies in State's possession or the possession of any agent or the State. CITY will review the reports and information set forth in State's Environmental Disclosure. State's Environmental Disclosure and any results of any investigations by CITY during the Due Diligence Period shall collectively be referred to as the "Known Hazardous Materials."

7.4 Definitions.

As used herein, the following terms shall have the meaning below:

(a) "Environmental Laws" shall mean any present or future federal, state or local laws, ordinances, regulations or policies relating to Hazardous Material (including, without limitation, their use, handling, transportation, production, disposal, discharge or storage) or to health and safety, industrial hygiene or environmental conditions in, on, under or about the Property, including, without limitation, soil, air and groundwater conditions. It includes but is not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act of 1976, as amended, and any other applicable laws, statutes or ordinances which relate to protection of the Environment, human health or safety or to Releases or threatened Releases of Hazardous Materials in the Environment, or otherwise relating to the treatment, storage, disposal, transport or handling of any Hazardous Material.

(b) "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to CERCLA or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of the Improvements or are naturally occurring substances on or about the Property; petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids; and "source," "special nuclear" and "by-product" material as defined in the Atomic Energy Act of 1985, 42 U.S.C. Sections 3011, et seq.

(c) "Release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting,

emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any of the improvements, or in, on, under or about the Property. Release shall include, without limitation, "release" as defined in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601).

(d) "Environment" means ambient air, surface water, ground water, land surface or subsurface strata.

(e) "Environmental Claim" means any written notice or claim by any person alleging or asserting liability for investigatory costs, cleanup costs. Governmental or Regulatory Body response costs, damages to natural resources or other property, personal injuries, fines or penalties arising out of, based on or resulting from (a) the presence or Release into the Environment of any Hazardous Material, or (b) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law.

## **Article 8 - RISK OF LOSS AND POSSESSION**

### **8.1 Risk of Loss.**

If any of the Property is damaged or destroyed prior to the Closing Date, then State shall immediately notify CITY of same. CITY shall have the option to either: (i) proceed with the Closing at the agreed upon Purchase Price; or (ii) terminate this Agreement without cost or penalty.

### **8.2 Condemnation.**

### **8.3 Possession.**

Possession of the Property shall be delivered to CITY on the Closing Date. The provisions of this Article 8 shall survive the Closing.

## **Article 9 - MAINTENANCE; CONSENT TO NEW CONTRACTS**

### **9.1 Maintenance of the Property by State.**

Between the date of State's execution of this Agreement and the Closing, State shall maintain the Property in good order, condition and repair, reasonable wear and tear excepted, and shall make all repairs, maintenance and replacements of the Improvements and otherwise operate the Property in the same manner as before the making of this Agreement, as if State were retaining the Property.

### **9.2 CITY's Consent to New Contracts Affecting the Property; Termination of Existing Contracts.**

After the date of execution of this Agreement, State shall not enter into any lease or contract, or any amendment thereof, or permit any tenant of the Property to enter into any sublease, assignment or agreement pertaining to the Property, without in each instance obtaining CITY's prior written consent thereto, which CITY may withhold in its sole and absolute discretion. State shall terminate prior to the Closing, at no cost or expense to CITY, any and all leases, management agreements, and other agreements affecting the Property.

## Article 10 - GENERAL PROVISIONS

### 10.1 Notices.

Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon (i) hand delivery, against receipt, (ii) one day after being deposited with a reliable overnight courier service, or (iii) two (2) days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

CITY: City of Albany  
City Manager  
1000 San Pablo Ave  
Albany, CA 94706  
(510) 528-5797 (FAX)

Seller: California Dept. of Transportation  
Deputy District Director  
Right of Way  
P.O. Box 23440  
Oakland, CA 94623-0440  
(510) 286-5482 (FAX)

or to such other address as either party may from time to time specify in writing to the other upon five (5) days prior written notice in the manner provided above. For convenience of the parties, copies of notices may also be given by telefacsimile, to the telephone number listed above, or such other numbers as may be provided from time to time. However, neither party may give official or binding notice by facsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

### 10.2 Brokers and Finders.

No broker or other person, firm, or other entity is entitled to any compensation or finder's fee in connection with transaction as a result of any dealings or acts of such party. CITY and State do each hereby agree to indemnify, defend, protect and hold the other harmless from and against any cost, expenses or liability for compensation, commission or charges which may be claimed by any broker, finder, or other similar party, other than said named Brokers by reason of any dealings or act of the indemnifying Party.

### 10.3 Successors and Assigns.

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.

### 10.4 Amendments.

Except as otherwise provided herein, this Agreement may be amended or modified only by a written instrument executed by CITY and State.



10.5 Continuation and Survival of Representations and Warranties.

All representations and warranties 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 Closing, 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 and the Closing, or, to the extent the context requires, beyond any termination of this Agreement. All statements contained in any certificate or other instrument delivered at any time by or on behalf of Seller in conjunction with the transaction contemplated hereby shall constitute representations and warranties hereunder.

10.6 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

10.7 Merger of Prior Agreements.

The parties intend that this Agreement (including all of the attached exhibits and schedules, which are incorporated into this Agreement by reference) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including, without limitation, prior drafts or changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement.

10.8 Parties and Their Agents; Approvals.

The term "State" as used herein shall include the plural as well as the singular. If there is more than one Seller, then the obligations under this Agreement imposed on Seller shall be joint and several. As used herein, the term "Agents" when used with respect to either party shall include the agents, employees, officers, contractors and representatives of such party. All approvals, consents or other determinations permitted or required by CITY hereunder shall be made by or through CITY's Director of Property unless otherwise provided herein, subject to applicable law.

10.9 Interpretation of Agreement.

The article, section and other headings of this Agreement and the table of contents are for convenience of reference only and shall not affect the meaning or interpretation of any provision contained herein. Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement

shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

10.10 Attorneys' Fees.

10.11 Sunshine Ordinance.

State understands and agrees that under the State Public Records Law (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the CITY hereunder public records subject to public disclosure. State hereby acknowledges that the CITY may disclose any records, information and materials submitted to the CITY in connection with this Agreement.

10.12 Conflicts of Interest.

Through its execution of this Agreement, State acknowledges that it is familiar with the provisions of Section 15.103 of the Albany Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if State becomes aware of any such fact during the term of this Agreement, State shall immediately notify the CITY.

10.13 Notification of Limitations on Contributions. N/A

10.14 Time of the Essence.

Time is of the essence of this Agreement.

10.15 Severability.

If any provision of this Agreement, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect.

10.16 City Charter.

All of the terms of this Agreement shall be governed by and subject to the provisions of the Charter of the City of Albany. There shall be no obligation for the payment or expenditure of money by CITY under this Agreement unless the Controller of the CITY of Albany first certifies, pursuant to Section 3.105 of the Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure.

10.17 Non-Liability of CITY Officials, Employees and Agents.

Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee or agent of CITY shall be personally liable to State, its successors and assigns, in the event of any default or breach by CITY or for any amount which may become due to State, its successors and assigns, or for any obligation of CITY under this Agreement.

10.18 No Relocation Assistance.

10.19 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

10.20 Effective Date.

As used herein, the term "Effective Date" shall mean the date on which the CITY's governing body enacts a resolution or ordinance approving and authorizing this Agreement and the transactions contemplated hereby, following execution of this Agreement by both parties.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, STATE ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL APPROPRIATE LEGISLATION OF CITY'S CITY COUNCIL SHALL HAVE BEEN DULY ENACTED APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH LEGISLATION, AND THIS AGREEMENT SHALL BE NULL AND VOID IF CITY'S CITY COUNCIL AND MAYOR DO NOT APPROVE THIS AGREEMENT, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH LEGISLATION WILL BE ENACTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON AGENCY OR CITY.

[SIGNATURE PAGE TO FOLLOW]

10.21 Acceptance.

State accepts the foregoing offer to purchase the Property and hereby agrees to sell the Property to CITY on the terms and conditions therein specified.

If this offer is not accepted by State on or before 5:00 P.M., Pacific Time, on February 28, 2011, it shall be deemed automatically revoked. Once accepted by State, the Agreement will be presented to the Agency Board at its next regularly scheduled meeting for acceptance. This purchase agreement is not binding until approved, in open session, by the Agency Board.

The parties have duly executed this Agreement as of the respective dates written below.

SELLER:

\_\_\_\_\_  
Department of Transportation  
R.A.MACPHERSON  
Deputy District Director  
Right of Way

Date: \_\_\_\_\_

CITY:

\_\_\_\_\_  
City of Albany  
Beth Pollard  
City Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

Robert Zweben, CITY Attorney

\_\_\_\_\_

Title Company agrees to act as escrow holder in accordance with the terms of this Agreement and to execute the Designation Agreement (attached hereto as Exhibit D) and act as the Reporting Person (as such term is defined in the Designation Agreement). Title Company's failure to execute below shall not invalidate the Agreement between CITY and State.

TITLE COMPANY:

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT "A" - REAL PROPERTY DESCRIPTION

All that certain real property located in the City of Albany, County of Alameda, State of California, described as follows:

EXHIBIT "B" – DIRECTOR’S DEED

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

City Manager  
City of Albany  
1000 San Pablo Ave.  
Albany, CA 94706

The undersigned hereby declares this instrument to be exempt from Recording Fees (Govt Code §27383).

Documentary Transfer Tax of \$0.00 based on full value of property conveyed.

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(Space above this line reserved for Recorder’s use only.)

GRANT DEED

FOR VALUEABLE CONSIDERATION, receipt of which is hereby acknowledged, \_\_\_\_\_ (“Grantor”), hereby grants to the City of Albany, a municipal corporation, the real property located in the **City of Albany** County of Alameda, State of California, described on Exhibit “A” attached hereto and made a part hereof (the “Property”).

TOGETHER WITH any and all of Grantor’s rights, privileges and easements incidental or appurtenant to the Property, including, without limitation, any and all minerals, oil, gas and other hydrocarbon substances on and under the Property, as well as any and all developmental rights, air rights, water, water rights, and water stock relating to the Property, and any and all easements, right-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Land and all of Grantor’s right, title, and interest in and to any and all roads and alleys adjoining or servicing the property.

Executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 2011

\_\_\_\_\_

Exhibit A to Grant Deed

Real property in the City of Albany, County of Alameda, State of California,  
described as follows:

STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

On \_\_\_\_\_ before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_,  
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 \_\_\_\_\_

Name \_\_\_\_\_  
(typed or printed)

Notary Public Commissioned for said County and State

(This area for official notarial seal.)

STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

On \_\_\_\_\_ before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_,  
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 \_\_\_\_\_

Name \_\_\_\_\_  
(typed or printed)



Notary Public Commissioned for said County and State

(This area for official notarial seal.)

EXHIBIT "C" – CERTIFICATE OF NON FOREIGN STATUS

Section 1445 of the Internal Revenue Code provides that a transferee (buyer) of a U.S. real property interest must withhold tax if the transferor (seller) is a foreign person. To inform \_\_\_\_\_ (the "Transferee") that withholding of tax is not required upon the disposition of a U.S. real property interest by \_\_\_\_\_ (the "Transferor"), the undersigned hereby certifies the following on behalf of the Transferor:

1. That the Transferor is the owner of the following described property, to wit:  
Block: \_\_\_\_\_ Lot: \_\_\_\_\_ County: \_\_\_\_\_ Premises:  
\_\_\_\_\_

2. The Transferor is not a non-resident alien for purposes of the U.S. income taxation (as such term is defined in the Internal Revenue Code and Income Tax Regulations).

3. The Transferor's U.S. taxpayer identification number (Social Security Number) is: 68-027-4794\_\_\_\_\_

4. The Transferor's address is: 111 Grand Avenue, Oakland CA 94612\_\_\_\_\_

5. The Transferor understands that this certification be disclosed to the Internal Revenue Service by the Transferee and that any false statement contained herein could be punished by fine, imprisonment or both.

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE EXAMINED THIS CERTIFICATION AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IT IS TRUE, CORRECT AND COMPLETE, AND I FURTHER DECLARE THAT I HAVE AUTHORITY TO SIGN THIS DOCUMENT ON BEHALF OF THE TRANSFEROR.

DATED: \_\_\_\_\_ BY: \_\_\_\_\_

BY: \_\_\_\_\_

BY: \_\_\_\_\_

BY: \_\_\_\_\_

## EXHIBIT "D" – DESIGNATION AGREEMENT

This DESIGNATION AGREEMENT (the "Agreement") dated as of \_\_\_\_\_, 200\_, is by and between California Department of Transportation \_\_\_\_\_, a \_\_\_\_\_ ("Seller"), the **Albany Community Reinvestment Agency**, ("Agency"), and CHICAGO TITLE COMPANY ("Title Company").

A. Pursuant to that certain Purchase Agreement entered into by and between Seller and City, dated November 15, 2010\_\_\_\_\_, 200\_ (the "Purchase Agreement"), Seller has agreed to sell to CITY, and CITY has agreed to purchase from Seller, certain real property located in City of Albany, California, more particularly described in Exhibit A attached hereto (the "Property"). The purchase and sale of the Property is sometimes hereinbelow referred to below as the "Transaction".

B. Section 6045(e) of the United States Internal Revenue Code of 1986 and the regulations promulgated thereunder (collectively, the "Reporting Requirements") require an information return to be made to the United States Internal Revenue Service, and a statement to be furnished to Seller, in connection with the Transaction.

C. Pursuant to Subparagraph 2(b)(i) ? There is no 2(b)(i) reference. Should it be 5.1? of the Purchase Agreement, an escrow has been opened with Title Company, Escrow No. \_\_\_\_\_, through which the Transaction will be or is being accomplished. Title Company is either (i) the person responsible for closing the Transaction (as described in the Reporting Requirements) or (ii) the disbursing title or escrow company that is most significant in terms of gross proceeds disbursed in connection with the Transaction (as described in the Reporting Requirements).

D. Seller, CITY and Title Company desire to designate Title Company as the "Reporting Person" (as defined in the "Reporting Requirements") with respect to the Transactions. ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Seller, City and Title Company agree as follows:

1. Title Company is hereby designated as the Reporting Person for the Transaction. Title Company shall perform all duties that are required by the Reporting Requirements to be performed by the Reporting Person for the Transaction.

2. Seller and CITY shall furnish to Title Company, in a timely manner, any information requested by Title Company and necessary for Title Company to perform its duties as Reporting Person for the transaction.

3. Title Company hereby requests Seller to furnish to Title Company Seller's correct taxpayer identification number. Seller acknowledges that any failure by Seller to provide Title D-2 Company with Seller's correct taxpayer identification number may subject Seller to civil or criminal penalties imposed by law. Accordingly, Seller hereby

certifies to Title Company, under penalties of perjury, that Seller's correct taxpayer identification number is 68-027-4794\_\_\_\_\_.

4. The names and addresses of the parties hereto are as follows:

SELLER:

California Department of Transportation  
111 Grand Avenue, Oakland CA 94612

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

CITY:

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

TITLE COMPANY:

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

5. Each of the parties hereto shall retain this Agreement for a period of four (4) years following the calendar year during which the date of closing of the Transaction occurs.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date and year first above written.

SELLER:

R.A. MACPHERSON

Deputy District Director  
Right of Way

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

CITY

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

TITLE COMPANY:

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_