

PURCHASE AND SALE AGREEMENT - DIRECT SALE

RW 16-5 (NEW 10/2016)

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into as of May 10th, 2023, by and between the State of California, Department of Transportation ("Caltrans") and the City of San Leandro ("Purchaser")

Recitals

- A. Caltrans owns the real property commonly known as DD-021647-X1-X1 (the "Property") and more particularly described as set forth in **Exhibit A** attached hereto.
- B. Purchaser is CITY OF SAN LEANDRO
- C. The parties wish to provide terms and conditions for Purchaser's purchase of the Property from Caltrans.

NOW THEREFORE, the parties agree as follows:

Section 1. Purchase and Sale

Caltrans shall sell the Property to Purchaser and Purchaser shall purchase the Property from Caltrans on the terms and conditions stated in this Agreement.

Section 2. Purchase Price

The purchase price for the Property shall be TWENTY-TWO THOUSAND THREE HUNDRED DOLLARS [\$22,300.00] ("Purchase Price"). The Purchase Price shall be paid by Purchaser as set forth below:

- (a) Receipt is hereby acknowledged of TWENTY-TWO THOUSAND THREE HUNDRED DOLLARS (\$22,300.00), representing 100% of the "Purchase Price", in the form of a (cashier's check/certified check/money order) made payable to the "California Department of Transportation".
- (b) Liquidated Damages: THE PARTIES AGREE THAT 10% OF THE PURCHASE PRICE IS A REASONABLE SUM FOR LIQUIDATED DAMAGES SHOULD THIS TRANSACTION FAIL TO CLOSE DUE TO A MATERIAL BREACH OF THIS AGREEMENT BY PURCHASER, IN THAT, WHEN CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, IT WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO FIX THE ACTUAL DAMAGES. BY PLACING THEIR INITIALS AT THE PLACES PROVIDED, EACH PARTY AGREES THAT THE FOREGOING CONSTITUTES LIQUIDATED DAMAGES AND NOT A FORFEITURE OR PENALTY.

Purchaser _____; Caltrans _____ [Initials of Purchaser and Caltrans]

Section 3. Closing and California Transportation Commission Approval

Purchaser understands and agrees that this sale is subject to the approval by the CTC. In the event the CTC fails to approve the sale, all monies paid by the Purchaser will be refunded without interest. Caltrans makes no representations or warranty concerning the CTC's approval of this sale.

Section 4. Close of Escrow

Caltrans will maintain an internal escrow at no charge to Purchaser. Purchaser may open an external escrow at Purchaser's expense but selection of the escrow company is subject to Caltrans' approval, which Caltrans may withhold for any reason within its discretion. Should Purchaser elect to open an escrow, Purchaser agrees to pay any and all fees associated with the escrow, and any and all recording fees, documentary transfer taxes or any other real estate transaction fees involved in the transaction.

ADA Notice

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Section 5. Closing Costs and Prorations

Purchaser shall pay all recording fees and the premium, if any, for the title insurance policy referred to herein. Prorations of real property taxes and assessments, rents, interest, and other expenses of the Property shall be prorated as of the date of recordation of the deed.

Section 6. Title

The Property is believed to be free of any liens, court judgments, loans, Deeds of Trust, and delinquent or unpaid property taxes. The sale of the Property is subject to all matters of public record and any easements, or reservations not of record or that which is reserved by Caltrans. Caltrans does not assume any liability for any possible encumbrances on the Property.

Purchaser understands and agrees that the right, title, and interest in the Property to be conveyed shall not exceed that vested in the State of California, Department of Transportation, and that Caltrans will furnish no policy of title insurance. If a policy of title insurance is desired, Purchaser may obtain one at Purchaser's sole expense. The property is being conveyed subject to any special assessments, restrictions, reservations or easements of record and subject to any reservations contained in the Director's Deed. Purchaser may examine any information Caltrans has relative to these matters. Purchaser has been given the opportunity to request and inspect all documents, if any, within Caltrans possession regarding the condition of the property.

Section 7. Condition of Property

Purchaser waives any further right to inspect the Property and conduct tests thereon. The Property is sold "AS IS" in its present physical condition as of the date of this Agreement. Purchaser acknowledges and agrees that they are acquiring the property in its present state and condition as of the date of this Agreement, with all defects, both patent and latent, and with all faults of the property whether known or unknown, presently existing or that may hereafter arise, including, without limitation, all existing conditions, if any, of lead paint, mold or other environmental health hazards. Purchaser acknowledges and agrees that Caltrans has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guarantees of any kind or character whatsoever, whether express, implied, oral or written, past, present or future, of, as to, concerning or with respect to the condition of the property.

Caltrans makes no representation regarding the potential for development, subdivision, zoning, or re-zoning of the Property. Purchaser shall be responsible for compliance with any and all local codes and ordinances for permitted land uses of any kind.

Section 8. No Assignment

Purchaser shall not assign all or any part of the Purchaser's interest in this Agreement without first having obtained the written consent of Caltrans. Any total or partial assignment shall not relieve Purchaser of Purchaser's obligation to this Agreement.

Section 9. Disclaimers

The Property and the fixtures and personal property contained therein, if any, are not new, and have been subject to normal wear and tear. Purchaser understands that Caltrans makes no express or implied warranty with respect to the condition of any of the Property, fixtures or personal property. Caltrans makes no oral or written representation regarding the age of improvements, the size and square footage of the parcel or building, or the location of property lines. Apparent boundary line indicators such as driveways, fences, hedges, walls, or other barriers may not represent the true boundary lines which may only be determined by a surveyor. If any of these issues are important to Purchaser's decision to purchase, then Purchaser should investigate the Property independently. Purchaser acknowledges that it has not relied upon any representations by Caltrans with respect to the condition of the Property, the status of permits, zoning, or code compliance. Purchaser is to satisfy itself concerning these issues.

Section 10. Changes During Transaction

During the pendency of this transaction, Caltrans agrees that no changes in the existing leases, if any leases exist, shall be made, nor new leases or rental agreements entered into, nor shall any substantial alterations or repairs be made or undertaken to the Property without the written consent of the Purchaser.

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Section 11. Indemnification

Purchaser shall defend, indemnify, and hold Caltrans and Caltrans' elected and appointed officers, agents, and employees free and harmless from and against any and all liabilities, damages, claims, costs, and expenses (including and without limitation to attorney's fees, legal expenses and costs, and consultant's fees, and investigation and remediation costs) arising in whole or in part from the existence of Hazardous Substances or Hazardous Substance Conditions. The indemnity is intended to address that liability for which Caltrans may be responsible solely out of its mere ownership of said Property. This provision shall survive transfer of the title to said Property and any rescission of said transfer.

When used in this Agreement, "Hazardous Substance" shall mean any substance whose nature and/or quantity of existence, use, manufacture, disposal of effect, render it subject to federal, state, or local regulation, investigation, remediation or removal as potentially injurious to public health or welfare, including the Comprehensive Environmental Response Compensation and Liability Act or Resource Conservation and Recovery Act as now in effect.

When used in this Agreement, "Hazardous Substance Condition" shall mean the existence on or under Property of a hazardous substance that requires remediation and/or removal and/or to be otherwise mitigated pursuant to applicable law.

Section 12. Destruction of Improvements

If the improvements of the Property are destroyed, materially damaged, or found to be materially defective as a result of such damage prior to Close of Escrow or approval by the CTC, Purchaser may terminate the transaction by written notice delivered to Caltrans, and all Deposits shall be returned to Purchaser.

Section 13. Commissions

Each party represents and warrants to the other party that no broker or finder or other real estate agent is entitled to any commission, finder's fee or other compensation resulting from any action on its part. Purchaser and Caltrans each agree to indemnify the other and defend and hold harmless the other party from and against any loss, cost, or expense, including attorney's fees, incurred by such party, and against any claims, causes of action or the like brought by any broker, finder or similar agent for a commission or fee on account of this Agreement. This section does not prohibit a Purchaser from obtaining a broker at their own expense.

Section 14. Effective Headings

The subject headings of the paragraphs and subparagraphs of this Agreement are included for convenience only and shall not affect the construction or interpretation of any of its provisions.

Section 15. Entire Agreement

This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties.

Section 16. Counterparts and Non Wet Signatures

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same Agreement. In order to expedite the transaction contemplated herein, to the extent allowable under applicable Law, telecopied signatures or signatures transmitted by electronic mail in so-called "pdf" format may be used in place of original signatures on this Agreement. Purchaser and Caltrans intend to be bound by the signatures on the telecopied or e-mailed document, are aware that the other party will rely on the telecopied or e-mailed signatures which shall be of the same force and effect as hand-written signatures, and hereby waive any defenses to the enforcement of the terms of this Agreement based on such telecopied or e-mailed signatures.

Section 17. Binding on Successors and Assigns

This Agreement shall be binding on, and shall inure to the benefit of, the parties to it and their respective legal representatives, successors, and assigns.

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Section 18. Attorney's Fees

If any legal action, arbitration or other proceeding is brought involving a dispute between the parties or arising out of the execution of this Agreement or sale of the Property, the prevailing party shall be entitled to recover its costs and reasonable attorney's fees incurred in such action or proceeding, in addition to any other relief to which such party may be entitled.

Section 19. Agreement to Perform Necessary Acts

Each party agrees to perform any further acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions in this Agreement.

Section 20. No Third-Party Beneficiaries

This Agreement is for the sole benefit of the parties hereto. There are no third-party beneficiaries, intended or otherwise.

Section 21. Notices

All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the person to whom notice is to be given or, on the second (2nd) day after mailing if mailed to the party to whom notice is to be given, by First Class Mail, registered or certified, return receipt requested, postage prepaid and properly addressed as follows:

To Caltrans at: State of California Department of Transportation
Right of Way, Excess Land Sales
PO BOX 23440, MS 11
Oakland, CA 94623

To Purchaser at: The City of San Leandro
835 East 14th Street
San Leandro, CA 94577

Any party may change its address for purposes of this paragraph by giving the other party written notice of the new address to the other party contained herein.

Section 22. Governing Law

This Agreement has been negotiated and entered into in the State of California and shall be governed by, construed and enforced in accordance with the laws of the State of California and according to its fair meaning, and not in favor of or against any party.

Section 23. Severability

If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all the other provisions of this Agreement be construed to remain fully valid, enforceable and binding on the parties.

Section 24. Survival of Representations and Warranties

All covenants, representations, warranties, and other agreements under this Agreement shall survive the Close of Escrow.

Section 25. Time is of the Essence

Time is of the essence and performance of this Agreement in respect to all provisions of this Agreement that specify a time for performance, and failure to comply with this provision shall be a material breach of this Agreement.

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Section 26. Saturdays, Sundays, and Holidays

If any date by which an election or a notice must be given falls on a Saturday, Sunday or holiday, then the date by which an election or notice must be given is extended to 5:00 p.m. on the next business day following such Saturday, Sunday or holiday.

Section 27. Waiver

No breach of any provision of this Agreement can be waived unless in writing. Waiver of any one breach of a provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision, including the time for performance of any such provision. The exercise by a party of any remedy provided in this Agreement or at law shall not prevent the exercise by that party of any other remedy provided in this Agreement or at law.

Section 28. Vesting

Title shall be vested as follows:

The City of San Leandro, a Municipal Corporation.

- ☐ as Husband and Wife
- ☐ A Single Man/Woman
- ☐ A Married Man/Woman as his/her sole and separate property
- ☐ as Joint Tenants
- ☐ as Tenants in Common
- ☐ Other (specify) _____

Section 29. Additional Terms & Conditions

Additional Terms & Conditions X are/ _____ are not attached.

- Exhibit A – Legal Description

SIGNATURES ON FOLLOWING PAGE

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

STATE:

Recommended for Approval by:

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____
BRANDON ZARRINGHALAM
Right of Way Agent
Excess Land Sales

By: _____ Date: _____
JASPREET SINGH
District Branch Chief
Excess Land Sales

APPROVED:

By: _____ Date: _____
RESHAM HADDOX
District Office Chief
R/W Appraisals/Estimating
Property Management Services and
Excess Land Sales

PURCHASER:

By: _____ Date: _____
FRANCES ROBUSTELLI
City Manager
City of San Leandro

Number
DD-021647-X1-X1

EXHIBIT "A"

All that real property situated in the City of Oakland, County of Alameda, State of California, being described as follows:

DD-021647-X1-X1:

PARCEL 1 (021647-X1-X1 and 023754-X1-X1):

A portion of PARCEL 2B (AMENDED) as described in that FINAL ORDER OF CONDEMNATION NO. 325033, recorded January 31, 1964, in Reel 1112, Image 543 and a portion of that parcel of land as described in that certain Grant Deed to the State of California, recorded May 19, 1965, in Reel 1508, Image 158, all of Official Records of Alameda County, State of California, more particularly described as follows:

BEGINNING at the most Southerly corner of said parcel of land (Reel 1508, Image 158); thence along the Southwesterly line of last said parcel of land, North 34°36'04" West, 346.76 feet; thence North 55°13'11" East, 5.51 feet; thence South 37°39'32" East, 19.32 feet; thence from a tangent that bears South 34°51'23" East, along a curve to the left with a radius of 1469.00 feet, through a central angle of 02°34'42", an arc length of 66.11 feet; thence South 37°26'05" East, 44.25 feet; thence South 39°20'38" East, 116.50 feet; thence along a tangent curve to the right with a radius of 214.00 feet, through a central angle of 01°54'33", an arc length of 7.13 feet; thence South 37°26'05" East, 177.66 feet; thence along a tangent curve to the left with a radius of 81.00 feet, through a central angle of 16°01'12", an arc length of 22.65 feet to a point of compound curvature; thence along a tangent curve to the left with a radius of 184.00 feet, through a central angle of 05°57'43", an arc length of 19.15 feet; thence South 59°25'00" East, 12.97 feet to a point on the Northerly prolongation of that course described as "N. 5°33'48" W., 103.61 feet" along the general Northeasterly line of PARCEL 1 as described in that certain Document entitled "RELINQUISHMENT OF STATE HIGHWAY IN THE CITY OF OAKLAND, ROAD 04-ALA-580-34.6-35.2 REQUEST NO. 31372", recorded November 29, 1965 in Reel 1652, Image 354, Official Records of Alameda County, State of California; thence along said Northerly prolongation, South 05°33'48" East, 9.88 feet to said general Northeasterly line; thence along last said line North 72°37'46" West, 41.35 feet and along a tangent curve to the right with a radius of 88.00 feet, through a central angle of 23°40'01", an arc length of 36.35 feet to the general Southwesterly line of said PARCEL 2B (AMENDED); thence along last said line, North 34°36'04" West, 78.84 feet to the POINT OF BEGINNING.

CONTAINING 8,455 square feet, more or less.

There shall be no abutter's rights of access appurtenant to the above-described real property in and to the adjacent State freeway.

Number
DD-021647-X1-X1

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RESERVING unto the State of California an EASEMENT for the purposes of extending the slopes of cuts and fills and incidents thereto, upon, over, under, through the above described parcel; together with the right to construct, operate, and maintain such slope as necessary to effect the purpose of the easement.

It is understood and agreed by the parties hereto that GRANTEE, for itself and their successors and assigns, shall have the right at any time to remove such slopes or portions thereof upon removing the necessity for maintaining such slopes or portions thereof or upon providing in place thereof other adequate lateral support. The design and construction of any support or changes in lieu of existing slopes shall first be approved by the State of California, Department of Transportation or such other public body having the right of said approval for the protection and support of said highway.

The bearings and distances used in the above description are based on the California Coordinate System of 1927, Zone 3. Multiply distances by 1.0000705 to obtain ground distances.

PARCEL 2 (031372-X1-X1):

The State of California, acting by and through its Department of Transportation does hereby remise, release, and quitclaim unto the hereinabove named grantee, all right, title and interest in and to PARCEL 2 (031372-X1-X1) described as follows:

All of that portion of Foothill Boulevard lying Southeasterly of that course described as "N. 55°23'56" E. 2.75 feet" and lying Northeasterly of that course described as "N. 34°36'04" W., 144.29 feet" and the curve with a radius of 88.00 feet and an arc length of 58.41 feet as said courses and curve are described in PARCEL 1 in that certain Document entitled "RELINQUISHMENT OF STATE HIGHWAY IN THE CITY OF OAKLAND, ROAD 04-ALA-580-34.6-35.2 REQUEST NO. 31372", recorded November 29, 1965 in Reel 1652, Image 354, Official Records of Alameda County, State of California.

CONTAINING 437 square feet, more or less.

RESERVING unto the State of California an EASEMENT for the purposes of extending the slopes of cuts and fills and incidents thereto, upon, over, under, through the above described PARCEL 2 (031372-X1-X1); together with the right to construct, operate, and maintain such slope as necessary to effect the purpose of the easement.

It is understood and agreed by the parties hereto that GRANTEE, for itself and their successors and assigns, shall have the right at any time to remove such slopes or

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portions thereof upon removing the necessity for maintaining such slopes or portions thereof or upon providing in place thereof other adequate lateral support. The design and construction of any support or changes in lieu of existing slopes shall first be approved by the State of California, Department of Transportation or such other public body having the right of said approval for the protection and support of said highway.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Signature: 
Licensed Land Surveyor

Date: 4/20/2021

