REAL ESTATE PURCHASE AND SALE AGREEMENT
SALE NO. 60-02-10

This Real Estate Purchase and Sale Agreement (the "Agreement") is made effective this ____ day of _____, by and between Idaho Department of Lands ("Seller") and _____("Buyer") for the purchase and sale of that certain real property commonly known as the **Hamilton Road Tract, totaling 80.00 +/- acres of vacant land,** and situated in Elmore County, Idaho legally described as,

Legal Description:

A parcel of land located in the SE¼NE¼, NE¼SE¼ of Section 14, Township 4 South, Range 6 East, B.M., Elmore County, Idaho.

Said described parcel of land contains 80 acres more-or-less, together with and subject to rights-of-way and easements of record and/or use. The State of Idaho will retain all mineral rights.

The 80 +/- acres of vacant land, together with all rights appurtenant thereto will be sold together and are herein referred to collectively as the "Property".

1. **Purchase Price; Payment.** The total purchase price for the Property is _____ Dollars ($_____) which amount, including the Deposit, shall be paid in cash or in other readily available funds at closing, as follows:

_____Dollars ($_____) winning bid at auction, plus Eight Thousand Dollars ($8,000.00) administrative fee, plus Three Thousand Seven Hundred Fifty Dollars ($3,750.00) Appraisal Fee.

1.1 **Earnest Money Deposit.** Buyer hereby deposits with Seller its check in the amount of Forty Thousand Dollars ($40,000.00) as an earnest money deposit (the "Deposit"), payable to the State of Idaho. The Deposit, together with any interest thereon which shall accrue to the benefit of Seller, shall be applied against the total purchase price at closing.

1.2 **Extension of Closing.** Buyer may extend the closing period up to one time by thirty (30) days with an additional non-refundable deposit(s) of Five Thousand Dollars ($5,000.00) for a thirty (30) day extension which shall be applied against the total purchase price at closing.

2. **Included Items.** N/A

3. **Closing.**

3.1 **Time for Closing; Termination Date; Multiple Closings.** The sale shall be closed in the office of the Idaho Department of Lands (Closing Agent) on or before _____, At Buyer's option, closing may occur earlier upon ten (10) days notice to Seller. As stated in 1.3, Buyer may extend the closing for up to one separate thirty (30) day period if needed. At closing, Buyer and Seller shall deposit in escrow with Closing Agent all instruments, documents and monies necessary to complete the sale in accordance with this Agreement. As used herein, "closing" or "date of closing" means the date on which all appropriate documents are recorded and proceeds of sale are available for disbursement to Seller. Funds held in reserve accounts pursuant to escrow instructions shall be deemed, for purposes of this definition, as available for disbursement to Seller. If requested by Buyer, Seller agrees to permit multiple closings for portions of the Property, with one or more purchasers, which may or may not include the Buyer, so long as the purchase price is paid in full and all closings for portions of the Property occur simultaneously.

3.2 **Prorations; Closing Costs.** Taxes and assessments for the current year, if any, shall be prorated as of the date of closing. Seller shall pay for recording the state deed.

3.3 **Possession.** Buyer shall be entitled to possession of the Property upon closing subject to existing leases, easements and encumbrances of record.

3.4 **Documents To Be Delivered by Seller at Closing.** On the date of closing, Seller shall have executed, or cause to be executed, and delivered to the Closing Agent, the following documents, if required by Buyer, in a form reasonably acceptable to Buyer and Seller:

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a) State deed;

4. **Conveyance of Title.** On closing, Seller shall execute and deliver to Buyer a state deed conveying good and marketable title to the Property free and clear of any defects or encumbrances except for those of record, those disclosed herein, those which may be known through reasonable investigation, or in documents referenced herein.

5. **Risk of Loss; Insurance; Condemnation.** Risk of loss of or damage to the Property shall be borne by Seller until the date of closing. Thereafter, Buyer shall bear the risk of loss. In the event of material loss of or damage to the Property prior to the date upon which Buyer assumes the risk of loss, Seller shall not be obligated to restore the Property nor pay damages to Buyer by reason of such loss or damage, and Buyer may terminate this Agreement by giving notice of such termination to Seller and Closing Agent, and such termination shall be effective and the Deposit shall be refunded to Buyer within ten (10) days thereafter; provided, however, that such termination shall not be effective if Seller agrees in writing within such ten (10) day period to restore the Property substantially to its present condition by the closing date; and provided further that Buyer may elect to purchase the Property in the condition existing on the date of closing

6. **Seller's Representations and Warranties.** In addition to other representations contained in this Agreement and in Exhibit A, which exhibit is attached hereto and made a part hereof, Seller represents and warrants to Buyer as of the date of closing that:

6.1 **Authority.** Seller, and the person signing on behalf of Seller, have full power and authority to execute this Agreement and perform Seller's obligations hereunder;

6.2 **Parties In Possession; Liens.** The Property is not subject to any leases, tenancies or rights of persons in possession except as have been disclosed to Buyer; and

6.3 **No Hazardous Waste; Indemnity.** Seller has not received notification of any kind from any agency suggesting that the Property is or may be targeted for a Superfund cleanup. To the best of Seller's knowledge, neither the Property nor any portion thereof is or has been used as a landfill, waste storage or disposal site, or for the storage or disposal of any chemicals, petroleum or oil products, or hazardous or dangerous wastes or substances.

7. **Buyer's Authority.** Buyer represents and warrants to Seller that at the date of execution hereof and at the date of closing Buyer, and the person signing on behalf of Buyer, have full power and authority to execute this Agreement and to perform Buyer's obligations hereunder, and if Buyer is a corporation, all necessary corporate action to authorize this transaction has been taken.

8. **Assignment of Warranties and Service and Supply Contracts.** On closing, Seller shall assign to Buyer all rights and benefits, if any, now or hereafter held by Seller under any warranties of any kind, express or implied, made or furnished by the manufacturers, suppliers or vendors of any material used in construction of the improvements on the Property or any furniture, appliances or equipment to be purchased by Buyer hereunder, and shall assign to Buyer all rights and benefits or under any present or future contract for services or supplies used in or about the Property, such assignments to be self-operative without the need for any further written document.

9. **Condition of Property.** Buyer is purchasing the Property on an "as-is" basis without any warranties, express or implied, from Seller, except as provided in this Agreement (including Exhibit A). Buyer further acknowledges that Buyer is not relying upon any statement or representations by the broker(s) or any representatives of the broker(s) or Seller which are not expressly set forth in this Agreement.

10. **Default; Attorney Fees.** Time is of the essence of this Agreement. If Seller defaults hereunder, Buyer may seek specific performance of this Agreement, damages or rescission and Buyer shall be entitled to a return of the Deposit on demand, and Seller hereby releases all claims to the Deposit in the event of such default. If Buyer defaults, the Deposit shall be forfeited on demand by Seller as liquidated damages and upon payment thereof to Seller, Buyer shall have no further obligations or liability hereunder. In any suit, action or appeal therefrom, to enforce this Agreement or any term or provision hereof, or to interpret this Agreement, the prevailing party shall be entitled to recover its costs incurred therein (and on appeal), including reasonable attorney fees.

11. **Notices.** Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail or by facsimile. Any notice given by

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certified mail shall be sent with return receipt requested. Any notice given by facsimile shall be verified by telephone. All notices shall be addressed to the parties at the addresses set forth in this Agreement, or at such other addresses as the parties may from time to time direct in writing. Any notice shall be deemed to have been given on the earlier of: (a) actual delivery or refusal, (b) three (3) days after mailing by certified mail, or (c) the day facsimile delivery is verified.

12. **Commissions.** Not applicable

13. **Counterparts.** This Agreement may be executed in any number of counterparts for the convenience of the parties, all of which, when taken together and after execution by all parties hereto, shall constitute one and the same Agreement.

14. **General.** This is the entire agreement of Buyer and Seller with respect to the matters covered hereby and supersedes all prior agreements between them, written or oral. This Agreement may be modified only in writing, signed by Buyer and Seller. Any waivers hereunder must be in writing. No waiver of any right or remedy in the event of default hereunder shall constitute a waiver of such right or remedy in the event of any subsequent default. This Agreement shall be governed by the laws of Idaho. This Agreement is for the benefit only of the parties hereto and shall inure to the benefit of and bind the heirs, personal representatives, successors and assigns of the parties hereto. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof.

15. **Assignment.** Buyer may only assign its rights hereunder to any person(s) or entities with the written consent of Seller.

16. **1031 Exchange.** Each party will cooperate with the other to allow each party to effect an exchange qualified for tax deferral under Internal Revenue Code section 1031, provided, such cooperation shall not delay the closing and shall not require or result in any cost, liability or expense to the party so cooperating.

17. **Additional Provisions.** Any additional provisions are set forth in the Addendum to this Agreement, if any, which Addendum may be attached hereto and, if attached, shall be made a part hereof.

18. **Exhibits.** Exhibit A and the Addendum, if any, attached hereto are incorporated herein as if fully set forth.

Executed effective the date first set forth above.

SELLER: The State of Idaho

By:_____
Its:_____

Seller's Address: 300 N. 6th St. Suite 103
P.O. Box 83720
Boise, ID 83720-0050
Telephone: 334-0200
Facsimile: _____

BUYER: The City of Mountain Home

By:_____
Its:_____

Buyer's Address: _____
_____
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EXHIBIT A

Additional Representations and Warranties

Seller's Representations and Warranties. In addition to other representations set forth in this Agreement, Seller represents and warrants to Buyer as of the date of closing that:

1. **No Violation of Law.** Neither the Property nor the sale of the Property violates any applicable statute, ordinance or regulation, nor any order of any court or any governmental authority or agency, pertaining to the Property or the use occupancy or condition thereof;

2. **No Liens.** All persons and corporations supplying labor, materials and equipment to the Property have been paid and there are no claims of materialmen liens;

3. **No Assessments.** There are no currently due and payable assessments for public improvements against the Property and Seller is not aware of any local improvement district or other taxing authority having jurisdiction over the Property in the process of formation;

4. **Legal Access.** The Property does have legal access by means of State Deed 12479 (Exhibit B);

5. **Title.** Seller acquired title to this property from the U.S. Government through Clear List 3 dated March 30, 1894. Seller has good and marketable title to the property. The parcel will be sold "as is". The sale shall be subject to liens, encumbrances, and claims on title to the Property, whether the same are shown in the public record or established otherwise, including those which would be disclosed by an inspection or a survey of the Property. The State of Idaho will retain mineral rights;

6. **Utilities.** Utilities are not available on the Property;

7. **Flood; Drainage.** The Property appears to be partially in Zone A according to FEMA Map No. 1602120625 C dated 3/15/1994 which is "Potential flood zone on Rattlesnake Creek"; the property is located in an area identified by the Secretary of Housing and Urban Development or other governmental agency as an area having special flood hazards, and no separate areas within the Property are required to be set aside for water retention, "green belt," open space or drainage;

8. **Water Retention; Drainage.** All water retention and storm drainage facilities, streets, curbs, gutters, sidewalks and utilities are not applicable to this property;

9. **Development Fees.** Seller has no notice or knowledge of any agreement, requirement, request or demand with or by any governmental entity to the effect that the owner of the Property shall or may be required to give consideration such as, without limitation, payment of any deferred zoning or development fees, contributions to school districts, park districts, local improvement districts or similar agencies, or dedication of any portion of the Property, as a condition to the granting of development or building permits for the Property;

10. **Storm/Sewer Facilities.** Not applicable;

11. **Contiguity.** The Property consists of 80.00 acres, more or less;

12. **Zoning.** The current zoning for the Property is Agricultural. Seller has no knowledge of any plan by any person or entity to change the existing zoning applicable to the Property; and

13. **Vehicular Access.** Seller does have legal access to the Property. Seller has no knowledge of any proposed changes in or to existing traffic patterns near the Property or vehicular access to the Property.

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