

**AGREEMENT FOR PURCHASE AND SALE OF PROPERTY
AND ESCROW INSTRUCTIONS**

Heavy Maintenance Facility Project

APN _____

_____, hereinafter called the "Seller," without regard to number or gender, hereby offers to sell to the CITY OF FRESNO, a municipal corporation, hereinafter called the "City," the hereinafter described fee simple purchase on the following terms and conditions:

1. All that real property which is the subject of this Agreement, and which is hereinafter for convenience referred to as the "Subject Property," is a fee simple title to certain property (APN _____) of land situated in the County of Fresno, State of California, more particularly described as follows:

See Exhibits "A" and "B", which are attached and incorporated herein

2. The purchase price for the Subject Property shall be the sum of _____ DOLLARS (\$_____) as just compensation therefor.

3. Seller acknowledges that City's obligation to purchase the Subject Property and to take the other actions required to be taken by City at the Closing is subject to the satisfaction, at or prior to the Closing, of the following condition precedent (which may be waived by City, in its sole and absolute discretion): The California High Speed Rail Authority ("CHSRA") must select the proposed Fresno site (Exhibit Attached) as the location for the CHSRA Heavy Maintenance Facility. If the condition is not met and City does not waive the condition prior to the expiration of this Agreement, the City will not proceed with this transaction and the Seller is entitled to retain the deposit.

4. Seller represents and warrants that it has the authority to make the offer herein made, and that it holds fee title to said real property and can convey the subject property free and clear of all liens, encumbrances, and restrictions of record except for the title exceptions noted in 5.b below.

5. The sale shall be completed through an escrow to be opened at National Title Company, 7485 N. Palm, Suite 106, Fresno, California 93711 ("escrow holder"), under Escrow Number _____. Said escrow shall be opened upon the following terms and conditions, and the Seller and City by their signature to this Agreement make this paragraph their escrow instructions:

a. The City shall deposit the sums specified in Paragraphs 2 of this Agreement and the closing costs in escrow upon receipt of a demand and statement from said title company therefor. A non-refundable deposit of \$_____ shall be deposited into escrow within sixty days' of full execution of this Agreement (including attestation by the Clerk). The deposit shall be applied to the Purchase Price.

b. Payment of said sums, less Seller's cost to clear title, if any, may be made to Sellers only when escrow holder possesses and is in a position to deliver to the City a fully executed and acknowledged and recorded grant deed to the subject property and when said escrow holder stands ready to issue to the City a standard title insurance policy guaranteeing a title to said property in the City free and clear of all liens, encumbrances, and restrictions of record, except for: Items _____ of the Preliminary Title Report No. _____ dated _____ from _____ Title Company.

c. It is understood that Seller shall be responsible for the payment of all taxes, penalties, redemptions, and costs allocable to the subject property. It is further Seller's responsibility to apply to the County Tax Collector for any refund or decrease in taxes which maybe granted.

d. The escrow fee, cost of policy of title insurance, recording fees (if any), and all other closing costs shall be paid by the City. Seller will pay any cost to convey the title to the subject property in the condition described in 5.b above.

e. The escrow will be considered closed ("Closing" or "Close" or the "Closing Date") on the date that the Title Company records the grant deed. The escrow will be in condition to Close when all conditions to Close, including the condition precedent in Section 3, are satisfied or waived, the Title Company is prepared to issue the title policy described herein, and the Title Company is otherwise able to record the grant deed. Unless extended by the City as provided herein, the escrow and this Agreement shall terminate if Closing does not occur within one year following final execution of this Agreement (including attestation by the Clerk) (the "Outside Closing Date"). Notwithstanding the foregoing, the City in its sole discretion may extend the Outside Closing date for an additional year by depositing a non-refundable deposit of \$_____. The deposit shall be applied to the Purchase Price. Upon termination of the escrow, the Title Company will return all funds and documents to the respective depositor, except the non-refundable deposit shall be paid to the Seller, and this Agreement will be of no further effect except as herein provided.

f. Disbursements of the purchase price to be in the amounts, at the times, and in all respects in accordance with the terms and conditions and subject to the limitations of this Agreement.

6. The City shall have the right to enter, inspect, and conduct any due diligence tests on the property that City deems advisable. Seller grants City, and/or City's agents, the right, upon 48 hours' notice, to enter onto the Subject Property to conduct tests and investigations, if all the following occur: (a) City conducts tests and investigations at its sole cost and expense; (b) the tests and investigations do not unreasonably interfere with Seller's possession.

7. Termination by City for Non-appropriation: In the event of non-appropriation relating to this Agreement, City shall have the right to terminate the Agreement at the end of any fiscal year of City, in the manner and subject to the terms specified in this paragraph. City shall endeavor to give written notice of such termination not less than sixty (60) days prior to the end of such fiscal year, and shall

notify Seller of any anticipated termination. For purposes of this paragraph, "fiscal year" shall mean the twelve month fiscal period of City which commences on July 1 in every year and ends on the following June 30. For purposes of this paragraph, "non-appropriation" shall mean the failure of the City or City's governing body to appropriate money for any fiscal year of City sufficient for the continued performance of this Agreement by City.

8. This Agreement may be assigned by City, in its sole and absolute discretion. City shall provide written notice to Seller of any assignment.

9. Miscellaneous Provisions:

a. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provision of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

b. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement any rights and duties hereunder shall be in Fresno, California.

c. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

d. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability or any one provision in this Agreement shall not affect the other provisions.

e. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

f. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

g. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment.

h. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

i. Exhibits and Attachments. Each Exhibit and Attachment referenced herein is by such reference incorporated into and made a part of this Agreement for all purposes.

j. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both the City and the Sellers.

10. Seller shall indemnify, hold harmless, and defend the City, its officers, agents, employees, and volunteers from any liability, loss, fines, penalties, forfeitures, claims, expenses, and costs, whether incurred by the Seller, City, or any other third party, arising directly or indirectly from the release, presence or disposal of any hazardous substances or materials (as now or hereafter defined in any law, regulation, or rule) in, on, or about the Subject Property on or before Closing. This indemnity shall include, without limitation, any claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), or any other federal, state or local law whether statutory or common law, ordinance, or regulation. Costs or losses covered will include, without limitation, consultants, engineering, investigator fees, clean up or disposal costs and attorneys' fees, and damages. Upon written notice from the City, the Seller, at Seller's sole cost and expense, shall immediately assume the defense of any claims, suit or action brought against the City by any public body, individual, partnership, corporation or other legal entity, relating to any matter covered by this paragraph. Seller's obligations under this indemnity shall survive the close of escrow and the recording of the grant deed.

11. Time is of the essence of each and every term, condition, and covenant hereof.

12. It is understood and agreed that as a condition precedent hereto, this Agreement shall have no force and effect until approved by the Council for the City of Fresno. This Agreement is to remain open for one hundred and twenty (120 days) from the date hereof, and that upon its duly authorized execution within said time by the City, this Agreement shall become a contract for the purchase and sale of subject property binding upon Sellers and City, their heirs, executors, administrators, successors in interest, and assigns.

SIGNATURE PAGE TO FOLLOW

SIGNATURE PAGE

This Agreement is executed by the City of Fresno by and through the City Manager or his designee pursuant to authority granted by the Council of the City of Fresno on

RECOMMENDED FOR APPROVAL

BY _____

Date _____

CITY OF FRESNO

By _____

Date _____

Address of City:
City of Fresno
Office of City Manager
2600 Fresno Street, Room 2064
Fresno, CA 93721-3623

SELLERS:

BY: _____

Date _____

BY: _____

Date _____

Address of Sellers:

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By _____
Deputy

Date _____

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By _____
Deputy

Date _____