

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

**APN 467-040-24
911 H Street, Fresno, California 93721**

The Purchase and Sale Agreement (Agreement), made and entered into on _____ (Effective Date), between EIE Alpha, LLC., a California Limited Liability Company, holding a Fifty Percent (50%) interest, Legacy DG Properties, LLC, a California Limited Liability Company, holding a Thirty-Three Percent (33%) interest, and Jason M. Geil and Kymberly D. Geil, Trustees of the Jason and Kymberly Geil Family Trust, dated April 8, 2011, holding a Seventeen Percent (17%) interest (collectively "Seller"), and the City of Fresno, a municipal corporation ("City or Buyer"). Seller offers to sell the property described below on the following terms and conditions:

1. The real property subject to this Agreement consists of the fee simple title to that certain parcel of land situated in the City of Fresno, County of Fresno, State of California, more particularly described as Assessors' Parcel Number 467-040-24 with a street address of 911 H Street (Subject Property). The Subject Property is more particularly depicted on **Exhibit A** and made part of this Agreement.

2. The Purchase Price of the Subject Property shall be equal to \$4,400,000.00. Within three days following the Effective Date of this Agreement, Buyer shall deposit with Fidelity Title Company (Attention: Bernadette Watson, Escrow Officer) (Escrow Holder) the sum of \$50,000 (Initial Deposit). The Initial Deposit shall be applied to the Purchase price at Close of Escrow. If the Buyer has not given notice of termination and cancellation on or before the expiration of the Feasibility Period, then the Initial Deposit shall be non-refundable and released and paid to Seller by the Escrow Holder on the next business day immediately following the expiration of the Feasibility Period. If, however, Buyer, in its sole and absolute discretion, decides to terminate and cancel the Agreement by sending a timely termination and cancellation notice on or before the expiration of the Feasibility Period, then the entire amount of the Initial Deposit, and any accrued interest, shall immediately be refunded to Buyer by Escrow Holder. The Close of Escrow shall occur no more than ten working days following the expiration of the Feasibility Period.

3. Buyer shall have the right to examine the feasibility of the Subject Property for a period of up to thirty days following the execution of this Agreement (Feasibility Period). Execution of the Agreement is defined as approved by the Fresno City Council and fully executed by all parties. As a condition of the sale, Buyer shall have the right to review and approve any information in Seller's possession, such as, but not limited to, all pertinent document, building plans, environmental reports, and surveys pertaining to the Subject Property. Such information, if any, shall be provided to Buyer within ten days of the execution of this Agreement.

4. At the Close of Escrow, and through escrow, Seller shall pay a commission equal to three percent of the purchase price, split equally between Buyer's Broker (Cushman & Wakefield Pacific) and Seller's Broker (Colliers International).

5. Buyer shall assume the responsibility of any ingress/egress construction work due to the impact of High Speed Rail.

6. Sellers acknowledge that the City has the power to acquire the Subject Property for public purposes by eminent domain. If title does not pass to the City within the time provided by this Agreement, the City may begin eminent domain proceedings to acquire such possession or title. The parties agree and stipulate that the Purchase Price shall be conclusively deemed to be the total just compensation payable in such proceedings, and this Agreement may be filed with the court as stipulation upon which judgment may be entered in the eminent domain proceeding as to the just compensation to be paid to Sellers. Sellers waive all other defenses in said proceeding.

7. 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 upon review and approval of an updated title report.

8. Buyer acknowledges that Seller intends to perform a tax deferred exchange pursuant to Section 1031 of the Internal Revenue Code. Buyer accordingly agrees to an assignment of the rights of the Seller to a qualified intermediary. Buyer agrees to cooperate in such an exchange at no additional costs to Buyer.

9. The sale shall be completed through an escrow to be opened at Fidelity National Title Company, 7475 N. Palm Avenue, Suite #101, Fresno, CA 93711. Phone number is 559-431-8050. Escrow Number is [REDACTED]. Bernadette Watson is the escrow officer. Said escrow shall be opened upon the following terms and conditions, and the Sellers 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 therefore.

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.

c. It is understood that Sellers shall be responsible for the payment of all taxes, penalties, redemptions, and costs allocable to the Subject Property. Any taxes owed by Seller, but not already paid by Seller at the Close of Escrow, shall be prorated and deducted from the Purchase Price.

d. The parties shall each pay one half of the escrow fee; Seller shall provide City with a CLTA policy of title insurance; recording fees (if any) shall be as customary in Fresno County; all other closing costs shall be paid by the City. Sellers will pay any cost to convey the title to the Subject Property in the condition described in 9.b. above.

e. 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.

f. Escrow shall close on June 30, 2018, or sooner, unless otherwise agreed to in writing by the parties hereto.

10. 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.

k. "As Is". Other than specifically set forth or warranted in this Agreement, or with respect to the warranty of title Seller agrees to deliver in the Deed required under Section 9 (b) above, it is expressly stipulated and agreed that Buyer accepts the property "AS IS" and "WITH ALL FAULTS", and that Seller makes and has made NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, with respect to the condition of the Property, the fitness of the Property for any intended use or purpose, the existence of any hazardous or toxic materials in or on the Property or any other environmental condition of the Property. Buyer acknowledges that it is not relying upon any information supplied by, representation, statement or other assertion with respect to the Property Condition made by Seller, its employees or agents, but is relying solely upon its examination of the Property. Without limiting the foregoing, in the event Buyer consummates the Closing pursuant to this Agreement with knowledge contrary to any representations, warranties, covenants, or other information made or provided by Seller pursuant to this Agreement, Buyer shall conclusively be deemed to have satisfied itself, based on its own inspections and investigations, as to the condition of the Property and all matters pertaining thereto, thereby releasing Seller from any liability as to such matters. **BUYER ACKNOWLEDGES THAT THE INFORMATION PROVIDED AND TO BE PROVIDED WITH RESPECT TO THE PROPERTY, IF ANY, WILL BE OBTAINED FROM A VARIETY OF SOURCES, AND SELLER HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION OR ANY EXPRESS, IMPLIED, ORAL OR WRITTEN REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION.**

11. It is understood and agreed that as a condition precedent hereto, this Agreement shall have no force and effect until approved by the Council of 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.

[SIGNATURES FOLLOW ON THE NEXT PAGE.]

CITY:

City of Fresno,
a municipal corporation

Wilma Quan-Schechter,
City Manager

Date: _____

ATTEST:

YVONNE SPENCE, MMC, CRM
City Clerk

By _____ Date _____
Deputy

APPROVED AS TO FORM:

DOUGLAS T. SLOAN
City Attorney

By: Brandon M. Collet 5/1/18
Senior Deputy Date

Addresses:

City of Fresno
Attention: City Manager
Public Works Department
2600 Fresno Street
Fresno, CA 93721-3623

SELLER:

EIE Alpha, LLC.,
a California limited liability company:

By Stephen D. Geil
Stephen D. Geil
Managing Member
EIE Alpha, LLC.

Date 4/30/2018

Legacy DG Properties, LLC,
a California limited liability company:

By Frank Easterly
Frank Easterly
Managing Member
Legacy DG Properties, LLC

Date 4/27/18

Jason M. Geil and Kymberly D. Geil,
Trustees of the Jason and Kymberly
Family Trust, dated April 8, 2011:

By Jason M. Geil
Jason M. Geil
Trustee

Date 4/30/18

By Kymberly D. Geil
Kymberly D. Geil
Trustee

Date 4/30/18

EIE Alpha, LLC.
Attention: Steve Geil
725 Pacific Avenue
Cayucos, CA 93430
Phone: (559) 351-2866
stevegeil@me.com

CITY:

City of Fresno,
a municipal corporation

Wilma Quan-Schechter,
City Manager

Date: _____

ATTEST:

YVONNE SPENCE, MMC, CRM
City Clerk

By _____ Date _____
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____ Date _____
Brandon M. Collet
Senior Deputy

Addresses:
City of Fresno
Attention: City Manager
Public Works Department
2600 Fresno Street
Fresno, CA 93721-3623

SELLER:

EIE Alpha, LLC.,
a California limited liability company:

By _____
Stephen D. Geil
Managing Member
EIE Alpha, LLC.

Date _____

Legacy DG Properties, LLC,
a California limited liability company:

By _____
Frank Easterly
Managing Member
Legacy DG Properties, LLC

Date _____

Jason M. Geil and Kymberly D. Geil,
Trustees of the Jason and Kymberly
Geil Family Trust, dated April 8, 2011:

By J. Geil
Jason M. Geil
Trustee

Date 5-3-18

By KD Geil
Kymberly D. Geil
Trustee

Date 5-3-18

EIE Alpha, LLC.
Attention: Steve Geil
725 Pacific Avenue
Cayucos, CA 93430
Phone: (559) 351-2866
stevegeil@me.com

Attachment:
Exhibit A