



**CITY OF ELK GROVE
CITY COUNCIL STAFF REPORT**

AGENDA TITLE: Adopt resolution authorizing the City Manager to execute a Purchase and Sale Agreement with Frank Loretz and Mundell Land and Livestock Company, Inc. for the acquisition of 99.57+/- acres of land located at 10251 Grant Line Road [Assessor Parcel Number 134-0190-009-0000] and adopt resolution approving an Inter-fund Loan Agreement of \$6,000,000 from the Drainage Fund to the General Fund Capital Reserve Fund

MEETING DATE: August 27, 2014

PREPARED BY: Julie D. Cline, Real Estate Manager

DEPARTMENT HEAD: Richard Shepard, Public Works Director / City Engineer

RECOMMENDED ACTION:

Staff recommends that the City Council:

1. Adopt a resolution authorizing the City Manager to execute a purchase and sale agreement with Frank Loretz and Mundell Land and Livestock Company, Inc. for the purchase of 99.57+/- acres of land located at 10251 Grant Line Road [Assessor Parcel Number 134-0190-009-0000]; and
2. Adopt a resolution approving an Inter-fund Loan Agreement of \$6,000,000, from the Drainage Fund to the General Fund Capital Reserve Fund.

BACKGROUND INFORMATION:

The City seeks to purchase approximately 100 acres of land within the vicinity of the Grant Line Road/State Route 99 Interchange. Purchase of the property will create an opportunity for potential City recreational or other public uses. Parks, recreation, and open space are important components of the quality of life desired by the residents of Elk Grove. The City recognizes the need for parks, recreation, and open space as development of the City continues. The City's General Plan envisions that the City will take a more active role in defining the locations, sizes, and facilities provided at public parks, as well as in expanding the number of trails in Elk Grove.

ANALYSIS:

The Property under consideration is currently owned by Frank Loretz and Mundell Land and Livestock Company, Inc. and serves as a farming operation. The Property encompasses approximately 100 acres and is located at 10251 Grant Line Road, unincorporated Sacramento County, and within the Sacramento County Urban Services and Urban Policy Area Boundaries.

Terms of the Proposed Purchase:

Pursuant to direction from the City Council, staff has negotiated a proposed purchase price of \$4,385,000, which has been accepted by Frank Loretz and Mundell Land and Livestock Company, Inc., subject to City Council approval (Attachment 3).

The following is a summary of the negotiated terms:

- \$4,385,000 to purchase 99.57+/- acres of land
- 60-day Due Diligence Period following fully-executed Purchase Agreement
- 30-day escrow following expiration of Due Diligence Period
- City responsible for all closing costs
- Seller will be allowed to complete crop production of any annual crop being produced at the time of close of escrow
- City is not obligated to pay any brokerage commission associated with this transaction

Staff recommends that the City Council authorize the City Manager to enter into a purchase and sale agreement consistent with these terms, and subject to approval as to form by the City Attorney.

ENVIRONMENTAL ANALYSIS:

The proposed acquisition is exempt from California Environmental Quality Act (CEQA) review pursuant to Section 15378(a) of the State CEQA Guidelines. Section 15378(a) states that where an action cannot be found to be a “project”, meaning the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, that action is not subject to CEQA. The proposed acquisition does not result in a direct or indirect change in the environment, as a use for the property has not been identified. Depending on the scope and scale of any future proposed project, CEQA would be assessed as part of any necessary permit review. Therefore, the proposed acquisition is not considered the approval of a project under CEQA and is exempt from CEQA review.

FISCAL IMPACT:

The General fund will purchase the land with monies internally borrowed from the Drainage fund. The \$6,000,000 will fund the acquisition of the land and closing costs and provide funding to study use alternatives. The inter-fund loan will be repaid, with interest, over ten years beginning in FY 2015-16. The General fund will benefit from sales and hotel taxes, as well as any fees or other revenues indirectly generated as a result of improving this parcel. Further, it is anticipated that this parcel will be annexed into the City’s boundaries to allow any direct revenues generated to contribute toward the annual loan payment.

ATTACHMENTS:

1. Resolution – Purchase and Sale Agreement
2. Resolution – Inter-fund Loan Agreement
3. Purchase and Sale Agreement
4. Inter-Fund Loan Agreement
5. Letter of Interest
6. Location Map

ATTACHMENT 1

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AUTHORIZING THE CITY MANAGER TO EXECUTE A PURCHASE AND SALE
AGREEMENT WITH FRANK LORETZ AND MUNDELL LAND AND LIVESTOCK
COMPANY, INC. FOR THE ACQUISITION OF 99.57+/- ACRES OF LAND LOCATED AT
10251 GRANT LINE ROAD [ASSESSOR PARCEL NUMBER 134-0190-009-0000]**

WHEREAS, the City Council has directed staff to identify up to 120 contiguous acres to consider purchasing for outdoor recreational purposes and/or other public uses; and

WHEREAS, pursuant to direction from the City Council staff proposes the acquisition of approximately 100 acres of land located at 10251 Grant Line Road, owned by Frank Loretz and Mundell Land and Livestock Company, Inc.; and

WHEREAS, staff has negotiated a purchase price of \$4,385,000, which has been agreed to by Frank Loretz and Mundell Land and Livestock Company, Inc. by execution of a Letter of Interest, subject to City Council approval and a finalized purchase and sale agreement; and

WHEREAS, staff recommends entering into a purchase and sale agreement with Frank Loretz and Mundell Land and Livestock Company, Inc. for the purchase of the property; and

WHEREAS, the proposed acquisition is exempt from review under the California Environmental Quality Act (CEQA) pursuant to Section 15378(a) of the CEQA Guidelines because the proposed acquisition does not constitute the approval of a project under CEQA and, therefore, environmental review under CEQA is not required at this time; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Elk Grove finds that the purchase of the property as proposed is for the common public benefit, and hereby authorizes the City Manager to execute a purchase and sale agreement with Frank Loretz and Mundell Land and Livestock Company, Inc. for the City's purchase of the property identified as APN 134-0190-009-0000 in substantially the form presented with the accompanying staff report, all subject to approval as to form by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 27th day of August 2014.

GARY DAVIS, MAYOR of the
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

JASON LINDGREN, CITY CLERK

JONATHAN P. HOBBS,
CITY ATTORNEY

ATTACHMENT 2

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE AUTHORIZING AN INTER-FUND LOAN AGREEMENT OF \$6,000,000 FOR THE ACQUISITION OF LAND AND CLOSING COSTS AND USE STUDY COSTS FROM THE DRAINAGE FUND TO THE GENERAL CAPITAL RESERVE FUND

WHEREAS, parks, recreation, and open space are important components of the quality of life desired by the residents; and,

WHEREAS, the City seeks to purchase approximately 100 acres of land within the vicinity of Grant Line Road/State Route 99 Interchange; and

WHEREAS, the purchase of land for recreational or other public uses is programmed in the 2014-19 Capital Improvement Program for \$6,000,000; and

WHEREAS, the City negotiated a purchase price of \$4,385,000 with Frank Loretz and Mundell Land and Livestock Company, Inc.; and

WHEREAS, the associated closing costs are anticipated to be less than \$50,000; and

WHEREAS, the estimated remaining funds of approximately \$1,565,000 will be available to study use alternatives; and

WHEREAS, the City has an Inter-Fund Loan Policy that formalizes the terms of Inter-fund Loans; and

WHEREAS, the interest rate is variable, tied to Local Agency Investment Fund (LAIF); and

WHEREAS, the initial rate used in schedule of repayment is .228% which is the June 2014 LAIF rate; and

WHEREAS, the Drainage Fund (503) has idle funds beyond what is needed to fund current projects; and

WHEREAS, the General Fund will benefit from sales and hotel taxes, and any other revenues indirectly generated as a result of improving the parcel; and

WHEREAS, the Inter-Fund Loan Policy has a maximum term of ten years with the first annual payment in FY 15-16; and

WHEREAS, the annual payment is estimated to be approximately \$608,000 based on the initial rate.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Elk Grove hereby approves the Inter-Fund loan of \$6,000,000 from the Drainage fund (503) to the General Capital Reserve Fund (106).

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 27th day of August 2014.

GARY DAVIS, MAYOR of the
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

JASON LINDGREN, CITY CLERK

JONATHAN P. HOBBS,
CITY ATTORNEY

ATTACHMENT 3

Parcel No: 134-0190-009
Escrow #: 0101400370
Title Company: Fidelity National Title Company
Date of Preliminary Title Report: TBD

Grantor: FRANK LORETZ, a single man, and MUNDELL LAND AND LIVESTOCK COMPANY, INC., a California corporation

Grantee: CITY OF ELK GROVE, a municipal corporation

AGREEMENT FOR ACQUISITION OF FEE INTEREST IN REAL PROPERTY

This Agreement for Acquisition of Fee Interest in Real Property ("Agreement") is made this ____ day of _____, 2014, by and between the City of Elk Grove, a municipal corporation ("CITY"), and Frank Loretz, a single man, and Mundell Land and Livestock Company, Inc., a California corporation ("Mundell"). Loretz and Mundell are collectively referred to as "GRANTOR", and CITY, Loretz and Mundell are collectively referred to as "Parties".

RECITALS

WHEREAS, GRANTOR is the owner of certain real property located at 10251 Grant Line Road in Elk Grove, California, identified as Sacramento County Assessor Parcel Number 134-0190-009 ("Property"); and

WHEREAS, GRANTOR intends to convey to the CITY and the CITY intends to acquire from GRANTOR all of GRANTOR's right, title and interest in and to the Property, described in the attached Exhibits "A" and "A-1", which are incorporated herein by reference; and

WHEREAS, GRANTOR and CITY prefer to reach a mutually acceptable agreement for the acquisition of the Property in lieu of CITY seeking to acquire the Property through the exercise of CITY's power of eminent domain; and

WHEREAS, GRANTOR agrees to sell and CITY agrees to buy the Property pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the payment and other obligations set forth below, GRANTOR and CITY mutually agree as follows:

1. Execution and Delivery to Escrow

CITY has opened an escrow with the title company identified above ("Escrow Holder") and will deliver a fully executed copy of this Agreement to Escrow Holder. The date on which the last required signature for this Agreement is obtained shall be the effective date ("Effective Date") for this Agreement. CITY shall deliver to the Escrow Holder the Purchase Price, less the Deposit, as defined below, within ten business days after the end of the Due Diligence Period. GRANTOR shall execute, notarize and deliver to Escrow Holder the Grant Deed ("Grant Deed") in the form of Exhibit "A" attached hereto and made a part hereof, within three business days of receiving notice that Escrow Holder holds the Purchase Price, less the Deposit, as defined below.

2. Payment and Consideration

A. Purchase Price

CITY shall tender payment to the Escrow Holder in the amount of Four Million Three Hundred Eighty Five Thousand and 00/100 Dollars (\$4,385,000) (“Purchase Price”), which includes the Deposit as defined in Section 2B.

B. Deposit

Concurrent with CITY's execution and delivery of this Agreement to Escrow Holder, CITY shall deliver to Escrow Holder, for deposit into the above-referenced escrow account, the sum of Twenty Five Thousand Dollars and 00/100 (\$25,000.00) as a deposit toward the Purchase Price ("Deposit"). The Deposit will be applied towards the Purchase Price at the Close of Escrow (as defined in Section 5A) and will become nonrefundable upon the expiration of the Due Diligence Period (as defined in Section 3), except in the event of a material default by GRANTOR or the failure of a condition precedent to CITY's obligations hereunder, or termination of this Agreement pursuant to Section 3.

a. Investment of Deposit

The Deposit, upon receipt by Escrow Holder, will be invested by Escrow Holder in an interest-bearing money market or a savings account with a national banking association or federally chartered savings and loan association. Interest earned on the Deposit will accrue to the benefit of CITY.

b. Release of Deposit

Upon the expiration of the Due Diligence Period, Escrow Holder shall immediately release the Deposit to GRANTOR without the need for further instructions from either CITY or GRANTOR.

c. Deposit as Liquidated Damages

IN THE EVENT THE SALE OF THE PROPERTY IS NOT CONSUMMATED BECAUSE OF A DEFAULT UNDER THIS AGREEMENT ON THE PART OF CITY, ESCROW HOLDER MAY BE INSTRUCTED BY GRANTOR TO CANCEL THE ESCROW. IF ESCROW IS CANCELLED DUE TO CITY'S DEFAULT, THEN GRANTOR WILL THEREUPON BE RELEASED FROM ITS OBLIGATIONS UNDER THIS AGREEMENT. THE DEPOSIT WILL BE RETAINED BY GRANTOR AS LIQUIDATED DAMAGES, CITY SHALL DELIVER TO GRANTOR ALL OF THE MATERIALS REQUIRED TO BE DELIVERED TO GRANTOR PURSUANT TO SECTION 3, AND ESCROW HOLDER IS HEREBY AUTHORIZED AND INSTRUCTED TO RELEASE THE DEPOSIT TO GRANTOR. ESCROW HOLDER IS HEREBY RELIEVED OF LIABILITY FOR SO RELEASING THE DEPOSIT TO GRANTOR. IF CITY ATTEMPTS TO INTERFERE WITH THE RELEASE OF THE DEPOSIT BY ESCROW HOLDER TO GRANTOR, THEN GRANTOR WILL NOT BE LIMITED IN THE AMOUNT OF DAMAGES IT MAY RECOVER FROM CITY. IN THE EVENT OF A DEFAULT BY CITY AS SET FORTH HEREIN, CITY SHALL PAY ALL TITLE, SURVEY AND ESCROW CANCELLATION CHARGES. THE PARTIES ACKNOWLEDGE THAT GRANTOR'S ACTUAL DAMAGES IN THE EVENT OF A DEFAULT BY

CITY WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR SIGNATURES OR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE DEPOSIT, AND THE ACTUAL TITLE, SURVEY AND ESCROW CANCELLATION CHARGES HAVE BEEN AGREED UPON, AFTER NEGOTIATION, AS REASONABLE LIQUIDATED DAMAGES PURSUANT TO THE TERMS HEREOF AND CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677 AND WILL CONSTITUTE GRANTOR'S EXCLUSIVE REMEDY AGAINST CITY IN THE EVENT OF A DEFAULT ON THE PART OF CITY PROVIDED THE DEPOSIT IS RELEASED TO GRANTOR AS SET FORTH HEREIN. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO GRANTOR PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677.

GRANTOR: _____

CITY: _____

C. Title and Removal of Encumbrances

CITY ordered a Preliminary Report from Escrow Holder on August 14, 2014. ("PR"). The Close of Escrow, defined below, is conditioned on the Property being granted to the CITY free and clear of any monetary encumbrances, except for the lien of current real estate taxes and assessments. As for any non-monetary encumbrances, CITY shall have the right to approve any and all matters of, and exceptions to, title of the Property. Upon receipt of the PR, CITY shall have five (5) business days to give GRANTOR and Escrow Holder written notice ("Buyer's Title Notice") of CITY's approval or disapproval of the legal description and every non-monetary item or exception disclosed by the PR. The failure of CITY to give Buyer's Title Notice to GRANTOR within the specified time period shall be deemed CITY's approval of title to the Property. In the event that Buyer's Title Notice disapproves of any matter of title shown in the PR, GRANTOR shall, within five (5) business days after Buyer's Title Notice is received by GRANTOR, give CITY written notice ("Seller's Title Notice") of those disapproved title matters, if any, which GRANTOR is unwilling or unable after reasonable and good faith efforts to have eliminated from title to the Property by Close of Escrow. In the event that GRANTOR is unable or unwilling to remove all of the title matters objected to by CITY in Buyer's Title Notice, CITY shall have five (5) business days from receipt of Seller's Title Notice to notify GRANTOR in writing that either of the following: (A) CITY is willing to purchase the Property subject to such disapproved exceptions, or (B) CITY elects to cancel this transaction. Failure of CITY to take either one of the actions described in Subsection (A) or (B) above shall be deemed to be CITY's election to take the action described in Subsection (A) above. In the event this Agreement is canceled pursuant to this Subsection (B) above, except as otherwise provided herein, the Parties shall have no further obligations under this Agreement, any documents or funds shall be returned by the Escrow Holder to the originating party, and any costs incurred through the escrow process shall be paid by CITY.

CITY may obtain a CLTA extended coverage owner's policy of title insurance in the amount of the Purchase Price insuring that clear title to the Property is vested in CITY upon recording of the Grant Deed.

D. Taxes

Taxes for the fiscal year in which the escrow closes shall be cleared and paid for in the manner required by Section 5086 of the Revenue and Taxation Code. As a deduction from the amount shown in Section 2A above, the CITY shall be authorized to pay any delinquent taxes due in any fiscal year, except the fiscal year in which this escrow closes, together with penalties and interest thereon. If the Property is subject to any assessments which are not subject to cancellation under Revenue and Taxation Code section 5086, such assessments shall be prorated as of the date of possession. GRANTOR shall pay all taxes and assessments outstanding, if any, up to the date of apportionment.

E. Improvements

GRANTOR will be allowed to complete crop production of any annual crop being produced at time of Close of Escrow provided that such production shall be complete within one year of the Close of Escrow. GRANTOR shall not plant, re-plant or replace any vegetation, crop or plant on the Property after the Effective Date. GRANTOR will maintain ownership of the three (3) agricultural pumps located on the Property and reserves the right to remove said pumps within 30 days after completion of above-mentioned crop production, and will waive the right to remove the pumps and for any compensation or damages if not removed within the 30 day time period. Further, GRANTOR shall reserve the right to remove, and/or salvage, all above-ground components of the metal shop building located on the Property upon 30 days' notice from CITY and will waive the right to remove, and/or salvage, such components and for any compensation or damages if not removed or salvaged within the 30 day time period. GRANTOR shall indemnify, hold harmless and defend (with counsel acceptable to CITY) CITY, and CITY's officers, agents, contractors and employees against and from any liability, loss, cost, damage or expense (including, without limitation attorneys' fees) of whatever nature as a result of, growing out of or in connection with personal injury or death of persons, or loss or destruction of or damage to property where such personal injury, death, loss, destruction or damage arises in any way in connection with or incident to the occupation or use of the Property after the Close of Escrow, by GRANTOR, its officers, agents, contractors or employees. Except as provided in this section, ownership of all structures, fixtures, improvements and personal property located on the Property at the Close of Escrow shall transfer to the CITY, and the Purchase Price listed in Section 2A includes compensation for all such items.

3. Due Diligence

GRANTOR shall deliver to CITY copies of such documents and information as set forth in this section ("Property Documents") within ten (10) business days after the Effective Date and CITY shall have sixty (60) days (the "Due Diligence Period") from the Effective Date to satisfy itself in its complete discretion of the feasibility of the transaction contemplated herein and to make such inspections and to obtain such information as CITY may elect. The Property Documents shall include:

- i. Plans and specifications, engineering reports, permits, environmental studies, toxic/hazardous material reports, geological studies, easements, liens, approvals, entitlements, licenses, leases and contracts regarding the Property in GRANTOR's possession;
- ii. Official Record of Survey prepared by Burrell Consulting Group; and
- iii. Such other information as CITY may reasonably request, provided that it is in GRANTOR's possession, or reasonably available to GRANTOR, without cost to GRANTOR.

During the Due Diligence Period, CITY, and its representatives, shall have the right to enter upon and inspect the PROPERTY and to conduct such tests and assessments as CITY may reasonably require. CITY shall provide GRANTOR with at least forty-eight (48) hours advance notice of such entry, including the nature and purpose of such entry. CITY shall indemnify, hold harmless and defend (with counsel acceptable to GRANTOR) GRANTOR, and GRANTOR's officers, agents, contractors and employees against and from any liability, loss, cost, damage or expense (including, without limitation attorneys' fees) of whatever nature as a result of, growing out of or in connection with personal injury or death of persons, or loss or destruction of or damage to property where such personal injury, death, loss destruction or damage arising from the entry onto the Property by CITY, its officers, agents, contractors or employees, during the Due Diligence Period.

CITY's obligation to purchase the Property is conditioned upon CITY's review and approval of the condition of the Property and the Property Documents pursuant to this Section. Should CITY, in its sole and absolute discretion, fail to approve the condition of the Property, or any matters related to the Property, or its use or intended use, at any time prior to the end of the Due Diligence Period, CITY shall have the right, exercisable by giving written notice to GRANTOR, to cancel the escrow, terminate this Agreement, and recover any and all other amounts paid by CITY to GRANTOR, or deposited with the Escrow Holder, by or on behalf of the CITY. The exercise of this right by CITY shall not constitute a waiver by CITY of any other rights CITY may have at law or in equity.

4. Eminent Domain

CITY represents and acknowledges that it has the power of eminent domain. CITY is acquiring the Property pursuant to the terms of this Agreement in lieu of exercising such power of eminent domain. CITY will seek approval to institute eminent domain proceedings if GRANTOR does not sell the Property to CITY pursuant to this Agreement. The parties further acknowledge that GRANTOR intends to treat the sale of the Property as sold under the threat of eminent domain. Upon full consideration of its rights, including the opportunity to consult with independent, counsel GRANTOR waives any compensation, reimbursement or damages, as well as relocation benefits, that might otherwise be recoverable through eminent domain or related proceedings.

5. Escrow

Unless extended by the mutual agreement of the Parties, the escrow shall close thirty (30) days after the expiration of the Due Diligence Period ("Close of Escrow").

A. Prior to the Close of Escrow, the Escrow Holder may expend any or all monies payable under this Agreement and deposited into escrow to discharge the following:

- 1) taxes as provided in Section 2.D.;
- 2) monetary exceptions to coverage referred to in the PR; and
- 3) incidental costs approved by GRANTOR.

The Escrow Holder shall release the Purchase Price to GRANTOR, return any credited amounts to CITY, and record the Grant Deed in the Recorder's Office for Sacramento County upon the Close of Escrow. Title to the Property shall pass immediately upon Close of Escrow.

B. This Agreement will serve as escrow instructions ("Escrow Instructions"). The Parties will execute any additional and supplementary instructions required or appropriate to enable the Escrow Holder to comply with the terms of this Agreement. The Parties shall

submit to the Escrow Holder all closing statements, non-foreign affidavits and withholding certificates and other documents as required by the Escrow Holder prior to the Close of Escrow. This Agreement controls if there is any conflict between this Agreement and additional or supplementary instructions.

- C. If for any reason escrow fails to close as set forth herein, including termination of this Agreement, Escrow Holder shall return all funds and documents to the party that submitted such funds or documents except for such amount that GRANTOR is entitled to retain pursuant to Section 2.B of this Agreement.

6. Possession

Possession of the Property will be delivered by GRANTOR to CITY on the Close of Escrow.

7. Fees

The CITY shall pay all escrow, document and transfer taxes, recording and title insurance fees incurred in this transaction.

8. Amendment

This agreement may be modified, changed or rescinded only by an instrument in writing executed by the Parties hereto.

9. Leases and Encumbrances

To the best of GRANTOR's knowledge, there are no leases on all or any portion of the Property. GRANTOR agrees not to assign, lease, transfer or sell to any third party any right, title or interest GRANTOR has in the Property prior to the Close of Escrow. GRANTOR will execute documentation required by the Escrow Holder consistent with GRANTOR's understanding. If there exists either recorded or unrecorded leases, the Parties agree that at CITY's sole discretion, escrow shall not close and this Agreement shall become all or in part null and void if Escrow Holder fails to receive adequate documentation (such as a quitclaim deed and/or Tenant Consent) establishing that lessee has agreed to claim no interest in the Property or in any compensation for the Property and further enables the CITY to obtain sufficient title insurance.

GRANTOR will not voluntarily create or cause any lien or encumbrance to attach to the Property prior to the Close of Escrow, except as approved by the CITY in advance; and if there exists any such lien or encumbrance which the CITY has not approved, the Parties agree that, at CITY's sole discretion, escrow shall not close and this Agreement shall become null and void.

10. Notices

Any notice that either party may or is required to give the other shall be in writing, and shall be either (1) personally delivered or (2) sent by regular U.S. Mail with a copy also transmitted via email, to the following address:

To City:
City of Elk Grove
Public Works Department
Development Services
8401 Laguna Palms Way
Elk Grove, CA 95758
Attention: Real Property Manager
Email: jcline@elkgrovecity.org

To Grantor:
Frank Loretz
10884 Franklin Boulevard
Elk Grove, CA 95757
Email: info@clmgalt.com

Mundell Land and Livestock Company, Inc.
Attention: Gary McEnerney, President
10207 Dillard Road
P.O. Box 870
Wilton, CA 95693-0870
Email: garymc@softcom.net

11. Recording

Either party may record this Agreement in the Recorder's Office for Sacramento County.

12. Binding on Successors

This Agreement shall be binding on and shall inure to the benefit of the CITY and GRANTOR, and their respective successors, assigns, and their past, present and future officers, employees and agents; provided that this Agreement may only be assigned with the written consent of both Parties, and any attempt to assign this Agreement without such consent shall be void.

13. Brokers

CITY's Real Estate staff is affiliated with a California Licensed Real Estate Broker, and is acting as the CITY's agent only. GRANTOR shall be responsible for GRANTOR's brokerage commissions, if any. If any broker or finder makes any claim for a commission or finder's fee, the party through which the broker or finder makes such claim shall indemnify, defend and hold the other party harmless from all liabilities, expenses, losses, damages or claims (including the indemnified party's reasonable attorneys' fees) arising out of such broker's or finder's claims.

14. Time of Essence

Time is of the essence for each condition, term, and provision in this Agreement.

15. Waivers

No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any other covenant or provision in this Agreement and no waiver shall be valid unless in writing and executed by the waiving party.

16. Severability

If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to either party. Upon such determination that any term or provision is illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the greatest extent possible.

17. Construction

Section headings are solely for the convenience of the Parties and are not a part of and shall not be used to interpret this Agreement. The singular form shall include the plural and vice versa. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties have prepared it. Unless otherwise indicated, all references to Sections are to this Agreement.

18. Governing Law

This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action arising under or related to this Agreement shall be brought and prosecuted in the Sacramento County Superior Court.

19. Entire Agreement

The Parties have herein set forth the whole of their Agreement with regard to acquisition of the Property by CITY. All prior oral discussions, representations, and/or agreements, if any, are specifically superseded by this Agreement, which is intended by the Parties to contain all of the terms and conditions agreed to by them with regard to acquisition of the Property by CITY. The recitals and contents of all Exhibits to this Agreement are incorporated by reference and constitute a material part of this Agreement.

20. Authority and Advice

Each individual executing this Agreement on behalf of an entity represents and warrants that he or she has been authorized to do so by the entity on whose behalf he or she executes this Agreement and that said entity will thereby be obligated to perform the terms of this Agreement. Each party has had the opportunity to be advised by their own legal counsel and professionals in connection with this Agreement, and each party has obtained, and relies upon, such advice as each party deems appropriate.

21. Future Rights

GRANTOR waives any notice or right of first refusal pursuant to Code of Civil Procedure section 1245.245 and any lease-back rights under Code of Civil Procedure section 1263.615.

22. Further Assurances

Each party to this Agreement agrees to execute, acknowledge, and deliver such further instruments as may be necessary or desirable to accomplish the intent and purpose of this Agreement.

23. Survival

The obligations defined hereunder shall continue until satisfied in accordance with the provisions hereof.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

GRANTOR(S):
FRANK LORETZ, a single man, and
MUNDELL LAND AND LIVESTOCK
COMPANY, INC., a California corporation

GRANTEE:
CITY OF ELK GROVE,
a municipal corporation

Date: _____
By: _____
Print: _____

Date: _____
By: _____
Laura S. Gill, City Manager

RECOMMENDED FOR APPROVAL:

Date: _____
By: _____
Print: _____

Date: _____
By: _____
Julie Cline, Real Estate Manager

APPROVED AS TO FORM:

Date: _____
By: _____
Jonathan Hobbs, City Attorney

ATTEST:

Date: _____
By: _____
Jason Lindgren, City Clerk

**EXHIBIT "A"
GRANT DEED**

No Fee Document – Per Government Code §6103 & §27383

RECORDING REQUESTED BY AND WHEN RECORDED
MAIL DOCUMENT AND TAX STATEMENT TO:

CITY OF ELK GROVE
Attn: City Clerk
8401 Laguna Palms Way
Elk Grove, CA 95758

APN: 134-0190-009

The Above Space For Recorder's Use Only

GRANT DEED

**The undersigned grantor(s) declare(s)
Documentary transfer tax is \$4,400.00**

computed on full value of property conveyed, or
 computed on full value less value of liens or encumbrances remaining at time of sale,
Unincorporated Area City of Elk Grove,

FOR VALUABLE CONSIDERATION, receipt and sufficiency of which is hereby acknowledged,
**FRANK LORETZ, a single man, and MUNDELL LAND AND LIVESTOCK COMPANY,
INC., a California corporation** ("GRANTOR"), hereby grants to the **CITY OF ELK GROVE, a
municipal corporation** ("GRANTEE"), all that real property situated in the City of Elk Grove,
County of Sacramento, State of California, described as follows:

See Exhibit "A-1", legal description, attached hereto and
incorporated herein by this reference.

Executed this ____ day of _____, 20 ____

**GRANTOR: FRANK LORETZ, a single man, and MUNDELL LAND AND LIVESTOCK
COMPANY, INC., a California corporation**

By: [Exhibit "A" – Do Not Sign]

Print name: _____

Title: _____

By: [Exhibit "A" – Do Not Sign]

Print name: _____

Title: _____

Mail Tax Statements To:
Finance Department
City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758

EXHIBIT "A-1"
Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

That portion of the Rancho Del Los Omochumnes, commonly known as and called that Sheldon Grant and described as follows to wit:

That portion of Lot 10 of the Lower Daylor Estates or Tract of said Rancho as shown upon a map of said Rancho entitled "Map of the Rancho Del Los Omochumnes as surveyed and subdivided between the Estates of Sheldon and Daylor, by Order of the Hom. Probate Court of Sacramento County, October 15, 1866, John G. Gleal, Civil Eng.", filed in the office of the County Recorder of Sacramento County, on February 18, 1958, in Book 1 of Maps, Map No. 32, more particularly described as follows to wit:

Commencing at the most Northerly corner of said Lot 10; thence from said point of beginning, along the Northeast boundary line of said Lot 10, South 49°50' East 3317.47 feet to a point, said point being the North corner of John W. Mahon's parcel of land, as said Parcel is shown on Record of Survey entitled "A Portion of Lot 10, Lower Daylor Estates Rancho De Los Omochumnes", filed in the office of the Recorder of Sacramento County, California, on February 9, 1955, in Book 11 of Surveys, Map No. 11; thence in a Southwesterly direction along the line of said Mahon land to the center line of said Lot 10; thence Northwesterly, along said center line to Grant Line Road; thence Northeasterly along said Grant Line Road to the place of beginning.

Said property is shown on the Record of Survey "A portion of Lot 10 Lower Daylor Estate, Rancho De Los Omochumnes", filed February 9, 1955, in the office of the Recorder of Sacramento County, in Book 11 of Surveys, Map No. 11.

Excepting therefrom that portion of said land conveyed to the City of Elk Grove in Grant Deed recorded April 5, 2013 in Book 20130405, Page 928, Official Records.

Further excepting therefrom that portion of said land conveyed to the City of Elk Grove in Grant of Public Right-of-Way recorded June 5, 2014 in Book 20140605, Page 488, Official Records.

APN: 134-0190-009-0000

**CITY OF ELK GROVE
INTERFUND LOAN AGREEMENT**

Date of Loan Authorization : 8/27/2014 Maximum Loan Amount: \$6,000,000

Advance From: Drainage Fund 503 \$ 6,000,000
(Lender) Name of Fund Fund/ Account Number

Advance To: Capital Reserve Fund 106 \$ 6,000,000
(Borrower) Name of Fund Fund/ Account Number

Purpose: Fund the purchase of recreational land CIP WFC004.
Includes closing cost & initial planning & design phase

Interest Rate: Variable (.228% initial rate) per quarterly tied to LAIF interest earnings

Repayment Terms: Annual payment, term of 10 years, due October 1, 2024

Amortization Schedule Attached: Yes No

Requestor: [Signature] 8/22/14
Signature Date

Department Head: [Signature] 8/22/14
Signature Date

Budget Manager: [Signature] 8/22/14
Signature Date

Finance Director: [Signature] 8-22-14
Signature Date

City Manager: _____
Signature Date

Date of City Council Approval, if required: _____

Original - City Clerk
Copies - Originating department, Accounting

Accounting Use Only	
Date entered in H.T.E.	_____ JV # _____
Entered By:	_____

Estimated Amortization Schedule
Variable Interest Rate (tied to LAIF)

Loan Amount \$ 6,000,000
Annual Interest 0.228%
Terms 10.00 Years
Pmts/Yr 1

Payment Date	Pay #	Payment	Principal	Interest	Balance	Prepayment Balance
10/1/2015	1	(\$607,549.70)	(\$593,869.70)	(\$13,680.00)	\$5,406,130.30	\$ 5,568,314.21
10/1/2016	2	(\$607,549.70)	(\$595,223.73)	(\$12,325.98)	\$4,810,906.57	\$ 4,955,233.77
10/1/2017	3	(\$607,549.70)	(\$596,580.84)	(\$10,968.87)	\$4,214,325.74	\$ 4,340,755.51
10/1/2018	4	(\$607,549.70)	(\$597,941.04)	(\$9,608.66)	\$3,616,384.70	\$ 3,724,876.24
10/1/2019	5	(\$607,549.70)	(\$599,304.35)	(\$8,245.36)	\$3,017,080.35	\$ 3,107,592.76
10/1/2020	6	(\$607,549.70)	(\$600,670.76)	(\$6,878.94)	\$2,416,409.59	\$ 2,488,901.88
10/1/2021	7	(\$607,549.70)	(\$602,040.29)	(\$5,509.41)	\$1,814,369.30	\$ 1,868,800.38
10/1/2022	8	(\$607,549.70)	(\$603,412.94)	(\$4,136.76)	\$1,210,956.36	\$ 1,247,285.05
10/1/2023	9	(\$607,549.70)	(\$604,788.72)	(\$2,760.98)	\$606,167.64	\$ 624,352.67
10/1/2024	10	(\$607,549.70)	(\$606,167.64)	(\$1,382.06)	\$0.00	\$ -
Totals		(\$6,075,497.03)	(\$6,000,000.00)	(\$75,497.03)		

Note: Payment amount may deviate from this estimated amortization schedule due to variable interest rates, actual associated closing costs (anticipated not to exceed \$50,000), and planning & design costs



8401 Laguna Palms Way
Elk Grove, California 95758

Phone: 916.683.7111
Fax: 916.691.3168

Web: www.elkgrovecity.org

August 19, 2014

Frank Loretz
10884 Franklin Boulevard
Elk Grove, CA 95757

Mundell Land and Livestock Company, Inc.
Attn: Gary McEnerney
10207 Dillard Road
P.O. Box 870
Wilton, CA 95693-0870

RE: 10251 Grant Line Road; APN 134-0190-009

Dear Mr. Loretz and Mr. McEnerney,

The City understands Frank Loretz and Mundell Land and Livestock Company, Inc. ("Seller") own approximately 99 acres of land and building improvements located at 10251 Grant Line Road, Sacramento County, California, identified as APN 134-0190-009 (the "Property"). This letter outlines the basic terms and conditions under which the City of Elk Grove ("Buyer") would have a definite interest in purchasing the Property, subject to City Council approval and pursuant to the execution of a definitive purchase agreement (the "Agreement") for said land:

- Property to be Purchased –** 99.57+/- acre parcel located at 10251 Grant Line Road, in Elk Grove, California and identified as Sacramento County Assessor's Parcel Number 134-0190-009.
- Buyer Information –** City of Elk Grove, a municipal corporation
- Purchase Price –** **\$4,385,000.00** (Four Million Three Hundred Eighty Five Thousand and 00/100 Dollars)
- Inspection Period –** Seller shall deliver to Buyer copies of such documents and information as Buyer shall reasonably request as soon as possible after execution of the Agreement and Buyer shall have sixty (60) days (the "Due Diligence Period") to satisfy itself in its complete discretion of the feasibility of the transaction contemplated herein and to make such inspections and to obtain such information as Buyer may elect. Such information shall include:

- i) plans and specifications, engineering reports, permits,

environmental studies, licenses and contracts regarding the Property in Seller's possession;

- ii) preliminary title report for the Property provided by Fidelity National Title Company;
- iii) official record of survey prepared by Burrell Consulting Group, Inc.;
- iv) seller warrants no agricultural leases, occupancy agreements or maintenance agreements exist for the Property; and
- v) such other information as Buyer may reasonably request, provided that it is in Seller's possession, or reasonably available to Seller, without cost to Seller.

- Financing Period –** The Buyer will provide cash funding at the close of escrow.
- Closing Date –** The closing shall occur thirty (30) days after the expiration of the Due Diligence Period. Upon the closing, Seller shall convey title free and clear of any monetary encumbrances, except for the lien of current real estate taxes and assessments.
- Opening of Escrow –** Opening of escrow will be the date the fully-executed Agreement is received by the Buyer's Title Company.
- Escrow Holder –** Fidelity National Title Company
1375 Exposition Blvd., Suite 240
Sacramento, CA 95815
Attn: Mr. Paul Avila
Telephone: (916) 856-1806
Facsimile: (916) 364-4093
- Internal Revenue Code § 1033 –** Buyer is willing to include the following language in the Agreement to effectuate a 1033 Exchange: Buyer represents and acknowledges that it has the power of eminent domain; Buyer is acquiring the Property pursuant to the terms of this Agreement in lieu of exercising such power of eminent domain; and Buyer will institute eminent domain proceedings if Seller does not sell the Property to Buyer pursuant to this Agreement. The parties further acknowledge that Seller intends to treat the sale of the property as sold under the threat of eminent domain.
- Confidentiality –** All aspects of this negotiated agreement shall be held by Buyer and Seller in the strictest of confidence. The confidentiality requirement shall not be in effect once a proposed Agreement is presented to the City Council in open session for final consideration.
- Proration and Costs –** At the closing, all closing costs shall be paid for by Buyer; Transfer Tax will be paid by Buyer; and Taxes pertaining to the Property will be prorated as of the close of escrow.

Frank Loretz & Mundell Land and Livestock Company, Inc.
Letter of Interest
August 19, 2014

- Farming –** Seller will be allowed to complete crop production of any annual crop being produced at time of close of escrow.
- Agricultural Pumps –** Seller will maintain ownership of the three Agricultural Pumps located on property and have the right to remove said pumps upon completion of Sellers farming activities.
- Shop Building –** Seller to have salvage right to all above ground components of metal shop building if Buyer's intent is to raze building.
- Broker –** Buyer's real estate staff is affiliated with a California Licensed Real Estate Broker, and is acting as the Buyer's agent only. Seller shall be responsible for Seller's brokerage commissions, if any.
- Form of Agreement –** The initial draft of the Agreement shall be prepared by the Buyer and shall contain such other terms and conditions as are customary and appropriate in transactions of this nature. The draft Agreement will be provided to Seller for review by August 20, 2014.

It is expressly understood that this Letter shall not constitute a binding agreement between the Parties, but only reflects the general terms upon which Buyer is prepared to purchase the Property. Neither party shall incur any rights or obligations with respect to the potential transaction unless and until a formal Agreement is executed by the parties and delivered to each other. It is contemplated that the Agreement shall contain such other terms, covenants, conditions, warranties and representations as are customary or appropriate in transactions of this nature. We are respectfully requesting a response to this Letter of Interest by close of business today, August 19, 2014.

Sincerely,

City of Elk Grove, a municipal corporation

Date: August 19, 2014

By: 

Julie D. Cline, Real Estate Manager

Agreed to by Seller(s):

Date: 8-20-14

By: Frank Loretz

Print: Frank Loretz

Title: Owner

Date: 8/20/2014

By: Gary McEnerney

Print: Gary McEnerney

Title: President, Mundell Land and Livestock Company, Inc.

LOCATION MAP

