

RESOLUTION NO. 2022-053

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE APPROVING AND RATIFYING THE REAL PROPERTY PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS WITH JACOBI ELK GROVE RANCH, LLC FOR THE PURCHASE OF A ±100-ACRE PARCEL OF LAND LOCATED AT THE NORTHWEST INTERSECTION OF KAMMERER ROAD AND LOTZ PARKWAY [APN: 132-0320-010], A ±0.80-ACRE PARCEL OF LAND LOCATED AT 8663 KAMMERER ROAD [APN: 132-0320-001], AND A ±0.16-ACRE PARCEL OF LAND LOCATED AT 8665 KAMMERER ROAD [APN: 132-0320-002]; AUTHORIZING THE CITY MANAGER TO TAKE ALL ACTIONS NECESSARY AND TO EXECUTE ALL DOCUMENTS NECESSARY TO EFFECT THE PURCHASE OF THE SUBJECT PARCELS; FINDING THE ACQUISITION OF THE SUBJECT PARCELS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND CONSISTENT WITH THE ELK GROVE GENERAL PLAN; AND AMENDING THE FISCAL YEAR 2021-22 ANNUAL BUDGET BY INCREASING THE AMOUNT BUDGETED FOR ECONOMIC DEVELOPMENT INCENTIVE FUND 105 EXPENDITURES BY THE AMOUNT OF \$9,525,000, INCLUDING \$9,025,000 FOR THE PURCHASE OF THE SUBJECT PARCELS, AND \$500,000 FOR COSTS ASSOCIATED WITH EVALUATING THE SUBJECT PARCELS FOR PURCHASE AND FUTURE DEVELOPMENT OPPORTUNITIES, AND CLOSING COSTS

WHEREAS, Jacobi Elk Grove Ranch, LLC (“Jacobi”) is the owner of three parcels of land totaling approximately 100.96 acres and comprised of ±100-acre parcel of land located at the northwest intersection of Kammerer Road and Lotz Parkway [APN: 132-0320-010], a ±0.80-acre parcel of land located at 8663 Kammerer Road [APN: 132-0320-001], and a ±0.16-acre parcel of land located at 8665 Kammerer Road [APN: 132-0320-002] (collectively, the “Property”); and

WHEREAS, the City wishes to purchase the Property for future development projects; and

WHEREAS, Jacobi and the City, under authority previously granted to the City Manager by the City Council, have entered into a Real Property Purchase Agreement and Escrow Instructions (the “Agreement”) whereby the City agrees to purchase the Property from Jacobi, unless the sale is terminated as permitted under the Agreement; and

WHEREAS, the terms of the purchase and sale of the Property are set forth in the Agreement, attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Elk Grove hereby finds that the approval of the Real Property Purchase Agreement and Escrow Instructions for the acquisition of the Property is exempt from the California Environmental Quality Act (CEQA) based upon the following finding and evidence:

Finding: The acquisition of the Property does not constitute the approval of a project and is exempt from CEQA. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c),(2)(3); 15061(b)(3); 15064(d)(3); 15352; 15378(a).)

Evidence: Approval of the Agreement and transfer of the Property will not, in and of itself, result in any direct physical change or reasonably foreseeable indirect change to the environment. The Property consists of vacant land within the City’s Southeast Policy Area. The acquisition of the Property by the City would not approve any development project, nor would it change the physical environment. The approval of

the Agreement and transfer of the Property, therefore, does not constitute the approval of a project under CEQA, and it is exempt from CEQA. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c),(2)(3); 15061(b)(3); 15064(d)(3); 15352; 15378(a).) Should a development project be proposed on the Property in the future, such development project would undergo CEQA review;

AND, BE IT FURTHER RESOLVED, that the City Council of the City of Elk Grove hereby finds the acquisition of the Property to be consistent with the City's General Plan as required by Elk Grove Municipal Code Section 23.10.030 and Government Code Section 65402(a) based upon the following finding:

Finding: The purchase of the Property is consistent with the General Plan.

Evidence: The purchase of the Property is consistent with the General Plan as it would present an opportunity to develop the Property to further the General Plan goals of building a strong, diverse, and balanced local economy that supports existing and prospective businesses, from large to small, and attendant job growth, revenue generation, and capital investment consistent. Acquisition of the Property is consistent with General Plan Goal ED-1: A Diverse and Balanced Mix of Land Uses; Goal ED-2: More Residents Employed Locally; and Goal ED-3: Successful Local Businesses;

AND, BE IT FURTHER RESOLVED, that the City Council of the City of Elk Grove hereby approves and ratifies the Real Property Purchase Agreement and Joint Escrow Instructions with Jacobi Elk Grove Ranch, LLC,, for the purchase of a ±100-acre parcel of land located at the northwest intersection of Kammerer Road and Lotz Parkway [APN: 132-0320-010], a ±0.80-acre parcel of land located at 8663 Kammerer Road [APN: 132-0320-001], and a ±0.16-acre parcel of land located at 8665 Kammerer Road [APN: 132-0320-002];

AND, BE IT FURTHER RESOLVED, that the City Council of the City of Elk Grove hereby authorizes the City Manager to take all actions necessary and to execute all documents necessary to effect the purchase of the Property consistent with the Agreement and this Resolution;

AND, BE IT FURTHER RESOLVED, that the City Council of the City of Elk Grove hereby approves an amendment to the Fiscal Year 2021-22 Budget, increasing the amount budgeted for Economic Development Incentive Fund (Fund 105) expenditures by the amount of \$9,525,000, including \$9,025,000 for the purchase of the subject parcels, and \$500,000 for costs associated with evaluating the subject parcels for purchase and future development opportunities, and closing costs.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 23rd day of February 2022.




BOBBIE SINGH-ALLEN, MAYOR of the
CITY OF ELK GROVE

ATTEST:


JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:


JONATHAN P. HOBBS,
CITY ATTORNEY

Fidelity National Title Company
Attn: Paul Avila
Escrow: 01005782
APNs: 132-0320-010,132-0320-001
132-0320-002

SELLER: JACOBI ELK GROVE RANCH, LLC, a California limited liability company

BUYER: CITY OF ELK GROVE, a municipal corporation

REAL PROPERTY PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

This Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions (“Agreement”) is made this ___ day of ___, 2022 by and between CITY OF ELK GROVE, a municipal corporation (“Buyer”) and JACOBI ELK GROVE RANCH, LLC, a California limited liability company (“Seller”), collectively referred to as (“Parties”).

RECITALS

- A. Seller is the owner of ±100 acres of real property located on Kammerer Road, in the City of Elk Grove ("City"), County of Sacramento ("County"), and State of California ("State"), known by Sacramento County Assessor Parcel Number (“APN”)132-0320-010, and legally described in **Exhibit A**, attached hereto and incorporated herein ; ±0.80 acres located at 8663 Kammerer Road, in the City, County and State, known by APN 132-0320-001, and legally described in **Exhibit B**, attached hereto and incorporated herein; and ±0.16 acres located at 8665 Kammerer Road, in the City, County and State, known by APN 132-0320-002 and legally described in **Exhibit C** attached hereto and incorporated herein (hereinafter collectively the "Subject Property"). The Subject Property means, collectively, all right , title and interest of Seller in and to (a) the land described in Exhibit A, Exhibit B, and Exhibit C; (b) easements, rights of way and all other rights and entitlements appurtenant to the Subject Property, (c) any buildings or other improvements and fixtures remaining on the Subject Property at the Close of Escrow, (d) any tangible personal property remaining on the Owner’s Property at the Close of Escrow, and (e) and any mineral and water rights.
- B. Buyer desires to purchase from Seller and Seller desires to sell to Buyer the Subject Property on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the Parties agree as follows:

AGREEMENT

1. Purchase and Sale

Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, the Subject Property on the terms and subject to the conditions set forth in this Agreement. For the purpose of this Agreement, the date on which the last party

executes the Agreement and delivers it to the other party shall hereinafter be referred to as the "Effective Date".

2. Payment

A. Purchase Price

The purchase price for the Subject Property shall be Nine Million Twenty-five Thousand Dollars and No Cents (\$9,025,000) ("Purchase Price"), which is specifically agreed to by the Parties.

B. Earnest Money Deposit

Within five (5) business days following the Effective Date of the Agreement, City shall deposit with Escrow Holder, defined below, the sum of One Hundred Thousand Dollars (\$100,000) (the "Deposit"), which shall be applied to the Purchase Price at the close of escrow. The Initial Deposit will become nonrefundable upon the expiration of the Due Diligence Period (as defined in Section 4, below), except in the event of a material default by Seller, or the failure of a condition precedent to City's obligation hereunder, or termination of this Agreement pursuant to Section 7. In no event shall the City or the Seller, be liable for any consequential, special, indirect, or punitive damages under this Agreement.

C. Balance of Purchase Price

On or before March 4, 2022, City shall deposit the remainder of the Purchase Price, Eight Million Nine Hundred Twenty-five Thousand Dollars and No Cents (\$8,925,000) and City's share of costs and prorations (as defined in Section 8 below), in cash by a deposit of immediately available funds.

i. Remedy for City's Failure to Close Escrow

IN THE EVENT ESCROW FAILS TO CLOSE AFTER THE EXECUTION DATE DUE TO A DEFAULT UNDER THIS AGREEMENT BY CITY, SELLER SHALL BE ENTITLED, AS SELLER'S SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT, TO TERMINATE THIS AGREEMENT AND RETAIN THE INITIAL DEPOSIT MADE BY CITY. THE PARTIES HAVE AGREED THAT SELLER'S ACTUAL DAMAGES, IN THE EVENT ESCROW FAILS TO CLOSE AFTER THE EFFECTIVE DATE SOLELY DUE TO A DEFAULT BY CITY, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE TOTAL AMOUNT OF THE DEPOSIT MADE BY THE BUYER HEREUNDER HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF SELLER'S DAMAGES AND AS

SELLER'S EXCLUSIVE REMEDY AGAINST PURCHASER
PRIOR TO CLOSE OF ESCROW.

SELLER: CJ

CITY: 

D. Property Interest Free of Encumbrances

The Close of Escrow, defined below, is conditioned on the Subject Property being conveyed to Buyer free and clear of all rights, restrictions, easements, impediments, encumbrances, liens, assessments or other security interests of any kind of which Seller is aware, except: (a) easements or rights-of-way for public roads, public facilities or public utilities, if any; and (b) exceptions to title approved and/or accepted by Buyer in accordance with this Agreement. The Subject Property shall be delivered vacant and free of any personal belongings. Any verbal or written farming lease shall be quitclaimed by holder prior to close of escrow.

3. Execution and Delivery to Escrow

Buyer shall open an escrow ("Escrow") with Fidelity National Title Company ("Escrow Holder") by delivery of a fully executed copy of this Agreement. Upon full execution of this Agreement by the Parties, Seller shall execute, notarize and deliver to Escrow Holder a Grant Deed(s) for the Subject Property, in a form acceptable to Escrow Holder and City.

- A. The Escrow Holder may expend any or all monies payable under this Agreement and deposited into escrow to discharge any obligations which are liens upon the Subject Property, including, but not limited to, those arising from judgments, assessments, delinquent taxes for other than the fiscal year in which the escrow closes, or debts secured by deeds of trust or mortgages, and/or to defray any other incidental costs other than those specified in Section 7 hereof to be borne by the Buyer. The Escrow Holder shall release payment to Seller, return any credited amounts to Buyer, and record the Deed in the Recorder's Office for Sacramento County upon the Close of Escrow. Title to the Subject Property shall pass to Buyer immediately upon Close of Escrow.
- B. This Agreement may serve in whole or in part as escrow instructions. The issuance of any further escrow instructions shall be the sole responsibility of the Buyer. The Seller agrees to execute such additional documents as may be reasonably necessary to consummate the purchase and sale herein contemplated.

4. Due Diligence

Seller shall deliver to City copies of any engineering reports, surveys, permits, environmental studies, toxic/hazardous material reports, geological studies, easements, liens, entitlement, licenses, leases, and contracts regarding the Subject Property ("Property Documents") in Seller's possession within two (2) business days after the Effective Date and City shall have until 5:00p.m., Pacific Standard Time, twenty (20) days following the Effective Date ("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 City may elect.

During the Due Diligence Period, City, and its representatives, shall have the right to enter upon and inspect the Subject Property and to conduct such tests and assessments as City may reasonably require. City shall provide Seller and Seller's Broker, Ken Noack, Jr. forty-eight (48) hours advance notice by email (cjac660@yahoo.com & ken.noack@nmrk.com) prior to such entry, including the nature and purpose of such entry.

City's obligation to purchase the Subject Property is conditioned upon City's review and approval of the condition of Purchase Property and the review of Property Documents pursuant to this Section. Should City, in its sole and absolute discretion, fail to approve the condition of the Subject Property, or any matters related to the Subject 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 Seller, to cancel the escrow, terminate this Agreement, and recover any and all other amounts paid by City to Seller, 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 equity.

5. As-Is Purchase; Release

Except with respect to any express representations, covenants, warranties, and statements set forth in this Agreement or in the documents that are executed and delivered by Seller at closing, the closing of this transaction shall constitute an acknowledgement by City that City is purchasing the Subject Property and the Subject Property is accepted in its "as-is, with all faults" condition as may exist on the Close of Escrow. Except as to the express representations, covenants, and warranties set forth in this Agreement or in the documents that are executed and delivered by Seller at Closing, Seller disclaims any implied warranty, guaranty or representation, concerning any of the following: (A) the financial status of the Subject Property, including without limitation, income or expenses generated, paid or incurred in connection with the Subject Property, (B) the nature, physical or environmental of the Subject Property or the Subject Property's compliance with applicable laws, ordinances, rules and regulations, including, without limitation, zoning ordinances, building codes (including, without limitation, the Americans With Disabilities Act) and environmental, Hazardous Substance, and endangered species statutes,

City acknowledges the foregoing as is condition. The provisions of this Section 5 shall survive the Closing.

TO SIGNIFY THEIR AWARENESS AND AGREEMENT TO BE BOUND BY THE TERMS AND PROVISIONS OF THIS SECTION 5, CITY AND SELLER HAVE SEPARATELY INITIALED THIS PARAGRAPH.

SELLER'S INITIALS: CT CITY'S INITIALS: [Signature]

6. Close of Escrow

Unless extended by the mutual written agreement of the Parties, the Escrow shall close within fifty (50) days from the Effective Date. Seller shall provide Hardesty a thirty (30) day notice to vacate the Subject Property at the end of the Due Diligence Period and City agrees to close escrow as soon as due diligence is complete and Hardesty has vacated the Subject Property.

7. Title Insurance

Seller shall pay the cost of the CLTA Title policy, and Buyer shall pay the cost of any endorsements, and any additional costs for an ALTA Title policy and ALTA survey.

8. Conditions to Close of Escrow

The conditions set forth in Sections 7(a) and 7(b) hereafter are referred to herein as the "Closing Conditions".

(a) Conditions to Buyer's Obligations. The Close of Escrow and Buyer's obligation to consummate the transactions contemplated by this Agreement are subject to the satisfaction of the following conditions (or Buyer's waiver thereof) for Buyer's benefit on or prior to the dates designated below for the satisfaction of such conditions, or as of the Close of Escrow in the absence of a specified date:

- i. Title. Seller shall convey title to the Subject Property to Buyer free and clear of any monetary encumbrances, except for the lien of current real estate taxes and assessments. As for any non-monetary encumbrances, Buyer shall have the right to approve any and all matters of and exceptions to title of the Subject Property, including the legal description, as disclosed by the following documents and instruments (collectively, "Title Documents"): (1) a preliminary report issued by Escrow Holder with respect to the Subject Property and all matters referenced therein ("Preliminary Report"); and (2) legible copies of all documents, whether recorded or unrecorded, referred to in such Preliminary Report. Seller shall cause Escrow Holder to deliver the Title Documents within five (5) days of the Effective Date. Buyer shall have through twelve (12) days from the Effective Date, to give Seller and Escrow Holder written notice ("Buyer's Title Notice") of Buyer's approval or disapproval of the legal description and every non-monetary item or exception disclosed by the Title Documents. The failure of Buyer to give Buyer's Title Notice to Seller within the specified time period shall be deemed Buyer's approval of title to the Subject Property. In the event that Buyer's Title Notice disapproves of any matter of title shown in the Title Documents, Seller shall have through seventeen (17) days from the Effective Date, to give Buyer written notice ("Seller's Title Notice") of those disapproved title matters, if any, which Seller is unwilling or unable after reasonable and good faith efforts to have eliminated from title to the Subject Property by Close of Escrow. In the event that Seller is unable or unwilling to remove all of the title matters objected to by

Buyer in Buyer's Title Notice, Buyer shall have until 5:00 p.m. pacific standard time on the nineteenth (19th) day from the Effective Date to notify Seller in writing that either of the following: (A) Buyer is willing to purchase the Subject Property subject to such disapproved exceptions, or (B) Buyer elects to cancel this transaction. Failure of Buyer to take either one of the actions described in Subsection (A) or (B) above shall be deemed to be Buyer's election to take the action described in Subsection (A) above. In the event this Agreement is canceled pursuant to this Section, 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 Buyer.

- ii. Verbal or Written Farming Lease. Seller has provided an estoppel to Escrow Holder for the verbal farming lease signed by Hardesty.
 - iii. Title Insurance. The Title Company shall have issued or shall have committed to issue the Title Policy to Buyer.
 - iv. Seller's Representations. All representations and warranties made by Seller to Buyer in this Agreement shall be true and correct.
 - v. Conditions Precedent. All of Seller's conditions precedent to Close of Escrow have been satisfied or waived by Buyer.
 - vi. Conditions to Seller's Obligations. The Close of Escrow and Seller's obligation to consummate the transactions contemplated in this Agreement are subject to the satisfaction of the following conditions (or Seller's waiver thereof) for Seller's benefit on or prior to the dates designated below for the satisfaction of such conditions, or as of the Close of Escrow in absence of a specified date: Buyer's Obligations. Buyer shall have timely performed all of the obligations required by the terms of this Agreement to be performed by Buyer.
 - vii. Buyer's Representations. All representations and warranties made by Buyer to Seller in this Agreement shall be true and correct.
- (b) Failure of Condition to Close of Escrow. Except as provided in Section 7(a) or 7(b), in the event any of the conditions set forth in Section 7(a or b) are not timely satisfied or waived by the appropriate benefitted party, for a reason other than the default of Buyer or Seller, this Agreement shall terminate, and, except as otherwise provided herein, the Parties shall have no further obligations hereunder, 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 Buyer.

9. Costs and Expenses

Charges and expenses incurred in this transaction are to be borne by the parties as follows:

- (a) The Parties shall equally divide the Escrow Holder's fees.
- (b) Seller shall pay the cost of the CLTA Title Policy, and Buyer shall pay the cost of any endorsements and any additional costs for an ALTA Title police and ALTA survey.
- (c) Buyer is exempt from city and county transfer taxes.
- (d) Any miscellaneous costs shall be borne by the Parties according to custom in Sacramento County.
- (e) In the event of any termination of this Agreement or the failure of Escrow to close due to a default of a Party, as provided herein, then the defaulting Party shall pay any cancellation costs imposed by the Escrow Holder.

Notwithstanding the foregoing, and whether the transaction contemplated by this Agreement closes, Buyer and Seller shall each bear their own attorney's, accountant's and consultant's fees, travel expenses, reproduction and document retrieval costs, and all other costs incurred with respect to this Agreement or with respect to any due diligence activities associated with this Agreement except as provided herein.

10. Prorations

- (a) Taxes/Assessments. 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 Purchase Price, the Buyer 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. All real property taxes and assessments for the Subject Property shall be prorated as of 11:59p.m. on the day prior to the Close of Escrow, based upon the latest available information.
- (b) Other Expenses. Any other expenses for the Subject Property shall be prorated as of 11:59 p.m. on the day prior to the Close of Escrow between the Parties based upon the latest available information.

11. Buyer's Covenants, Representations and Warranties

In consideration of the Seller entering into this Agreement and as an inducement to Seller to sell the Subject Property to Buyer, Buyer makes the following covenants, representations and warranties, each of which is material and is being relied upon by Seller (the compliance with and continued truth and accuracy of which shall constitute a condition precedent to Seller's obligations hereunder).

- (a) Buyer's Authority. Buyer has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transaction contemplated hereby;

- (b) Actions. All requisite action (corporate, trust, partnership or otherwise) has been taken by Buyer in connection with the entering into this Agreement, the instruments referenced herein, and the consummation of the transaction contemplated hereby.
- (c) Signatory. The individuals executing this Agreement and the instruments referenced herein on behalf of Buyer and the partners of Buyer, if any, have the legal power, right, and actual authority to bind Buyer to the terms and conditions hereof and thereof.
- (d) Enforceability. This Agreement and all documents required hereby to be executed by Buyer are and shall be valid, legally binding obligations of and enforceable against Buyer in accordance with their terms.
- (e) Conflicting Documents. Neither the execution and delivery of this Agreement and the documents and instruments referenced herein, nor the occurrence of the obligations set forth herein, nor the consummation of the transaction contemplated herein, noncompliance with the terms of this Agreement and the documents and instruments referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreement or instrument to which Buyer is a party or affecting the Subject Property.
- (f) Truthfulness at Close of Escrow. The representations and warranties of Buyer set forth in this Agreement shall be true on and as of the Close of Escrow as if those representations and warranties were made on and as of such time.

12. Seller's Representations and Warranties

In consideration for Buyer entering into this Agreement, Seller makes the representations and warranties set forth in this Section, which are material and are being relied upon by Buyer (the continued truth and accuracy of which shall constitute a condition precedent to Buyer's obligations hereunder). To the extent that Buyer becomes aware of any conflict with the representations and warranties set forth herein after the Effective Date and prior to the Close of Escrow, and nonetheless elects to proceed with the transaction described herein, Buyer shall thereby waive its right to assert any claim against the Seller for any such inconsistent representation(s) and warranty(ies).

- (a) Seller's Authority. Seller has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transaction contemplated hereby.
- (b) Actions. All requisite action (corporate, trust, partnership or otherwise) has been taken by Seller in connection with the entering into this Agreement, the instruments referenced herein, and the consummation of the transaction contemplated hereby.
- (c) Signatory. The individuals executing this Agreement and the instruments referenced herein on behalf of Seller and the partners of Seller, if any, have the legal power,

right, and actual authority to bind Seller to the terms and conditions hereof and thereof.

- (d) Enforceability. This Agreement and all documents required hereby to be executed by Seller are and shall be valid, legally binding obligations of and enforceable against Seller in accordance with their terms.
- (e) Conflicting Documents. Neither the execution and delivery of this Agreement and the documents and instruments referenced herein, nor the occurrence of the obligations set forth herein, nor the consummation of the transaction contemplated herein, nor compliance with the terms of this Agreement and the documents and instruments referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreement or instrument to which Seller is a party or affecting the Subject Property.
- (f) Truthfulness at Close of Escrow. The representations and warranties of Seller set forth in this Agreement shall be true on and as of the Close of Escrow as if those representations and warranties were made on and as of such time.
- (g) Ownership. Seller is an LLC. Charles Jacobi is the Managing Member authorized to sign all legal documents. Seller represents and warrants that Seller is able to convey good and marketable title as of the date of close of escrow. The Subject Property is free and clear of all liens, claims, encumbrances, easements, encroachments or rights of way of any nature, other than the exceptions listed in the preliminary title report issued under Section 6 and any Approved Conditions of Title.
- (h) Hazardous Substances. To Seller's best knowledge, there are no Hazardous Substances, or storage tanks containing Hazardous Substances, in, on, under, or about the Subject Property, and there has been no production, storage, disposal, presence, observance, or release of any Hazardous Substances, in on, under or about the Subject Property.

13. Damage Prior to Closing

The Seller shall bear the risk of loss or damage to the Subject Property until Close of Escrow. Seller shall promptly notify Buyer of any casualty to the Subject Property prior to the Close of Escrow. If any such damage relates to or may result in the loss of any material portion of the Subject Property, Buyer may, at its option, elect either to (a) terminate this Agreement, in which event, except as otherwise provided herein and all rights and obligations under this Agreement shall terminate or (b) continue the Agreement in effect, in which event upon the Close of Escrow, Buyer shall be entitled to any compensation, award, or other payments or relief resulting from such casualty.

14. Notices

All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or sent by facsimile or email and shall be deemed received upon the earlier of (a) if personally delivered, the date of delivery to the address of the person to receive such notice, (b) if mailed, two (2) days after the date of posting by the United States Post Office, or (c) if given by facsimile, when received by the other party.

TO BUYER: CITY OF ELK GROVE
8401 Laguna Palms
Way Elk Grove, CA
95758
Attention: Ann Grava, Real Estate Manager
Telephone: (916) 478-3660
Facsimile: (916) 691-3173

TO SELLER: Charles Jacobi, Manager
Jacobi Elk Grove Ranch, LLC
200 Martinez Place
Pagosa Springs, CO 81147
Cjac660@yahoo.com

To Escrow Holder: Fidelity National Title Company
Attn: Paul Avila
8525 Madison Ave. Suite 110
Fair Oaks, CA 95628

With a Copy to: Newmark
Ken Noack, Jr.
980 Ninth Street, #2500
Sacramento, Ca. 95814
Ken.noack@nmrk.com

Notice of change of address shall be given by written notice in the manner described in this Section.

15. Seller's Indemnification

Seller agrees to hold harmless, indemnify, and defend (with counsel acceptable to the Buyer which consent shall not be unreasonably withheld) Buyer, its officers, elected and appointed officials, agents, employees, and volunteers (hereinafter "**Indemnified Party**"), and hold the Indemnified Party harmless from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside counsel or the City Attorney), causes of action, claims, or judgments that arise by reason of any

death, bodily injury, personal injury, property or economic damage, or violation of any law or regulation, or damage to the environment, including ambient air, soil, soil vapor, groundwater, or surface water, and resulting from or in any way connected with: (i) any acts or omissions related to the performance of this Agreement, (ii) any breach of this Agreement, or (iii) the occupancy or use of the Subject Property (including, but not limited to, the use, storage, treatment, transportation, release, or disposal of Hazardous Substances on or about any portion of the Subject Property), by the Seller, its officers, employees, agents, engineers, contractors or subcontractors, or any other person or entity employed by or acting on their behalf up to recordation of title transfer by Seller to Buyer.

16. Brokers

Buyer warrants to Seller that no person or entity can properly claim a right to a commission, finder's fee, or other compensation with respect to Buyer's representation in this transaction contemplated by this Purchase Agreement. 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 except for Ken Noack, Jr. Newmark Cornish and Carey dba Newmark representing Seller who will be paid a commission by Seller at close of escrow from proceeds of escrow in the amount of 2.5% of the gross purchase price.

17. Assignment

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.

18. Exculpation

(a) Notwithstanding anything to the contrary contained herein, no member of Seller, nor any direct or indirect partner, shareholder, manager (including Management Agent), officer, director, trustee or employee in or of Seller (collectively, the "Seller Nonrecourse Parties") shall be personally liable in any manner or to any extent under or in connection with this Agreement, and neither Buyer nor any successor, assignee, partner, officer, director, or employee of Buyer shall have any recourse to any assets of a Seller Nonrecourse Party other than such party's interest in Seller to satisfy any liability, judgment or claim that may be obtained or made against any such Seller Nonrecourse Party under this Agreement. The limitation of liability provided in this Section 17(a) is in addition to, and not in limitation of, any limitation on liability applicable to a Seller Nonrecourse Party provided by law or by this Agreement or any other contract, agreement or instrument.

(b) Notwithstanding anything to the contrary contained herein, no member of Buyer, including any officer, director, trustee, agent or employee (collectively, the "Buyer Nonrecourse Parties") shall be personally liable in any manner or to any extent under or in connection with this Agreement, and neither Seller nor any successor, assignee, partner, officer, director or employee of Seller shall have any recourse to any assets of

a Buyer Nonrecourse party. The limitation of liability provided in this Section 17(b) is in addition to, and not in limitation of, any limitation on liability applicable to a Buyer Nonrecourse Party provided by law or by this Agreement or any other contract, agreement or instrument.

19. Miscellaneous

- (a) Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- (b) Waivers. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act except those of the waiving party, which shall be extended by a period of time equal to the period of the delay.
- (c) Survival of Representations. Notwithstanding any provision of this Agreement, the covenants intended to be performed after Close of Escrow, and the representations, warranties, hold harmless and indemnification obligations made by each party herein shall not survive the Close of Escrow and shall terminate upon close of escrow or cancellation of this Agreement.
- (d) Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the Parties hereto.
- (e) Entire Agreement. This Agreement (including all Exhibits (“A, B, and C”) attached hereto is the final expression of, and contains the entire agreement between, the Parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, supplemented, superseded, canceled or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. The Parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the Parties hereto and lawful assignees.
- (f) Time of Essence. Seller and Buyer hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by either party shall constitute a material breach of and a non-curable (but waivable) default under this Agreement by the party so failing to perform.
- (g) Relationship of Parties. Nothing contained in this Agreement shall be deemed or

construed by the Parties to create the relationship of principal and agent, a partnership, joint venture or any other association between Buyer and Seller.

- (h) Construction. Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the Parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine 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 had prepared the same. Unless otherwise indicated, all references to paragraphs, sections, subparagraphs and subsections are to this Agreement. All exhibits referred to in this Agreement are attached and incorporated by this reference.
- (i) Governing Law and Venue. The Parties hereto acknowledge that this Agreement has been negotiated and entered into in the State of California. The Parties hereto expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California, and venue shall be in the California Superior Court in the County of Sacramento.
- (j) Days of Week. If any date for performance herein falls on a Saturday, Sunday or holiday, as defined in Section 6700 of the California Government Code, the time for such performance shall be extended to 5:00 p.m. on the next business day.
- (k) Possession of Property. Buyer shall be entitled to the possession of the Subject Property immediately following the Close of Escrow.
- (l) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, when signed by all of the Parties hereto, shall constitute one and the same instrument.
- (m) Further Documents. Upon the reasonable request of the other party, each party will execute, acknowledge and deliver or cause to be executed, acknowledged and delivered, such further instruments and documents as may be reasonably necessary in order to carry out the intent and purpose of this Agreement, including escrow instructions.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates set forth below.

SELLER:
JACOBI ELK GROVE RANCH, LLC, a
California limited liability company

Date: 2/17/2022 | 3:51 PM PST

By: Charles Jacobi
Charles Jacobi, Manager

BUYER:
CITY OF ELK GROVE,
a municipal corporation

Date: 2/17/2022 | 5:52 PM PST

By: Jason Behrmann
Jason Behrmann, City Manager

RECOMMENDED FOR APPROVAL:

Date: 2/17/2022 | 3:56 PM PST

By: Ann Grava
Ann Grava, Real Estate Manager

APPROVED AS TO FORM:

Date: 2/17/2022 | 4:59 PM PST

By: Jonathan P. Hobbs
Jonathan P. Hobbs, City Attorney

ATTEST:

Date: 2/18/2022 | 8:09 AM PST

By: Jason Lindgren
Jason Lindgren, City Clerk

Exhibit A

Draft Legal Description APN 132-0320-010 – Title Report will provide updated description

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

All those portions of the Southwest one-quarter of Section 12, the Northwest one-quarter of Section 13, and the Northeast one-quarter of Section 14 all in Township 6 North, Range 5 East, MDM and being portions of Parcel C as shown on Parcel Map filed for record February 6, 1973 in [Book 10 of Parcel Maps at page 27](#), Sacramento County Records, more particularly described as follows:

All that portion of the above-described Parcel C lying easterly of the following described line:

Beginning at a point on the South line of said Parcel C being also the South line of said Northwest one-quarter of Section 13 distant along last said line S 89° 41' 35" W, 1520.28 feet from a copper monument marked L.S. 3636 marking the center of said Section 13 as shown on said Parcel Map; thence N 0° 15' 13" W, 2309.87 feet to a point in the Northerly boundary of said Parcel C, as described by a Certificate of Compliance-Land Division, recorded August 23, 1984 in [Book 840823, Page 864](#) of Official Records.

EXCEPTING THEREFROM an undivided ½ interest in all minerals, oil, gas and other hydrocarbon substances and geothermal rights within or underlying said land whether now known to exist or hereafter discovered, for a period of 5 years from February 9, 1976, as contained in the deed from Joseph 3. Souza and Mary Souza, his wife, to the Grantee herein, and for so long thereafter as there shall be development, excavating, drilling, redrilling, deepening, repairing and/or reworking or producing operations on said land by the grantor, grantee or by any lessee, agent, employee or joint venturers of the grantor or grantee.

Also excepting therefrom, the Grant Deed recorded with the Sacramento County Recorder's Office in Book 20210420 Page 1433 on April 20, 2021 which conveyed in Fee Title roadway right-of-way to the City of Elk Grove for Kammerer Road, and Grant of Public Right-of-Way (easement) recorded with the Sacramento County Recorder's Office in Book 20210420 Page 1434, on April 20, 2021.

Exhibit B

Legal Description APN 132-0320-001 – Title report will provide updated legal description

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

All those portions of the Southwest one-quarter of Section 12, the Northwest one-quarter of Section 13, and the Northeast one-quarter of Section 14 all in Township 6 North, Range 5 East, MDM and being portions of Parcel C as shown on Parcel Map filed for record February 6, 1973 in [Book 10 of Parcel Maps at page 27](#), Sacramento County Records, more particularly described as follows:

All that portion of the above-described Parcel C lying easterly of the following described line:

Beginning at a point on the South line of said Parcel C being also the South line of said Northwest one-quarter of Section 13 distant along last said line S 89° 41' 35" W, 1520.28 feet from a copper monument marked L.S. 3636 marking the center of said Section 13 as shown on said Parcel Map; thence N 0° 15' 13" W, 2309.87 feet to a point in the Northerly boundary of said Parcel C, as described by a Certificate of Compliance-Land Division, recorded August 23, 1984 in [Book 840823, Page 864](#) of Official Records.

EXCEPTING THEREFROM an undivided ½ interest in all minerals, oil, gas and other hydrocarbon substances and geothermal rights within or underlying said land whether now known to exist or hereafter discovered, for a period of 5 years from February 9, 1976, as contained in the deed from Joseph 3. Souza and Mary Souza, his wife, to the Grantee herein, and for so long thereafter as there shall be development, excavating, drilling, redrilling, deepening, repairing and/or reworking or producing operations on said land by the grantor, grantee or by any lessee, agent, employee or joint venturers of the grantor or grantee.

Exhibit C

Legal Description APN 132-0320-002 – Title Report will provide update legal description

All that real property situated in the City of Elk Grove, County of Sacramento, State of California, more particularly described as follows:

All that portion of Section 13, Township 6 North, Range 5 East, Mount Diablo Meridian, being a portion of the lands of Pacific Telephone and Telegraph Co., as shown on the Record of Survey filed in Book 3 of Surveys, at Page 158, Official Records of Sacramento County and being more particularly described as follows:

Commencing at the Southwest corner of the said Pacific Telephone and Telegraph Co. parcel being the intersection of the centerline of Kammerer Road and the West line of said Pacific Telephone and Telegraph Co. parcel; thence along the West line of said parcel North 00°42'36" West, 63.59 feet to the **True Point of Beginning**; thence continuing along said West line North 00°42'36" West, 56.41 feet to the North line of said Pacific Telephone and Telegraph Co. parcel; thence along said North line North 89°17'24" East, 120.00 feet to the East line of said Pacific Telephone and Telegraph Co. parcel; thence along said East line South 00°42'36" East, 56.42 feet; thence leaving said East line South 89°17'46" West 120.00 feet to the said True Point of Beginning, containing 0.155 acres more or less.

CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2022-053

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)

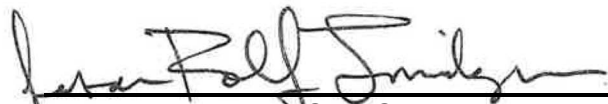
I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on February 23, 2022 by the following vote:

AYES: **COUNCILMEMBERS:** *Singh-Allen, Suen, Hume, Spease, Nguyen*

NOES: **COUNCILMEMBERS:** *None*

ABSTAIN: **COUNCILMEMBERS:** *None*

ABSENT: **COUNCILMEMBERS:** *None*



Jason Lindgren, City Clerk
City of Elk Grove, California