

## EXCLUSIVE NEGOTIATION AGREEMENT

### City of Elk Grove Zoo Relocation and Expansion Project

This Exclusive Negotiation Agreement (“**ENA**”) is made as of September 1, 2021 (“**Effective Date**”) by and between the Sacramento Zoological Society, a California-based 501(c)(3) non-profit corporation (“**DEVELOPER**”) and the City of Elk Grove, a municipal corporation (“**CITY**”) with respect to the following facts:

A. DEVELOPER intends to evaluate and conduct due diligence on the development of an approximately 60-acre zoo, including approximately 10 acres of parking and 50 acres of animal habitat, with accessory facilities, including, by way of examples and not as limitations, admissions and ticketing, concessions, a veterinary hospital, an amphitheater, a child’s play area, a lodge, and various back-of-house facilities (“**Facility**”) to be located at a suitable site to be identified in the City of Elk Grove, California (the “**Site**”).

B. CITY and DEVELOPER (jointly, “**Parties**”) wish to work cooperatively to: (i) evaluate the feasibility of developing and operating the Facility at the Site, including preparation of a conceptual feasibility study; and (ii) prepare plans and identify funding for developing and operating the Facility at the Site, including any required or requested City participation in the project.

#### NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Agreement to Negotiate Exclusively and in Good Faith. During the “Negotiation Period”, as defined below, CITY and DEVELOPER, and their agents, affiliates, and assigns, agree to conduct a conceptual feasibility study and negotiate exclusively and in good faith with each other regarding the content of an agreement for the development and use of the Facility at the Site (“**Agreement**”). DEVELOPER, and its agents, affiliates, and assigns further agree, during the Negotiation Period, to not undertake, directly or indirectly, any act (including soliciting or entertaining offers or proposals from any other party or parties) concerning development of such a Facility anywhere else in Sacramento County, San Joaquin County, Yolo County, El Dorado County, or Placer County.

2. Negotiation Period. Unless this ENA is sooner terminated, the Parties agree to negotiate in good faith during the period commencing on the Effective Date and ending on March 31, 2022 (“**Negotiation Period**”). The Negotiation Period reflects the time required to preliminarily evaluate the feasibility of building and operating the Facility at the Site and enter into the Agreement. The Parties may mutually agree to extend the Negotiation Period.

3. Site Analysis. During the Negotiation Period, the Parties shall analyze the Site to assess suitability for the development of the Facility. The Site will be developed by the DEVELOPER, but may include CITY financial participation in the project.

4. Site Information. The Parties shall provide each other with access to all non-privileged information, studies, reports, or other documents in their possession or control relating to the Site or Facility during the term of this ENA.

5. Confidentiality. To the extent permitted by law, CITY shall keep all information relating to DEVELOPER's activities and shared information and documents confidential to the extent and for the periods allowable pursuant to Section 6254 of the California Public Records Act and its enumerated exemptions (e.g., for negotiation of real estate contracts) and/or any other applicable provision of law allowing for such confidentiality.

6. No Commitment to Enter into the Agreement. This ENA is an agreement to negotiate exclusively. CITY and DEVELOPER each reserves the right to not enter into the Agreement. Except as expressly provided in this ENA, CITY and DEVELOPER shall have no liability in the event they fail to execute the Agreement. This ENA does not obligate CITY to do any act requiring the exercise of discretion by CITY. Should this ENA be terminated, and the CITY and DEVELOPER not enter into the Agreement, all work product paid for and created by DEVELOPER, including but not limited to plans, drawings, market information, and all intellectual property provided by the Developer shall remain the sole property of the DEVELOPER, and the CITY warrants that it will not utilize the information gained from DEVELOPER during the ENA period to proceed with a similar project with an alternate developer.

7. Termination. This ENA may be terminated by either party, without cause, provided that the terminating party provides the other party not less than thirty (30) calendar days' written notice of its intent to terminate.

8. Entire Agreement. This ENA represents the entire agreement of the Parties with respect to the matters set forth herein. This ENA may not be amended except in writing signed by both Parties.


9. Notices. All notices required or permitted hereunder shall be delivered in person, by overnight courier, or by registered or certified mail, postage prepaid, return receipt requested to such Party at its address shown below, or to any other place designated in writing by such Party. Any such notice shall be deemed received upon delivery, if delivered personally, the next business day after delivery by a courier, if delivered by courier, and three (3) days after deposit into the United States Mail, if delivered by registered or certified mail.

CITY: City of Elk Grove  
Attn: City Manager  
Elk Grove City Hall  
8401 Laguna Palms Way  
Elk Grove, CA 95758

DEVELOPER: Sacramento Zoological Society  
Attn: Executive Director  
3930 West Land Park Drive  
Sacramento, CA 95822

IN WITNESS WHEREOF, the CITY and DEVELOPER have signed this ENA as of the dates set forth below.

City of Elk Grove,  
a municipal corporation

By:   
Jason Behrmann,  
City Manager

Date: 9/23/2021 | 9:18 AM PDT

DEVELOPER

By: Jason Jacobs  
Jason Jacobs,  
Executive Director

Date: 9/23/2021 | 8:14 AM PDT

Approved to as form:

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