

MEMORANDUM OF UNDERSTANDING REGARDING NEW ZOO IN ELK GROVE

This Memorandum of Understanding (“MOU”) is entered into this 25th day of May, 2022 (“Effective Date”) by and between SACRAMENTO ZOOLOGICAL SOCIETY, a California nonprofit corporation (“Society”), and the CITY OF ELK GROVE, a municipal corporation (“City”) (each individually, a “Party” and, collectively, the “Parties”).

RECITALS

WHEREAS, Society is currently evaluating and conducting due diligence regarding the development of an approximately seventy (70)-acre zoological park, including approximately ten (10) acres of parking and sixty (60) acres of animal habitat, with accessory facilities (collectively, the “Facility” or the “Zoo”) to be located at a suitable site within the City of Elk Grove, California; and

WHEREAS, the Parties entered into an Exclusive Negotiation Agreement on September 23, 2021, and a First Amendment to Exclusive Negotiation Agreement on March 23, 2022 (collectively, the “ENA”), which memorialized the Parties’ intent to negotiate in good faith regarding the development of the Facility (the “Project”) and to analyze potential sites and assess their suitability for the Project; and

WHEREAS, the ENA is set to expire at the end of the day on May 31, 2022; and

WHEREAS, on April 8, 2022, the City acquired a potential site for the Zoo (the “Candidate Site”); and

WHEREAS, the Parties have completed the feasibility study for the Project and desire to continue planning for the development of the Facility at the Candidate Site and to undertake the necessary steps to move the Project forward, as outlined further in this MOU.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1. Replacement of Exclusive Negotiation Agreement; Term. This MOU replaces and supersedes the ENA, which is hereby terminated. The term of this MOU shall commence as of the Effective Date and terminate on March 31, 2024 (the “Term”). The Parties shall have the option to extend the Term for two additional periods of six (6) months each. These extension options may be exercised upon mutual written agreement of the City Manager and the Executive Director of Society at any time prior to the expiration of the then-existing term.

2. Foundational Agreements.

2.1 Good Faith and Cooperative Planning; Subject to City Review. The Parties agree to continue working together in good faith to develop a Facility that is owned by the City and managed and operated by Society. Development of the Facility at the Candidate Site

remains subject to the City's approval of the Project, entitlements, and environmental review, and the Parties' negotiation and adoption of a plan of finance (the "Plan of Finance"). Until such approvals and adoption, the Project remains subject to the City's complete discretion to approve, condition, or deny the Project and its entitlements and approvals based upon information produced from the California Environmental Quality Act ("CEQA") environmental review process and following public review and all legally required procedures.

2.2 Exclusivity. The Parties agree to work exclusively with each other regarding the Project and an eventual management operating agreement for the development and operation of the Facility at the Candidate Site (the "Management Operating Agreement" or "MOA").

2.3 Feasibility Study as Basis for Planning. The Parties agree that the February 28, 2022, Feasibility Study for a New Zoo in Elk Grove (the "Feasibility Study"), and the Vision Concept Plan, Concept Feasibility Plan, Vision Statement, Strategic Business Plan and other elements contained therein, shall provide the basis for future design and financial planning for the Project. The Society will update the key financial and business findings from the Feasibility Study throughout the design process.

2.4 Importance of Public Engagement. The Parties agree that public engagement is a critical planning tool and that both the City and Society shall, and shall cause their respective consultants and teams to, continue to provide input and guidance regarding engaging the Elk Grove community in the development of the Facility and the design plan.

2.5 Authorization for Project Phases 1.0 through 6.0. The Project is proposed to consist of nine phases of work (the "Phases of Work"), which are set forth in **Exhibit A** hereto. Phase 0.0, which encompasses the Feasibility Study, has been completed. By entering into this MOU, the Parties intend to and hereby authorize each other to initiate work on Phases 1.0 through 6.0 of the Phases of Work:

- a. Phase 1.0 – Development of a Conceptual Master Plan, which will form the basis for donor and partner conversations;
- b. Phase 2.0 – Development of Schematic Plans, which are necessary for the CEQA and entitlement process;
- c. Phase 3.0 – Preparation of an Infrastructure Master Plan for off-site facilities necessary to serve the Zoo;
- d. Phase 4.0 – Preparation of a formal Plan of Finance, which will be informed by the Schematic Plans, cost estimate, donor partner conversations, and an update of the Operating Pro Forma (defined below);
- e. Phase 5.0 – CEQA review;
- f. Phase 6.0 – Entitlement consideration and discretionary action of the City's Planning Commission and City Council.

2.6 Reliance on MOU and Candidate Site. Society may rely on the terms of this MOU and the location of the Candidate Site in preparing the Conceptual Master Plan and Schematic Plans (defined below) and in undertaking donor cultivation and fundraising initiatives.

2.7 Construction Responsibility Not Determined. Responsibility for Construction of the Project will not be determined until the time that the Parties enter into an Management Operating Agreement concurrently with approval of the Project.

2.8 Compliance with CEQA. The obligations of the Parties under this MOU are conditioned upon compliance with CEQA. In no event shall the City or Society be authorized or required to develop the Project unless and until the City has completed its review under CEQA and has taken appropriate discretionary action as lead agency.

3. Society Obligations.

3.1 Accreditation. The Parties intend that the new Zoo will be accredited by the Association of Zoos and Aquariums (“AZA”) and that such accreditation will be granted within a reasonable period of time following opening of the Zoo to visitors, consistent with the time frames and procedures of the AZA. Society shall be responsible for applying for AZA accreditation and managing the accreditation process.

3.2 Donor Cultivation and Fundraising. Society shall, at Society’s expense, initiate and sustain donor cultivation for the Project and implement and manage a private-sector fundraising campaign to support the Facility. Society shall demonstrate progress in securing donor commitments to the Project in advance of final City approval of the Project. Society further agrees to cultivate, engage, and solicit funding for the Facility from individuals, major donors, partners, foundations, businesses entities and, where appropriate, other public-sector resources outside of Elk Grove. The City and Society acknowledge that Society’s private fundraising campaign may involve potential naming and sponsorship opportunities for the Facility; provided, however, any specific or exclusive naming rights of the Project, or retention of revenue generated from the sale of naming rights, are subject to a separate agreement between the Parties. Society may not indicate to any individual or entity that it has the exclusive and final authority to provide such rights.

3.3 Conceptual Master Plan. Society shall develop a conceptual master plan for the Facility (the “Conceptual Master Plan”) at Society’s expense. The Conceptual Master Plan shall include, among other things, a cost estimate for Construction Phase 1 (as defined in the Feasibility Study) of the Project.

3.4 Design Team. The Parties agree that a design team (the “Design Team”) shall be retained for the preparation of the Conceptual Master Plan. Society shall lead the search process for and ultimate retention of the Design Team. Society shall assemble a review and selection panel (the “Panel”) for this purpose. The Panel shall have a total of seven members, appointed as follows: the City shall appoint two members, and Society shall appoint the other five members, including the Zoo’s Executive Director, an additional Zoo staff member, two members of Society’s Board of Trustees, and one facility advisory member selected by Society.

3.5 Preparation of Schematic Plans. Upon completion of the Conceptual Master Plan and acceptance of the same by both Society and the City, Society shall contract with

the Design Team for the preparation of schematic plans for the buildout of the Facility (the “Schematic Plans”), at Society’s expense. The Schematic Plans shall include, at a minimum, fifteen (15%) to twenty-five percent (25%) design plans, inclusive of major onsite infrastructure and points of connection. Schematic Plans shall also include reasonable projections of utility needs for the Facility, including, but not necessarily limited to, water (potable and recycled), sewer, and electricity.

3.6 Update of Operating Pro Forma. Following completion of the Schematic Plans, Society shall update the construction cost estimate and the operating pro forma projections from the Feasibility Study (“Operating Pro Forma”). The Parties agree to meet and confer regarding the inputs and assumptions of the Operating Pro Forma.

4. City Obligations.

4.1 Support of Donor Cultivation. The City agrees to support Society’s donor cultivation initiatives at the request of Society.

4.2 Infrastructure Master Plan. The City, at its expense, shall update area infrastructure master plans around the Candidate Site and prepare preliminary engineering for the alignment of roads and infrastructure serving the Candidate Site. The Design Team and City engineering teams shall coordinate with each other throughout the process, and members of the City engineering teams may attend meetings of the Project Development Team (defined below). Final determination of the street and utility systems shall be at the sole discretion of the City.

4.3 Environmental Review. After the Schematic Plans are prepared and technical documentation for infrastructure services have been provided to the City, the City shall initiate and complete CEQA review for the entire Project (Construction Phases 1 and 2) at the City’s expense. As part of this CEQA review, the City shall prepare an Environmental Impact Report (“EIR”). As required by CEQA, the City shall be authorized, in its sole discretion, to determine the analysis and mitigation measures that apply to the Project.

4.4 Entitlements. Upon preparation of the Final EIR, the City shall schedule all public hearings for approval of the Project entitlements. In conjunction with scheduling such public hearings the City will review plans and prepare conditions of approval.

4.5 Confidentiality. To the extent permitted by law, the City shall keep all information relating to Society’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.

5. Mutual Obligations.

5.1 Transparent Dialogue. Both City and Society agree to continue to work with one another in a transparent and open dialogue format in creating the new Zoo.

5.2 Scope of Work. Society and City shall mutually agree to the scope of work prior to the execution of the contract for retention of the Design Team.

5.3 Public Input. Throughout the Conceptual Master Plan process, the Parties shall engage with the public on various elements and components of the Project. The Parties shall develop and cooperatively implement a public participation plan, which may be modified from time to time. The Design Team shall support these efforts to the extent deemed necessary by the Parties.

5.4 Project Development Team Meetings; Check-In Opportunities. A Project Development Team (“PDT”) shall be formed and shall consist of the Design Team and key representatives from the City and Society, as mutually agreed between the Parties. Society and the Design Team shall establish regular PDT meetings. In addition to the PDT meetings, Society and the Design Team shall provide at least three (3) “check-in opportunities” for City leadership throughout the design process.

5.5 Service Delivery. Society and City shall coordinate with other service providers, including Sacramento Area Sewer District, Sacramento County Water Agency, and Sacramento Municipal Utility District regarding delivery of services to the Candidate Site. This coordination shall occur during the development of the Schematic Plans.

5.6 Plan of Finance. The Parties shall prepare a formal Plan of Finance based upon the cost estimate for Construction Phase 1. The Plan of Finance shall, among other things, detail provisions for City and third-party funding of the Project, including development partners, sponsors, and donors. The Plan of Finance shall be approved by both the City Council and Society as part of the Project approvals. The Parties will ultimately rely on the Plan of Finance as a basis for the Management Operating Agreement that the Parties intend to enter into prior to Project construction.

6. CEQA Compliance. This MOU is entered to establish a process for developing designs and plans for the Project. Pending certification of the EIR and completion and City approval of the Plan of Finance, Master Infrastructure Plan, and Project entitlements, the Project remains subject to the City’s full exercise of discretion as a lead agency under CEQA to consider the EIR and approve or disapprove the Project and to require the Project to undertake mitigation measures or alternatives as may be set forth in the EIR, including the alternative of not proceeding with the Project.

7. Additional Terms.

7.1 Amendment or Modification. Any changes to this MOU, whether by additions, deletions, waivers, amendments or modifications, may only be made in a writing signed by all Parties to this MOU.

7.2 Termination. This MOU may be terminated by either party, without cause, provided that the terminating party provides the other party not less than sixty (60) days’ written notice of its intent to terminate.

7.3 California Law and Venue. This MOU shall be governed by and construed in accordance with the laws of the state of California. Any legal action arising out of this MOU shall be filed in and adjudicated by a court of competent jurisdiction located in the County of Sacramento, State of California.

7.4 No Third-Party Beneficiaries. Nothing in this MOU is intended to or shall be construed to confer upon any person or entity other than the Parties and their successors or assigns, any rights or remedies under or by reason of this MOU.

7.5 No Assignment. Neither this MOU, nor any rights or obligations hereunder, may be assigned, delegated or conveyed by either Party.

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

CITY: City of Elk Grove
Attn: City Manager
Elk Grove City Hall
8401 Laguna Palms Way
Elk Grove, CA 95758
email: jbehrmann@elkgrovecity.org

SOCIETY: Sacramento Zoological Society
Attn: Executive Director
3930 West Land Park Drive
Sacramento, CA 95822
email: JJacobs@saczoo.org


7.7 Entire Agreement. This MOU represents the entire agreement of the Parties with respect to the Project and supersedes all previous oral and written contracts, correspondence, representations, warranties, guarantees, documentation and/or instruments in any way relating to the Project.

7.8 Counterparts. This MOU may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one agreement. Electronic signatures, including DocuSign and scanned PDFs, may be used in place of original ink signatures on this MOU.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed by each of them as of the Effective Date set forth above.

CITY OF ELK GROVE,
a California municipal corporation

By: 

Jason Behrmann
City Manager

Approved to as form:

By: *Jonathan P. Hobbs*

Jonathan P. Hobbs
City Attorney

Attest to:

By: 

Jason Lindgren, City Clerk

Dated: May 25, 2022

SACRAMENTO ZOOLOGICAL SOCIETY,
a California nonprofit corporation

By: *Jason Jacobs*

Jason Jacobs
Executive Director

EXHIBIT A Phases of Work

The following outlines the phases of work and key work elements necessary to develop the Zoo. This listing is not meant to be extensive or exclusive and does not include all necessary sub-tasks. For planning purposes, a schedule for completing the key work elements is presented. This schedule is meant as a guide; the ultimate schedule will be determined by the City and the Society through their continued collaboration throughout the effort and each Party will work diligently with their consultant team(s) to complete the work within the intended timeframes.

Task ID#	Key Work Element	Schedule	Dependencies	Lead	Consultant(s)	Funding Source
Work Under The ENA						
0.0	Feasibility Study					
0.1	Execute ENA	Sep 21		City & Society		
0.2	Site Identification	Sep 21	0.1	City		City
0.3	Site Acquisition	Feb-Apr 22	0.2	City		City
0.4	Field Trips	Oct-Nov 21	0.1	City & Society	RSS	City & Society
0.5	Feasibility Study	Nov 21-Feb 22	0.1	Society	RSS	Society
0.6	Economic Impact Analysis	Feb 22	0.5	City	AE	City
0.7	Public Workshop	Mar 22	0.5, 0.6	City & Society	RSS	City
0.8	City Council Presentation	Mar 22	0.7	City & Society	RSS	City
Work Under The MOU						
1.0	Conceptual Master Plan					
1.1	Scope, Bid, Award	April 22-June 22		Society		Society
1.2	Development	June 22-Sept 22	1.1	Society	TBD (design firm)	Society
1.3	Outreach	Summer 22	1.1	City & Society	TBD (design firm)	City & Society
1.4	Council Check In	Aug-Sept 22	1.2, 1.3	City & Society	TBD (design firm)	City & Society
1.5	Cost Estimates	Aug-Oct 22	1.2	Society	TBD (design firm)	Society
1.6	Final Conceptual Plan	Fall 22	1.2	Society	TBD (design firm)	Society

Task ID#	Key Work Element	Schedule	Dependencies	Lead	Consultant(s)	Funding Source
2.0	Schematic Plan					
2.1	Scope	Aug 22	1.2	Society		Society
2.2	Development	Fall 22 > Spring 23	1.6	Society	TBD (design firm)	Society
2.3	Outreach	Fall 22 > Spring 23	2.2	City & Society	TBD (design firm)	City & Society
2.4	Cost Estimates	Spring 23	2.2	Society	TBD (design firm)	Society
2.5	Final Schematic Plan	Spring 23	2.4	Society	TBD (design firm)	Society
3.0	Infrastructure Master Plan					
3.1	Finalize site location and context	April 22-June 22	1.2	City	Kimley-Horn	City
3.2	Site access opportunities	May 22-August 22	1.2	City	Kimley-Horn	City
3.3	Off-site utility sizing and points of connection	June 22-Spring 23	1.6, 2.2	City	Wood Rodgers	City
4.0	Plan of Finance					
4.1	Facility Costing	Winter 23	1.4	Society	TBD (design firm) Kimley-Horn	Society
4.2	Capital Campaign	Summer 22-Fall 26	3.1	Society		Society
4.3	Updated Operating Pro Forma	Winter 23	1.4, 3.1	Society	RS&S	Society
4.3	Bond exploration	2023	3.1	City	Fieldman Rolapp	City
4.4	Bond placement	2024	3.3	City	Fieldman Rolapp	City

Task ID#	Key Work Element	Schedule	Dependencies	Lead	Consultant(s)	Funding Source
5.0	CEQA Review					
5.1	Scope	Summer 22	1.2	City	Ascent	City
5.2	NOP	Fall 22	5.1, 1.5	City	Ascent	City
5.3	Water Supply Assessment	Spring 24	5.2, 3.3	City	SCWA	City
5.4	Draft EIR	Spring/Summer 23	5.2, 5.3	City	Ascent	City
5.5	Final EIR	Fall 23	5.4	City	Ascent	City
5.6	Certification	Fall 23	6.4	City	Ascent	City
6.0	Entitlement					
6.1	Plans and materials	Spring/Summer 23	2.5	Society & City	TBD (design firm)	City & Society
6.2	Routing and Condition Development	Spring 23	6.1	City		City
6.3	Planning Commission	Fall 23	5.4, 6.2	City		City
6.4	City Council	Fall 23	6.3	City		City
Work Under the Subsequent MOA						
7.0	Off-Site Infrastructure					
7.1	Design (DD and CD)	Winter to/Fall 24	2.5, 3.3			
7.2	Bid and Award	Fall 24	5.6, 7.1			
7.3	Construction	Spring 24 to Fall 25	6.2			
7.4	Construction Management	Spring 25	6.2			

Task ID#	Key Work Element	Schedule	Dependencies	Lead	Consultant(s)	Funding Source
8.0	DD/CD Package and Facility Construction (On-Sites)					
8.1	Scope and Award	Summer 23				
8.2	DD Preparation	Fall 23				
8.3	DD Review and Approval	Winter 24				
8.4	CD Preparation	Spring/Summer 24				
8.5	CD Review and Approval	Summer 24				
8.6	Final Plans and Specifications	Fall 24				
8.7	Bid and Award	Fall 24/Winter 25	5.6, 8.6			
8.8	Construction	Spring 25 to Winter 27	7.2			
8.9	Construction Management	Spring 25 to Winter 27	7.2			
8.10	Owner's Rep	Summer 25 to Winter 27	7.2			
9.0	Opening					
9.1	Soft occupancy	Winter 27	7.3	Society		
9.2	Animal Placement	Spring 27	8.1	Society		
9.3	Opening Day	Summer 27	8.2	Society		