

## **EXCLUSIVE NEGOTIATING AGREEMENT**

This EXCLUSIVE NEGOTIATING AGREEMENT (“ENA”) is dated, for reference purposes, as of the Effective Date (as defined in Section 16.8), and is entered between the CITY OF FRESNO, a municipal corporation (“City”), and Fresno’s Chaffee Zoo Corporation (“Zoo”), on the terms, and subject to the conditions, set forth below. The City and Zoo are sometimes referred herein collectively as the “Parties,” and either individually as a “Party.”

### **RECITALS**

A. The Parties desire to jointly undertake improvements to parking facilities in Roeding Park in the general vicinity of the current employee and overflow parking lots, and maintenance yard to the north of the Fresno Chaffee Zoo boundary (“Project Area”) which are anticipated to include construction of up to two multi-story parking structures along with related landscaping and parkland improvements, which are collectively referred to as the “Parking Facilities Project.” Concurrently, the Zoo intends to undertake additional improvements within the Zoo (“Other Facilities”) which may include improvements to the entry, improvement or addition of exhibits, internal pedestrian circulation, and relocation of administrative areas. Such improvements are currently being identified and are likely to be developed alongside the Parking Facilities Project.

B. The nature of the Parking Facilities Project as well as the concurrent improvements to Other Facilities will provide substantial public benefit to the area.

C. The Parties anticipate that cooperation on the Parking Facilities Project will require negotiating the terms of several project components, including but not limited to:

1. Negotiation of an Amendment to the Lease Agreement to expand the leased premises and extend to term beyond 30 years; and
2. Negotiation of terms to operate, manage, and maintain the facilities constructed as part of the Parking Facilities Project; and
3. Negotiation of each Party’s financial contribution to the construction of the Parking Facilities Project; and
4. Negotiation of terms relevant to allocation of revenue from the Parking Facilities Project once operation begins; and
5. Negotiation of any other terms as may be necessary to facilitate the Parking Facilities Project, including, but not limited to, terms relevant to utilities and public infrastructure necessary to serve the project site.

D. The Parties intend to negotiate mutually acceptable terms and conditions in an Amended Lease Agreement and such other ancillary agreements as may be necessary (collectively the “Agreements”), that will define the Parties’ rights, obligations and participation in the development of the Parking Facilities Project.

### **EXCLUSIVE NEGOTIATING AGREEMENT**

NOW, THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual covenants herein contained and such other and further consideration as is hereby acknowledged, and subject to the terms and conditions and provisions hereof, the Parties agree as follows:

1. **Exclusive Good Faith Negotiations.** The Parties, during the Negotiation Period defined in Section 3 below, shall negotiate exclusively and in good faith the terms of an Amended Lease Agreement and/or other agreements necessary to develop the Parking Facilities Project. Good faith negotiations shall include, without limitation, attending scheduled meetings, directing staff and consultants to cooperate with the other Party to the extent reasonably practicable and necessary to negotiations, providing information reasonably available to the Party and necessary to negotiations, and promptly reviewing and returning any comments on correspondence, reports, agreements or other documents received from the other Party.
2. **Project Concept/Scope.** The negotiations under this ENA shall include defining the project scope and features that are agreeable to both parties.
3. **Negotiation Period.** The Parties will negotiate for one year from the date that the City executes this ENA (the "Negotiation Period"), unless negotiations are terminated sooner as provided herein. Following the Negotiation Period, this ENA may only be extended by a majority vote of the City Council.
4. **Proposed Terms and Conditions for Agreements.** During the Negotiation Period, including any extensions, the Parties shall negotiate the proposed terms for the Agreements. The negotiations regarding the proposed terms of the Agreements will include further detail concerning the Parties' (and affiliates of Zoo's) respective rights and obligations for developing the Project within the Project Area.
5. **Assignment Prohibited.** Neither Party may assign or otherwise transfer any of their respective rights or obligations under this ENA without the express written consent of the other Party. Either Party may give or deny consent in their sole and absolute discretion.
6. **Zoo Responsibilities.** Without limiting any other provision of this ENA, Zoo shall, during the Negotiation Period, including any extension thereof, do the following in furtherance of the negotiation process:
  - 6.1. **Meetings.** Zoo shall meet with City representatives to review and understand the terms of the Agreements governing the improvement and operation of the Sites.
  - 6.2. **Reports.** Normally but not more frequently than monthly, but at any time requested by the City Council, Zoo shall make oral and/or summary form written progress reports advising the City and/or its staff on all progress being made on tasks and other activities undertaken by Zoo pursuant to this ENA.
7. **City Responsibilities.** During the Negotiation Period, including any extension thereof, in furtherance of the negotiation process the City will cooperate and assist Zoo, as needed, in fulfilling Zoo's obligations hereunder.

8. **Compliance with Laws/CEQA.** The Parties anticipate that the Parking Facilities Project will require preparation of an Environmental Impact Report (EIR). The City will serve as lead agency for purposes of evaluating potential environmental effects. However, Zoo shall cooperate with the City in preparation of the environmental documents by, among other things, timely supplying necessary technical data and other related information and/or plans concerning the Project. An objective during the Negotiation Period is to establish a Project scope and description sufficient to include in any applicable NEPA and CEQA review. Preparation of an environmental document pursuant to CEQA will include all components of the Parking Facilities Project as well as known on-site improvements related to the Other Facilities. If the negotiations result in one or more proposed Agreements, City Council approval thereof may occur only after compliance, as may be required, with all applicable laws and ordinances including, without limitation, CEQA. Any Agreements resulting from the negotiations shall become effective only if and after such Agreement has been considered and approved by the City Council at a public hearing called for such purpose.

Zoo shall be responsible for the cost of CEQA/NEPA compliance for the Project, as determined necessary.

9. **Entire Agreement; Attorneys' Fees; Time is of the Essence; Counterparts.** This ENA is the entire agreement as understood by the Parties with respect to the matters set forth herein. This ENA may be amended only in a writing signed by all Parties and approved by the City Council. If a Party brings an action or files a proceeding in connection with the enforcement of its respective rights or as a consequence of any breach by the other Party, then the prevailing Party(ies) in such action or proceeding shall be entitled to have its reasonable attorneys' fees and costs and other out-of-pocket expenditures paid by the losing Party. Time is of the essence in this ENA. Section 1654 of the California Civil Code shall not apply to the interpretation of this ENA. Each individual executing this ENA represents and warrants they are duly authorized to execute and deliver this ENA on behalf of the Party named herein and this ENA is binding upon said party in accordance with its terms. This ENA may be executed in counterparts.

10. **Nondiscrimination.** Zoo covenants and agrees that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code (race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability or any other basis prohibited by California Civil Code § 51), as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall Zoo or any person claiming under or through Zoo establish or permit any such practice or practices of discrimination or segregation in the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees of the Sites.

11. **Notices.** All notices required or permitted hereunder shall be delivered in person or by facsimile, 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:

City: City Manager  
City of Fresno  
2600 Fresno St., Room 3070  
Fresno, CA 93721-3605

Zoo: Jon Forrest Dohlin  
CEO and Zoo Director  
Fresno's Chaffee Zoo Corporation  
894 West Belmont Avenue  
Fresno, CA 93728

*With a copy to:*

John P. Kinsey  
Wanger Jones Helsley PC  
265 E. River Park Cir., Third Floor  
Fresno, CA 93720

Notice shall be deemed received on delivery, if delivered personally or by facsimile; one day after delivery to the courier if delivered by courier; or three days after deposit into the United States mail if delivered by registered or certified mail.

12. **Agreement Limitations.** The City is not, by entering this ENA, committing itself to or agreeing to undertake any other act or activities requiring the subsequent independent exercise of discretion by the City or any agency or department thereof. This ENA is merely an agreement to enter exclusive negotiations with respect to the Project according to the terms hereof, with all final discretion and approval remaining with the City Council as to any Agreements and all proceedings and decisions in connection therewith.

13. **Miscellaneous provisions.**

13.1. **Governing Law and Venue.** California law governs this ENA. The provisions of this ENA will be construed, and the rights and duties (procedural and substantive) of the Parties hereunder will be determined, according to California laws. Venue for filing any action to enforce or interpret this ENA will be Fresno, California.

13.2. **Headings.** The section headings in this ENA are for convenience only; they do not explain, modify or add to the meaning of this ENA.

13.3. **Severability.** The provisions of this ENA are severable. The invalidity or unenforceability of any provision in this ENA will not affect the other provisions.

13.4. **Interpretation.** This ENA is the result of the combined efforts of the Parties. If any provision is found ambiguous, the ambiguity will not be resolved by construing this ENA in favor of or against either Party, but by construing the terms according to their generally accepted meaning.

**13.5. Precedence of Documents.** If the body of this ENA and any Exhibit or attachment conflict, the terms in the body of this ENA will control. Any term or condition in any Exhibit or attachment that purports to modify the allocation of risk between the Parties is void.

**13.6. Successors and Assigns.** Subject to the limitation on assignment herein, this ENA is binding on and will inure to the benefit of the Parties and their respective successors and assigns.

**13.7. Effective Date.** The Effective Date of this ENA shall be the date that the City executes this ENA, following City Council approval.

**13.8. Independent Capacity.** The City shall not become or be deemed a partner or joint venturer with Zoo or associate in any such relations with Zoo by reason of the provisions of this ENA. Zoo shall not for any purpose be considered an agent, officer or employee of the City.

**13.9. Conflict of Interest.** No officer or employee of the City shall hold any interest in this ENA (California Government Code Section 1090).

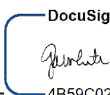
Each Party acknowledges that this ENA has been executed by its duly authorized representative(s) on the dates shown below.

CITY:

Fresno's Chaffee Zoo Corporation:

CITY OF FRESNO

A California Municipal Corporation

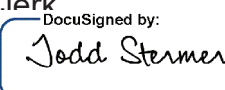
By    
DocuSigned by: 4B59C02BA274430...   
 Georgeanne White, City Manager

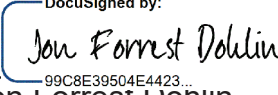
Dated: 8/30/2024, 2024

APPROVED AS TO FORM  
 ANDREW JANZ  
 City Attorney

By    
Signed by: 6FAB5E2FFB594D5...   
 Talia Kolluri 8/22/2024   
 Assistant City Attorney

ATTEST:  
 TODD STERMER, CMC  
 City Clerk

By    
DocuSigned by: 9CEBB07EED3A4D5...   
9/4/2024

By    
DocuSigned by: 99C8E39504E4423...   
 Jon Forrest Dohlin  
 CEO and Zoo Director  
 Fresno's Chaffee Zoo Corporation

Dated: 8/22/2024, 2024