

# EXCLUSIVE NEGOTIATION AGREEMENT

BY AND BETWEEN THE COUNTY OF NEVADA  
AND

KOCH & KOCH, Inc.

FOR A PROPOSED DEVELOPMENT AT NEVADA  
COUNTY AIRPORT FOR RAMP ONE AIRCRAFT  
STORAGE HANGARS

## **EXCLUSIVE NEGOTIATION AGREEMENT**

### **FOR A PROPOSED DEVELOPMENT AT NEVADA COUNTY AIRPORT**

This Exclusive Negotiation Agreement [ENA] for a proposed development of Aircraft Storage Hangars at Nevada County Airport, is made by and between the County of Nevada, a political subdivision of the State of California, and Koch & Koch, Inc., jointly referred to as the "Parties", and shall be effective the 28th day of April, 2020.

#### **RECITALS**

WHEREAS, the County owns and operates the Nevada County Airport [Airport] and desires to develop aircraft storage hangars [Hangar Development] at the Airport; and

WHEREAS, the County issued a Request for Proposals [RFP] in regard to the Hangar Development, to which Developer timely responded and whereby the Developer's financial, managerial, and development qualifications were validated in an open competitive RFP process; and

WHEREAS, thereafter Developer's response to the County's RFP for the purpose of developing the aircraft storage hangars, to be operated and/or subleased by Developer to third party users, was ultimately selected by County under the terms of the RFP; and

WHEREAS, as part of the RFP application, Developer agreed to engage in an Exclusive Negotiation Agreement [ENA] to enter into a Long Term Lease Agreement [LTLA] subject to approval by the County; and

WHEREAS, in furtherance of submitting this ENA to the County Board of Supervisors for its approval, the Parties have reached certain understandings respecting processes and procedures for negotiating terms which are meant to lead to the eventual submission and approval of documents required for the Hangar Development at the Airport; and

WHEREAS, upon completion of the aircraft storage hangars with associated LTLA contemplated by this ENA, as more fully described in the Developers response to the RFP, it is anticipated the privately-leased hangars will contribute to the benefit and economy of the Airport and the surrounding community.

NOW, THEREFORE, County and Developer agree that the purpose of this ENA is to provide a broad outline of the basis on which the County and Developer will work with each other during the term of this ENA in furtherance of negotiating a LTLA, and hereby express their understanding as follows:

## **Section 1    Term**

Unless terminated earlier by agreement of the Parties, as set forth elsewhere herein, the obligations and privileges contained in this ENA shall be in effect for a period of six (6) months commencing upon the Effective Date hereof (“Term”). Provided, however, that the County may, good cause having been shown, extend this ENA for an additional three (3) months upon payment of an additional non-refundable Five Hundred Dollars (\$500) to the County. Upon the expiration or early termination of this ENA, all obligations and privileges under this ENA shall terminate.

## **Section 2    Exclusive Rights**

County hereby agrees that so long as Developer is fulfilling the obligations of the Development Agreement (and all other associated and necessary documents), County shall not negotiate with any person or entity, other than Developer, regarding a LTLA, including the option for ground lease or space permit for the developed hangars, for the Term of this ENA. This prohibition does not apply to the temporary use of any areas of the Property which are not under development or are currently occupied and whose temporary use by County or another would not preclude Developer from fulfilling its obligations under this ENA.

## **Section 3    Consideration**

In consideration of County's agreement to negotiate exclusively with Developer pursuant to Section 2 herein, Developer shall pay County, within fifteen (15) business days after the Effective Date of this ENA, a non-refundable sum of Five Hundred Dollars (\$500.00).

## **Section 4    LTLA**

Developer agrees that it shall secure all required building permits and approvals within six (6) months following the date of the LTLA. Developer shall commence construction of all hangars within six (6) months from the date of execution of the LTLA. Construction will not begin prior to the developer obtaining all relevant permits and other authorizations (including FAA, County and all others that may be required) for the project. All construction activity must be completed with eighteen (18) months of the construction start date.

In the event a successful Proposer(s) does not sign a long-term lease with the County, within six (6) months of signing an ENA, the \$500 proposal deposit fee, shall be forfeited to the County.

Lease or space permit fee payments to the County will commence upon the execution date of the LTLA.

## **Section 5    FAA**

It is understood and agreed that FAA approval of certain elements of the Hangar Development may be required. In that regard, as soon as is reasonably practicable after the Effective Date of this ENA, the County's Airports Director, or his designee, and Developer shall commence consultation efforts with the FAA to facilitate FAA approval. Developer shall obtain all applicable FAA permits and approvals.

#### **Section 6 Lease Rates and Charges**

The determination of the parcel lease rental rates, charges and/or additional rents, will be established in accordance with the terms of an approved LTLA as set forth in the RFP guidelines.

#### **Section 7 Right of Entry**

During the term of this ENA, Developer and its employees, agents, consultants, and contractors shall have the right, upon reasonable notice to County, to enter upon the Property for the purpose of conducting necessary inspections, surveys, and examination of the Property as required by Developer in exercise of Developer's reasonable judgement. Developer's inspection, testing and examination, survey and review of the Property shall be at Developer's sole expense. Developer shall obtain County's advance consent in writing of any proposed physical testing of the Property in furtherance of its obligations contained herein, which consent shall not be unreasonably withheld or delayed. Developer shall be responsible for obtaining any/all permits required for physical testing, and all work performed on the Property shall be in compliance with applicable laws and regulations. Developer shall repair, restore and return the PROPERTY to its original condition after such physical testing is completed, at Developer's expense.

In amplification of the Indemnification section below, Developer, its officers, officials, employees, agents or volunteers, shall indemnify and hold harmless County, its officers, officials, employees, agents or volunteers from any claims, damages, or injuries resulting from its entry onto the property, including those incurred by individuals under contract with Developer.

#### **Section 8 Termination of ENA by Developer**

Developer shall have the right at any time during the term of this ENA, exercisable at its option by giving thirty (30) days written notice thereof to the County, to terminate this ENA if the Proposed Project proves to be impractical, uneconomical or otherwise unfeasible as determined by Developer in its sole discretion. If Developer exercises its option to terminate as set forth in this section, Developer (i) shall not be entitled to any compensation or other payment whatsoever by the County on account of such termination, (ii) shall offer to the County, at a reasonable cost to be determined by the Developer in Developer's sole discretion, copies of and rights to all plans, specifications, permits and studies prepared for or germane to the Proposed Project and the Property or any part thereof, and (iii) shall forfeit the \$500 deposit fee.

**Section 9 Termination of ENA by County**

County expressly reserves the right and option to terminate this ENA by thirty (30) days written notice to Developer if the Developer fails to fully observe and perform all of the terms, covenants, and conditions set forth in this ENA.

Upon termination of this ENA as set forth in this Section, this ENA shall: (i) become null and void; (ii) Developer shall have no rights to develop the Property or any part thereof; and (iii) Developer shall have no rights or interest whatsoever in or to the Property. In addition, Developer: (i) shall not be entitled to any compensation or other payment whatsoever by the County on account of such termination or for any improvements constructed by Developer on the Property (if any); and (ii) shall offer to the County, at a reasonable cost copies of and rights to all plans, specifications, permits and studies prepared for or germane to the Proposed Project and the Property or any part thereof.

**Section 10 Construction and Amendment**

This ENA constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior oral or written agreements, understandings, representations, and warranties between the Parties with respect to the subject matter hereof. No amendment or modification of the ENA or any attachment hereto shall be effective unless incorporated in a written instrument executed by the County and Developer.

**Section 11 Indemnification**

Nothing herein shall be construed as a limitation of Developer's liability, and Developer, its officers, officials, employees, and agents shall indemnify, defend, and hold harmless County and its officers, officials, employees, agents and volunteers from any and all liabilities, claims, demands, damages, losses and expenses (including, without limitation, defense costs and attorney fees of litigation) which result from the negligent act, willful misconduct, or error or omission of Developer, except such loss or damage which was caused by the sole negligence or willful misconduct of County or its officers, officials, employees, agents or volunteers.

**Section 12 Assignment**

Developer shall not sell, assign, convey or transfer in any manner, to any other person or entity, any right or obligation hereunder granted to Developer. Any such sale, assignment, conveyance or transfer would be a material breach of this Agreement and in addition to any and all remedies available in law and equity, entitle County to immediately terminate this Agreement.

**Section 13 Governing Law**

This ENA and the Parties' respective rights and obligations hereunder shall be governed and construed in accordance with the laws of the State of California without regard to conflicts of law, principles thereof, or of any other jurisdiction.

**Section 14**    Notices

All notices required or permitted under this ENA shall be given (i) by hand, recognized overnight courier, or by the United States Postal Service to the Parties as the addresses set forth below, effective upon receipt or refusal of delivery, or (ii) by facsimile (fax) transmission to the Parties at their fax numbers set forth below effective upon electronic confirmation of transmission by sender. The Parties may change the entity to receive notice or the address of that entity upon thirty (30) days' written notice to the other Party.

Address for Developer:

KOCH & KOCH, INC.  
P.O. Box 909  
Penn Valley, CA 95946

Address for the County:

Nevada County Airport Division  
13059 John Bauer Ave.  
Grass Valley, CA 95959

**Section 15**    Relationship of the Parties

Notwithstanding anything to the contrary contained herein, the relationship of County and Developer shall be solely that of property owner and prospective developer/tenant, respectively, and nothing contained herein shall be deemed to create a partnership or joint venture between them.

This ENA creates rights and duties only between County and Developer, and no other party, or third party, is intended to have or be deemed to have any rights under this ENA, except as expressly set forth herein. Developer shall not assign, transfer, mortgage, pledge, hypothecate, or encumber this ENS or any interest therein without the prior written consent of County, which may be withheld by County for any reason.

Developer specifically acknowledges that County shall not be responsible or held liable for any costs incurred by the Developer in relation to this ENA, regardless of the type or amount of cost(s) incurred.

**Section 16 County Approval Required**

Notwithstanding anything which may seem to the contrary, it is understood and agreed that any proposed LTLA or other binding agreement(s) contemplated in this ENA, must be reviewed, considered, and approved at a hearing before the Board of Supervisors of the County of Nevada. While the County Airports Director and/or staff may recommend approval of documents contemplated in this ENA, the County shall have the sole discretion to approve or disapprove any such documents.

**Section 17 Miscellaneous**

(a) Time of the Essence; Dates. Time is of the essence of this Agreement. In the event that any date specified in this Agreement falls on Saturday, Sunday or holiday (as defined in Section 6700 of the California Government Code) (each a “Non-Business Day”), such date shall be deemed to be the succeeding business day. For purposes of this Agreement, a “business day” shall mean a day other than a Non-Business Day.

(b) Further Assurances. The parties agree to cooperate with each other and execute any documents reasonably necessary to perform the intent and purpose of the Agreement.

(c) Addenda, Exhibits and Schedules. All addenda, exhibits and schedules referred to herein are, unless otherwise indicated, incorporated herein by this reference as though set forth herein in full.

(d) Severability. If any provision of this Agreement, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect.

(e) Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersede any and all prior agreements and understandings between the parties relating to the subject matter hereof.

IN WITNESS WHEREOF, County and Developer have executed this ENA as of the date first set forth above.

**THE COUNTY OF NEVADA**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**DEVELOPER**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form,

By: \_\_\_\_\_

County Counsel