



**BUENA PARK CITY COUNCIL  
SPECIAL MEETING  
FRIDAY, APRIL 30, 2021  
10:00 A.M.**

VIA ZOOM  
BUENA PARK, CALIFORNIA

**SPECIAL NOTICE REGARDING COVID-19**

On March 4, 2020, Governor Newsom proclaimed a State of Emergency in California as a result of COVID-19. The Governor issued Executive Order N-25-20, which allows Council Members to attend City Council meetings telephonically. Please be advised that some, or all, of the City of Buena Park Council Members and staff may attend this meeting telephonically.

This meeting will also allow public attendance via Zoom:

Meeting ID: 921 1872 5304

Passcode: 679499

Zoom link: <https://zoom.us/j/92118725304?pwd=THF4MXZFWEFMamVBZVdjL0FVSHNOQT09>

Members of the public may also submit their comments and questions in writing, for City Council consideration, by sending them to the City Clerk at [comments@buenapark.com](mailto:comments@buenapark.com). **Please submit all comments and questions by 9:00 a.m., on Friday, April 30, 2021.** All comments and questions will be read during the meeting.

Please contact the City Clerk's Office at (714) 562-3750, for any questions.

**CALL TO ORDER**

**10:00 A.M.**

**ROLL CALL**

**COUNCIL MEMBER ARTHUR C. BROWN  
COUNCIL MEMBER SUSAN SONNE  
COUNCIL MEMBER ELIZABETH A. SWIFT  
MAYOR PRO TEM SUNNY YOUNGSUN PARK  
MAYOR CONNOR TRAUT**

*Our core values are excellence, communication, teamwork, commitment, respect, and integrity.*

Please turn off all cell phones when the meeting is in session.

**ORAL COMMUNICATIONS ON SPECIAL MEETING ITEMS**

This is the portion of the meeting set aside to invite public comments regarding any item on the Special Meeting Agenda only. Public comments are limited to no more than three minutes each. Those wishing to speak are asked to complete a speaker identification form located at the council chamber entrance and place it in the box near the speaker's lectern.

**CLOSED SESSION (1 - 2)****1. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

Pursuant to Gov. Code Section 54956.9(d)(1)

Name of Case: *City of Buena Park vs. Butterfly Pavilion, LLC*

Case No.: 30-2019-01059680-CU-BC-CJC

**2. CONFERENCE WITH REAL PROPERTY NEGOTIATOR**

Pursuant to Gov. Code Section 54956.9

Property: 7711-7733 Beach Blvd., Buena Park, CA

ORANGE COUNTY TAX ASSESSOR PARCEL NUMBERS 136-203-40,

136-211-57 & 64

Negotiating Parties: Aaron France, City Manager / Butterfly Pavillion, LLC / Proforma 77 Corporation

Under Negotiation: Terms, and Conditions

**NEW BUSINESS (3)****3. CONSIDERATION OF APPROVING THE EXECUTION OF AN EXTENSION AGREEMENT BETWEEN THE CITY AND BUTTERFLY PAVILLION, LLC, AND CONSIDERATING THE APPROVAL OF A PRELIMINARY REAL ESTATE AGREEMENT BY AND AMONG THE CITY, BUTTERFLY PAVILLION, LLC, AND PROFORMA 77 CORPORATION CONCERNING THE PROPERTY LOCATED AT 7711-7733 BEACH BOULEVARD IN THE CITY OF BUENA PARK**

Purpose: The City Council will consider approving the execution of an Extension Agreement with Butterfly Pavillion LLC (under new management and control), together with a Preliminary Real Estate Agreement with both Butterfly Pavillion and Proforma 77 Corporation (the current owner of the Property), which together detail the preliminary terms, conditions, and schedule for the purchase and development of the Property by Butterfly Pavillion, subject to various future discretionary approvals of the City Council, the City's reservation of rights, and performance obligations of the parties.

Recommended Action: That the City Council review and consider the proposed terms and conditions of the Extension Agreement and Preliminary Real Estate Agreement, and either: 1) approve the Agreements in the form substantially presented, and authorize the City Manager to execute the Agreements in a form approved by the City Attorney; 2) approve the Agreements subject to changes directed by the City Council, and authorize the City Manager to execute the Agreements subject to the City Attorney making the

directed changes; 3) decline to execute the Extension Agreement and decline approval of the Preliminary Real Estate Agreement; or 4) provide alternative direction to staff.

## ADJOURNMENT

This agenda contains a brief general description of each item to be considered. Supporting documents are available for review and copying at City Hall or at [www.buenapark.com](http://www.buenapark.com). Video streaming of the meeting is available on the City's website. This governing body is prohibited from discussing or taking action on any item which is not included in this agenda; however, may ask clarifying questions, ask staff to follow-up, or provide other direction. The order of business as it appears on this agenda may be modified by the governing body.



In compliance with the Americans with Disabilities Act, if you need accommodations to participate in this meeting, contact the City Clerk's Office at (714) 562-3750 or the California Relay Service at 711. Notification at least 48 hours prior to the meeting will enable the City to make arrangements to assure accessibility.



If you would like to participate in any matter of business on the agenda and would like translation in Chinese, Korean, Spanish, Tagalog, or Vietnamese, please contact the **City Clerk's Office at (714) 562-3750 48-hours prior to the meeting**. Residents requiring translation during Oral Communications are encouraged to bring interpreters.

시의제 목록에 있는 정식 안건에 대해 의견을 발표하고 싶으신 경우, 중국어, 한국어, 스페인어, 타갈로에 대한 통역사가 필요하시면 시미팅 48시간전 시서기 오피스로 (714-562-3750) 연락하시면 됩니다. 정식안건이 아닌 주민 발언시간에 발표하실 경우, 본인의 통역사를 직접 모시고 오시면 감사하겠습니다.

Si le gustaría participar en audiencia pública o cualquier asunto de negocios programado en la agenda y necesita traducción en chino, coreano, español, tagalo o vietnamita, comuníquese con la Oficina del Secretario de la Ciudad, 48 horas antes de la reunión al (714) 562-3750. Para participar en los comentarios públicos sobre cualquier otro asunto dentro de la jurisdicción del ayuntamiento, se le recomienda que traiga un intérprete.

如果您想参与议程上的任何事务，并希望翻译成中文，韩文，西班牙文，他加禄文或越南文，请联系市政文员办公室，网址为（714）562-3750在会议开始前48小时。鼓励在口头交流中需要翻译的居民带同传译员。

Kung nais ninyong lumahok sa anumang usapin ng negosyo sa agenda at kailangan ang pagsasalin sa wikang Tsino, Koreano, Espanyol, Tagalog, o Vietnamese, mangyaring makipag-ugnay sa Opisina ng Clerk ng Lungsod sa (714) 562-3750 48-oras bago ang pulong. Ang mga residente na nangangailangan ng pagsasalin sa Oral Communications ay hinikayat na magdala ng mga tagasalin.

Nếu bạn muốn tham gia vào bất kỳ vấn đề kinh doanh nào trong chương trình nghị sự và muốn dịch sang tiếng Trung, tiếng Hàn, tiếng Tây Ban Nha, tiếng Tagalog hoặc tiếng Việt, vui lòng liên hệ với Văn phòng Thư ký Thành phố tại (714) 562-3750 48 giờ trước cuộc họp. Cư dân yêu cầu dịch thuật trong Giao tiếp bằng miệng được khuyến khích mang theo thông dịch viên.

I, Lucie Cazares, CMC, City of Buena Park, do hereby certify, under penalty of perjury under the laws of the State of California that a full and correct copy of this agenda was posted pursuant to Government Code Section 54950 et. seq., at the following locations: Buena Park City Hall, 6650 Beach Blvd., the Buena Park Library, 7510 La Palma Avenue, and uploaded to the City of Buena Park website [www.buenapark.com](http://www.buenapark.com).

Date Posted: April 29, 2021

Lucie Cazares, CMC, Assistant City Clerk

BUENA PARK CITY COUNCIL   
BUENA PARK REDEVELOPMENT AGENCY   
STUDY SESSION  EXECUTIVE SESSION   
SUMMARY SHEET

MEETING DATE: April 30, 2021

TOPIC: CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

FROM: Christopher G. Cardinale, City Attorney

EXECUTIVE SESSION: INFORMATION REQUIRED BY THE BROWN ACT:

- |                                                                              |                                                                                      |
|------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
| <input type="checkbox"/> License Permit Determination 54956.7                | <input type="checkbox"/> Conference with Real Property Negotiator 54956.8            |
| <input type="checkbox"/> Conf w/Legal Counsel-Existing Litigation 54956.9(a) | <input type="checkbox"/> Conf w/Legal-Anticipated Lit. (exposure to) 54956.9(b)(1)   |
| <input type="checkbox"/> Liability Claims 54956.95                           | <input type="checkbox"/> Conf w/ Legal-Anticipation Lit. (city initiated) 54956.9(c) |
| <input type="checkbox"/> Worker' Compensation Claims 54956.95                | <input type="checkbox"/> Threat to Public Services or Facilities 54957               |
| <input type="checkbox"/> Public Employee Appointment 54957                   | <input type="checkbox"/> Public Employment 54957                                     |
| <input type="checkbox"/> Public Employee Performance Evaluation 54957        | <input type="checkbox"/> Public Employee Discipline/Dismissal/Release 54957          |
| <input type="checkbox"/> Conference with Labor Negotiator 54957.6            | <input type="checkbox"/> Report Involving Trade Secret                               |
| <input type="checkbox"/> Case Review/Planning 54957.8                        | <input type="checkbox"/> Hearings                                                    |

Pursuant to Government Code Section 54956.9 (d)(1) (example: 54956.8, 54957.6)

Applicant: \_\_\_\_\_

Property: \_\_\_\_\_

Negotiating Parties: \_\_\_\_\_

Under Negotiation: \_\_\_\_\_

Name of Case: City of Buena Park vs. Butterfly Pavilion, LLC

Title (for employment items): Case No.: 30-2019-01059680-CU-BC-CJC

Employee Organization (labor items): \_\_\_\_\_

Subject Matter: \_\_\_\_\_

Other: \_\_\_\_\_

BACK-UP MATERIAL?  YES  NO

REQUESTED OF COUNCIL/AGENCY BOARD:

Receive report and provide direction.

BUENA PARK CITY COUNCIL   
BUENA PARK REDEVELOPMENT AGENCY   
STUDY SESSION  EXECUTIVE SESSION   
SUMMARY SHEET

MEETING DATE: April 30, 2021

TOPIC: CONFERENCE WITH REAL PROPERTY NEGOTIATOR

FROM: Aaron France, City Manager

EXECUTIVE SESSION: INFORMATION REQUIRED BY THE BROWN ACT:

- |                                                                              |                                                                                      |
|------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
| <input type="checkbox"/> License Permit Determination 54956.7                | <input checked="" type="checkbox"/> Conference with Real Property Negotiator 54956.8 |
| <input type="checkbox"/> Conf w/Legal Counsel-Existing Litigation 54956.9(a) | <input type="checkbox"/> Conf w/Legal-Anticipated Lit. (exposure to) 54956.9(b)(1)   |
| <input type="checkbox"/> Liability Claims 54956.95                           | <input type="checkbox"/> Conf w/ Legal-Anticipation Lit. (city initiated) 54956.9(c) |
| <input type="checkbox"/> Worker' Compensation Claims 54956.95                | <input type="checkbox"/> Threat to Public Services or Facilities 54957               |
| <input type="checkbox"/> Public Employee Appointment 54957                   | <input type="checkbox"/> Public Employment 54957                                     |
| <input type="checkbox"/> Public Employee Performance Evaluation 54957        | <input type="checkbox"/> Public Employee Discipline/Dismissal/Release 54957          |
| <input type="checkbox"/> Conference with Labor Negotiator 54957.6            | <input type="checkbox"/> Report Involving Trade Secret                               |
| <input type="checkbox"/> Case Review/Planning 54957.8                        | <input type="checkbox"/> Hearings                                                    |

Pursuant to Government Code Section 54956.8 (example: 54956.8, 54957.6)

Applicant: \_\_\_\_\_

Property: 7711-7733 Beach Blvd., Buena Park, CA

Negotiating Parties: Aaron France, City Manager / Butterfly Pavillion, LLC / Proforma 77 Corporation

Under Negotiation: Terms, and Conditions

Name of Case: \_\_\_\_\_

Title (for employment items): \_\_\_\_\_

Employee Organization (labor items): \_\_\_\_\_

Subject Matter: \_\_\_\_\_

Other: \_\_\_\_\_

BACK-UP MATERIAL?  YES  NO

REQUESTED OF COUNCIL/AGENCY BOARD:

Receive report and provide direction.



---

## AGENDA REPORT TO CITY COUNCIL

MEETING DATE: April 29, 2021

TO: The Mayor and City Council

TITLE: **CONSIDERATION OF APPROVING THE EXECUTION OF AN EXTENSION AGREEMENT BETWEEN THE CITY AND BUTTERFLY PAVILLION LLC, AND CONSIDERATING THE APPROVAL OF A PRELIMINARY REAL ESTATE AGREEMENT BY AND AMONG THE CITY, BUTTERFLY PAVILLION LLC, AND PROFORMA 77 CORPORATION CONCERNING THE PROPERTY LOCATED AT 7711-7733 BEACH BOULEVARD IN THE CITY OF BUENA PARK**

RECOMMENDED ACTION: That the City Council review and consider the proposed terms and conditions of an Extension Agreement and Preliminary Real Estate Agreement for the Properties, and either: 1) approve the Agreements in the form substantially presented, and authorize the City Manager to execute the Agreements in a form approved by the City Attorney; 2) approve the Agreements subject to changes directed by the City Council, and authorize the City Manager to execute the Agreements subject to the City Attorney making the directed changes; 3) decline to execute the Extension Agreement and decline approval of the Preliminary Real Estate Agreement; or 4) provide alternative direction to staff.

PREVIOUS: As detailed in the “Background” section of this report, the City Council has taken various actions relating to the Properties over the past several years.

PURPOSE: The City Council will consider approving the execution of an Extension Agreement with Butterfly Pavillion LLC (under new management and control), together with a Preliminary Real Estate Agreement with both new Butterfly Pavillion and Proforma 77 Corporation (the current owner of the Property), which jointly detail the preliminary terms, conditions, and schedule for the purchase and development of the Properties by the new Butterfly Pavillion, subject to various future discretionary approvals of the City Council, the City’s reservation of rights, and performance obligations of the parties.

DISCUSSION:

A. Background

The Properties have long been central to the City's efforts to redevelop the City's "Entertainment Corridor" along Beach Boulevard. The Properties are located in the heart of the City's "Entertainment Corridor Specific Plan" ("Specific Plan"), which requires their use for a large-scale development that is "theatrical and glamorous" in nature and "stage set" in character.

The City Council's effort to revitalize and facilitate development of the Properties dates to at least May 2007, when the Buena Park Redevelopment Agency ("BP RDA") purchased the former "Movieland Wax Museum" site with an eye towards its private development. However, the City's efforts were cut-short when the BP RDA was dissolved by operation of State law in February 2012, and the City was directed to expeditiously liquidate the BP RDA's real property estate assets for subsequent development and use consistent with applicable land use plans.

To that end in March 2015, the "Successor Agency" to the BP RDA agreed to sell the Properties to developer "Butterfly Pavillion LLC" ("Developer"), in exchange for Developer's promise to construct and subsequently operate a large entertainment and educational attraction on the Properties. The "Project" approved by the City was to include a development between 38,000 to 42,000 square feet, and consist of a large live butterfly / hummingbird rainforest atrium, small aquarium, 3D theater, education rooms, party rooms, a café, retail shops, and restaurant space ("Project").

In October 2015, and as a condition to Developer's purchase of the Properties, the City and Developer entered into "Development Agreement DA16-005" ("Development Agreement") which specifically defined the Project and construction schedule.

Unfortunately, by the end of 2018, Developer had fallen significantly behind schedule on the Project, which ultimately lead to the City initiating litigation to enforce the Development Agreement and related rights. This lawsuit is captioned *City of Buena Park, et al v. Butterfly Pavillion, LLC, et al* (Case No.: 30-2019-01059680-CU-BC-CJC) and remains pending Orange County Superior Court, and includes various cross-complaints and related claims filed by Developer and others with claimed security interests in the Properties (the "Action").

Subsequently on September 3, 2019, the Developer lost title to the Properties via non-judicial foreclosure sale resulting from Developer's default on a secured bridge loan, and the Properties were acquired at auction by Proforma 77 ("Proforma 77") – an assignee of GF Capital which at the time had a third-position security interest in the Properties.

As of the date of this report, and at all times since the foreclosure sale, Proforma 77 has owned the Properties; subject to the continuing right and obligation to use and develop the Properties for the Project.

In the nearly 18-months since Proforma 77 acquired the Properties no affirmative construction progress has been made, and the Properties' condition and initial improvements installed by the Developer have continued to deteriorate. In March 2020, five (5) months after Proforma 77 acquired the Properties, the City issued a "notice of default" under the Development Agreement demanding Proforma 77 immediately commence efforts to develop the Properties. As of the date of this report, no construction progress has been made but Proforma 77 has repeatedly represented that it is making good faith efforts to identify a developer to do so.

Given the Properties' critical importance to the success of the Entertainment Corridor, and the City and public's continuing interest in seeing the Properties developed, on April 13, 2021, the City Council adopted a "Resolution of Public Necessity" pursuant to California's Eminent Domain Law (Gov't Code § 1230.010 *et seq.*) ("Resolution" attached as Attachment B). The Resolution sets forth facts and findings setting forth the public purpose, need and justification for the City's condemnation of the Properties for the public uses stated in the Resolution, and the City will imminently be filing a complaint in eminent domain seeking to acquire the Property from Proforma in exchange for the payment of just compensation (the "Condemnation Case").

#### B. Extension Agreement and Proposed Preliminary Real Estate Agreement

In early 2021, Proforma 77 advised the City that it had identified a third-party with an interest in acquiring the Properties and subsequently completing development of the Project. Since that time, staff has been actively meeting and exploring the viability of this transaction as means of potentially settling or resolving the Action and avoiding the need for the Condemnation Case.

Despite staff's best efforts, including the retention of consultants to aid its review, as of the date of this report the due diligence inquiry into this third-party remains outstanding and staff cannot independently validate their capacity. However, the parties have requested the City Council nonetheless consider a transaction that protects against these uncertainties.

As explained to the City, the proposed transaction would be structured as follows:

- Developer would be purchased and acquired by new ownership, and new members and managers would be installed to manage the development entity;
- Former owners/managers of the Developer would release / disclaim any interest in the Project;
- The "New Developer" would immediately commence due diligence activities on the Properties to identify the viability of current improvements and, in concert with the City, determine the best course forward with the site;
- The New Developer would be financed entirely by an established foreign investment entity that would retain experienced and local project managers, design professionals, contractors, and operators; and
- The New Developer would open escrow on the purchase of the Properties from Proforma, but the transaction would not close unless and until various conditions to close escrow have been completed to the City's satisfaction.

Based on representations from the investment group and Proforma 77, immediate approval of the proposed transaction from the City is required for the proposed financing to be released for use domestically in the United States.



Extension Agreement.            To evidence the City's preliminary consent to the transaction, Proforma 77 and the New Developer have requested the City approve an Extension Agreement attached to this report (Attachment A). The Extension Agreement details the steps and actions that will be taken by the New Developer over the next 12 months in furtherance of the Project, and represents that the Developer will complete and operate the Project (or an alternative concept approved in the City Council's discretion) within 36 months. The Developer has represented that, due to restrictions associated with its proposed financing, the form and terms of the Extension Agreement are not negotiable and may not be altered.

In connection with ongoing efforts to settle and resolve the Action and initiating the Condemnation Case, the Extension Agreement concept was considered by the City Council in closed session on April 27, 2021, and the City Council authorized approval of the Extension Agreement conditioned upon the City, Proforma, and the New Developer entering into a second "Preliminary Real Estate Agreement" ("Preliminary Agreement") that clarifies, supplements, and amends the Extension Agreement to include terms that adequately protect the City's rights and interests.

The City Council directed staff to work with the parties on the terms and conditions of a Preliminary Agreement, and given the New Developer's timing restrictions, scheduled a special meeting at 10:00 a.m. on Friday, April 30, 2021, to consider the Preliminary Agreement and ratify / approve execution of the Extension Agreement.

Preliminary Agreement.            Staff has worked with the Parties over the last several days towards as directed, and as of the writing of this report the Parties are continuing to negotiate and finalize the Preliminary Agreement with the Parties. This report will be supplemented and the Preliminary Agreement published when negotiations among the Parties are complete.

Based on the status of discussions and the City Council's direction, staff anticipates the Preliminary Agreement to provide or require as follows:

- The transaction will be conditioned upon and subject to the New Developer acquiring all rights, interest, and ownership in the original Developer;
- The New Developer providing additional due diligence and project information to the City to validate the capacity and viability of the proposal;
- The New Developer will settle and resolve the pending Action with the City and Proforma 77, thereby ending pending litigation, and former members / owners of Developer will release the City;
- Secured liens and claims recorded on the Properties associated with the failed development (totaling several million) would be removed from title;
- The New Developer will complete due diligence and project feasibility studies in concert with and to the reasonable satisfaction of the City;
- The New Developer, in cooperation with the City, will design or redesign the proposed development, and a new or amended Development Agreement would be considered by the Planning Commission and City Council; and
- The New Developer will be required to commence and complete construction within a specific period of time (anticipated to be 36 months).

The Preliminary Agreement is also anticipated to have a relatively short term (approximately 3 to 4 months), during which time the New Developer and Proforma 77 would be required to complete several tasks to demonstrate good faith and capacity, and the Parties would have to enter into a three (3)-party Purchase and Sale Agreement for the complete transaction. If either party breaches the Preliminary Agreement, or it expires without a Purchase & Sale Agreement in place, then both the Preliminary Agreement and the Extension Agreement would be subject to termination by the City without recourse to the other parties.

Finally, critically to the City's willingness to enter into the Extension Agreement and Preliminary Agreement is the agreement and understanding from both the New Developer and Proforma 77 that the Agreements have no impact and do not restrict or otherwise waive the City's right to continue to pursue the Action or acquisition of the Properties in the Condemnation Case. Staff anticipates the Preliminary Agreement including language that makes this expressly clear. The Agreements are in furtherance of the Parties' efforts to facilitate settlement and resolution of the Action, but do not represent or constitute the City's approval of the proposed transaction or release of any legal rights.

If the City Council approves the Preliminary Agreement, the Extension Agreement would also become effective. City staff would then work with the Parties to monitor and perform obligations under those Agreements, while simultaneously advancing the City's rights in the Action and Condemnation Case. If the transaction among the Parties materializes, both the Action and Condemnation Case would be settled and resolved.

The proposed Preliminary Agreement will be circulated under separate cover as soon as it complete, and staff will provide additional information and a presentation during the special meeting.

BUDGET IMPACT: There is no direct budget impact associated with this matter.

Prepared by: Christopher G. Cardinale, City Attorney

Approved:     Aaron France, City Manager

Presented by: Christopher G. Cardinale, City Attorney

**ATTACHMENTS:**

- 1) Extension Agreement
- 2) Resolution of Necessity

**EXTENSION AGREEMENT BETWEEN  
CITY OF BUENA PARK  
AND  
BUTTERFLY PAVILLION, LLC**

This Extension Agreement (“Agreement”) related to the Butterfly Palladium Project in the City of Buena Park (the “Project” as defined further below), is made by and between the City of Buena Park (“City”), a municipal corporation, and Butterfly Pavillion, LLC, a California limited liability company (“Developer”), hereinafter jointly referred to as the (“Parties”), and shall be effective April \_\_\_\_, 2021 (“Effective Date”).

**RECITALS**

WHEREAS, the land entitlement process for the Project in its original conception was initially completed in 2016 and allowed for an entertainment venue consisting of a butterfly experience, theater, and restaurant, among other things, involving those certain parcels of real property located at 7711-7733 Beach Boulevard, Buena Park, California (“Property”) as detailed in that certain Development Agreement No. DA16-005 between the City of Buena Park and Butterfly Pavillion, LLC (“Development Agreement”), as such was recorded on the Property as of December 12, 2016, as Instrument No. 2016000655715 in the Official Records of the County of Orange, California; and

WHEREAS, the Property is currently owned by Proforma<sup>77</sup> Corporation, a California corporation (“Proforma”), and is located within the Theater District of the Beach Boulevard Entertainment Corridor that incorporates major entertainment attractions of relatively large size as described in more detail in the Buena Park Entertainment Corridor Specific Plan (“ECSP”); and

WHEREAS, the Project became the subject of litigation involving the Parties (*Buena Park Successor Agency et al. v. Butterfly Pavillion, LLC*, Orange County Superior Court Case No. 30-2019-01059680-CU-BC-CJC, hereinafter the “Action”); and

WHEREAS, the Developer shall be acquired in its entirety by a third party that has made representations to the City that it has the financial capacity and professional experience, necessary for the Project, that intends, and is fully prepared to take control of the Property and thereafter expeditiously complete development of the Project, or a substantially similar concept to be determined in cooperation with the City as described below and to commence operating the same within thirty (36) months of execution of this Agreement; and

WHEREAS, any former members of Developer, managing or otherwise, and each of them, shall be replaced by new ownership, and going forward shall consist entirely of individuals who have not previously had dealings with the City related to the Project or Property; and

WHEREAS, the City has a continuing interest in seeing the Property developed and subsequently operated in the manner substantially described in the Development Agreement and in a manner consistent with applicable land use regulations, including without limitation the ECSP (“Land Use Regulations”); and

WHEREAS, in the context of real property negotiations and settlement discussions, the Parties desire to provide an extension period (“Extension”) to allow Developer to meet certain conditions and comply with the process required by California law and the City’s Municipal and Zoning Codes for development the Property consistent with the Land Use Regulations at the earliest practical date but not later than the conclusion of the Extension (“Transaction”).

**NOW, THEREFORE,** in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, the parties hereby agree as follows:

**1. TERM**

Unless terminated earlier by agreement of the Parties, as set forth elsewhere herein, the obligations and privileges contained in this Agreement shall be in effect for a period of twelve (12) months commencing upon the Effective Date hereof, or until replaced or superseded by or until the effective date of another approved agreement that continues beyond this Agreement, whichever occurs first in time ("Term").

**2. DUTIES OF DEVELOPER/CONDITIONS TO BE COMPLETED DURING EXTENSION TERM**

2.1 Developer shall be acquired in its entirety, and new ownership shall replace all prior members with new members of its choosing with no prior affiliation to the former members, the Project, or the Property, and provide proof of such transaction to the City’s satisfaction, which shall not be unreasonably withheld.

2.2 Developer shall obtain control of the Property, provided that prior to any close of escrow, Developer shall ensure the Property is transferred with clear title, and shall satisfy all conditions of close and material terms to the City’s satisfaction as stated in the Preliminary Conditions.

2.3 Developer shall facilitate resolution of the Action as to any causes of action existing between the City, Developer, and/or Owner.

2.4 During the Term, Developer will:

2.4.1 The Developer shall provide an equity commitment acceptable to the City in a manner specifically identifying the sources of all such equity financing to be used by Developer to finance the development of the Proposed Project.

2.4.2 Provide additional information about the Development Team as required by the City. For purposes of this Agreement, Developer has proposed Bob Maxwell of RMM Construction Management Services, Herman Construction Group, and LPA Design Studios as the development team (“Development Team”).

2.4.3 Obtain the rights to use and/or purchase the original architectural plans for the Project, or otherwise cause to be prepared original architectural plans.

2.4.4 Conduct a forensic study of the Property and Project as it currently exists, including but not limited to the physical structures, purchased materials, and status of any outstanding items previously purchased, and provide to City a report regarding the viability of the existing structure and plans.

2.4.5 Pending the results of the forensic study and review of the economic feasibility of the Project, including any modifications, to the Parties’ mutual satisfaction, Developer will provide the City with a revised Site Plan and basic architectural renderings.

2.4.6 Incorporate the City’s vision for its Entertainment Corridor Specific Plan as stated in the ECSP to finalize the scope and overall use of the Property, , and submit the same to the City in the form of an application for a revised or amended version of the Development Agreement in accordance with Government Code sections 65864-65869.5, the requirements of the City’s Municipal and Zoning Codes, and other applicable laws.

### **3. MUTUAL CONFIDENTIALITY**

To the extent permitted by applicable law, the Parties shall maintain all information concerning this Agreement and any pending or subsequent collaboration between the Parties as confidential, disclosing information only to those individuals and representatives as designated by the other Party, provided that such individuals acknowledge and agree to maintain the confidentiality of such information.

### **4. MISCELLANEOUS PROVISIONS**

4.1 Reservation of Rights. This Agreement shall not constitute a waiver, restriction, or release of the City’s rights.

4.2 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California. Any action brought by either Party in connection with this Agreement shall be commenced and maintained in any proper jurisdiction located in Orange County, California.

4.3 Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes any and all prior agreements and understandings between the Parties. There are no agreements or understandings between

the Parties and no representations by either Party to the other as an inducement to enter into this Agreement.

4.4 Assignment. This Agreement shall not be assigned by the Developer to any person or entity without the express written consent of the City.

4.5 Counterparts. This Agreement may be executed in counterparts, each of which when so executed shall be deemed an original, and all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives effective as of the Effective Date.

**Butterfly Pavillion, LLC**

**CITY OF BUENA PARK**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Name:  
Title:  
#

By: \_\_\_\_\_  
Name:  
Title:

RESOLUTION NO. 14300

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BUENA PARK DECLARING THAT THE FEE SIMPLE INTEREST IN THE REAL PROPERTY LOCATED AT 7711-7733 BEACH BOULEVARD, FURTHER IDENTIFIED AS ORANGE COUNTY TAX ASSESSOR PARCEL NUMBERS 136-203-40, 136-211-57 & 64 IS NECESSARY FOR PUBLIC PURPOSES AND AUTHORIZING THE ACQUISITION THEREOF, FOR PUBLIC HEALTH, SAFETY AND WELFARE PURPOSES IN A MANNER CONSISTENT WITH THE LAND USE AND COMMUNITY DESIGN ELEMENT AND THE ECONOMIC DEVELOPMENT ELEMENT OF THE CITY'S GENERAL PLAN AS WELL AS THE REDEVELOPMENT PLAN FOR THE CONSOLIDATED PROJECT AREA

THE CITY COUNCIL OF THE CITY OF BUENA PARK HEREBY FINDS AND RESOLVES AS FOLLOWS:

**SECTION 1.** The City of Buena Park is a municipal corporation in the County of Orange, State of California.

**SECTION 2.** The real property interest described in Section 3 of this Resolution is to be taken for a public use, namely for public health, safety and welfare purposes in a manner consistent with the Land Use and Community Design Element and the Economic Development Element of the City's General Plan, the Redevelopment Plan for the Consolidated Project Area, and all purposes necessary and convenient thereto, ("Project"), pursuant to the authority conferred upon the City of Buena Park to acquire real property by eminent domain by California Constitution, Article 1, Section 19, California Government Code Sections 37350, 37350.5, 37351, 40404, and California Code of Civil Procedure Sections 1230.010 *et seq.* (Eminent Domain Law), including, but not limited to Sections 1240.010, 1240.020, 1240.110, 1240.120 and 1245.250, City of Buena Park Municipal Code, Title 19, Chapter 19.204, Section 19.504.020(C), Chapter 19.104, Section 19.104.030, *Bauer v. County of Ventura* (1955) 45 Cal.2d 276, 284, *Fallbrook Irrigation District v. Bradley* (1896) 164 US 112, 161-162, *Barnes v. New Haven* (1953) 140 Conn. 8, 15, *Roe v. Kervick* (1964) 42 N.J. 191, 207, *Berman v. Parker* (1954) 348 U.S. 26, and other provisions of law.

**SECTION 3.** The City seeks to acquire the fee simple interest in the real property located at 7711-7733 Beach Boulevard in the City of Buena Park subject only to certain public utility easements of record, and further identified as Orange County Tax Assessor Parcel Numbers 136-203-40, 136-211-57 & 64 ("Subject Property Interest") for public use, namely for public health, safety and welfare purposes in a manner consistent with the Land Use and Community Design Element and the Economic Development Element of the City's General Plan, the Entertainment Corridor Specific Plan, and the Redevelopment Plan for the Consolidated Project Area, and all uses necessary or convenient thereto. The legal description of the Subject Property Interest is attached as Exhibit "A" to this Resolution. The Subject Property Interest is depicted on the diagram attached as Exhibit "B" to this Resolution. The above-referenced exhibits are incorporated herein by this reference. The Subject Property Interest is required for the Project, which is a public use.

**SECTION 4.** The City seeks to acquire the Subject Property for a public use, namely to protect and enhance the public health, safety, and welfare by eliminating existing obstacles to the productive growth and development of underutilized areas of the City in a manner that is consistent with the provisions of the Land Use and Community Design Element and the Economic Development Element of the City's General Plan, the Entertainment Corridor Specific Plan, and the Redevelopment Plan for the Consolidated Project Area, and all uses necessary and convenient thereto. The Proposed Project will ensure that the City can plan for the productive use of the Subject Property and the area surrounding it in a manner that will benefit its citizens consistent with the goals of the City's General Plan, Entertainment Corridor Specific Plan, and Redevelopment Plan.

Each city and county in California must prepare a comprehensive, long term General Plan to guide its future. The General Plan is required to plan for the physical development of the county or city and any land outside its boundaries which bears relation to its planning. (Government Code section 65300). The General Plan expresses the specific community's development goals and embodies public policy relative to the distribution of future land uses, both public and private. A comprehensive General Plan provides a jurisdiction with a consistent framework for land use decision-making.

The Land Use and Community Design Element of the City's General Plan provides the primary policy foundation for the entire General Plan, as it establishes the desired vision for future land use decisions in the City. The Land Use and Community Design Element directs development patterns by identifying and describing, through diagrams and text, the location and distribution of existing and future land uses throughout the City. The General Plan Land Use map describes land use designations and identifies the geographic distribution of land uses that will help guide future growth and change consistent with the City's vision. The Land Use and Community Design Element articulates City goals and policies that address community character and identity, as well as future growth and change, preservation, enhancement of existing resources and community safety.

The Land Use and Community Design Element identifies the Beach Boulevard Entertainment Corridor Specific Plan (ECSP 2019). The Beach Boulevard Entertainment Corridor Specific Plan, Area B2(a), or the Theater District, encourages uses such as lodging, restaurants, museums, cultural, gifts, books, music and dance entertainment. Land uses within the Theater District are oriented toward large entertainment facilities capitalizing on freeway exposure, sharing prominence with Knott's Berry Farm.

The City's Municipal Code codifies the uses allowed within the City. Title 19, Chapter 19.104, Section 19.104.030 of the Municipal Code states that, "The purpose of this Title 19 is to implement the General Plan of the City of Buena Park and to ensure that the growth and development of the City is attractive, efficient and humane, and that the health, safety, prosperity, enjoyment and general welfare of those who reside, work or visit in the City is served to the optimum degree." The Municipal Code also describes the Specific Plan zones. Title 19, Chapter 19.504, Section 19.504.020(C) states that the Entertainment Corridor Specific Plan was designed, "To provide for the continued development, preservation and enhancement of integrated major tourist entertainment attractions and visitor-serving commercial uses in attractive settings that are unique and distinctive from the conventional use pattern of independent and unrelated businesses."

The Subject Property is also located within the Consolidated Redevelopment Plan for the Consolidated Project Area of the former Buena Park Redevelopment Agency ("RDA"), and prior to its sale to the original developer was owned by the former RDA. After the California Legislature's dissolution of the State's redevelopment agencies in 2012, all land use-related plans and functions of the Buena Park RDA were transferred to the City of Buena Park, including the authority and responsibility for managing and enforcing the Consolidated Redevelopment Plan.



(Health & Saf. Code § 34173(i). Among other things, the Redevelopment Plan: includes land use restrictions and mechanisms for enforcing them; requires private property owners within the Consolidated Project Area to participate in the development and use of their property in a manner consistent with the Entertainment Corridor Specific Plan; requires purchasers of property to commence development work within a reasonable period of time, and expressly precludes private parties from engaging in land speculation or excess profitmaking in undeveloped land. The Redevelopment Plan includes mechanisms for enforcement and remediating violations of its provisions, which specifically include the re-entry of real property and acquisition by the RDA for subsequent sale or lease for rehabilitation and development accordance with land use controls.

Presently, the Subject Property is partially improved with some masonry wall, foundations, footings and interior structures that were part of the Butterfly Palladium planned development ("Development"). While construction of the Development was underway, the property lapsed into foreclosure, and title to the property transferred to the current property owner. Also included on the property is a vacant 3,000 square foot retail building located at the southeast corner of the site. The current property owner was leasing the parking lot improvements encircling the footprint of the Development to Amazon for delivery truck parking. The Subject Property has remained primarily vacant since 2016 and is currently underutilized.

The Land Use and Community Design Element of the City's General Plan describes the Entertainment Corridor Focus Area in section 2.7.4. It states, in part, "The Entertainment Corridor Focus Area is the primary tourist-oriented area within the City and includes Knott's Berry Farm and Soak City, Medieval Times, Pirates Dinner Adventure, and the Buena Park Mall. The Entertainment Corridor Focus Area is generally located along Beach Boulevard and is the major City gateway from the south. Expanding tourism is a priority for the City." It goes on to state, in part, "With uses that attract both residents and visitors, the Entertainment Corridor is considered the 'heart' of the City." Thus, the Subject Property is squarely within this important Entertainment Corridor.

The City of Buena Park has also adopted an Economic Development Element as part of its General Plan. The City has chosen to include an Economic Development Element to address the economic health of the City, to establish goals and policies that encourage economic growth and also maintain and improve the quality of life in the community. The Economic Development Element sets the framework for a balanced and stable economic base in Buena Park. The Economic Development Element establishes goals and policies that promote Economic Development by establishing a favorable environment for business attraction and retention, private investment, economic diversification, entrepreneurship and the attraction of well-paying jobs. Specifically, the Economic Development Element provides a framework for new development, revitalization and redevelopment in the City. The purpose of the Economic Development Element is to identify current economic development conditions and to demonstrate how the land use plan will promote business activity and employment growth within the City. The Economic Development Element establishes goals and policies to promote fiscal stability, expand the City's employment base and enhance the City's revenues in order to provide quality services to the community.

The Consolidated Plan establishes the process and framework for the redevelopment, rehabilitation, and revitalization of all real property located within the plan area. All real property in the Consolidated Plan area is subject to the controls and requirements of the plan, and no real property may be developed except in accordance with the land use controls of the Entertainment Corridor Specific Plan (which is incorporated therein by reference). The Proposed Project is necessary to accomplish the goals and objectives of the Consolidated Redevelopment Plan which private property owners within the plan area from engaging in land speculation or excess profitmaking in undeveloped land.

The Proposed Project is needed to implement the growth and use of this underutilized area of the Entertainment Corridor within the City as envisioned by the Land Use and Community Design Element and the Economic Development Element of the City's General Plan. The General Plan describes the City's vision for the continued growth of the City. The General Plan also describes the existing conditions in the City and establishes standards for implementing future improvements in conjunction with planned growth and provides a method for measuring system performance for future updates. The Land Use and Community Design Element provides the vision for the Entertainment Corridor area, including goals and policies to enhance and attract entertainment and tourism related uses to the City. The Economic Development Element of the General Plan sets forth principles, goals and policies of the City relative to economic growth. One of the principles identified in the Economic Development Element relates to fiscal stability. It states that, "The City of Buena Park seeks fiscal stability and continued financial growth. Stability will enhance opportunity for economic growth sectors of the community." This principle is then followed by the City's Goal ED-1 which states, "Cumulative growth that provides net fiscal gains to the City." This goal is then followed by a set of policies that support this goal. Policy ED-1.2 states, "Monitor the fiscal health of the community and focus on major public/private economic achievements." Policy ED-1.5 is to, "Promote diversification of the City's tax base; including sales, use, property, and other taxes to keep pace with the cost and delivery of desired levels of service." The Proposed Project will help achieve the principle, goal and policies identified above by creating and promoting fiscal stability and continued financial growth in those areas of the community where it is needed. In this case, the area surrounding the Subject Property is improved with a variety of entertainment, hospitality and restaurant uses. The Subject Property is situated within the central Entertainment Corridor of the City and within the Consolidated Redevelopment Plan Area. The Subject Property has been vacant and predominately undeveloped since 2016.

Another principle found in the Economic Development Element relates to tax base revenue growth. It states, "Economic growth can bring many benefits to the community, including jobs, housing and new revenue. New growth will lead to higher tax revenue, thus benefitting residents and the community directly by enhancing many of the public services the City provides. The City will continue to collaborate with the business community to facilitate growth, development, and infrastructure improvements that benefit residents and businesses alike." The corresponding goal is the "Encouragement and facilitation of activities that expand the City's revenue base." Policy ED-2.1 states, "Encourage a broad range of business uses that provide employment at all income levels and that make a positive contribution to the City's tax base." The Proposed Project will help achieve this principle, goal and policy by facilitating the growth and development of this area of the Entertainment Corridor of the City that is currently underutilized to the detriment of the community. In addition, the Land Use and Community Design Element acknowledges the importance of expanding the City's revenue base.

The Economic Development Element includes a principle relating to the Entertainment Corridor and Tourism. It states, "The Entertainment Corridor along Beach Boulevard provides multiple attractions and destinations for visitors of Buena Park. The City will continue to seek opportunities to grow and expand the experience for tourist who visit Buena Park." The stated goal is the, "Encouragement of the development and expansion of entertainment and tourism related business in Buena Park." This is supported by Policy ED-8.1, which states, "Continue to provide enhanced visitor services, including hotels, visitor information, and commercial recreation opportunities." It is further supported by Policy ED-8.2, which states, "Investigate the diversity of entertainment uses and activities, which would encourage tourists and business-oriented travelers to extend the duration of their visit in Buena Park (i.e., theater events, restaurants, movie theaters, themed hotels, commercial recreation opportunities, etc.)." The Subject Property is within the

Beach Boulevard Entertainment Corridor Specific Plan (ECSP 2019). The Beach Boulevard Entertainment Corridor Specific Plan, Area B2(a), or the Theater District, encourages uses such as lodging, restaurants, museums, cultural, gifts, books, music and dance entertainment. Land uses within the Theater District are oriented toward large entertainment facilities capitalizing on freeway exposure, sharing prominence with Knott's Berry Farm. The Proposed Project will help the City achieve the principle, goal, and policy of attracting new businesses that will grow and expand the overall entertainment experience for tourists who visit Buena Park, consistent with the zoning and the City's General Plan.

**SECTION 5.** As a proposed discretionary action by a local agency, the Proposed Project is subject to review of the environmental effects. Accordingly, the environmental effects of the Proposed Project were studied and analyzed pursuant to the California Environmental Quality Act (CEQA) (Public Resources Code § 21000 et seq.) and the CEQA Guidelines (14 Cal. Code Regs. §15000 et seq.). The City determined that the Proposed Project was subject to a Categorical Exemption pursuant to Sections 15321, 15332, 15168, and 15061, of the Cal. Code Regs. A Notice of Exemption was filed and posted in the Orange County Recorder's Office on December 2, 2020. The Notice of Exemption remained posted for thirty (30) days as required by the Public Resource Code.

**SECTION 6.** Pursuant to California Government Code Section 7262 *et seq.*, the City obtained a fair market value appraisal of the Subject Property Interests that used a date of value of February 4, 2021. The City set just compensation in accordance with the appraised fair market value and on February 25, 2021 extended a written offer to the record owner seeking to purchase the Subject Property Interest pursuant to Government Code Section 7267.2. The City's offer letter included an informational pamphlet describing the eminent domain process and the owners' rights. The City further offered to pay the record owner the reasonable costs, up to \$5,000.00, for an independent appraisal of the Subject Property Interest pursuant to Code of Civil Procedure Section 1263.025.

**SECTION 7.** On March 26, 2021 the City provided written notice to the record owner of the City Council's intent to consider the adoption of the proposed Resolution of Necessity at its April 13, 2021 meeting as required by Code of Civil Procedure Section 1245.235.

**SECTION 8.** Based on the evidence presented at the hearing regarding the adoption of the Resolution of Necessity, including the Agenda Report and the documents referenced therein, the City Council hereby finds and determines that:

- A. The public interest and necessity require the Project;
- B. The Project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury;
- C. The Subject Property Interest described in Exhibit "A" hereto and depicted on Exhibit "B" hereto is necessary for the Project; and
- D. The City made the offer required by Section 7267.2 of the Government Code to the owner of record.

**SECTION 9.** The findings and declarations contained in this Resolution are based on the record before the City Council on April 13, 2021, including the Agenda Report dated April 13, 2021 and all documents referenced therein, all of which are incorporated herein by this reference.

These documents include the Notice of Exemption, the offer letter sent to the owner of record pursuant to Government Code Section 7267.2, the notice to the owners of record pursuant to Code of Civil Procedure Section 1245.235 of the City's intent to consider the adoption of the Resolution of Necessity, and all the file documents relating to the Project. The findings and declarations in this Resolution are also based on any testimony, records and documents produced at the hearing, all of which are incorporated herein by this reference.

**SECTION 10.** The City Council of the City of Buena Park hereby authorizes and directs the law firm of Richards, Watson & Gershon, , subject to the oversight and direction of the City Manager and City Attorney, to take all steps necessary to commence and prosecute legal proceedings in a court of competent jurisdiction to acquire by eminent domain the Subject Property Interest legally described in Exhibit "A" and depicted on Exhibit "B" to this Resolution.

**SECTION 11.** The City of Buena Park hereby authorizes the City Manager to execute all necessary documents in connection with the eminent domain proceeding.

**SECTION 12.** This Resolution shall take effect upon adoption.

ADOPTED AND APPROVED by the City of Buena Park this 13th day of April 2021.

AYES: COUNCIL MEMBERS: Swift, Brown, Park, Sonne, Traut

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

---

Mayor

ATTEST:

---

City Clerk

I, Adria M. Jimenez, MMC, City Clerk of the City of Buena Park, hereby certify that the foregoing resolution was duly and regularly passed and adopted at a regular meeting of the City Council of the City of Buena Park, held this 13th day of April 2021.

---

City Clerk