

CONCESSION AGREEMENT

BETWEEN

MILWAUKEE COUNTY ZOO

AND

ROPES COURSES, INC. DBA Sky Trail Wisconsin, LLC

This Concession Agreement ("Agreement") is made and entered into effect December 16, 2015 ("Effective Date"), by and between MILWAUKEE COUNTY ZOO (the "County") and ROPES COURSES, INC. DBA Sky Trail Wisconsin, LLC (the "Concessionaire"), as represented by: Jim Liggett. Referenced together, the County and the Concessionaire are the "Parties" to this Agreement.

WITNESSETH:

WHEREAS, in August 2010, the Parties entered into an agreement governing the operation and management of the concession, expiring on December 15, 2015; and

WHEREAS, due to the success of the concession, the Parties wish to enter into this subsequent agreement governing the operation and management of the concession.

NOW THEREFORE, the Parties do herewith, in consideration of mutual promises and other good and valuable consideration, agree as follows:

PROVISIONS:

1. **Scope:** Concessionaire and any assigns are permitted the exclusive right to construct, maintain, and operate a concession for the operation and management of the Sky Trail ropes course and CTS zip line at the County (the "Concession") within the area mutually agreed upon by Concessionaire and County. The Concession is a weather-dependent operation scheduled to be open, daily from Memorial Day through Labor Day from 10 a.m. through 4:30 p.m., and May (before Memorial Day), September (after Labor Day) and October during weekends only from 10 a.m. through 4 p.m. Unless otherwise provided herein, Concessionaire's daily schedule may not be changed without the prior written consent of the Zoo Director or his/her designee. At no time may the Concession be left unattended or temporarily closed during established hours of operation. Concessionaire may not use the Concession for any purpose other than that set forth herein. Concessionaire is responsible for all expenditures except electricity related to operating this venue including sales and employment taxes.
2. **Term:** This Agreement extension shall commence on the Effective Date and terminate on the third (3rd) anniversary thereof with the option of 2 annual renewals.
3. **Payment:** Concessionaire shall pay to the County a commission of twenty percent (20%) on all Gross Receipts of sales at the Concession. "Gross Receipts" shall be defined as the total of all receipts (cash, checks, debit cards, credit cards) derived from the rental or sale of all merchandise associated with the Concession, less sales tax. Commission payments shall be made to the County on a bi-monthly basis, no later than two (2) weeks after the 15th and no later than two (2) weeks after the last day of each month the Commission is operational. A detailed sales report, in a format to be agreed upon, shall accompany the Commission check.

Checks shall be made payable to: **Milwaukee County Treasurer** and mailed or delivered to: Milwaukee County Zoo, Accounting – Contracts, 10001 W. Bluemound Road, Milwaukee, WI 53226.

4. **Rights Reserved to County:** County reserves the right to award a contract with one (1) or more additional concessionaires to provide other concessionable items in the environs surrounding the Premises and to operate its own concession in the environs surrounding the Premises.
5. **Legal Compliance:** Concessionaire shall, at Concessionaire's expense, promptly comply with all laws, rules, and regulations made by any governmental authority having jurisdiction over Concessionaire's use of the Concession, including SPS 334, Wis. Adm. Code. Concessionaire shall obtain and pay for all necessary permits and licensing for the operation of the Concession. Concessionaire shall comply with all applicable federal, state and municipal laws and regulations, including, but not limited to, Milwaukee County Ordinance 111, related to the County's minimum wage requirements. Concessionaire shall pay all fees and taxes required to carry out the provisions of this Agreement.
6. **Forms of Payment:** In the course of its operation of the Concession, Concessionaire must accept as a form of payment at least Visa, Mastercard, Discover, and American Express major credit or debit card(s). Concessionaire further agrees to make reasonable money change for any persons requesting such accommodation.
7. **Signage:** All proposed banners, signage and advertising on or within the Premises and environs, whether temporary or permanent, must be pre-approved in writing by the Director or his/her designee.
8. **Marketing; Logo:** County is responsible for marketing and advertising to promote Concessionaire's activities in a manner that shall be mutually agreed upon between the parties. Concessionaire agrees that any use of the County Department's logo and name, "Milwaukee County Zoo" whether print or digital, directly related to its activities pursuant to this Agreement must have prior written consent of the Director or his/her designee, which approval will not be unreasonably withheld. Concessionaire shall notify the Department's Marketing Manager or his/her designee as soon as it is aware of any television, radio, print, electronic or other media interviews or reports to be prepared regarding, at or concerning the Premises. Concessionaire may not enter into any sponsorships or other promotional arrangements with outside contractors at the Concession without the prior written consent of the Director or his/her designee.
9. **Staff; Customer Service:** Concessionaire shall conduct its operation in a first-class manner, and all service shall be prompt, clean, and efficient. Concessionaire shall maintain customer service as a top priority. Concessionaire shall employ a sufficient number of qualified staff to properly operate the Concession. Concessionaire agrees to run criminal background checks annually on all employees working at County. Concessionaire shall disclose any criminal background information to County and if County reasonably determines that a Concessionaire's employee's criminal background renders him/her unsuitable to provide services to County visitors, Concessionaire shall not assign that employee to work at County. Concessionaire shall provide employees who are professional, friendly, and courteous to customers and the general public. Concessionaire employees shall attend staff training session provided by County, maintain a neat appearance, exercise good public relations skills, respond to customer complaints and questions, and conduct themselves in a high standard acceptable to County. Concessionaire and staff shall wear appropriate attire which, complies with County uniform requirements and in the sole determination of County, clearly distinguishes Concessionaire staff from County staff. The Director or his/her designee shall have the right, at all times, to notify Concessionaire, in writing,

of any reasonable objections to the quality of services rendered at the Concession, and to require that his/her objections be remedied within a reasonable period of time.

10. **Cleaning**: Concessionaire shall maintain the Premises and surrounding areas as set forth on Exhibit A in a state of cleanliness and repair to prevent injury to the public and shall ensure the Premises clean, orderly and inviting at all times, to the reasonable satisfaction of the Director or his/her designee. Concessionaire is responsible for continuous cleaning of the Premises, including a thorough daily cleaning by closing each day. Cleaning shall include pick up of all trash and litter on all parts of the Premises.
11. **Removal of Equipment and Supplies**: Upon expiration or termination of this Agreement, Concessionaire shall remove, at its costs, all of its supplies, displays, and related items from the Premises within thirty (30) days of the expiration or termination date, and shall restore the Premises to its prior condition, satisfactory to the Director or his/her designee. Damage caused to the Premises by any removal of personal property or improvements to the Premises will be repaired by the Concessionaire. If for any reason Concessionaire does not comply in a timely manner with its obligations under this paragraph, then the County may make such repairs or remove, dispose of, or retain such property as the County sees fit. It is mutually agreed that the County may recover from the Concessionaire any and all reasonable costs, as determined by the County, related to this Section. The Concessionaire agrees to surrender the Premises in broom-clean condition, subject to ordinary wear and tear and casualty.
12. **Continuity of Operations**: In the event that Concessionaire shall be prevented for any reason from furnishing merchandise to the public during the Term, County shall have the right to enter immediately upon the Premises with agents, employees, and contractors retained by it and to use Concessionaire's furnishings, and equipment and render service during the period of Concessionaire's inability, it being understood that none of Concessionaire's stock shall be used by County except with consent of Concessionaire and that Concessionaire shall not be liable under its several insurance obligations required by this Agreement for injury or damage resulting from such operation by County. Gross Receipts of such operations by County shall not be included in Concessionaire's Gross Receipts for the period.
13. **Inspection by County**: County shall at all reasonable times have the right to enter into and upon the Premises to examine and inspect the condition thereof; provided, however, such entry shall be done in such a manner that it does not unreasonably interfere with the conduct of Concessionaire's use of the Premises.
14. **Interest**: Unless waived by County Board of Supervisors, Concessionaire shall be responsible for payment of interest on amounts not remitted in accordance with this Agreement. The rate of interest shall be the statutory rate in effect for delinquent County property taxes (one-percent (1%) per month or fraction of a month) as described in Wisconsin statutes section 74.47(1). The obligation for payment and calculation thereof shall commence upon the day following the due dates established herein.

14.1 **Penalty**: In addition to the interest described above, Concessionaire may be responsible for payment of penalty on amounts not remitted in accordance with this Agreement, as may be determined by County. The penalty shall be the statutory rate in effect for delinquent County property taxes (.5% per month, or fraction of a month) as described in Milwaukee County ordinance section 6.06(1) and Wisconsin statutes section 74.47(2). The obligation for payment and calculation thereof shall commence upon the day following the due dates established herein.

14.2 **Audit Results**: If, as a result of the annual audit required herein, additional amounts are disclosed to be due and owing to the County, interest and penalty shall be

calculated thereon in accordance with the above method. Concessionaire shall remit to the County any additional amounts identified due and owing for the audit including interest and penalty thereon within thirty (30) days following receipt of the audit report by the County.

14.3 **Non-exclusivity:** This provision permitting collection of interest and penalty by the County on delinquent payments is not to be considered the County's exclusive remedy for Concessionaire's default or breach with respect to delinquent payment. The exercise of this remedy is not a waiver by the County of any other remedy permitted under this Agreement, including but not limited to termination of this Agreement.

15. **Audit:** Concessionaire, its officers, directors, agents, partners, and employees shall allow the County Audit Services Division and department contract administrators (collectively, "Designated Personnel") and any other party the Designated Personnel may name, with or without notice, to audit, examine and make copies of any and all records of the Concessionaire related to the performance of the Agreement for a period of up to three (3) years following the date of last payment. Any subcontractors or other parties performing work on this Agreement will be bound by the same terms and responsibilities as the Concessionaire. All subcontracts or other agreements for work performed on this Agreement will include written notice that the subcontractors or other parties understand and will comply with the terms and responsibilities. Any bidder, proposer, contractor and their officers, directors, agents, partners and employees understand and will abide by all provisions of Chapter 34 of the Code of Ordinances. The Concessionaire agrees to prominently post in locations accessible to its employees County-provided bulletins concerning the County Fraud Hotline. Any subcontractors or other parties performing work on this Agreement will be bound by the same terms and responsibilities as the Concessionaire. All subcontracts or other agreements for work performed on this Agreement will include written notice that the subcontractors or other parties understand and will comply with the terms and responsibilities.
16. **Insurance:** Concessionaire shall strictly comply with the insurance requirements set forth on Exhibit A.
17. **Indemnification:** To the fullest extent permitted by law, Concessionaire shall indemnify the County for, and hold it harmless from, all liability, claims and demands on account of personal injuries, property damage and loss of any kind whatsoever, including workers' compensation claims, which arise out of or are in any manner connected to the Premises or Concession, based on any injury, damage or loss being caused by any acts or omissions of the Concessionaire or its agents, guests, or employees. Concessionaire shall, at its own expense, investigate all claims and demands, attend to their settlement or disposition, defend all actions based thereon and pay all reasonable charges of attorneys and other costs and expenses arising from any such injury, damage or loss, claim, demand or action. Concessionaire shall indemnify and save County harmless from any award of damages and costs against County for any action based on U.S. Patent or Copyright infringement regarding computer programs involved in the performance of the tasks and services covered by this Agreement.
18. **Environmental Indemnification:** Concessionaire shall, to the fullest extent provided for under any environmental laws, rules and regulations, be responsible for any required repair, clean-up, remediation or detoxification arising out of any Hazardous Materials brought onto or introduced into the Premises or surrounding areas by Concessionaire or its agents at or near the Premises or environs. Concessionaire shall indemnify, defend and hold the County harmless from any liability, cost, damage, claim or injury (including reasonable attorney fees) arising therefrom. Moreover, Concessionaire shall remediate and restore any affected area to at least the minimum standards as required by the WDNR or other applicable regulatory agencies. "Hazardous Materials" as the term is used herein shall mean any substance: (i) the presence of which

requires investigation or remediation under any Federal, State or local statute, regulation, ordinance, order, action or policy; or (ii) which is or becomes defined as a "hazardous waste" or "hazardous substance" under any Federal, State or local statute, regulation, ordinance, or amendments thereto.

19. Assignment, Subletting and Subcontracting: Concessionaire may only assign this Agreement, in whole or in part, or sublease or rent any part of the Premises to Sky Trail Wisconsin, LLC without the prior written approval of the Director. Any additional assignment of any portion of the work by subcontract must have the prior written approval of County.
20. Termination for Default: County may terminate this Agreement if Concessionaire fails to comply with any provision in this Agreement, and such failure continues for thirty (30) days after a written notice from County setting forth in reasonable detail the nature of such default.
21. Termination for Bankruptcy: County may terminate this Agreement if Concessionaire ceases to do business as a going concern, ceases to pay its debts as they become due, or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any proceeding under any federal or state bankruptcy law, or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Concessionaire's assets or interest in this Agreement.
22. Termination at Will: County may terminate this Agreement for any reason or no reason, upon thirty (30) days' prior written notice to Concessionaire. Upon notice, County agrees to not provide these services through another contractor for at least six months.
23. Independent Contractor: Nothing contained in this Agreement shall constitute or be construed to create a partnership or joint venture between County or its successors or assigns and Concessionaire or its successors or assigns. In entering into this Agreement, and in acting in compliance herewith, Concessionaire is at all times acting and performing as an independent contractor, duly authorized to perform the acts required of it hereunder.
24. Prohibited Practices:
 - 24.1 Concessionaire during the period of this Agreement shall not hire, retain or utilize for compensation any member, officer, or employee of County or any person who, to the knowledge of Concessionaire, has a conflict of interest.
 - 24.2 Concessionaire hereby attests that it is familiar with Milwaukee County's Code of Ethics which states, in part, "No person may offer to give to any County officer or employee or his immediate family, and no County officer or employee or his immediate family, may solicit or receive anything of value pursuant to an understanding that such officer's or employee's vote, official actions or judgment would be influenced thereby."
25. Public Records: Both Parties understand that the County is bound by the public records law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. § 19.21, et seq. Concessionaire hereby agrees that it shall be obligated to assist the County in retaining and timely producing records that are subject to the Wisconsin Public Records Law upon any statutory request having been made, and that any failure to do so shall constitute a material breach of this agreement, whereupon the Concessionaire shall then and in such event be obligated to indemnify, defend and hold the County harmless from liability under the Wisconsin Public Records Law occasioned by such breach. Except as otherwise authorized by the County in writing, records that are subject to the Wisconsin Public Records Law shall be maintained for a period of three (3) years after receipt of final payment under this Agreement.

26. **Notices:** All notices with respect to this Agreement shall be in writing. Except as otherwise expressly provided in this Agreement, a notice shall be deemed duly given and received upon delivery, if delivered by hand or after posting via US Mail, to the party addressed as follows:

To Concessionaire:
Ropes Courses, Inc.
DBA Sky Trail Wisconsin
Attn: Michelle Liggett
1300 Lincoln Road
Allegan, MI 49010
1-269-673-9460

To County:

Milwaukee County Zoo
Attn: Zoo Director
10001 W. Bluemound Rd.
Milwaukee, WI 53226
1-414-771-3040

Either party may designate a new address for purposes of this Agreement by written notice to the other party.

27. **Waiver:** No delay or omission by a party in exercising any right under this Agreement shall operate as a waiver of that or any other right. A waiver or consent given by a party on any one occasion shall be effective only in that instance and shall not be construed as a bar or waiver of any right on any other occasion.
28. **Severability:** The Parties agree that if any provision of this Agreement is determined to be unenforceable for any reason, such provision shall be deemed separate and severable and the unenforceability of any such provision shall not invalidate or render unenforceable any of the remaining provisions hereof.
29. **Paragraph Headings:** The paragraph headings contained herein are for convenience in reference and are not intended to specifically define or limit the scope of any provision of this Agreement.
30. **Miscellaneous:** This Agreement shall be construed, interpreted and enforced under the laws and jurisdiction of the State of Wisconsin without effect to its conflicts of law provisions. This Agreement constitutes the entire understanding between the Parties and is not subject to amendment unless agreed upon in writing by both Parties hereto. The Concessionaire acknowledges and agrees that it will perform its obligations hereunder in compliance with all applicable state, local or federal law, rules and regulations and orders. The Parties expressly consent to personal jurisdiction and venue of the state and federal courts located in Milwaukee County, Wisconsin for any lawsuit that arises from or relates to this Agreement.
31. **Affirmative Action, Nondiscrimination and Equal Opportunity:** Concessionaire hereby certifies that it is in compliance with the equal opportunity policy and standards of Milwaukee County, and Federal rules and regulations regarding nondiscrimination in employment and service delivery. Concessionaire certifies that in the performance of work or execution of this agreement, it shall not discriminate against any employee or applicant for employment because of race, color, national origin, or ancestry, age, sex, sexual orientation, gender identity and gender expression, disability, marital status, family status, lawful source of income, or status as a victim of domestic abuse, sexual assault or stalking, which shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeships. Concessionaire will post in conspicuous places, available to its employees and applicants for employment, notices to be provided by the County setting forth the provisions of the non-discriminatory clause. A violation of these provisions shall be sufficient cause for the County to terminate the agreement without liability for the uncompleted portion or for any materials or

services purchased or paid for by the Concessionaire for use in completing the agreement. Concessionaire will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

31.1 Affirmative Action Program (41 CFR 60-1.40): Concessionaire certifies that it will strive to implement the principles of equal employment opportunity through an effective affirmative action program (and will so certify prior to the award of the agreement), which shall have as its objective to increase the utilization of women, minorities, and disabled persons and other protected groups, at all levels of employment in all divisions of the Concessionaire's work force, where these groups may have been previously under-utilized and under-represented. Concessionaire also agrees that in the event of any dispute as to compliance with the preceding requirements, it shall be its responsibility to show that all requirements are met.

31.2 Non-Segregated Facilities (41 CFR 60-1.8): Concessionaire certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location under its control, where segregated facilities are maintained.

31.3 Subcontractors: Concessionaire certifies that it has obtained or will obtain certifications regarding non-discrimination, an affirmative action program and non-segregated facilities from proposed subcontractors that are directly related to any agreements with Milwaukee County before the award of any subcontracts, and that it will retain such certifications in its files.

31.4 Reporting Requirement: Where applicable, Concessionaire certifies that it will comply with all reporting requirements and procedures established in 41 CFR 60.

31.5 Affirmative Action Plan: Concessionaire certifies that, if it has 50 or more employees, that it will develop and/or update and submit (within 120 days of contract award) an Affirmative Action Plan to: Mr. Paul Grant, Audit Compliance Manager, Milwaukee County Department of Audit, 633 W. Wisconsin Ave., Milwaukee, WI 53203, Telephone No.: (414) 278-4292, or other appropriate government agency. Concessionaire will also require its subcontractors that have 50 or more employees to establish similar written affirmative action plans.

32. Disadvantaged Business Enterprises:

Concessionaire shall comply with all provisions imposed by or pursuant to Milwaukee County Code of General Ordinances Chapter 42 when and where applicable, and as said Ordinance may be amended. The County shall notify Concessionaire in the event that new ordinances are issued.

Concessionaire shall adhere to any approved DBE participation plan contained in this agreement, which assures that seventeen percent (17%) of the Agreement be attributed to a firm certified by the County or an entity whose certification is recognized by the County throughout the Term of this Agreement. Approval must be obtained from the County prior to making any change(s) to the approved DBE participation plan.

If Concessionaire fails to achieve and maintain the level of DBE participation stated in this Agreement, Concessionaire shall provide documentation to the County demonstrating that it made good faith efforts in its attempt to meet the stated level of participation. If Concessionaire fails to reflect a good faith effort to achieve and maintain the level of DBE participation stated herein throughout the Term of this Agreement, County may consider this as a material breach of the Agreement and may terminate the Agreement.

Concessionaire shall submit monthly reports online as required by the County for the purpose of demonstrating compliance with this Section.

33. County Approval of Items to be Rented and Sold: Concessionaire shall provide the Director with a list and pricing information for the products it intends to rent or sell to the public. The Director or his/her designee maintains the right to prohibit the sale or rental of any item. Concessionaire agrees to comply with the County's prohibitions on certain sales and to operate subject to the Department's exclusive non-alcoholic beverage contract.
34. Security: Security personnel are permitted within the Premises for the purposes of checking identification and general observation.

Signature page follows

IN WITNESS WHEREOF, the Parties hereto have set their hands as follows:

Milwaukee County Zoo Director:

Concessionaire:

Milwaukee County Community Business Development Partners
Approved with regards to County Ordinance Chapter 42:

Milwaukee County Risk Management:

Milwaukee County Corporation Counsel
Approved as to Form:

Milwaukee County Comptroller:

Milwaukee County Executive:

Milwaukee County Corporation Counsel
Approved as to WI Stats. 59.42 (2)(b)5:

**EXHIBIT A
INSURANCE REQUIREMENTS**

County assumes no responsibility for any loss or damage to Concessionaire's personal property while in use or stored at or on the Premises. Concessionaire shall maintain comprehensive liability, workers compensation and automobile liability insurance as required below. Concessionaire shall provide the County with evidence of said coverages in the following minimum amounts.

Type of Coverage	Minimum Limits
Commercial General Liability	
Bodily Injury and Property Damage	\$1,000,000 Per Occurrence
(incl. Personal Injury, Fire Legal, Contractual & Products/Completed Operations, Broad Form Property Damage, Independent Contractors Protective Liability)	\$2,000,000 General Aggregate

Automobile Liability	
Bodily Injury & Property Damage	\$1,000,000 Per Accident
All Autos-Owned, non-owned and/or hired	
Uninsured Motorists	Per Wisconsin Requirements
Wisconsin Workers' Compensation	Statutory, if applicable
or Proof of All States Coverage	
Employers' Liability	\$100,000/\$500,000/\$100,000
	if applicable
Excess Liability	\$3,000,000 Per Occurrence
	\$3,000,000 General Aggregate

Milwaukee County will be named as an additional insured for General and Auto Liability. A waiver of subrogation for Workers Compensation by endorsement in favor of Milwaukee County shall be provided. Disclosure must be made of any non-standard or restrictive additional insured endorsement, and any use of non-standard or restrictive additional insured endorsement will not be acceptable. A certificate indicating the above coverages shall be submitted for review and approval by the County for the duration of this Agreement. Coverages shall be placed with an insurance company approved by the State of Wisconsin and rated "A+" per Best's Key Rating Guide.

Additional information as to policy form, retroactive date, discovery provisions and applicable retentions shall be submitted to County, if requested, to obtain approval of insurance requirements. Any deviations, including use of purchasing groups, risk retention groups, etc., or requests for waiver from the above requirements shall be submitted in writing to the County for approval prior to the commencement of activities under this Agreement.

The insurance requirements contained within this Agreement are subject to periodic review and adjustment by the County Risk Manager.