

## AGREEMENT

This AGREEMENT, made and entered into this 1<sup>st</sup> day of February, 2022, between WORLD BIRD SANCTUARY (“Vendor”), having its principal place of business in Valley Park, Missouri, and MILWAUKEE COUNTY ZOO (“Zoo”) having its place of business in Milwaukee, Wisconsin.

### WITNESSETH:

WHEREAS, in September 2021 the Zoo issued a Request for Proposals requesting that an experienced presenter submit a proposal to develop, produce, manage and conduct a bird of prey show for the Zoo at Heritage Farm (the “RFP”), and the Vendor submitted a written proposal response meeting all of the terms and conditions of the RFP (the “RFP Response”); and

WHEREAS, pursuant to the RFP and the RFP Response, the Parties wish to enter into an agreement governing the operation and production of the bird of prey show.

NOW, THEREFORE, the parties agree as follows:

### I. VENDOR COVENANTS, REPRESENTATIONS AND AGREEMENTS

- A. **SHOW.** During the term of this Agreement, the Vendor agrees to develop, produce, manage and conduct a bird of prey show for the Zoo at Heritage Farm (the “Show”). The Vendor further agrees that the Zoo may schedule as many as three (3) Shows per day, seven (7) days per week, or a total of twenty-one (21) Shows per week from May 30, 2022 through September 5, 2022 (the “Summer Season”). The Vendor also agrees that each Show shall be at least twelve (12) minutes in length unless otherwise directed by the Zoo in writing.
- B. **CANCELLATION OF SHOWS.** The Vendor agrees that the Zoo has the authority to cancel Shows for any reason. Cancellations by the Vendor shall also be considered if there is a possibility of injury to spectators or Show birds, but such cancellations must be authorized in writing by the Zoo’s Director or his representative.
- C. **TERM.** The term of this Agreement shall be from February 1, 2022 through December 31, 2022. The Vendor agrees that all services provided under this Agreement are for the entire Summer Season and the Vendor shall provide these services for all operating days during the Summer Season except for days when shows are cancelled by the Zoo.
- D. **PRODUCTION ELEMENTS.** The Vendor agrees to deliver to the Zoo all production elements, to include all birds necessary to perform the Show, personnel, props, uniforms (other than Show shirts), food for the Show birds and all other operating supplies necessary for the Show at least ten (10) days prior to Summer Season opening day.

- E. REHEARSALS. The Vendor agrees that compensation for all rehearsals is included in the total fee set forth in this Agreement.
- F. ROUTINE AND MATERIAL. The Vendor is aware that the Zoo is a family-oriented attraction and recognizes the Zoo's policy of presenting only entertainment suitable for the entire family including minors. Therefore, the Vendor agrees that the costumes, routines and materials used in the Shows shall be in good taste, have regard for such reputation and standards and shall not contain materials that are objectionable in the Zoo's sole judgment. The Zoo reserves the right to notify the Vendor that a routine or any material in any performance does not conform to the above-mentioned standards and the Vendor agrees to make any adjustments to content the Zoo deems necessary. All Show content is subject to Zoo's written approval prior to any public performances.
- G. PROFESSIONALISM IN ACCORDANCE WITH ZOO POLICIES. The Vendor agrees that all Vendor personnel will perform in a competent, professional and respectful manner; that strict regard will be taken as to appearance and attire; and that Vendor and Vendor personnel will strictly adhere to all rules, regulations, and reasonable requests by the Zoo. The Zoo may modify at any time any such rule or schedule by giving the Vendor's Director (or his or her representative) written notification.
- H. PERSONNEL. The Vendor agrees to provide adequate trained staff during the term of this Agreement, and a full complement of staff will be present for every scheduled Show performance. The Vendor is solely responsible for the physical presentation of the Show as it is being presented.
- I. FREIGHT. The Vendor agrees to be responsible at its expense for the freighting of the Show birds and its equipment during the term of this Agreement.
- J. COSTUMING AND WARDROBE. The Vendor agrees to provide Show pants and shoes, including replacements, and the Zoo agrees to provide Show shirts, including replacements. The Vendor will be responsible for all cleaning and laundry expenses during the term of this Agreement.
- K. PERMITS. The Vendor will arrange for and secure any and all permits necessary from any government agency for the transportation of the Vendor's birds and the performance of the Shows. The Vendor shall strictly comply with all applicable law, including without limitation, requirements relating to bird of prey husbandry and permits (U.S. Dept. of the Interior and the State of Wisconsin).
- L. INSURANCE. The Vendor agrees to maintain policies of insurance and proof of financial responsibility to cover costs as may arise from claims for damages to property of and/or claims which may arise out of or result from The Vendor's activities, by whomever performed, in such coverage and amounts as required and approved by the County. Acceptable proof of such coverage shall be furnished to the County prior to commencement of activities under this agreement. A Certificate of Insurance shall be submitted for review for each successive period of coverage for the duration of this

agreement, unless otherwise specified by the County, in the minimum amounts specified below.

The Vendor shall provide evidence of the following coverages and minimum amounts:

<u>Type of Coverage</u>	<u>Minimum Limits</u>
Wisconsin Workers Compensation and Employers Liability & Disease	Statutory/Waiver of Subrogation \$100,000/\$500,000/\$100,000
General Liability	
Bodily Injury and Property Damage to include:	\$1,000,000 Per Occurrence
Personal Injury, Fire, Products and Completed Operations	\$2,000,000 Aggregate
Automobile Liability – Bodily Injury & Property Damage	\$1,000,000 Per Accident
All Autos	

Milwaukee County shall be named as an Additional Insured on the General and Automobile Liability policies as respects the services provided in this agreement. A Waiver of Subrogation shall be afforded to Milwaukee County on the Workers' Compensation policy. A thirty (30) day written notice of cancellation or non-renewal shall be afforded to Milwaukee County.

The insurance specified above shall be placed with a Carrier approved to do business in the State of Wisconsin. All carriers must be A rated or better per AM Best's Rating Guide. Any deviations or waiver of required coverages or minimums shall be submitted in writing and approved by Milwaukee County's Risk Manager as a condition of this agreement.

M. ADVERTISING. The Vendor licenses the Zoo to use the Show elements and the Vendor's personnel in publicity, promotional and/or advertising activities as determined by the Zoo. The Vendor warrants that the Zoo has the right to use Show elements and the Vendor personnel for such purposes. The Vendor shall provide any of its personnel to participate in publicity, promotional and/or advertising activities as determined by the Zoo, and the Vendor agrees that the Zoo shall have full rights to promotional advertising and institutional sponsorship of the Show. The Zoo agrees that any photographs, filming or video taping of the Show will be used only for advertising, publicity or promotional purposes. The Vendor further agrees that no additional consideration will be paid to The Vendor or its personnel for participation in publicity, promotional or advertising activities during the term of this Agreement. Upon the Zoo's written request, the Vendor shall write product identification into the Show script. The Zoo agrees that for any additional Show that may be requested after normal working hours, the Zoo shall pay to the Vendor Three Hundred Dollars (\$300.00) per additional Show performed by the Vendor's personnel and birds. Vendor 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 Zoo. Vendor may not enter into any sponsorships or other promotional arrangements with outside contractors regarding the Show without the prior written consent of the Director or his/her designee.

- N. INABILITY TO PERFORM. If through no fault of the Zoo, the Vendor is unable to present the Show as outlined above, then the Vendor will promptly reimburse to the Zoo a pro rata portion of the Vendor's compensation hereunder.
- O. PROPERTY AND EQUIPMENT DAMAGES. The Vendor is responsible for any damage to equipment or facilities owned or supplied by the Zoo caused by acts or omissions of any of the Vendor's personnel and the Vendor agrees to promptly reimburse the Zoo for all repair and replacement costs.
- P. RELACEMENT OF BIRDS. The Vendor will provide additional birds as needed for replacement or stand-in for the continuous operation of the Show consistent with this Agreement. A replacement bird will be provided by the Vendor in the event of a Show bird's death or if a bird cannot perform for any reason for a period of twenty-one (21) or more days. It is understood that all birds, including any replacement or back-up, used for the Shows are, and will remain, the property of the Vendor.
- Q. VETERINARY CARE. In general, the Zoo is not responsible for the veterinary care of the Vendor's animals. The Vendor is required to contract for veterinary services to provide appropriate health care for the Vendor's animals.
- R. PRE-SHIPMENT TESTING. Prior to arrival of any animals at the Zoo, the Vendor shall submit results of pre-shipment testing for approval by the Zoo's veterinary staff. Pre-shipment testing requirements will be determined by the Zoo's veterinarians.
- S. VETERINARY REQUIREMENTS. The Wisconsin State Veterinarian may require additional testing, a Certificate of Veterinary Inspection (aka "health certificate"), and an import permit for animals entering Wisconsin from other states. It is the Vendor's responsibility to contact the office of the Wisconsin State Veterinarian to determine if additional testing is needed and to obtain the necessary import permits and Certificates of Veterinary Inspection for all animals entering Wisconsin.
- T. DUTY TO INFORM. The Vendor will keep the Zoo veterinary staff informed concerning the health status of all the Vendor's animals. The Zoo will provide opinions on non-emergency and emergency situations involving the Vendor's animals with the understanding that the final responsibility on treatment belongs to the Vendor and the Vendor's veterinary staff. In the event of a veterinary emergency involving the Vendor's animals, the Zoo's veterinary staff will provide care to the affected Vendor's animals in an attempt to stabilize the animals' condition until the Vendor's contracted veterinary services can take charge. The Zoo and its employees will not be held liable for the death, illness or injury of Vendor animals that may result from this emergency care.

- U. **VENDOR RESPONSIBILITY FOR ANIMALS.** The Vendor is responsible for the care and feeding of all Vendor animals. The use of Zoo veterinary equipment, hospital facilities and/or staff will be charged at the rate of \$90.00 per hour during normal business hours and \$110.00 for overtime hours. The Vendor is responsible for the purchase of veterinary supplies used for Vendor animals. The Vendor is responsible for paying for the repair or replacement of Zoo equipment damaged during diagnosis or treatment of Vendor animals. A facilities charge of \$30.00 per day will be assessed to the Vendor for the use of Zoo facilities other than the Raptory Theater for quarantining or holding of Vendor animals. These facilities charges will not be assessed if Vendor animals are in Zoo facilities due to repair or maintenance of the Show facilities. Any use of Zoo facilities for Vendor animals must be approved and scheduled by Zoo management.
- V. **DUTY OF CARE IN EMERGENCY.** In the event of simultaneous, multiple animal emergencies within the Zoo involving Vendor animals, Zoo animal care will take precedence over Vendor animals, and alternative veterinary care will be sought by the Vendor.
- W. **INDEMNITY.** The Vendor agrees, to the fullest extent permitted by law, to indemnify, defend and hold harmless, the Zoo and its agents, officers and employees, from and against all loss or expenses including cost and attorney's fees by reason of liability for damages including suits at law or in equity, caused by any wrongful, intentional, or negligent act or omission of the Vendor, or its (their) agent(s) which may arise out of or are connected with the activities covered by this agreement.
- X. **NON-DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION PROGRAMS.** In the performance of work under this Agreement, the Vendor shall not discriminate against any employee or applicant for employment because of race, color, national origin, 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, 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. The Vendor will post in conspicuous places, available for employees and applicants for employment, notices to be provided by the Zoo, setting forth the provisions of the non-discriminatory clause. A violation of this provision shall be sufficient cause for the Zoo to terminate the Agreement without liability for the uncompleted portion or for any materials or services purchased or paid for by the Vendor for use in completing the contract.

The Vendor agrees that it will strive to implement the principles of equal employment opportunities through an effective affirmative action program, and will so certify prior to the award of the Agreement, which program shall have as its objective to increase the utilization of women, minorities and handicapped persons, and other protected groups, at all levels of employment in all divisions of the contractor's workforce, where these groups may have been previously under-utilized and under-represented. The Vendor also

agrees that in the event of any dispute as to compliance with the aforesaid requirements, it shall be his/her responsibility to show that he/she has met all such requirements.

The Vendor agrees that it will strive to implement the principles of active and aggressive efforts to assist Milwaukee County in meeting or exceeding its overall annual goal of participation of target enterprise firms.

When a violation of the non-discrimination, equal opportunity or Affirmative Action provision of this section has been determined by Zoo, the Vendor shall immediately be informed of the violation, and directed to take all action necessary to halt the violation, as well as such action as may be necessary to correct, if possible, any injustice to any person adversely affected by the violation, and immediately take steps to prevent further violations.

If, after notice of violation to the Vendor, further violations of this section are committed during the term of this Agreement, the Zoo may terminate the Agreement with liability for the incompleted portion of any materials or services purchased or paid for by the Vendor for use in completing this Agreement, or it may permit the Vendor to complete the Agreement, but in either event, the Vendor shall be ineligible to bid on any future Agreements let by the Zoo.

- Y. **REMOVAL OF EQUIPMENT AND SUPPLIES:** Upon expiration or termination of this Agreement, Vendor shall remove, at its costs, all of its supplies, displays, and related items from the Zoo within thirty (30) days of the expiration or termination date, satisfactory to the Director or his/her designee. Damage caused to the Zoo by any removal of personal property will be repaired by the Vendor. If for any reason Vendor does not comply in a timely manner with its obligations under this paragraph, then the Zoo may dispose of, or retain such property as the Zoo sees fit. It is mutually agreed that the Zoo may recover from the Vendor any and all reasonable costs, as determined by the Zoo, related to this Section. The Vendor agrees to surrender the Zoo in broom-clean condition, subject to ordinary wear and tear and casualty.

## **II. ZOO COVENANTS, REPRESENTATIONS AND AGREEMENTS**

- A. **FACILITY.** The Zoo will provide security as required for all Show birds, especially at night.
1. The Zoo agrees to furnish the holding facilities for the Show. These facilities must meet the requirements for the operation of the Show as reasonably defined by the Vendor.
  2. The Zoo agrees to provide the sound system for the Show and maintain the system during the term of this Agreement. Two cordless headset microphones (one for back-up) will be provided by the Zoo.
- B. **PERSONNEL.** The Zoo agrees to provide sound and crowd control personnel for the Show during the Summer Season.

- C. **ACCESSIBILITY.** The Zoo will assure that the Vendor's personnel will have access to the bird of prey facility and the Show birds twenty-four (24) hours a day for the term of this Agreement.
- D. **HOLD HARMLESS.** The Zoo will defend, indemnify and save harmless the Vendor at any costs or other liability arising out of any act or omission by the Zoo in the performance of this Agreement.
- E. **FEE.** In consideration of the Vendor's performance of this Agreement, the Zoo agrees to pay the Vendor the sum of \$110,760. This sum will be paid in six (6) equal installments, due April 15, May 15, June 15, July 15, August 15, and September 15 during the term.
- F. **COUNTY RIGHTS OF ACCESS AND AUDIT.** The Vendor, its officers, directors, agents, partners, and employees shall allow the County Audit Services Division and Zoo contract administrators (collectively referred to as 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 Vendor related to the performance of the Agreement for a period of up to three 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 Vendor. The Vendor and any subcontractors understand and will abide by all expressed requirements for its operation as set forth in the Milwaukee County Code of General Ordinances. 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.

### **III. OTHER TERMS**

- A. **TERMINATION.** If either party fails to fulfill its obligations under this Agreement in a timely or proper manner, or violates any of its provisions, the other party shall thereupon have the right to terminate it by giving thirty (30) days written notice of termination of contract, specifying the alleged violations, and effective date of termination. It shall not be terminated if, upon receipt of the notice, the violating party promptly cures the alleged violation prior to the end of the thirty (30) day period. In the event of termination, the Zoo will only be liable for services rendered through the date of termination and not for the uncompleted portion, or for any materials or services purchased or paid for by the Vendor for use in completing the Agreement.

**B. PROHIBITED PRACTICES:**

Contractor 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 Contractor, has a conflict of interest.

Contractor 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."

- C. **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. Contractor 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 Contractor 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.
- D. **RELATIONSHIP.** The relationship between the parties hereto shall be that of independent contractors. Neither party shall be considered to be an agent, employer or representative of the other and neither party shall have any right to bind or commit the other party in any way.
- E. **ASSIGNMENT.** Neither party shall have the right to assign its interest herein or its rights or obligations hereunder without the consent of the other, which consent shall not be unreasonably withheld. This Agreement shall be binding on and inured to the benefit of the parties and their respective successors and approved assigns.
- F. **SEVERABILITY.** In the event any part of this Agreement is rendered void, invalid or unenforceable by any court of competent jurisdiction, then the remainder of this Agreement shall not be affected thereby in any way, but shall remain enforceable.
- G. **AMENDMENTS.** This Agreement may not be modified or amended unless in writing, signed by both parties.
- H. **GOVERNING LAW.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Wisconsin, without regard to conflicts of laws principles.
- I. **NOTICE.** Any notice required or permitted under this Agreement shall be sent postage prepaid to the parties at their respective addresses set forth below.

If to Zoo:  
 Milwaukee County Zoo  
 10001 Bluemound Rd.  
 Milwaukee, WI 53226  
 Attn: Director

If to Vendor:  
 World Bird Sanctuary  
 125 Bald Eagle Ridge Rd.  
 Valley Park, MO 63088  
 Attn: Jeffrey Meshach



- J. **ORDER OF PRECEDENCE:** The parties understand and agree that the RFP and RFP Response are incorporated into and made a part of this Agreement by this specific reference. In the event of a conflict or disagreement among the documents, the following order of precedence shall govern:
- (i) Written amendments to the Agreement;
  - (ii) The Agreement;
  - (iii) The RFP;
  - (iv) The RFP Response.
- K. **ACT OF GOD:** In the case of a Disruptive Event (as hereinafter defined), either Party shall have the right to terminate the Agreement without fault upon written notice to the other. A “Disruptive Event” is defined as: (i) an Act of God that damages the Premises such that they cannot be utilized by the Vendor for a period exceeding consecutive ten (10) days; or governmental regulation or advisory (including, without limitation, Milwaukee County Administrative Order), recognized health threats as determined by the World Health Organization, the Centers for Disease Control, or local government authority or health agencies (including but not limited to the health threats of COVID-19, H1N1, or similar infectious diseases), curtailment of transportation facilities, or other similar occurrence, where any of those factors, circumstances, situations, or conditions or similar ones prevent, dissuade, or unreasonably delay Zoo attendance, or where any of them make it illegal, impossible, inadvisable, or commercially impracticable to fully perform the terms of the Agreement. In case a Disruptive Event should permanently damage the Premises beyond a point where the Milwaukee County Zoo chooses not to reopen the facilities or close the Zoo beyond a point where the Zoo will likely opt not to reopen the Zoo throughout the Term, the Milwaukee County Zoo shall have the right to terminate the Agreement five (5) days after such a decision is made, and the Zoo will liable for a pro rata payment to the Vendor reflecting the percentage of days the Zoo was permitted it to operate during the Summer Season.
- L. **PANDEMIC PREPAREDNESS.** Vendor is responsible for compliance with all state, federal, and local orders, including Milwaukee County Administrative Orders, and all regulations and laws regarding the COVID-19 pandemic. Further, Vendor will follow all relevant agency guidance, specifically issued by the CDC, including, but not limited to, social distancing, hygiene, sanitation of work spaces, providing proper personal protective equipment to staff, proper staff screening methods and education of staff.
- If determined applicable by the County, Vendor should have a written Pandemic Preparedness Plan that complies with all applicable laws, regulations, orders, and agency guidelines regarding COVID-19 and, at a minimum, meets the requirements in the Milwaukee County COVID-19 Response Preparedness Plan Checklist, attached to this Agreement as Exhibit 1.
- M. **ENTIRE AGREEMENT.** This is the entire agreement between the parties with respect to subject matter hereof and it supercedes any and all prior agreements in regard thereto.