

## **ADVENTURE AFRICA PHASE III - RHINO DESIGN PROJECT AGREEMENT**

**THIS ADVENTURE AFRICA PHASE III - RHINO DESIGN PROJECT AGREEMENT** is entered into this \_\_\_ day of \_\_\_\_\_, 2021 by and between the **ZOOLOGICAL SOCIETY OF MILWAUKEE COUNTY**, a Wisconsin not-for-profit corporation (the “Society”), and **MILWAUKEE COUNTY**, a Wisconsin municipal corporate body, represented by its Director of the Milwaukee County Zoo (the “County”).

### **RECITALS**

- A. The County owns a zoological garden known as the Milwaukee County Zoo (the “Zoo”).
- B. The Society is a non-profit corporation whose mission is to take part in conserving wildlife and endangered species, to educate people about the importance of wildlife and the environment, and to support the Milwaukee County Zoo.
- C. Both the Society and the County wish to jointly develop a new Rhino exhibit as part of the Adventure Africa exhibit complex for the Milwaukee County Zoo as outlined in the 2013 master plan, and further described in this Agreement (the “Exhibit”).
- D. The cost of designing the Exhibit will be allocated and paid equally by the Society and the County.
- E. The Society and County will form a committee for the purpose of selecting a consultant and leading the development design phase of the Exhibit.

### **AGREEMENT**

#### **1. PROJECT.**

Phase I of the Adventure Africa Exhibit complex featuring a new elephant exhibit was opened in May, 2019. Phase II of the Adventure Africa Exhibit complex featuring hippos opened mid-June, 2020. Adventure Africa Phase III – Rhino Design Project will create a construction plan for the Exhibit, which shall consist of the replacement of the former elephant exhibit and renovation of the remainder of the pachyderm complex, including ancillary holding facilities and a central pathway through the Zoo. Rhinos will be the featured species in this phase. The Society and the County will form a committee consisting of professional planning consultants, the Department of Administrative Services Facilities Management Division staff, selected Zoo staff, and representatives of the Society (“Design Committee”) to lead the development design phase of the Exhibit. The Design Committee may retain one or more consultants to assist in developing the Exhibit.

Once the design plan for the Exhibit is fully developed, the County and Society will construct the Exhibit according to the Joint Capital Project Procedures as outlined in the attached Exhibit A.

## 2. CONSULTANT SELECTION.

Milwaukee County through the Department of Administrative Services Facilities Management Division (DAS-FMD) will issue a Request for Proposal for consultant services on or about November 1, 2021. The DAS-FMD representative conducting the review of the Preliminary Plans and the Final Plans and Specifications will be Bill Banach (“DAS-FMD Project Architect”). The joint County/Society design committee will evaluate and grade all proposals.

- A. The Consultant Selection Process: The consultant will be selected in a 2-stage process. Stage 1 will be to select multiple finalists or a single consultant designate on the basis of candidates’ rhino exhibit design qualifications to provide programming, conceptual and preliminary design services for the Exhibit. Stage 2 will be to select a fully organized team involving experts in all applicable disciplines as well as Targeted Business Enterprise (“TBE”) participants to provide the remaining services for a full design service contract.
- B. Stage 1 Proposal, Contents, and Evaluation: Contents and evaluation of Stage 1 proposals will be as follows:
- 1) Company information: All pertinent company information.
  - 2) Designers’ Qualification: Each Candidate will be required to list detailed experiences in designing live animal exhibits and holding facilities, with an emphasis on experience with rhino exhibits in particular.
  - 3) Design fee proposals: Each Candidate will be required to submit a fee proposal for Programming-Conceptual and Preliminary design services, and a separate lump sum preliminary fee proposal for a full design service from Programming to Construction Administration, including the services of all professional disciplines involved.
  - 4) Participation by local professionals beyond Programming-Conceptual and Preliminary design services: Each candidate is required to indicate to what extent, if any, local design professionals will participate in services beyond Programming-Conceptual and Preliminary design services.
  - 5) Other requirements: Additional requirements will be stated in the RFP.
  - 6) Proposal evaluation: All proposals will be evaluated on the basis of both qualifications, and proposed design fees. Detailed evaluation criteria will be determined during RFP preparation
  - 7) Finalist or Consultant Designate: Upon the successful conclusion of the Stage 1 evaluation process, one or more candidate(s) will be selected to enter the Stage 2 proposal and evaluation process.
- C. Stage 2 Proposal, Contents, and Evaluation Criteria: Contents and evaluation of Stage 2 proposals will be as follow:
- 1) Company information: All pertinent company information.
  - 2) Design team members and organization: Names of sub-consultants and organization chart.
  - 3) TBE participants: Names of sub-consultants which are TBE firms.

- 4) Team members' Qualifications: Each Candidate will be required to list detail experiences of all team members in designing live animal exhibits and holding facilities, rhino exhibits in particular, as well as qualifications in designing infrastructures and service systems that will support the operations of the Exhibit .
- 5) Design fee proposals and design responsibilities distribution: Each Candidate will be required to submit a detailed discipline by discipline, and phase by phase fees proposal for a full design service from Programming to Construction Administration encompassing all services of all professional disciplines involved.
- 6) TBE participation: Each candidate will be required to name the TBE participants, the service(s) each will provide, the projected fee(s) for the service(s) and the representative % of each fee to the total fee. The projected TBE participation goals are as follow:
  - a) Programming-Conceptual-Preliminary Design: 0%
  - b) Design Development: 25% (6.25% of total fee)
  - c) Construction Document: 35% (15.75% of total fee)
  - d) Bidding and Construction Administration: 20% (3% of total fee)
  - e) Overall TBE participation goal: 25% of total fee.
  - f) Alternate participation goal: Candidates are allowed to propose an alternate distribution as long as the overall participation is 25%.
- 7) Multiple design team options: Each candidate is free to propose more than one possible design team, all in a single proposal or in separate proposals, as long as all proposals have the same total design fee and each one meets the 25% overall TBE participation goal.
- 8) Other requirements: Additional requirements will be stated in the RFP.
- 9) Proposal evaluation: All proposals will be evaluated on the basis of qualifications, proposed design fees, as well as local and TBE participations. Detailed evaluation criteria will be determined during RFP preparation
- 10) Final selection decision: Upon the successful conclusion of the Stage 2 evaluation process, including negotiations and additional proposals and evaluations, if any, the candidate with the proposal acceptable to the Design Committee will be nominated for a contract award recommendation.

### **3. PROJECT MANAGERS.**

The Zoo Director, shall serve as the Zoo's Project Manager. The Society's CEO/President, shall serve as the Zoological Society's Project Manager.

### **4. PROJECT COSTS.**

The total estimated design development cost of the Project is Nine Hundred Two Thousand One Hundred Dollars (\$902,100). This cost will be allocated and paid equally between the County and the Society and in no event shall the aggregate cost exceed Nine Hundred Two Thousand One Hundred Dollars (\$902,100) without agreement between the County and Society and any required approvals from each organizations' respective Boards. The County will invoice the Society for its share of the costs according to a schedule and on such other terms as will be mutually agreed upon by both parties.

## **5. WAIVER AND AMENDMENT.**

No provision of this Agreement shall be deemed waived or amended except by a written instrument unambiguously setting forth the matter waived or amended and signed by the party against which enforcement of such waiver or amendment is sought. Waiver of any matter shall not be deemed a waiver of the same or any other matter on any future occasion.

## **6. JOINT VENTURE.**

None of the agreements contained herein is intended, nor shall the same be deemed or construed, to create a partnership between the County and the Society, to make them joint venturers.

## **7. CAPTIONS.**

Captions are used throughout this Agreement for convenience or reference only and shall not be considered in any manner in the construction or interpretation of this Agreement.

## **8. SEVERABILITY.**

If any of the terms or provisions contained herein shall be declared to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions and conditions of this Agreement, or the application of such to persons or circumstances other than those to which it is declared invalid or unenforceable, shall not be affected thereby and shall remain in full force and effect and shall be valid and enforceable to the fullest extent permitted by law.

## **9. CONSTRUCTION.**

This Agreement involves property located within the State of Wisconsin and shall be construed according to the laws of the State of Wisconsin.

## **10. ENTIRE AGREEMENT.**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and there are no other representations, warranties, or agreements except as herein provided. The definitions and information set forth in the Recitals section are hereby incorporated into this Agreement as if fully set forth herein.

## **11. COUNTERPARTS.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

**12. BINDING EFFECT.**

The terms and conditions of this Agreement shall be binding upon and benefit the parties hereto and their respective successors and assigns.

**IN WITNESS WHEREOF**, the parties hereto have executed this Contract on the day, month and year first above written.

**ZOOLOGICAL SOCIETY**

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

**MILWAUKEE COUNTY ZOO**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Zoo Director

*Approved with regards to County Ordinance Chapter 42:*

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Community Business Development Partners

*Reviewed by:*

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Risk Management

*Approved for execution:*

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Corporation Counsel

*Approved as to funds available per  
Wis. Stat. sec. 59.255(2)(e):*

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Comptroller

*Approved:*

By: \_\_\_\_\_ Date: \_\_\_\_\_  
County Executive

*Approved as compliant under sec. 59.42(2)(b)5, Stats.:*

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Corporation Counsel

DRAFT

**Exhibit A**  
**Joint Capital Project Procedures**

- A. For each such capital project, the County and the Society will execute a specific agreement describing sources and uses of funds, procedures for transferring the Society's share of project costs to the County, program management, project schedule, County Architectural Services fees, and any other specific agreements. The Zoo Director will submit each agreement to the appropriate County Board Committee for approval prior to bidding the project.
- B. Such a Project is subject to the approval of both the Society and County, and the following terms and conditions:
1. Design. The County in consultation with the Society will review the designs, plans and specifications for the Project and shall deliver same to the Society upon their completion.
  2. Project Approval. The Project, including its cost, integration in the Zoo park setting, landscaping, design, equipment, plan, specifications and construction shall be subject to the written approval of the Society and the County, which approval of the County shall include approval by the Department of Administrative Services-Facilities Management (DAS- FM). The Society's approval of the Project shall not be unreasonably conditioned, withheld or delayed, and shall not constitute, nor shall be deemed to be an approval of the Project's compliance with applicable governmental laws, ordinances or rules.
  3. Project Construction. Upon approval of the Project by the Society and the County, the County shall promptly begin, and shall have the sole responsibility for the construction of the Project, which construction shall be done in accordance with matters previously approved in writing by and between the parties. The County shall provide contract documents to the Society, obtain bids, secure contracts and administer the Project construction process through its completion. Any changes to those matters previously approved shall require the written approval of both the Society and the County. The County shall implement the Project with the intent that it will be completed and available for occupancy on an agreed upon date.
  4. Source of Funds. No such capital project may proceed where the County will share the cost of such capital project until the County Board appropriates funds for such project and until the Society transfers its share of the appropriation or provides assurances acceptable to the County of the timely availability of such funds. During the County's fiscal year, the County shall appropriate, if the Board approves, and authorize expenditure of the total approved Project budget for that year. The County shall then provide a preliminary listing of Project expenses and commitments to the Society in the fourth quarter of the calendar year. After performing a reconciliation of Project expenses and confirming that they are

consistent with Budget as previously approved, the County shall provide an accounting of Project expenses along with a request for reimbursement of project expenses based on the proportional allocation included in the County Budget. The Society shall reimburse the County for its share of the County's appropriations up to actual incurred cost. Upon written approval by the County and Society, any cost overruns with regard to the Project shall be mutually agreed upon and the cost shared equally by the County and Society. If the Audit Report required under Section 7 below indicates that, based on the due date, pledge receivables plus cash and investments held for the Project will not be sufficient to meet the Project cash flow schedule, the Society will be required to provide a reserve of available funds or line of credit that bridges the gap in receivables and cash flow or another option acceptable to the County, before construction can begin.

5. In-Kind Support. Upon the request by the Society, and upon written approval by the County, the Society may contract directly with third parties and provide materials, services, and/or equipment that is part of the Project. The request from the Society shall include an estimate of the fair market value of such materials, services and/or equipment to be provided. The request will be provided to the County Zoological Department Director, Department of Administrative Services – Performance, Strategy and Budget Director and Comptroller before the County provides approval. Upon completion or delivery of in-kind materials, services and/or equipment delivery, the Society will provide a final accounting of the fair market value of the materials, services, and/or equipment and costs in writing to the County Zoological Department Director, Department of Administrative Services – Performance, Strategy and Budget Director and Comptroller. The project budget will be adjusted to reflect the fair market value of the in-kind scope of work. In the event that the County agrees to accept such monies or materials, in-kind services, and/or equipment, the County shall account for these funds as part of the Society's commitment to the Project.

For each year of project implementation, the Society will provide its prorated share of that year's incurred costs. The end result will be Society contributions and/or in-kind work that equals the Society's commitment to the total project cost.

6. Project Management. The Milwaukee County DAS-FM and the Society will select a Project Manager to coordinate the activities of the Project. It is agreed that the Project Manager will be a DAS-FM Project Architect. The scope of services to be provided by the Project Manager are described in an exhibit attached to each agreement. The cost of these services will not exceed 3.3% of the construction costs of the Project. The Project Manager, and such other personnel who are involved in the Project as the Society may reasonably request, shall meet with the Society periodically and as requested by the Society, and the Society is hereby granted access to the Project site for inspection and to all of the costs and records regarding the Project, including invoices and bills of material. The Project Manager shall have the authority to make on-site decisions during the



course of construction, provided that such decisions do not materially change those matters (including design concepts and specifications) previously approved by the Society and the County. The utilization of contingency funds allocated to the Project budget shall be mutually agreed upon by the Zoo and the Society.

7. Records. The Society and the County shall provide each other access to all construction and other documents or records related to the construction of or disbursement of funds for capital improvement projects in which the Society participates. These documents and records shall include an accounting of the amount of funds received and disbursed by the Society and/or the County for a particular capital improvement project, but shall not include any documents which would contain information regarding individual donors or other sources of such funds." It is the responsibility of the Society to verify to the reasonable satisfaction of the Milwaukee County Office of the Comptroller the validity of pledges made for this project prior to project funds being expended. In satisfaction of this responsibility, the Society will engage its external auditor to prepare an audit report of all pledge receivable, cash, and investments, net of any outstanding payables or other Commitments for such funds held by the Society for the Project. The Audit report will be prepared based on the guidelines of the American Institute of CPAs for an "Auditor's Report on a Specific Element" and will be delivered to the County. Upon delivery of the Audit Report, the Society will have no further responsibility to verify its pledges and funds for the Project.
8. Use of Facility and Naming Rights. The County shall be and remain the sole owner of the project. The County agrees to maintain and staff such facility and make designated public space available for use of the Society's members and general Zoo visitor public for the reasonable, useful life of the facility. In addition, the County and Society shall have reasonable access and use of the Project facility's designated public space without cost for events held or operated for the promotion of the Zoo or the Society. The County agrees that the Society is hereby granted the exclusive right to name the Project facility or parts thereof (by use of a single name or multiple names), subject to the County's written approval, which shall not be reasonably conditioned, withheld, or delayed, and upon such designation by the Society, the Zoo and County will thereafter, during the reasonable, useful life of the Project facility, refer in public to such name or names and will refer to the Society as a partner in developing the Project facility in any advertising, articles or websites regarding the Project facility. The County will allow the Society to erect and maintain suitable name plates or other identifying signage that may be reasonably requested by the Society to effectuate such naming designation, and such costs are included in the Project budget. The County will execute such agreements as may be reasonably requested by the Society to confirm such naming rights.
9. No Private Business Use of the Project. The Society acknowledges that if the Project is financed with tax-exempt bonds, the County will be prohibited from using or permitting the use of the Project in a manner that would result in Private

Business Use that would jeopardize the tax-exempt status of the interest on any tax-exempt obligations issued by the County to finance the County's portion of the Project (the "Bonds"). "Private Business Use" means direct or indirect use in a trade or business carried on by any person other than a state or local government unit (as defined in Section 1.103-1 of the Treasury Regulations) or where an organization described in Section 501(c)(3) of the Code is treated as a state or local government unit (as defined in Section 1.103-1 of the Treasury Regulations) with respect to its activities which are not unrelated trades or businesses (without regard to whether the activity results in unrelated trade or business income subject to taxation under Section 512(a) of the Code), determined under Section 513(a) of the Code. Without limiting the foregoing, the Society agrees and acknowledges that the Comptroller of the County may reject any contract proposed by the Society to be entered into with respect to the Project if the Comptroller determines, in his or her sole reasonable discretion, that such contract may result in Private Business Use of any portion of the Project (including contracts for naming rights contemplated in Section 9 herein). Further, the Society's use of the Project described in Section 9 herein may be limited by the Comptroller of the County in any year to ensure that any Bonds maintain their tax-exempt status. This provision shall remain in force as long as the County has Bonds outstanding. The Society shall provide the Comptroller with any proposed contract referred to above before entering into such contract and shall, promptly upon the County's written request delivered at any time until the last Bond matures, provide the Comptroller of the County on behalf of the County a certificate (and any other information the County reasonably deems necessary) to evidence that the Society complied with this Section.