

**Memorandum of Understanding between
Milwaukee County and the Zoological Society of Milwaukee County, Inc.
Regarding Operations and Support of the Milwaukee County Zoo**

This Memorandum of Understanding is entered into between Milwaukee County (County) and the Zoological Society of Milwaukee County, Inc. (Society), effective as of the ___ day of March, 2020.

The County is a municipal body corporate in the State of Wisconsin. The County has constructed and maintains a zoological garden known as the Milwaukee County Zoo (Zoo) to collect and exhibit to the residents of the County and general public a collection of animals and to promote conservation, education and recreation. The Zoo has become one of the finest zoos in the world. It is a major tourist attraction in Wisconsin, with a substantial and beneficial economic, cultural and educational impact on the County and southeastern Wisconsin. The County has a commitment to operate, maintain and improve the Zoo.

The Society is a nonstock corporation organized under Chapter 181 of the Wisconsin Statutes. The Society is exempt from federal income tax because it is described in Section 501(c)(3) of the Internal Revenue Code (Code). It is separate and independent from the County. The purposes of the Society, as set forth in its Articles of Incorporation, are to (a) support the Zoo; (b) provide assistance to the County in all proper ways to develop, and to promote the enjoyment and understanding of, zoological exhibits that shall be a credit to the County; (c) raise funds by dues, subscriptions, solicitations, donations, gifts, lectures, entertainment events, educational programs, and all other lawful and appropriate means; and (d) make expenditures from the funds so raised for the acquisition of animals for, and the betterment of, said zoological exhibits and the zoo or zoos operated in connection therewith, for promoting the better enjoyment and understanding thereof, and for the proper administration of the affairs of the Society. In furtherance of these purposes, the Society's 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 Zoo.

The County and Society wish to assure the continued success and prosperous growth of the Zoo in the future. The County and the Society acknowledge that the continued operation, maintenance and improvement of the Zoo provide an invaluable asset to the residents of the County and the public in general. The County desires to continue to receive the support of the Society. The Society desires to continue its support of the Zoo.

Milwaukee County is required to follow the guidelines in Milwaukee County General Ordinances Chapter 13 for establishing partnerships with support groups. Specifically, under Chapter 13.06 it reads "Because of their close relationship with public institutions, friends groups acquire a quasi-public status.

The public often perceives them to be a functional part and representative of a county department. Public confidence and support is best maintained by adequate disclosure of all activities". This is true of the relationship between the County and the Society. The public perceives the Zoo and Society as the "Zoo" and not as separate organizations. The Zoological Society recognizes that the County Board endorses a policy of open meetings, open records, affirmative action and its code of ethics, and expects Milwaukee County employees to understand and comply with such policies in working with friends groups. The County and Society are committed to making the partnership as successful as possible to benefit both organizations in supporting and maintaining the Milwaukee County Zoo. Notwithstanding any of the foregoing, the parties acknowledge and agree that the Society is not a functional part, representative, or agency of the County, nor is it a quasi-public government unit or agency. The Society is an independent nonstock Wisconsin corporation that is not subject to any of the open meetings, open records, affirmative action, code of ethics, and similar policies and requirements that apply to the County, to functional parts, representatives, agencies of the County, or to quasi-public government units or agencies.

The County through this agreement entrusts the Society to develop, collect fees and maintain a membership program. **Exhibit A** outlines the Zoo Pass Membership Program and Benefits. The Society is accountable to the Zoological Society Board of Directors as to how the funds collected from membership fees are used to support the Zoo within the mission of the Society. The Society, on an annual basis, shall disclose all activities as to how the funds were expended through the submission of the Society's independently prepared annual audit.

THEREFORE, for valuable consideration given and received by the County and the Society, the receipt of which is hereby acknowledged by all parties, the parties enter into this MEMORANDUM OF UNDERSTANDING:

1. RIGHTS AND OBLIGATIONS OF EACH PARTY

a. The County has the exclusive right and obligation to operate and maintain all aspects of the Zoo in accordance with the policies and directives established by the Milwaukee County Board of Supervisors (County Board) and the County Executive. The County shall receive from the Society, program, service, and financial support as further set forth in this Memorandum of Understanding and upon which the parties agree from time to time. The County shall provide to the Society certain facilities and support as further set forth in this Memorandum of Understanding and upon which the parties agree from time to time.

b. The Society shall continue to function as a nonstock corporation organized under Chapter 181 of the Wisconsin Statutes and as an organization described in Section 501(c)(3) of the IRS Code,

independent and separate from the County. The Society shall receive from the County certain facilities and support as further set forth in this Memorandum of Understanding and upon which the parties agree from time to time. The Society shall direct its efforts towards supporting the Zoo within the mission of the Society. The Society shall provide program, service, and financial support to the County for the Zoo as further set forth in this Memorandum of Understanding and upon which the parties agree from time to time.

2. COUNTY SUPPORT PROVIDED TO THE SOCIETY

a. The County shall provide to the Society such administrative, office, and classroom space on the Zoo grounds as is reasonably necessary for the operation of the Society (Administrative Facilities). The Administrative Facilities shall be provided to the Society inclusive of utilities, custodial and maintenance services and parking for Society staff. The Administrative Facilities are described on **Exhibit B**. At the Zoo's discretion, with one-year written notice to the Society's President and CEO or if mutually agreed upon, the administrative facilities made available may change.

b. To assure continued support for the Zoo, the County shall continue to provide free admission and parking to the Zoo during regular hours of operation for Society members throughout the term of this Memorandum of Understanding. By mutual agreement with the Society, and with a minimum of six months' notification to the Society, the County may charge Society members a fee for Zoo events listed in **Exhibit C** and/or other Zoo events developed in the future. The County shall also permit the Society to offer to its members certain benefits and discounts (Member Benefits), which shall be reviewed and approved by the Zoo Director. The Member Pricing and Benefits are described on **Exhibit A** hereto and may be amended from time to time by agreement of the parties.

c. The Society and County agree that the County will continue to procure and maintain a collection of small animals that can be used by the Society in support of its school-based and public education programming throughout the term of this Memorandum of Understanding. The County agrees to maintain the collection at a size and level of diversity that is sufficient to meet the needs of the Society, as communicated to the Zoo Director by the Society's President and CEO from time to time, and as approved by the Zoo Director.

d. The County will, in accordance with standards established by the Zoo Director, provide Zoo staff to train, at no-cost to the Society, designated Society education staff with respect to the proper handling, care and management of the animals in the collection described in Section c. The Society agrees to comply with the AZA (Association of Zoos and Aquariums) Accreditation Standards and Policies regarding any animal ambassador program.

e. The County will provide support for special events and education programs conducted by the Society. The Society shall submit proposals in writing, for approval by the Zoo Director, for special events to be sponsored, operated, and funded by the Society, and for Zoo facilities, staff and equipment to be made available to the Society for such events. Any such facilities, staff, and equipment will be provided to the Society at no more than the actual cost to the County for such space, staff (including during normal working hours), and equipment, and the parties will enter into a Letter of Intent (LOI) specifying the rights and obligations of each party with respect to each such event. The LOI must be submitted a minimum of eight weeks in advance of any event or activity. Within three weeks of the event, a written estimate of costs associated with the event will be provided to the Society for review and approval.

f. To the extent that any activity to be conducted by the Society pursuant to this Memorandum of Understanding subjects the Society to obligations, restrictions or requirements under the Milwaukee County Code of General Ordinances, the County agrees to notify the Society of such obligation, restriction or requirement prior to its effective date.

g. To the extent that Society employees and volunteers conduct activities on Zoo premises, they are subject to Zoo policies and procedures with regards to, for example, safety, security, program animal use, emergency response, behind the scenes tours, use of radios, media contact, vehicle use, smoking on Zoo grounds and any other applicable policies and procedures or permits required by any governmental agency.

3. ZOO OPERATIONAL SUPPORT PROVIDED BY THE SOCIETY

a. The Society will provide to the County such programming and other services as the parties may agree from time to time, including, but not limited to, such programs and other services that assist the Zoo in maintaining its accreditation with the Association of Zoos and Aquariums (Programs). This includes, but is not limited to, the Society's education and conservation programs.

b. The Zoo and Society agree to a 50% split of gross revenue, less credit card fees, generated by Zoo Pass membership dues. If Zoo Pass revenue should increase or decrease, the Zoo and the Society will jointly share in the risks and rewards.

c. On a monthly basis, staff from the Society and the Zoo will share reports via email on memberships sold and calculate the 50%/50% split. Payments between the Zoo and the Society for their respective share will occur as follows:

<u>Time period</u>	<u>Payment Month</u>
1/1 -3/31	April
4/1 – 6/30	July
7/1 – 9/30	November
10/1 -12/31	January

d. The Society and Zoo will work creatively and cooperatively to maintain Zoo attendance and Society membership numbers. The Zoo and Society agree that the marketing staff of each organization will work closely together to provide zoo guests and members with opportunities to visit the Zoo. The two organizations may need to pursue marketing initiatives to maintain interest in the Zoo and jointly look at flexible pricing strategies, in-park spending incentives, etc. Zoo and Zoological Society cost recovery opportunities are listed in Section 7.f. Sponsorships and Section 7.i.3.

e. The Society's Conservation Education, Creative and Communications departments will be responsible for developing all Zoo interpretive signage in conjunction with Zoo staff and as approved by the Zoo Director or his/her designee. Conservation Education staff shall review and suggest modifications to education presentation scripts that are to be delivered by Zoo staff, Zoo Pride volunteers, and private animal-related vendors operating within the Zoo. The Society will coordinate efforts with the Zoo to enhance visitors' awareness and support of wildlife and resource conservation through onsite programs and performances. The Zoo will provide registration services for all school/youth groups planning a field trip to the Zoo and refer field trips to Society school programs. The Society will manage an animal biofact collection, including USFWS-tagged items from endangered animals. The Society may also, on the Zoo's behalf and with approval of the Zoo Director, or his/her designee, conduct offsite programming as may be appropriate as a part of its Conservation Education program.

f. Society publications, advertisements, merchandise, graphics, donor recognition materials, electronic media and other items with text or images referencing or depicting the Zoo are subject to Zoo Director, or his/her designee, approval prior to publication, installation or distribution. Society fundraising initiatives on Zoo grounds are subject to Zoo Director approval.

g. Zoo Pass membership benefits must be approved by the Zoo Director. Zoo Pass members receive free admission into the Zoo (during regular Zoo hours) for the adult named on the card and minor children and/or grandchildren and guests when applicable. Zoo Pass Plus members receive free admission and parking during regular Zoo hours.

h. The Zoo, with notification to the Society, may charge members an admission fee for events. In order to communicate any admission fee charged by the Zoo to Society members, the Zoo

Director will inform the Society's President and CEO a minimum of six months prior to the event. The Society will publish in a timely manner such fees in their communication materials both in print and electronically.

i. By August 15 each year, the Zoo Director and the Society President and CEO shall mutually agree on an estimate of the budgeted amount and scope of financial support for Zoo operations that the Society anticipates providing to the County for the Zoo for the Society's upcoming fiscal year. The Estimated Financial Support shall include detail regarding the projected amount of support anticipated to be provided to the County for items such as, but not limited to, cash operating support which is generated from a 50% share of Zoo Pass membership revenue earned, sponsorship, summer exhibit support, in-kind services, ticket sales, and similar items. By July 1 of each year, the Zoo Director will provide to the Society its annual work plan, setting forth the Zoo's requested annual budgeting objectives for the purpose assisting the Society with its budgeting process. The parties acknowledge that the Estimated Annual Financial Support is the Society's good faith estimate and that the actual amount of financial support provided by the Society on an annual basis may vary from the Estimated Annual Financial Support depending on the Society's financial position and based on hardship or circumstances, as determined by its Board of Directors. Such hardship or circumstances, noting the variance of actual amount of financial support and a corrective action plan, must be reported in writing to the County for presentation to the appropriate County Board committees. The Society may make such amendments to the Estimated Annual Financial Support as its Board of Directors deems appropriate. The County acknowledges that the Estimated Annual Financial Support is an estimate only and that the Society is required to provide the Estimated Annual Financial Support to the County only to the extent that the Society's Board of Directors, in its sole discretion, determines that it is prudent for the Society to do so. These terms are subject to modification by mutual consent.

4. MANAGEMENT OF COUNTY AND SOCIETY AFFAIRS; EMPLOYEES

a. The County and Society agree that, as independent and separate entities, each shall maintain a staff and management structure independent of the other.

b. The Zoo Director is the County official responsible for administration of this Memorandum of Understanding for the County.

c. The President and CEO is the Society employee responsible for administration of this Memorandum of Understanding for the Society.

d. The Society shall not make any direct payment or reimbursement to a County employee without the approval of the Zoo Director or Animal Management and Health Director. An example of an

acceptable payment would be the payment or reimbursement of travel expenses incurred by the County's Zoo staff in connection with Zoo activities.

e. The Society shall direct Zoo Pride efforts at the Zoo. The scope of Zoo Pride duties at the Zoo will be in accordance with standards approved by the Zoo Director and the Society's President and CEO.

f. The Society and County agree to encourage cooperation and open communication between the Society's staff and the County's Zoo staff. However, in no event will the County's Zoo staff report to, be treated as, or be supervised by employees of the Society, and in no event will the Society's staff report to, be treated as, or be supervised by employees of the County.

g. To better describe and facilitate the operating procedures shared by both the Zoo and Zoological Society, the two organizations will jointly develop by June 30, 2020, an Administrative Manual of Procedures (AMOP).

5. FINANCIAL MATTERS

a. The County and the Society shall maintain separate books and records and each shall obtain a separate audit of its financial statements. Each audit shall be made in accordance with generally accepted auditing standards by an independent certified public accountant.

b. The Society and Zoo may receive funds intended for the other organization and agree to provide a reconciliation and transfer of funds on a monthly basis. This includes, but is not limited to memberships sold after admission has been paid and on the same date and sponsorship monies secured by the Society on the Zoo's behalf.

c. The Society agrees that for federal income tax purposes it is not entitled to and will not take any depreciated or amortization deduction or investment tax credit for any assets of the Zoo.

6. CAPITAL PROJECTS

a. The County and the Society may agree from time to time to jointly or separately fund capital projects for the Zoo. **Exhibit D** outlines the Joint Capital Project procedures. With regard to each such capital project, the County and the Society agree to proceed as follows:

1. For projects funded partially or totally by the County, appropriations for each project shall be established by the County in writing and reviewed annually during the County budget deliberations or more often if appropriate. The Society must obtain approval from the Society Board for any projects that the Society agrees to fund or partially fund. The Society and the County will agree to share costs only under procedures mutually agreed to in writing by the Society and the County from time to time.

2. 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 for approval prior to bidding the project.

3. 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 verifies to the reasonable satisfaction of the Milwaukee County Office of the Comptroller the validity of pledges and the availability of other funds or line(s) of credit made for such project prior to project funds being expended.

4. The County and the Society shall share the costs of a project manager to coordinate and monitor any capital project as agreed to by the Society and the County, the terms of such shared costs to be agreed to by the Society and the County in advance.

5. Before accepting a donation for a Zoo capital project, the Society agrees to notify the Zoo Director of any donation, intent to support or indication of interest in any new capital project not already authorized by the County. Upon receipt of such information, the Zoo Director shall, at his discretion, inform the County Executive and the appropriate County Board committee, and seek approval to proceed to the next phase or recommend disapproval.

7. SOLICITATIONS AND DONATIONS

a. The Society shall have the right to solicit and receive donations, gifts, grants and other forms of revenue from any source during the term of this agreement, provided such revenue received is used consistent with the mission of the Society.

b. Zoo employees authorized by the Zoo Director may participate in solicitations at the request of the Society.

c. No other County employee shall solicit any donations for the Society unless the County specifically approves such activity.

d. Any proposed donation to benefit programs, activities or exhibits at the Zoo that includes restrictions or contingencies must be approved by the Zoo Director prior to acceptance, and any building or renovated area that is created through the donations are the property of the County.

e. The County and the Society agree to encourage cooperative and collaborative fundraising efforts among the Zoo staff and the Society's staff in support of the Zoo. Participation in such cooperative efforts must be approved by the Zoo Director (with respect to County staff) and the Society's President

and CEO (with respect to Society staff). By July 1 each year, the Zoo Director and the President and CEO of the Society, along with the appropriate support staff, will meet to jointly establish a prioritized list of capital projects, conservation initiatives, animal acquisitions, green initiatives, programs, and equipment. The County and Society will review estimated costs from the list of priorities provided by the County and agree to specific projects by August 1 each year that the Society will attempt to fundraise for. Interim reports will be provided by the Society at the request of the Zoo Director.

f. The Society will plan, organize and execute fundraising events throughout the year. Society staff will work with Zoo staff to schedule events within the Zoo master calendar and will follow the LOI and work order requirements established between the Zoo and Society. At the request of the Society's President and CEO and subject to the approval of the Zoo Director, the County will make a senior Zoo staff person available at Society events such as Zoo Ball and the Birdies and Eagles Golf Outing.

The Society's current fundraising efforts are noted below. This is a representation of some of the methods used by the Society and is not intended as an all-inclusive listing.

Annual Appeal

The Society generally undertakes an appeal to members/donors for a specified project each year. Such projects typically are mutually agreed upon by the Society and Zoo.

Sponsorships

The Society will solicit sponsorships for Zoo events and attractions and for Society events and programs. The terms of Zoo sponsorships will be approved by the Zoo's Marketing and Communications Director. By June 1 each year, Zoo and Society staff will prepare the sponsorship budget, evaluate the fair market values of sponsorship opportunities and develop a prospective list of potential marketing partners. The funds received from sponsorships will come to the Society. The Society will pay the Zoo the sponsorship fee, less the cost of obtaining the sponsorship and/or the materials to produce any sponsorship recognition. Any such costs must be approved in advance by the Zoo Director. The sponsorship dollars received from the Society will be credited in the Zoo's budget as Society support for sponsorship.

g. Neither the County nor the County's employees may utilize the Society's donor list or donor information to contact or solicit support for the Zoo or any other organization from such individuals without the prior written approval of the Society President and CEO.

h. Donations from the Public

1. The Society shall have the right to solicit and receive donations, gifts, and other forms of revenue to support programs, activities or exhibits at the Zoo from any source during the term

of this agreement, provided that such revenue received is used by the Society to support the Zoo within the mission of the Society.

2. To the extent that a donation in support of the Zoo is made directly to the County, the County shall inform the Society's Development Department of the amount of the gift, the date of the gift, and any restrictions placed on the gift. Upon approval by the Zoo Director, the Society may, at its discretion, contact such donor to recognize the gift made in support of the Zoo. Any additional follow-up with such donor will be the responsibility of the County. The County, at its discretion, is responsible for providing any acknowledgment.

i. Grants or Sponsorships secured by the Society

1. The Society shall provide written notification to the Zoo Director of any grant or sponsorship opportunities that will support the Zoo's mission.

2. Prior to applying for any such grant or sponsorship, the Society shall require timely written confirmation from the Zoo Director that the opportunity would be of benefit to programs, activities, or projects at the Zoo, and that the Zoo will cooperate in the Society's activities in connection with such submission.

3. For new grants or sponsorships, excluding those for field trips, directly benefiting the Zoo, the Society may incorporate an administrative fee of 10% or the actual cost to obtain the grant or sponsorship, whichever is greater, which would be written into the grant proposal and still provide the grant funds required for the Zoo project.

4. The Society will work with the Zoo Director, or his/her designee, to compile progress reports for all funded projects.

5. The Society will track and provide a status report of grants and sponsorships that were accepted and/or declined for programs, activities, or projects at the Zoo to the Zoo Director and the Society's President and CEO.

6. The Society will provide the Zoo with a copy of awarded grant and sponsorship agreements which will outline the terms and/or restrictions.

7. If Zoo staff assist the Society in implementing all or part of a grant and sponsorship, the Zoo Director, or his/her designee, agrees to cooperate in the reporting, including but not limited to, assisting in design options, project management, vendor identification and expenditure review to assure that uses of funds are within the approved purposes of the agreement.

8. RECORDS

a. The Society shall provide the following to the County annually:

1. The Society's audited financial statements and management letter issued in conjunction therewith.
2. A copy of the Society's adopted budget for its upcoming fiscal year.
3. When applicable, updated copies of the Society's Articles of Incorporation and Bylaws.
4. The public disclosure copy of the Society's IRS Form 990.
5. Upon request from the Zoo Director, the Society will provide a report of the Endowment funds held by the Society for the benefit of programs, activities or exhibits at the Zoo, including the fund balance and details of any disbursements from the fund(s).
9. 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.

10. COUNTY RIGHTS OF ACCESS AND AUDIT

Society shall, not less than annually, submit to the Milwaukee County Office of the Comptroller copies of Society's audited financial statements. Furthermore, Society, its officers, directors, agents, partners and employees shall allow the County Audit Services ("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 Society related to matters under this MOU for a period of up to three years following the Expiration Date. Any personally identifiable personnel or donor information reviewed as part of any audit would not be recorded as part of County Audit Services Division's workpapers. Any of Society's contractors or subcontractors performing work under this MOU will be bound by the same audit terms as Society. All contracts, subcontracts, or other agreements for work performed under this MOU will include written notice that the parties understand and will comply with the requirement contained in Milwaukee County Ordinances § 34.095.

11. INDEPENDENT CONTRACTORS

In the performance of this Memorandum of Understanding, both the County and the Society will be acting in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The agents or employees of the one shall not be construed to be the agents or employees of the other. County employees shall remain employees of the County notwithstanding the fact that they

may assist the Society.

12. CONFLICT OF INTEREST

a. The County and Society each are responsible for ensuring that its employees are informed of and comply with the provisions of its respective ethics and conflict of interest policies. Neither party is responsible for supervising compliance with the provisions of the other's ethics or conflict of interest policies.

b. County employees may join the Society but shall not serve as officers or directors.

c. The Zoo and their agents and employees shall comply with all applicable Federal, State, and Milwaukee County laws and regulations governing conflicts of interest.

d. The Society shall comply with the conflicts of interest rules that apply to it as a Wisconsin nonstock corporation organized under Chapter 181 of the Wisconsin Statutes and with the excess benefit transaction rules set forth in Section 4958 of the Code that apply to it as an organization described in Sections 501(c)(3) and 509(a)(1) of the Code.

13. TERMS

a. The initial term of this Memorandum of Understanding shall be four (4) years (Initial Term) and shall automatically renew for an additional four (4) years (Additional Term). Either party may terminate this Memorandum of Understanding only by providing at least one calendar year written notice (as defined in Section 16) to the other party prior to the extension of any Additional Term. For purposes of clarification, neither party may terminate this Agreement except at the end of an Additional Term.

b. This Memorandum of Understanding contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Memorandum of Understanding shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein, unless contained in a written agreement entered into by both of the parties hereto. All the provisions of this Memorandum of Understanding and any amendment thereto shall extend to and be binding upon and inure to the benefit of the successors of the respective parties. This Memorandum of Understanding, or any provision hereof or any right or obligation arising hereunder, is not assignable by either party in whole or in part, without the express written consent of the other party.

14. INDEMNIFICATION

a. To the fullest extent permitted by law, the County agrees to indemnify, defend and hold harmless the Society and its officers, employees and agents, against any and all liability, losses, charges, fines, costs or expenses including attorney's fees to the extent such damages including suits at law or in

equity are caused by or resulting from any wrongful, intentional or negligent acts or omissions of the indemnifying party or any conditions relating to the Zoo premises not caused by the Society, its officers, its governing and associated board members, employees or agents, which may result in any person, persons, or organization suffering bodily injury, personal injury, death or property loss or damage, employment practices, civil rights or environmental liability and impairments arising out of this Agreement. Milwaukee County's liability shall be limited by Wis. Stat. § 345.05(3) for automobile and § 893.80(3) for general liability.

b. To the fullest extent permitted by law, the Society agrees to indemnify, defend and hold harmless the County and its elected officials, officers, employees and agents, against any and all liability, losses, charges, costs or expenses including attorney's fees to the extent such damages including suits at law or in equity are caused by or resulting from any wrongful, intentional or negligent acts or omissions of the identifying party which may result in any person, persons, or organization suffering bodily injury, personal injury, death or property loss or damage, employment practices, civil rights or environmental liability and impairments arising out of this Agreement.

15. INSURANCE

a. The Society must provide the County with evidence of the minimum insurance requirements summarized in **Exhibit E**.

b. Milwaukee County is a municipal body corporate that self-funds for liability under Wis. Stat. secs. 893.80 and 895.461(1), and for automobile liability under Wis. Stat. sec. 345.05. Milwaukee County is also permissibly self-insured under Wis. Stat. sec. 102.28(2)(b) for Workers' Compensation. This protection is applicable to Milwaukee County officers, employees and agents while acting within the scope of their employment or agency. The County agrees to provide a letter of financial responsibility in proof of this.

16. APPLICABLE LAW

The validity, legality and all matters relating to the interpretation and effect of this Memorandum of Understanding including any amendment shall be governed by the laws of the State of Wisconsin.

17. AMENDMENTS

No amendment, change or modification to this Memorandum of Understanding shall be effective or enforceable unless it is in writing and executed by each party to this Memorandum of Understanding.

18. NOTICE

a. Any notice or notices required or permitted to be given pursuant to this Memorandum of Understanding may be personally served on the other party by the party giving such a notice, or may be

served by certified mail, postage prepaid, return receipt requested.

b. All notices to the County shall be sent addressed to the following: Director, Milwaukee County Zoo, 10001 West Blue Mound Road, Milwaukee, Wisconsin 53226.

c. All notices to the Society shall be sent addressed to the following: President& CEO, Zoological Society of Milwaukee County, 10005 West Blue Mound Road, Milwaukee, Wisconsin 53226.

19. TERMINATION OF PRIOR MEMORANDUM OF UNDERSTANDING.

The Memorandum of Understanding previously executed between the County and the Society dated May 2014 is hereby terminated effective is of the date above written.

20. CONSENT NOT UNREASONABLY WITHHELD

Whenever provision is made in this Memorandum of Understanding for either party to secure the consent or approval of the other, that consent or approval shall not be unreasonably withheld, delayed or conditioned, and if a party denies its consent or approval, it shall be the obligation of such party to offer an alternative in good faith that enables the parties to exercise the rights contemplated by this Memorandum of Understanding.

Signature Page Follows:

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: _____
Chuck Wikenhauser, 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

Exhibit A
Zoo Pass Membership Pricing and Benefits

Zoo Pass Membership Pricing

The Zoo and the Society are committed to balancing and maximizing revenue from admission and membership, while continuing to fulfill the Zoo's mission and ensuring that the Zoo is accessible to all but also keeping in mind the cost of running the zoo. A successful Zoo helps the Society generate more memberships which, in turn, helps in raising funds to support the Zoo and the Society. As part of its annual budget process, the Society's Board of Directors will approve Zoo Pass membership rates. As part of its annual budget process, the County Board will approve admission rates. The Society and the Zoo will provide one another with a synopsis of the due diligence process used to determine any adjustment to membership fees/admission fees.

To keep Zoo admission and Society Zoo Pass membership prices in line, the Zoo and Society agree to the following general membership pricing ranges:

- Individual memberships will generally range in price between 3.5 to 3.9 times the regular County summer individual admission prices for the basic membership and between 3.5 and 3.9 times the regular County summer individual admission and parking for the parking plus memberships.
- Family memberships will generally range in price between 2.0 to 2.5 times the regular County summer admission prices (based at a minimum of 2 adults and 2 children) for basic and between 2.0 and 2.5 times for County summer admission prices (based on 2 adults and 2 children and the parking fee) for parking plus memberships.
- The above multipliers are general guidelines to be used in determining membership pricing. Another consideration, of equal importance, is the price the Milwaukee market will bear when compared to other peer Midwest zoos. Economic factors and the timing since the last increase(s) should be taken into consideration when reviewing membership pricing.

Membership Benefits

All Zoo Pass membership benefits must be approved by the Zoo Director. Text and images are subject to the Zoo Director's approval in accordance with Section 3.d. of the MOU.

The following benefits will be associated with the Society's Zoo Pass membership program:

- Zoo Pass members will receive free admission into the Zoo during regular Zoo hours for the adults named on card and minor children and/or grandchildren and guests when applicable. Some Zoo events may not qualify for free admission. (The Zoo Pass members will be informed that a photo ID and Zoo Pass card will need to be presented for admission.)

- Participation in AZA's reciprocity program as approved by the Zoo Director, which will be maintained by the Society.
- 10% gift shop discount when the Society membership card is presented
- Free parking for one vehicle per membership per day with Zoo Pass Plus
- Special members-only events that will be coordinated with the Zoo's master calendar and be documented in Letters of Intent.

* Zoo Pass admission/parking privileges are not inclusive of company picnics or class field trips when group rates have been established for the picnic/field trip.

Member Field Trips

The Society can offer field trips to members as a benefit of membership. These trips will be to other zoos, aquariums, museums and places of interest as determined by surveys of participants. Society staff will serve as host/hostesses on the buses. The Society will follow the LOI and work order requirements in requesting support from the Zoo concessions for the continental breakfast and area set-up for participant check-in.

Additional membership benefits

- The Society and Zoo may negotiate higher gift shop discounts or discounts on certain items subject to Zoo Director's approval.
- Upon agreement of the Society President and CEO and Zoo Director, the Society and Zoo may offer loyalty programs to increase in-park member spending.
- The Society premium memberships will receive a 20% discount on facility rentals booked through Zoo Group Sales.

Exhibit B Facilities

Communications, Membership and Marketing department

- Office, storage and Guest Services space located primarily in the northeast section of the US Bank Gathering Place (approximately 2,810 sq. ft.) and two storage areas located in the lower level of the Peck Welcome Center.

Creative department

- Office and storage space located in the loft area of the octagonal barn in the Northwestern Mutual Family Farm (approximately 2,038 sq.ft.).

Conservation and Conservation Education departments

- Office, classroom, staff lunchroom, storage and conference room space located at the Karen Peck Katz Education Center on the south end of the parking lot (approximately 15,063 sq.ft. over two floors).
- Utilization of the Conservation Outpost (previously called Wolf Woods) and the Northwestern Mutual Learning Loft in the Elephant Care Center.

Kohl's Wild Theater Education Program

- Outdoor performance space located in the Northwestern Mutual Family Farm for spring, summer and fall shows (approximately 3,600 sq.ft. - includes bleacher sitting and two backstage storage areas). This space will be shared with other performances and shows that the Zoo may wish to provide. Zoo and Society staff will coordinate the schedule.
- Indoor performance space and storage space located in the US Bank Gathering Place Atrium during the summer (approximately 631 sq.ft. - minimum of two performances daily).
- Rehearsal space during portions of May and September in the Special Exhibits Building and or Zoofari Conference Center (approximately 1,600 sq.ft.).
Utilization of the Northwestern Mutual Learning Loft in the Elephant Care Center when available.
- Additional Space Occasional usage of the Peck Welcome Center US Bank Gathering Place and other Zoo facilities as agreed upon for Society activities.
- When available, the Society may use the Special Exhibits building and/or the Zoofari Conference Center for rehearsal space.

President/CEO, Finance/Accounting, Development and Zoo Pride departments

- Offices and storage located in the lower level of the Peck Welcome Center (approximately 2,700

sq. ft.) and three storage areas located in the lower level of the Peck Welcome Center (near the loading dock area).

- Utilization of the storage room located on the mezzanine level of the Peck Welcome Center (will be used as the Society's secure IT server room).

Garage Location

- Cart storage garage located behind the Flamingo Cafe on the northwest side of main parking lot (approximately 800 sq. ft.).
- An additional parking space by the Garage/Animal Hospital that is used to park a Society golf cart.

(Please note: In addition to the items referenced above, staff utilize parking spaces in the Zoo's public parking lot at no charge.)

This list describes the location and amount of space currently provided to the Society. At the Zoo's discretion, with one-year written notice to Society's President and CEO, or sooner if mutually agreed upon by the Zoo Director and the Society's President and CEO, the location and amount of space made available may change. Any additional space allocated to the Society by the Zoo Director during the term(s) of this agreement would have the one-year written notice to the Society's President and CEO requirement. Notwithstanding any other provision in this agreement no changes to Exhibit B may occur without written approval from the Milwaukee County Comptroller.

Exhibit C
Special Events/After-hour Zoo Events at the Zoo

The Zoo, with a six-month notification to the Society, may charge members an admission fee for the following events:

- Sunset Zoofaris (6 nights – 6:00 p.m. to 9:00 p.m.) 81% of guests are members
- Boo at the Zoo (2 nights - 6:00 p.m. to 9:00 p.m.) 85% of guests are members
- Halloween Spooktacular (2 nights - 6:00 p.m. to 9:00 p.m.) 81% of guests are members
- Other events upon notification

In order to communicate any admission fee charged by the Zoo to Society members, the Zoo Director will inform the Society's President and CEO a minimum of six months prior to the event. The Society will publish in a timely manner such fees in their communication materials both in print and electronically.

Exhibit D
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 siting, 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 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.

Exhibit E
County Insurance Requirements

Every contractor and all parties furnishing services or product to County or any of its subsidiary companies must provide County with evidence of the following minimum insurance requirements. In no way do these minimum requirements limit the liability assumed elsewhere in the contract. All parties shall, at their sole expense, maintain the following insurance:

- A. Commercial General Liability Insurance including contractual coverage: The limits of this insurance for bodily injury and property damage Combined shall be at least:

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products – Completed Operations Limit	\$2,000,000
Personal and Advertising injury Limit	\$1,000,000

- B. Business Automobile Liability Insurance:

Should the performance of this Agreement involve the use of automobiles, Contractor shall provide comprehensive automobile insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles. Contractor shall maintain limits of at least \$1,000,000 per accident for bodily injury and property damage combined.

- C. Workers' Compensation Insurance:

Such insurance shall provide coverage in amounts not less than the statutory requirements in the state where the work is performed, even if such coverages are elective in that state.

- D. Employers Liability Insurance:

Such insurance shall provide limits of not less than \$500,000 policy limit.

- E. Excess/Umbrella Liability Insurance

Such insurance shall provide additional limits of not less than \$5,000,000 per occurrence in excess of the limits in (A.), (B.), and (D.) above.

Additional Requirements:

- F. Contractor shall require the same minimum insurance requirements, as listed above, of all its contractors, and subcontractors, and these contractors, and subcontractors shall also comply with the additional requirements listed below.

- G. The insurance specified in (A.), (B.), and (E.) above shall: (a) name County including its directors, officers, employees and agents as additional insureds by endorsement to the policies, and, (b) provide that such insurance is primary coverage with respect to all insureds and additional

insureds.

- H. The above insurance coverages may be obtained through any combination of primary and excess or umbrella liability insurance. County may require higher limits or other types of insurance coverage(s) as necessary and appropriate under the applicable purchase order.
- I. Except where prohibited by law, all insurance policies shall contain provisions that the insurance companies waive the rights of recovery or subrogation, by endorsement to the insurance policies, against County, its subsidiaries, its agents, servants, invitees, employees, co-lessees, co-venturers, affiliated companies, contractors, subcontractors, and their insurers.
- J. Contractor shall provide certificates evidencing the coverages, limits and provisions specified above on or before the execution of the Agreement and thereafter upon the renewal of any of the policies. Contractor shall require all insurers to provide County with a thirty (30) day advanced written notice of any cancellation, nonrenewal or material change in any of the policies maintained in accordance with this Agreement. With the exception of worker's compensation coverage, all coverage must be placed with carriers with an A. M. Best rating of A- or better.

