

CONCESSIONAIRE AGREEMENT

This CONCESSIONAIRE AGREEMENT (this "Agreement") is made and entered into as of _____, 2015, by and between the MILWAUKEE COUNTY ZOO ("County"), a division of Milwaukee County, a municipal body corporate, and SERVICE SYSTEMS ASSOCIATES, INC., a Colorado corporation ("Concessionaire").

WITNESSETH:

WHEREAS, the County solicited proposals for food service, catering food service, retail and warehouse operations at the Milwaukee County Zoo (the "Zoo Facilities"), located at 10001 West Bluemound Road and 9715 West Bluemound Road, Milwaukee, Wisconsin; and

WHEREAS, the County has determined that it would be in its best interest to award a contract to the Concessionaire based on the Concessionaire's proposal; and

WHEREAS, Concessionaire desires to to operate the food service, catering food service, retail and warehouse operations at the Zoo Facilities.

NOW, THEREFORE, in consideration of the mutual rights and responsibilities hereinafter set forth, the parties agree as follows:

1. USE OF ZOO FACILITIES AND EQUIPMENT

A. Concessionaire shall have the exclusive right to use the Zoo Facilities for the sole purpose of operating a food service and merchandising business. This includes but is not limited to maintaining permanent and mobile food concession facilities, establishing vending concessions and catering operations, managing warehouse operations, retail stores, and retail vending, positioning Mobile Unit(s) (as defined in Section 7), establishing any newly conceived merchandising operations, and using storage, closet facilities, and office space, all for the purpose of selling food service and retail merchandise that (i) relates to the Zoo and its mission; (ii) promotes public awareness of the Zoo; and (iii) is customary and reasonable for the convenience for the Zoo's visitors (collectively the "Food Service & Merchandising Business"). Concessionaire shall not use or permit the Zoo to be used for any other purpose without County's prior written consent.

B. County also hereby allows Concessionaire to use, and Concessionaire hereby accepts for use from County, all equipment and furnishings existing prior to the date of this Agreement that are owned by County, physically located at the Zoo Facilities, and related to the Food Service & Merchandising Business ("Existing Equipment"), attached hereto as Exhibit A. Concessionaire agrees to accept all Existing Equipment "as is" in its current condition.

C. Existing Equipment includes third-party vendor equipment, and beverage dispensing equipment which Concessionaire shall make available to contracted events located in

the picnic areas and rental facilities during the transition year of 2015 for all events not contracted with Concessionaire.

D. Existing Equipment also includes linens which the Concessionaire agrees to make available to non-food and beverage events during the transition year of 2015 for all events not contracted with Concessionaire.

2. TERM

A. This Agreement shall commence on _____, 2015 (the "Effective Date") and continue until _____, 2025, subject to the termination provisions set forth herein. So long as County is reasonably satisfied with its relationship with the Concessionaire and the performance of the Agreement, and as long as the parties are able to successfully negotiate changes in the financial package (commissions and capital investment), and with the approval of the County Board, the term of the Agreement may be extended for additional five-year terms (each an "Extended Term").

B. In the event Concessionaire, with the consent of County, holds over and remains in possession of any of the Zoo Facilities without any formal extension of the Term or Extended Term as set forth in Section 2.A, after the expiration of the then current term, such holding over shall not be deemed to operate as a renewal or extension of this Agreement but shall only create a month-to-month agreement on the same terms, conditions and covenants, including consideration, contained herein, with exception to annual guarantee.

3. EXCLUSIVITY

A. County grants Concessionaire the exclusive privilege and obligation to conduct the Food Service & Merchandising Business at the Zoo during the term of this Agreement, except for the following:

- i. Concessionaire agrees to honor contracted Group Sales rates for beverage and concession pass pricing for the transition year of 2015 with full exclusivity for pricing January 1, 2016 to January 18, 2025.
- ii. Concessionaire agrees to honor Group Sales rate for County owned linens (included in Existing Equipment) for the transition year of 2015 with full exclusivity for pricing January 1, 2016 to January 18, 2025
- iii. Concessionaire agrees to allow outside catering and bartending services to facilitate contracted events during the transition year of 2015 with full exclusivity for catering and bartending operations January 1, 2016 to January 18, 2025.
- iv. On occasion, the County conducts activities (fund-raising, recognition of sponsors and/or long-term clients) at the Zoo during which the Concessionaire shall waive its catering exclusivity, including the sale of alcoholic beverages as may be allowed by local and state ordinance, for up to ten (10) events annually, at the discretion of the County. In all instances, when practical, the County

shall coordinate such activities with the Concessionaire, offering Concessionaire the right to bid on any such services. Exhibit B attached hereto, outlines the details of one such activity in which the Concessionaire will participate as a vendor.

- v. Concessionaire is not a “Kosher Caterer” (providing strictly “Kosher Catering”, not kosher style, consistent with rabbinical laws, guidelines and industry practices). If a prospective user or the County requires Kosher Catering for an event, then the Concessionaire must enter into a subcontract with a local Kosher Caterer that is satisfactory to the prospective user and the County at a price that is acceptable to the potential user and the County. Such Kosher Catering engagement shall be in addition to the ten (10) exclusions outlined in Section 3, paragraph A, sub-paragraph .iv. above.

The Concessionaire and the County further acknowledge that there may from time to time be other specialized catering, such as specialty ethnic food or dietary requirements, which the Concessionaire cannot reasonably provide with its own resources. In such circumstances, a user or the County may require that the Concessionaire subcontract to a specialty caterer that is satisfactory to the user and the County (“Specialty Caterer”). Such engagement shall be in addition to the ten (10) exclusions outlined in Section 3., paragraph A., sub-paragraph iv. above.

- vi. From time to time, County and Zoological Society of Milwaukee sponsors are allowed to provide product samples (ie. food and beverages) to Zoo visitors. This practice will be allowed during the term of this contract. The parties agree that no samples will be provided that are in violation of existing sponsor agreements. Sample sizes will be restricted by weight and volume so as to not compete with Concessionaire’s food service or retail offerings. In all instances, when practical, the distribution of samples shall be coordinated with the Concessionaire. County agrees that it shall not conduct such activities arbitrarily or unreasonably.
- vii. On occasion the County and the Zoological Society of Milwaukee receive and accept donated products and services for their events and programs. If requested by County, Concessionaire may prepare and display these donated products, charging the County only its handling and preparation costs.
- viii. The County has a long-term relationship with a local Miller/Coor distributor in serving and providing beer to the County. The Concessionaire is encouraged to continue to cultivate and maintain this relationship.

B. The Concessionaire is required to meet the terms and conditions of sponsorship agreements and the County retains sponsorship revenues from all exclusivity contracts (i.e. Pepsi, Cedar Crest). Concessionaire will follow the purchasing rules under these contracts. Concessionaire will be the agent representing the County in these contracts and will have access to the equipment provided by these types of vendors. Concessionaire will keep these items in good working condition and all equipment will be returned to the County or the vendor if the

contract is terminated. The Concessionaire will likewise accommodate the requirements of any future sponsorship arrangements that the County may pursue. The County agrees to include Concessionaire in the selection of sponsorship vendors, and in the negotiation of sponsorship agreements. The County agrees to not engage in any exclusive sponsorship arrangements in which the pricing of vendor products are in excess of those generally available to Concessionaire. If Concessionaire should enter into any sponsorship agreements for product distribution at the Zoo, Concessionaire shall include County in the selection of potential sponsorship vendors, Concessionaire shall obtain written approval by the County to enter into such agreements, and County shall retain sponsorship revenues from any newly conceived exclusivity contracts.

C. Concessionaire will have the exclusive right to serve alcoholic beverages within the Zoo upon written approval by County. Concessionaire shall be required to obtain and maintain (keep in good standing) City of Milwaukee liquor permits and licenses necessary for all types of alcoholic beverage dispensing that occurs at the Zoo. The responsibilities associated with acquiring the appropriate licenses, as well as any related fees or taxes, vest with the Concessionaire.

D. Concessionaire agrees to honor the Zoo’s exclusive tent rental agreement for rentals and seasonal tenting in designed rental and picnic areas throughout the duration of the Agreement.

4. REMUNERATION

A. Monthly Remuneration. Concessionaire shall pay to County monthly remuneration in an amount equal to the applicable percentage of Gross Receipts for items sold during that month, as set forth in the following table:

CATEGORY	SALES	COMMISSION
Concession Food & Beverage and Vending	Receipts from \$0 up to \$2,000,000	25%
	Receipts in excess of \$2,000,000	28%
Retail Gifts	All Receipts	30%
External Catering Food & Beverage and Alcohol	All Receipts	15%

B. Annual Guarantee. If in any contract year (March _____ – March ____), Zoo Attendance exceeds 1,200,000 visitors, Concessionaire shall pay County the following amounts (the “Guaranteed Amount”) if the Guaranteed Amount exceeds the total remuneration due to County under Section 4.A for that contract year.

- Contract Year 1: \$1,450,000
- Contract Year 2: \$1,650,000
- Contract Year 3: \$1,700,000
- Contract Year 4: \$1,750,000
- Contract Years 5 and beyond: \$1,800,000

If Zoo Attendance does not reach 1,200,000 in a contract year, no guarantee will apply for that year and Concessionaire shall only pay County remuneration pursuant to Section 4.A.

For purposes of this Section, “Zoo Attendance” means total attendance as determined by the Zoo as of the date of this Agreement, less attendance at any special events that occur outside of the public operating hours of the Zoo Facilities in which Concessionaire’s services are not available or educational outreach programs in which participants do not have access to Zoo Facilities. Zoo Attendance also does not include employees or independent contractors who are providing services to Concessionaire or County. The daily business records maintained by the Zoo in connection with its admissions function shall be authoritative as to the Zoo Attendance number. The Zoo shall provide Concessionaire with monthly reports, certified by the the Zoo’s Deputy Zoo Director (Administration and Finance), of Total Attendance within ten (10) days after the end of each calendar month, *provided* the Zoo may adjust any monthly attendance report up to, but no later than, fifteen (15) days after that month’s end.

C. Due Date. Concessionaire shall pay County by the twentieth day of each month the total rent due for the previous Concessionaire fiscal month. Concessionaire may not set-off any amounts against the rent due to County under this Agreement, except as provided in Section 5.

D. Annual Statement and Payment. Within thirty (30) days after the end of each contract year, Concessionaire shall provide County with a financial statement setting forth (i) Gross Receipts for such year, and (ii) the total amount of rent actually paid by Concessionaire to County during such year (“Paid Rent”).

E. Confidentiality. Concessionaire and County agree to keep confidential the terms of Remuneration as described in Section 4.A and shall not share this information with any third parties, except to the extent required by local, state, or federal law, or unless written approval is obtained by the requesting party.

F. Marketing Fund. Concessionaire shall provide an annual special event marketing fund of \$30,000 per year for the first five years of the Agreement, which the parties may draw upon as needed to support the marketing, advertising and promotion of group sales rentals at the Zoo. This fund may consist of either monetary payments for advertising and promotion, or the provision of “in-kind” (valued at then printed and publically available pricing) catering services provided by Concessionaire to County. Concessionaire shall budget for these services or payments on an annual basis, and any unused funds shall not accrue for use in the following year. The parties shall meet annually to discuss and agree upon in writing how the funds are to be disbursed.

5. DEFINITION OF GROSS RECEIPTS

A. For purposes of this Agreement, “Gross Receipts” means the total price charged for all items sold, assigned, or otherwise distributed on, in, at, or from the Zoo Facilities, including without limitation the Mobile Unit(s), whether paid in cash, by check, on credit, through a charge account, exchange, or otherwise, regardless of the location where payment is actually collected, and regardless of the level of profit, if any, realized on any transaction, subject to Section 5.B below.

B. Deducted from the calculation of “Gross Receipts” shall be: (i) sales taxes actually paid, or any credit card merchant transaction processing fees levied upon the transaction and remitted by Concessionaire; (ii) the amount of any internal sales to County sold at

Concessionaire's cost plus 15% shipping and handling or internal catering sales to County at Concessionaire's retail price, including County discount, due and payable to Concessionaire net thirty (30) days from billing; (iii) wholesale sales of County publications for the purpose of resale by another sales tax licensee; (iv) the discounted sale of any inventory purchased by Concessionaire from County that is remaining at the end of the first contract year; (v) the amount of any discounted sales as described in Section 5.C.ii.a. and b.; and (vi) the actual selling price at which the merchandise was purchased of all merchandise returned by customers and accepted for full credit or refund.

C. Concessionaire shall provide the following discounts on food and beverage and retail items, excepting merchandise which has been reduced from its usual selling price as a sale or promotion:

- i. Retail. 10% discount to Zoo Members, subject to an annual review by the parties to assess the value and impact of this discount or similar promotions available only to Zoo Members as a form of annual incentive.
- ii. Catering Food and Beverage & Alcohol
 - a. 30% discount to County. These sales shall not be included in the calculation of Gross Receipts.
 - b. Concessionaire shall donate up to \$6,000 in retail value catering annually to the County, in support of fundraising efforts.
 - c. 10% discount to Zoological Society Platypus Member events on the sale of beer, malted beverages, bottled water and soda. These sales shall be included in the calculation of Gross Receipts, net of the discount.

Any identification required in order to receive a discount will be subject to the mutual written agreement of the parties.

6. STATEMENT OF ACCOUNTS

Concessionaire shall keep a true and accurate account of Gross Receipts and shall, on or before the 20th day of each month, deliver to County an itemized statement showing a breakdown of all amounts so received during the calendar month immediately preceding, and the amount of all exclusions, by category, from Gross Receipts, pursuant to Section 5.B.

Annually, Concessionaire shall meet with County representatives for an review of the previous year's operation, discussing key performance indicators (including, but not limited to budget-to-actual results, per capita performance, capture rates in retail merchandise, penetration in food service, and top and bottom selling items in both food service and retail merchandise). Concessionaire shall also outline its capital, personnel, and budget goals for the upcoming season.

7. MOBILE UNITS

A. Any carts, display cases, or other mobile units used to display food service and merchandise items ("Mobile Units") shall be maintained by Concessionaire in a clean and

attractive condition. Mobile Units may only be located in the Zoo, unless otherwise approved in writing by County.

B. The size, number, design, locations, and hours of operation of all Mobile Units shall be subject to County's prior written approval. County shall have the right in its sole discretion to object to the operation of any Mobile Unit, and upon receiving such objection, Concessionaire shall immediately remove, relocate, or alter the Mobile Unit, as requested by County.

C. Mobile Units may not have (i) flashing or colored lights, (ii) siren horns, (iii) musical recordings, (iv) portable amplified public announcement systems, or (v) any other feature deemed inappropriate by County, in its sole discretion.

8. CONCESSIONAIRE CAPITAL IMPROVEMENTS

A. Concessionaire will make an investment in capital improvements over the term of this Agreement in the amount of \$3,000,000.00 for start-up costs (which shall include the purchase of any remaining merchandise as further described in Section 15.A), alterations, furnishings and equipment as necessary to provide the Food Service and Merchandising Business. All expenditures and capital improvement contracts, including schedule and completion dates, are subject to the prior written approval of County. Concessionaire's draft schedule of capital improvements, as outlined within Concessionaire's proposal to the County, and which are subject to the approval, prioritization, and timelines of the County, are attached hereto as Exhibit C. of this Agreement.

B. Concessionaire shall furnish at its cost any moveable furniture, fixtures, and equipment ("FF&E") necessary to conduct the Food Service & Merchandising Business in the Zoo Facilities, including the replacement of any Existing Equipment, and including but not limited to any cash registers, display cases, shelves, racks, appliances, tables, desks, or chairs.

- i. Any FF&E provided by Concessionaire which are "not-fixed", or moveable, and which are not purchased by County pursuant to Section 24.E, shall remain the property of Concessionaire. Upon termination of this Agreement (whether by expiration, cancellation, or otherwise), Concessionaire shall remove at its own expense all such property pursuant to Section 24.E. Any and all fixtures and property turned over to the Concessionaire at the start of this Agreement shall be returned to the County.
- ii. Concessionaire shall depreciate moveable FF&E using a straight-line method, for a period of ten (10) years commencing from the "in service to the public" date of the moveable FF&E.

C. Permanent alterations to the Zoo Facilities (“Leasehold Improvements”) made by Concessionaire shall be amortized over a period of ten (10) years, utilizing a straight-line method, commencing from “in service to the public” date of said Leasehold Improvements. Any Leasehold Improvements, including the selection of any design firm or contractor in connection with making such improvements, must be approved in advance by County. All Leasehold Improvements shall become part of the Zoo Facilities, and are subject to the provisions of Section 24.F. herein.

D. Any Leasehold Improvements will require written approval of the County and the approval of DAS-Facilities to guarantee all codes are met and County contractor policies are followed.

9. POSSESSORY INTEREST

This Agreement is not intended to and shall not be construed to vest in Concessionaire any title, estate, possessory interest, or property right in any properties or equipment of County or in any part thereof, including without limitation the Zoo Facilities and the Existing Equipment, and County does not by this instrument relinquish, convey, or qualify in any degree its respective possession, title, control, or management of any of said properties or equipment. Concessionaire shall not be held liable for any possessory or real estate taxes, if any, for use of the Zoo Facilities.

10. LICENSE

County hereby grants to Concessionaire, during the term of this Agreement, a nonexclusive, nontransferable, limited license to use the Zoo trademark(s) and logo(s) to be provided from time to time by County (collectively, the “Mark”) in connection with its Food Service & Merchandising Business at the Zoo Facilities, and Concessionaire accepts the license subject to the following terms and conditions:

- i. Concessionaire acknowledges the ownership of all rights in the Mark by County and agrees that it will do nothing inconsistent with such ownership and that all use of the Mark by Concessionaire shall inure to the benefit of County. Concessionaire agrees that nothing in this license shall give it any right, title or interest in the Mark other than the right to use the Mark in accordance with this license, and agrees that it will not attack, or assist others to attack, the title of County to the Mark or the validity of this license.
- ii. Concessionaire agrees that the nature and quality of all services rendered, goods sold or distributed, and advertising conducted by Concessionaire in connection with the Mark shall be subject to such standards and controls as County may set from time to time, and at all times shall at least meet the standards generally applicable to similarly situated visitor service operations in similar public attractions. County retains the right, in its sole discretion, to request removal of any merchandise on which the Mark appears, and is considered inconsistent with these standards.
- iii. Concessionaire agrees to notify County of any unauthorized use of the Mark by others promptly as it comes to its attention. County shall have the sole

right and discretion to bring infringement, unfair competition, or other proceedings involving unauthorized use of the Mark.

11. TRASH COLLECTION

A. Concessionaire shall be responsible for placing in and adjacent to the Zoo Facilities receptacles that have been provided by County for the collection of trash, garbage and other refuse. Concessionaire shall remove any receptacle immediately upon County's request. Accumulation of trash, debris, and boxes will not be allowed inside or outside of the Zoo Facilities.

B. Concessionaire shall provide for the proper handling and disposal in County dumpsters of trash, garbage, and other refuse resulting from its operations.

C. Concessionaire shall be responsible for keeping land areas adjacent to sales outlets clear of litter and shall be responsible for the emptying of waste receptacles in these areas and ensuring its waste receptacles are emptied in County dumpsters at the end of the day.

D. Concessionaire will work to reduce waste streams and recycle where possible and actively participate in the County's recycling programs.

12. MAINTENANCE

A. Zoo Facilities. County shall be responsible for the routine general maintenance of the Zoo Facilities, including but not restricted to maintaining all pipes, lines, mains, wires, HVAC, restrooms and conduits on at the Zoo Facilities. County shall be responsible for repairing any major breakdowns, line breaks and system malfunctions not caused by the negligence of Concessionaire, upon prompt notification by Concessionaire. County shall be responsible for cleaning all public restrooms in the Zoo Facilities. Concessionaire shall be responsible for maintaining pest control in its facilities, cleaning non-public (employee) restrooms that are located within all retail and food service locations, and for keeping the Zoo Facilities in a clean, orderly, and sanitary condition at all times.

B. Concessionaire will be responsible for the cleaning of all indoor dining areas associated with concession outlets, including cleaning windows (below 9 feet), floors, tables, chairs and other fixtures in those facilities.

C. The Concessionaire is responsible for the daily upkeep of all retail shops, retail carts, Concessionaire's gasoline and battery-powered transportation equipment (commonly referred to as vehicles and/or golf carts) and foodservice facilities as well as keeping all of its equipment, furniture and fixtures in a first class, neat, safe, clean and sanitary condition contained in and around these structures. The floors will be kept free of debris. Concessionaire is expected to maintain all facilities at or above the standard of the Milwaukee Health Department. The expectation is zero critical violations reported on the annual health inspections. In the event a critical violation occurs, Concessionaire would retain the right to cure the violation to the standard of the Milwaukee Health Department within the timeline provided. The continued failure of the operator to maintain a clean and safe work environment will constitute a material breach of the contract and would be grounds for termination. Concessionaire also agrees to notify County in

writing immediately upon detection of any unsafe and/or unhealthful working conditions at the Zoo facilities.

D. Concessionaire shall be responsible for the preventative maintenance of food service hood vents, including, but not limited to, the annual cleaning by a certified third party, the annual inspection completed by the Milwaukee County Neighborhood Services, and completion of any call to action recommended by Milwaukee County Neighborhood Services. Concessionaire shall be responsible for removal of all cooking oils; including selection of reputable vendor, oil waste containers, and removal from the premises. The location of oil waste containers shall be approved by the County. The expectation is for the Concessionaire to maintain all grease traps in good working order and to provide all scheduled maintenance as required. In addition, Concessionaire shall comply with the following provisions regarding the disposal of fats, oils and grease (“FOG”):

- i. Prevention of FOG Build-up: Concessionaire shall keep leftover grease and food scraps from going down the drains. FOG poured down drains can build up in pipes and sewers and cause sewage backups, which can lead to raw sewage overflows. Large amounts of FOG should be collected and stored in drums or barrels for recycling. Small amounts can be poured into a sealed container and thrown away. Concessionaire should scrape or wipe FOG from dishware and cookware and put it in the trash.
- ii. GCD Installation: Concessionaire shall have a grease control device (“GCD”) meeting all applicable requirements of Wisconsin Administrative Code NR 113 and State of Wisconsin Department of Commerce 82.34 standards.
- iii. Maintenance: The GCD shall be maintained at the Concessionaire’s sole expense. Maintenance shall include the complete removal of all contents, including floating material, wastewater and settled solids. The GCD shall be cleaned no less frequently than once every six (6) months. Grease interceptors shall be pumped out completely when the total accumulation of FOG, including floating solids and settled solids, reaches twenty-five percent (25%) of the overall liquid volume. Frequency of cleaning will depend upon the type of food prepared and how well grease is managed in the kitchen.
- iv. Waste Disposal: FOG removed from a grease interceptor shall be disposed of in a solid waste disposal system or by a certified grease hauler. FOG removed from a grease interceptor shall be disposed of at a facility permitted to receive such wastes. No FOG shall be returned, decanted or discharged to any grease interceptor or into any portion of any private or County sanitary sewer system or water treatment facility.
- v. Posting of Signage: The Concessionaire shall post County signage provided to the Concessionaire regarding FOG disposal in a clear and prominent place in the kitchens on the Premises. County signage shall be posted above the sink at the Premises if such posting is possible and if such posting would not obscure the signage.
- vi. Inspection: County shall have the right of entry into the Premises at any time to make inspections, observation, measurements, sampling, testing, or records review of the GCD to ensure that the Concessionaire is in compliance with this Section 12.D. .

vii. **Record Keeping:** Concessionaire shall retain and make available for County's inspection and request all records of all cleaning and/or maintenance pertaining to the GCD during the Term. Cleaning and/or maintenance records shall include, at a minimum: (a) the dates of cleaning/maintenance; (b) the names and business addresses of each company or person performing the cleaning/maintenance; (c) the volume of waste removed in each cleaning/maintenance; (d) information regarding each FOG disposal, including location of the waste disposal site and a copy of the original manifest from the hauler, if applicable; and (e) description of any repairs needed to the GCD, date repairs performed and name of repairer.

E. **Pest Control.** The County will be responsible for the cost of pest control for Zoofari, Peck and the picnic area structures. The Concessionaire is responsible for the cost of pest control for the other concession, indoor catering areas and novelty areas. The County must approve in writing all chemicals used on County property.

F. **Personal Property.** Concessionaire shall keep all personal property it uses, including without limitation the Existing Equipment, FF&E, the Mobile Unit(s) and the contents thereof, in good condition, normal wear and tear excepted. Concessionaire shall obtain County's written approval prior to replacing any Existing Equipment. The cost of replacing any Existing Equipment shall be the responsibility of Concessionaire and shall be treated as FF&E, as defined in Section 8.

G. **Point of Sale.** Included in the Existing Equipment shall be County owned Point of Sale (POS) hardware and software in the retail and food service Zoo Facilities. County shall be responsible for system upgrades and software maintenance while County continues to use the system in non-Concessionaire areas. Concessionaire shall be responsible for hardware maintenance and replacement as necessary. Before replacing any POS hardware, Concessionaire must receive written approval from the County, and replacement hardware purchased by Concessionaire shall be treated as Concessionaire FF&E as outlined within Section 8 of this Agreement. Concessionaire shall update Counterpoint menus and inventory utilizing its own personnel, unless otherwise agreed to by the County.

H. **Right of Entry.** County shall have the right to enter upon the Zoo Facilities at all times to make such repairs, replacements, public restroom cleaning, and alterations as may, in the opinion of County, be deemed necessary and advisable, *provided*, however, that the same shall be done so as to interfere as little as reasonably possible with Concessionaire's operations.

13. UTILITIES

County shall provide at no charge to Concessionaire all utilities necessary for Concessionaire to operate the Food Service & Merchandising Business at the Zoo Facilities, including but not limited to heating, water, gas, electricity, sewerage, drainage, fire protection (except as noted in section 12 – Maintenance), sprinkler, ventilating, cooling, telephones, garbage disposal, and internet access, with the following exceptions: (i) Concessionaire shall pay for all mobile telephone systems it may use, long distance phone calls, and hood/vent preventative maintenance. Concessionaire shall bear the cost and responsibility for any additional water, sewer, gas and electrical upgrades associated with new Food Service & Merchandising Business

improvements, and the Concessionaire will make an effort to reduce energy consumption where possible.

14. OPERATING HOURS

Concessionaire shall keep all stores at the Zoo Facilities open in accordance with a written schedule provided to and mutually agreed upon by County and which is consistent with the public hours of the Zoo. Concessionaire must obtain County's prior written consent before changing its operating hours. Closing food and/or retail facilities without the prior written consent of the County may result in penalties of \$200 per day, per food or retail facility.

15. FOOD SERVICE AND RETAIL MERCHANDISE INVENTORY

A. Concessionaire shall purchase from County, at the book value as agreed upon by the parties, the existing food service and retail merchandise inventory at the Zoo Facilities as of such date, that, in the mutual judgment of County and Concessionaire, is saleable and in good condition. Concessionaire may recognize this purchase as a buy-in fee, and may amortize this investment over the term of the Agreement. Final terms of this purchase shall be negotiated by all parties.

B. Concessionaire shall be responsible for selecting, ordering, stocking, replenishing, insuring, and paying for, sufficient levels of food service, catering and retail merchandise so that there is ample inventory for sale during the term of the Agreement.

C. Concessionaire shall sell, assign, or otherwise distribute on, in, at, or from the Zoo Facilities, including without limitation the Mobile Units, only food service and retail merchandise that is appropriate to County's purposes and consistent with the Zoo's Mission. The nature and quality of all such food service and retail merchandise shall be in keeping with the visitor experience provided by Zoo's exhibits and other operations at the Zoo, as determined in County's reasonable discretion. The sale of balloons, projectiles, water guns, slingshots or any other weapon-like toys is expressly forbidden unless mutually agreed upon in writing in advance. The sale of tobacco-related products and explosives are expressly prohibited.

D. County shall have the right to object to any food service or retail merchandise item being offered for sale, and upon receiving such objection in writing, Concessionaire shall remove that item immediately. County agrees that it will neither arbitrarily nor unreasonably interfere with the operation of Concessionaire's business in exercising its power of objection hereunder.

16. CONCESSIONAIRE MANAGEMENT, EMPLOYEES, AGENTS, AND REPRESENTATIVES

A. Concessionaire acknowledges that County is providing Concessionaire with special access to visitors to the Zoo, and that County's purpose in this Agreement is to enhance visitor experiences of the Zoo. Concessionaire and its employees, agents, and representatives shall not interfere in any way with the projects, activities, or events of County or the performance of the duties of any employee, volunteer, or representative of County.

B. Concessionaire shall at all times maintain an on-site manager with a level of experience commensurate with management at similar stores of comparable size and scope, to oversee the Food Service & Merchandising Business at the Zoo Facilities for the term of this Agreement.

C. Concessionaire shall at all times maintain an adequate staff of employees on duty at the Zoo Facilities to conduct the Food Service & Merchandising Business. All employees of Concessionaire shall be dressed in a clean and professional manner and in accordance with County's regulations. Upon the Effective Date of this Agreement, Concessionaire shall hire and retain the three existing key Zoo employees described within the County's request for proposals. These individuals shall become Concessionaire employees, subject to the terms of employment, job responsibilities, policies, procedures and benefits applicable to all of Concessionaire's employees. Concessionaire shall be responsible for the compensation and all other employer-employee obligations as further described in paragraph L., below, of this Section 16.

D. The Director or their designee may, at any time, request, in writing, the withdrawal or replacement of any of the Concessionaire's employees, and such request shall not be unreasonably refused by the Contractor; provided the request is based upon employee misconduct or the inability of such employee to reasonably work together with Zoo staff. Such withdrawal or replacement shall be carried out as quickly as possible and in a manner that will not adversely impact the performance of obligations under the Agreement. All expenses related to the withdrawal or replacement shall be borne exclusively by Concessionaire.

E. The Concessionaire will abide by the Milwaukee County Minimum Wage Ordinance as may be applicable.

F. Concessionaire shall be responsible for the proper training and motivation of its employees including the Recruitment and Training and Quality Control programs listed in the Concessionaire's Proposal.

G. In May of each year, the County prepares performance measures that are included in the upcoming budget. The measures for concessions and novelties in 2015 are: 88% result from Guest Survey: Excellent or Very Good Food Service: and 91% Excellent or Very Good Service at Retail Outlets. SSA will work to reach these goals. For 2016, the County and SSA will work together on developing the measures for 2016 and discuss prior ratings.

H. Concessionaire shall permit and encourage its employees to attend any meetings County may offer them in order that said employees may more completely understand the philosophy, purposes and programs of County. Concessionaire shall familiarize all of its personnel with the Zoo's Dangerous Animal Escape Policy, Key Policies and all other safety policies at their orientation. Concessionaire shall be required to participate in all drills related to the Dangerous Animal Escape Policy, severe weather, guest or employee injury, fire or any other drills necessary for staff, guests and animal safety. Concessionaire employees will make every effort to attend the County's annual safety fair.

I. Concessionaire will designate an employee(s) to represent Concessionaire on the County's Safety and Green committees.

J. All persons and sub-contractors engaged by Concessionaire shall be the sole and exclusive employees of Concessionaire and shall be paid by Concessionaire. It is understood that County shall have neither supervision nor control over Concessionaire's employees' or sub-contractor's performance of their duties for Concessionaire. Said employees and sub-contractors, however, and any other persons in or about the Zoo Facilities at the request or invitation of Concessionaire, shall conform to all rules and policies established by County from time to time.

K. If County determines, in its sole discretion, that any employee, agent, sub-contractor or representative of Concessionaire has violated any of County's rules or policies, Concessionaire shall remove such employee, agent, sub-contractor or representative from the premises upon County's written request, and Concessionaire shall no longer employ such person or sub-contractor to work at the Zoo Facilities. County reserves the right to revoke access to the Zoo by anyone at any time with or without cause and without liability to County.

L. Concessionaire shall be solely responsible for all obligations and duties with respect to Concessionaire's employees, agents, and representatives, including without limitation any obligations or duties with respect to federal or state income taxes; social security taxes; workers' compensation; unemployment; disability, health, or retirement benefits; or any other tax obligations resulting from or benefits provided to employees under federal, state, or local laws.

M. SSA will adhere to the County's background check policies for employees.

17. RIGHT TO OBSERVE/REPORTS

County shall have the right to observe any transaction or transactions involving Concessionaire at the Zoo Facilities or otherwise in the Zoo, for the purposes of determining the treatment of Zoo visitors, employees, volunteers, or other representatives; the quality, pricing, and quantity of merchandise sold; and the accountability of the revenue received therefrom.

By August 15 of each year of the Agreement, Concessionaire will provide to the Zoo an annual business review plan for the upcoming year for the Zoo's budgeting purposes. The plan will include an estimate of Concessionaire's revenues and commission fees for the Zoo.

18. DELIVERIES

Concessionaire shall not allow deliveries to interrupt basic Zoo operations and will make every effort to ensure that deliveries cause as little disturbance as possible. Concessionaire shall provide routine delivery schedules to County on a seasonal basis. Delivery vehicles shall park in designated areas which have been approved by County. The shipment of all products will be delivered to: Zoofari Center Warehouse, 9715 West Bluemound Road, Milwaukee, Wisconsin, 53226.

19. SIGNAGE

A. All signage placed by or on behalf of Concessionaire on, around, or inside the Zoo, including without limitation on any Mobile Units, shall comply with all applicable federal, state, and local laws and shall be consistent with County's mission and policies. Concessionaire shall be responsible for obtaining any applicable permits and payment of all applicable permit fees as required by applicable laws and ordinances.

B. The number, size, design, content, and location of all signage shall be subject to County's standards. County shall have the sole and absolute right to object to any signage, and upon receiving such objection in writing Concessionaire shall remove such signage immediately.

C. All signage shall be professionally lettered and produced in coordination with County. Handmade signage, paper signage, box signage, flashing signage, moving signage or billboard signage are not permitted unless specifically authorized by County.

20. AUDIT

A. Concessionaire shall preserve for the term of this Agreement and at least three (3) years thereafter all sales slips, cash register tapes, sales books, sales invoices or duplicate deposit slips, point-of-sale reports, and other evidence of Gross Receipts and business transacted by Concessionaire at the Zoo Facilities (including without limitation documentation of all elements relevant in calculating Gross Receipts and any exclusions or deductions there from), as well as supporting documentation and financial records related to merchandise inventory, Leasehold Improvements, and FF&E.

B. County shall have the right to inspect the books and records of Concessionaire at all reasonable times during normal business hours.

C. County shall have the right to have a full audit of Concessionaire's books and records, including sales tax returns, conducted at County's own expense and with an auditor of County's choosing. In the event that County chooses to exercise this right, Concessionaire will cooperate fully and make such records available for inspection and audit by County and a time and location that is convenient for County.

21. TAXES, INSURANCE, LICENSES

A. Concessionaire shall pay all taxes and excise or licensee fees, of whatever nature, applicable to its operations at the Zoo Facilities and its possession of inventory, equipment, and supplies, and shall obtain and keep current all licenses (municipal, state or federal) required for the conduct of its business, and further shall not permit any of said taxes, excise or licensee fees to become delinquent. Concessionaire shall not permit any lien to be imposed upon any real property or any part or parcel thereof, including without limitation the Zoo, or upon any property located at the Zoo Facilities or installed by Concessionaire pursuant to this Agreement, including without limitation any FF&E, Leasehold Improvements, or Existing Equipment. Concessionaire shall not be held liable for possessory interest taxes related to real property owned by County.

B. Concessionaire shall pay all premiums and deductibles for the insurance required herein. Concessionaire shall maintain the following coverages with insurers rated A per Best's Rating Guide and licensed to do business in the State of Wisconsin. All policies shall be kept in full force during the term of the Agreement and each policy shall contain a rider that the policy is non-cancelable and may not be amended without thirty (30) days prior written notice to the parties insured. Copies of the insurance certificate shall be provided to County with the executed agreement.

<u>Type of Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability (Vendor Liability) Bodily Injury and Property Damage (incl. Personal Injury, Fire Legal, Contractual & Products / Completed Operations)	\$1,000,000 per Occurrence \$3,000,000 General Aggregate
Liquor Liability	\$1,000,000
Automobile Liability Bodily Injury & Property Damage All Autos-Owned, non-owned and/or hired	\$1,000,000 per Accident
Uninsured Motorists	per Wisconsin Requirements
Wisconsin Workers' Compensation Or Proof of All States Covers (with waiver of subrogation)	Statutory
Employers' Liability	\$100,000/\$500,000/\$100,000

C. Milwaukee County will be named as an additional insured for General Liability and Auto Liability. A waiver of subrogation for Workers Compensation by endorsement in favor of Milwaukee County shall be provided. Disclosure must be made of any non-standard or restrictive additional insured endorsement, and any use of non-standard or restrictive additional insured endorsement will not be acceptable. A certificate indicating the above coverages shall be submitted for review and approval by the County. The insurance requirements contained within this provision are subject to periodic review and adjustment by the County Risk Manager.

22. INDEMNIFICATION

Concessionaire shall to the fullest extent permitted by law indemnify, defend, and hold harmless the the County, and its agents, officers and employees, from and against all loss or expense including costs 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 Concessoraire, or its agents and employees which may arise out of or are connected with the activities covered by this Agreement.

23. TERMINATION

A. Termination for Default. County may terminate this Agreement: (i) if Concessionaire fails to comply with any provision in this Agreement, and such failure continues for forty-five (45) days after a written notice from County setting forth in reasonable detail the nature of such default; or (ii) if the Concessionaire ceases to do business as a going concern, ceases to pay its debts as they become due, or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any proceeding under any federal or state bankruptcy law, or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of the Concessionaire's assets or the Concessionaire's interest in this Agreement.

B. Termination Upon Default. Whenever an event of default has occurred, County shall have the right, at its election, then or at any time thereafter, to immediately terminate this Agreement and all of Concessionaire's rights hereunder; to repossess the Zoo Facilities, including without limitation the Existing Equipment and Leasehold Improvements; to purchase all inventory at the Zoo Facilities as of the termination date, pursuant to Section 24.D; and to purchase all existing FF&E as of the termination date, pursuant to Section 24.E.

C. County Termination Without Cause. County may terminate this Agreement without cause upon 90 days' prior written notice to Concessionaire. County may also terminate this Agreement in the event that County, upon reasonable prior notice to the Concessionaire (taking the length of the term of Agreement into account), elects to close or otherwise repurpose the premises from its use as a Concession during the Term. Termination without cause is subject to the terms and conditions set forth in Section 24.

D. Concessionaire Termination Without Cause. Concessionaire may terminate this Agreement without cause upon 90 days' prior written notice to County, *provided* that Concessionaire shall continue operating the Food Service & Merchandising Business at the Zoo Facilities up until the date of termination. This termination without cause is subject to the terms and conditions set forth in Section 24.

E. Termination of Rights. Upon any termination of this Agreement, all rights and obligations of the parties shall cease except those rights and obligations that have accrued or expressly survive such termination. For purposes of this Agreement, termination includes expiration or cancellation of this Agreement.

24. DELIVERY UPON TERMINATION

A. Zoo Facilities. Concessionaire shall deliver the Zoo Facilities and any Existing Equipment to County as of the termination of this Agreement in as good condition and state of repair as when received, except for ordinary wear and tear or loss or damage caused by a natural disaster. The Zoo Facilities shall include all Leasehold Improvements.

B. Remuneration. Concessionaire shall promptly pay any accrued remuneration or other amounts due but not yet paid to County upon termination of this Agreement. Concessionaire's rights upon termination as set forth in this Agreement shall not be effective until all such amounts are paid.

C. License. Upon termination of this Agreement, Concessionaire shall immediately discontinue all use of the Mark and any terms confusingly similar thereto pursuant to the terms of Section 10.

D. Inventory. Upon termination of this Agreement, County or successor concessionaire shall purchase from Concessionaire, at the book value as agreed upon by the parties, the food service and merchandise inventory existing at the Zoo Facilities as of the termination date.

E. FF&E. Upon termination of this Agreement, County may, at its option, purchase any or all of the moveable FF&E provided by Concessionaire in accordance with this Agreement. In the event that County exercises this option, the purchase price shall be the greater of cost to Concessionaire (less depreciation in accordance with Section 8) or fair market value of the FF&E as mutually agreed upon by the parties. County must exercise this option within fourteen (14) days after the date of termination. If County does not exercise this option on all of the FF&E, and subject to Section 24.B, Concessionaire shall have the right and obligation upon termination of this Agreement to remove only the FF&E on which County did not exercise its option, *provided* that if such removal causes any damage to the Zoo (including but not limited to the walls, floors or other parts of the Zoo Facilities), Concessionaire shall repair, at its own expense, the Zoo in a manner satisfactory to County. Concessionaire shall not remove any FF&E from the Zoo Facilities until after the end of the fourteen day (14) option period or County declines its option on such FF&E in writing, whichever occurs first.

F. Leasehold Improvements. If this Agreement expires or is terminated, County shall pay Concessionaire the remaining unamortized value (as amortized in accordance with Section 8) of all Leasehold Improvements installed by Concessionaire.

25. ASSIGNMENT; SUBLETTING

Concessionaire may not assign this Agreement or sublet the Zoo Facilities or any portion thereof without the prior written consent of County, which may be granted or withheld in County's sole discretion.

26. RELATIONSHIP OF PARTIES

A. Nothing herein shall be construed as creating the relationship of employer or employee between County and Concessionaire or between County's employees and Concessionaire's employees, and Concessionaire agrees that it is an independent contractor of County. This Agreement does not create a relationship of agency, joint venture, or partnership between the parties. Concessionaire shall have no power to incur any liability or other obligation, or to enter into any contract, on behalf of County, and shall have no right to reimbursement for any expenses paid or incurred by Concessionaire, except as otherwise stated herein or agreed by the parties in writing.

B. It is agreed both parties shall refrain from recruiting or hiring management staff from the other party until a period of one (1) year has elapsed from the point of employment severance from the initial party or termination of this Agreement. However, this requirement

may be waived upon mutual written agreement between both parties as it pertains to case-by-case occurrences.

27. ANIMALS

Unless otherwise approved in writing by County, Concessionaire and its employees, agents, and representatives may not keep or permit any live animals, including without limitation any pets or other fish, birds, or dogs, on the premises or elsewhere in the Zoo.

28. NOTICES

A. All notices, requests, waivers, approvals, consents, demands and other communications hereunder shall be in writing and shall be deemed duly given when delivered personally, or three days after being deposited with the United States Postal Service, or one day after being deposited for delivery with a nationally-recognized overnight delivery service, with all charges, fees and first-class postage prepaid, properly addressed, as follows:

County: Milwaukee County Zoo
Attn: Chuck Wikenhauser, Zoo Director
10001 West Bluemound Road
Milwaukee, WI 53226-4384

Concessionaire: Service Systems Associates, Inc.
Attn: Timothy L. Brantley, CEO
4699 Marion Street
Denver, CO 80216

B. In the event that either party wishes to change the address for notification, it shall notify the other party of the new address in accordance with Section 28.A.

29. WIRE TRANSFERS

Unless otherwise instructed in writing by County pursuant to Section 28, Concessionaire may make all payments due to County under this Agreement by electronic funds transfer in accordance with the wiring instructions provided by County from time to time.

30. COMPLIANCE WITH LAWS AND ZOO POLICIES

Concessionaire shall comply with all applicable federal, state, and local laws, ordinances, regulations, and orders, and shall obtain all appropriate government approvals pertaining to the sale, distribution and advertising of merchandise and all other activities covered by this Agreement. Concessionaire shall also comply with all applicable rules and policies established by County from time to time.

31. PROHIBITED ACTS

A. Conflict of Interest. Concessionaire certifies that to the best of its knowledge no employee of the County, nor any member thereof, nor any public agency or official affected by

any agreement that results from this Agreement, has any pecuniary interest in the business of Concessionaire, and that no person associated with the Concessionaire has any interest that would conflict in any manner with the performance of the Agreement. County Ordinance 9.05(2)(1) applies:

- i. *“No person(s) with a personal financial interest in the approval or denial of a contract being considered by a County department or with an agency funded and regulated by a County department, may make a campaign contribution to any County official who has approval authority over that contract during its consideration. Contract consideration shall begin when a contract is submitted directly to a County department or to an agency until the contract has reached final disposition, including adoption, county executive action, proceedings on veto (if necessary) or departmental approval. This provision does not apply to those items covered by County Ordinance Section 9.15 unless an acceptance by an elected official would conflict with this section.”*

B. Discrimination. Concessionaire represents that no person in the United States has, on the grounds of race, creed, color, national origin, gender, sexual orientation, disability, or age, been excluded from service by, been denied the benefits of, or been subject to discrimination in connection with, Concessionaire’s operations.

C. Discriminatory Criteria. Concessionaire may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination on the basis of race, creed, color, sex, sexual orientation, national origin, disability or age.

D. Prohibited Activities. Notwithstanding anything to the contrary in this Agreement, Concessionaire shall not do or permit anything to be done in or about the Zoo Facilities, nor bring or keep anything on or at the Zoo Facilities, that may in any way:

- i. increase the existing rate of or otherwise affect any fire or other insurance on the Zoo;
- ii. cause cancellation of any insurance policy covering any part of the Zoo;
- iii. obstruct or interfere with the projects, activities, or events of County or the lawful operation of the Zoo;
- iv. interfere with County operations or ability to fulfill its purposes;
- v. use or allow the Zoo Facilities to be used for any illegal or unlawful purpose;
- vi. cause, maintain or permit any nuisance in, on or about the Zoo; or
- vii. cause disfigurement, damage or structural injury to the Zoo Facilities or the Zoo.

32. REPRESENTATIONS AND WARRANTIES

Each party represents and warrants to the other that this Agreement has been duly executed and delivered by such party, has been authorized by all necessary corporate action and constitutes the legally valid and binding obligation of such party, enforceable against it in accordance with its terms.

33. FORCE MAJEURE

County shall not be liable for any loss or damage suffered by Concessionaire arising out of the interruption or cessation of the Food Service & Merchandising Business, nor for any loss suffered by Concessionaire in the performance of its obligations under this Agreement resulting from a strike or other work stoppage; breakdown or failure of apparatus, equipment or machinery; any temporary stoppage for repair, improvement, or replacement thereof; interruption in sewer, water, or electrical service; limitation of access to or condemnation of the Zoo Facilities; or any other act or condition beyond County's control.

34. ZOO CLOSING AND/OR INTERRUPTION OF SERVICE

A. Food Service & Merchandise facilities may be closed or service therein temporarily interrupted to accommodate any and all construction, restoration and repair activities, or for any other reason deemed appropriate by County in or around the main Zoo buildings for the food service locations and gift shops. County shall give Concessionaire reasonable advance notice, if possible, to arrange for any such closing or interruption.

B. County shall make a good faith effort to provide reasonable alternate locations for Concessionaire's Services if such closure or interruption will be for an extended period of time. In the event of closings or service interruptions caused by County which continue for a substantial period of time or which are repetitive, Concessionaire may request that County negotiate some form of relief to mitigate the financial loss by Concessionaire, directly caused by such closing. County will evaluate and consider such requests on a case-by-case basis.

35. DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

Concessions Operator shall make reasonable efforts to utilize DBE firms to meet participation goals consistent with Milwaukee County DBE goals for professional design services and construction. The areas include, but are not limited to, planning, development, and construction of improvements associated with the physical structures for which operator will be responsible to expand and maintain. The anticipated Operator capital improvement spend, per information contained elsewhere in this document, is approximately \$2,632,000.00 over the term of the contract.

In addition, Operator shall make reasonable efforts for inclusion of DBE firms to provide services in the additional areas of routine maintenance of facilities, cleaning services, specialized catering, temporary labor, procurement, and any other opportunities that may become available for which DBE firms are certified for participation.

Milwaukee County utilizes a system for online payment reporting, tracking and confirmation to better assist in monitoring prompt and accurate payments. The system is an online application provided by B2Gnow, and is also used by the County to manage DBE certification.

The Milwaukee County Business Development Partners office shall assist the Operator in soliciting potential DBE firms for inclusion, and shall monitor the performance of the Operator in attaining the participation goals. Operator's contact regarding DBE participation is the Director of CBDP, 414-257-4747.

36. ENTIRE AGREEMENT

This Agreement, including the Request for Proposal #6947 (“RFP”) published by Milwaukee County and dated July 18, 2014, attached hereto as Exhibit D, and the Concessionaire’s Proposal in response to that RFP, attached hereto as Exhibit E, including attachments, constitutes and expresses the entire agreement of the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. In the event of a conflict between this Agreement and above referenced Exhibits, the order of precedence shall be this Agreement, the RFP, and the Proposal. This Agreement shall not be amended or modified except by a written instrument signed by both parties.

37. WAIVERS

The failure of either party to exercise any of its rights under the Agreement shall not be deemed to be a waiver of such rights.

38. CONSTRUCTION

The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of the provisions of this Agreement. This Agreement shall be deemed the joint work product of the parties hereto without regard to the identity of the drafter, and any rule of construction that a document shall be interpreted or construed against the drafting party shall not be applicable.

39. SEVERABILITY

If any part of the Agreement shall be held unenforceable, the rest of the Agreement will nevertheless remain in full force and effect.

40. COUNTERPARTS

This Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon a single instrument and is intended to be binding when all parties have delivered their signatures to the other parties. All counterparts shall be deemed an original of this Agreement.

41. GOVERNING LAW

This Agreement shall be interpreted and governed by the laws of the State of Wisconsin. Venue shall be in Milwaukee County, Wisconsin.

SIGNATURE PAGE FOLLOWS:

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first above written.

COUNTY

Chuck Wikenhauser
Zoo Director
Milwaukee County Zoo

Date: _____

CONCESSIONAIRE

Timothy L. Brantley
Chief Executive Officer
Service Systems Associates, Inc.

Date: _____

Community Business Development Partners

Date: _____

Risk Management

Date: _____

Comptroller

Date: _____

Corporation Counsel – Approved for Execution

Date: _____

County Executive

Date: _____

Corporation Counsel – Approved as to Wis. Stats 59.42

Date: _____

**EXHIBIT A.
EXISTING EQUIPMENT**

VENUE: FLAMINGO CAFE

ITEM	ZOO OWNED
2 DOOR CONTINENTAL COOLER	YES
2 DOOR CONTINENTAL COOLER	YES
VULCAN CONVECTION OVEN (TOP & BOTTOM)	YES
PANASONIC MICROWAVE (2)	YES
GARLAND CONVECTION OVEN (TOP & BOTTOM)	YES
BROASTER	YES
HOBART DELI SLICER	YES
TRUE DELI COOLER	YES
LINCOLN IMPINGER	YES
STAR PANINI GRILL	YES
VULCAN 2 BURNER STOVE TOP	YES
RANDELL DELI COOLER	YES
CHEST FREEZER	YES
NIECO BROILER	YES
RANKIN-DELUX FLAT TOP / GRILL	YES
CREATIVE SERVING STEAM WELL	YES
ICE CREAM MERCHANDISER (2)	NO
POP MAX POPCORN MAKER	NO
BUTTER WARMER	NO
BUNN FROZEN DRINK SERVER (3)	NO
PRETZEL WARMERS (2)	NO
FRY WARMER	YES
PITCO FRYER	YES
RANDELL COLD TABLE	YES
CHEESE WARMER	NO
HATCO FOOD WARMER (2)	YES
TRAULSEN STAND UP FREEZER	YES
LINCOLN IMPINGER DOUBLE DECK PIZZA OVEN	YES
ENDURO FOUNTAIN UNITS CORNELIUS (2)	YES
HATCO GLO RAY	YES
RANDELL TABLE TOP COOLER	YES
UTILITY TABLES 5-8 FT (6)	YES
TEA DISPENSER (4)	NO
GRAND MERCHANDISERS COOLERS (2)	NO

VENUE: COFFEE SHOP

ITEM	ZOO OWNED
WUNDER BAR CONDIMENT DISPENSER	YES
TRAULSEN STAND UP COOLER	YES
TRAULSEN FREEZER	YES
TEA BREWER BUNN	NO
COFFEE BREWING SYSTEM FETCO	NO
ESPRESSO MACHINE FRANKE	YES
GRINDER BUNN (2)	NO
FEDERAL INDUSTRIES DISPLAY COOLER	YES
RANDALL DELI UNIT YES	

VENUE: SEA LION

ITEM	ZOO OWNED
Vulcan Stand Up Freezer	YES
Ice Cream Merchandise	NO
Wells Cook n Hold	YES
Nemco Cooker	YES
Deli Unit	YES
Pepsi Cooler	NO
Gehls Nacho Cheese Dispenser (2)	NO
Pretzel Warmer	NO
Beverage Cart	NO
Perlic Cooler	NO
Bunn Machine	NO
Drop Freezer	YES

VENUE: WOODLAND

ITEM	ZOO OWNED
Panasonic Microwave	YES
Vulcan Grill	YES
Pitco Solstice Supreme Fryer	YES
Gehls Cheese Dispenser	NO
Household Freezer	YES
Victory Refrigerator	YES
Ice Cream Merchandise	NO
Hatco Food Warmer (2)	YES
Pepsi Soda Fountain (4)	NO
Bunn Machine (4)	NO
Pretzel Machine (2)	NO
Aquafina Fridge	NO
Lincoln Imaginer Pizza oven (2)	YES
Pepsi Fridge	NO
Butter Dispenser	NO
Popcorn Machine	NO
Oil Dispenser	NO
Pretzel Oven	NO
Ice Bunker	YES
Randell Deli Unit	YES
Hatco Pizza Warmer (2)	NO
Stoelting Sift Serve Machine	YES

VENUE: DIPPERS

ITEM	ZOO OWNED
EMPTY	

VENUE: LAKEVIEW PLACE

ITEM	ZOO OWNED
Caravell	YES
Nemco Steam Well (2)	YES
Randell Deli Cooler	YES
Randell Deli Unit (2)	YES
Lincoln Impinger Oven	YES
Victory Stand Up Cooler	YES
Classic Cook & Serve	YES
Panasonic Microwave	YES
Alto Sham	YES
Alto Sham 2 Drawer	YES
Gehls Cheese Dispenser (4)	NO
Fry Warmer	YES
APW Wyoitt	YES
Pitco Fryer	YES
Victory Stand Up Freezer	YES
Randell 2 Door Standup Freezer	YES
Bunn Coffee Machine	NO
Aquafina Stand Up Cooler	NO
Bunn Machine (3)	NO
Perlick	YES
Perlick Coolers	YES
Carpigiani Soft Serve	NO
Celicware Hot Chocolate	NO
Pepsi Dispenser (2)	NO
Hatco Food Warmer	YES
Hatco Pizza Warmer (2)	YES
Super Pretzel Warmer	NO
Pepsi Dispenser Carts	NO
Badger Butter Warmer (2)	NO
Popcorn Machine (2)	NO
Wunder Bar Condiment	YES
Cold Tech Novelty Freezer	NO
Big Lemonade Popcorn	NO
Thelmas Frozen Lemonade	NO
Thelmas Strawberry Lemonade	NO
Thelmas Lemonade	NO
Mini Fridge	NO
Ice Cream Merchandise	NO

VENUE: FARMER'S MARKET

ITEM	ZOO OWNED
Lincoln Impigner Pizza Oven	YES
AD Craft Panini Press	YES
Pitco Fryer	YES
South Bend Flat Grill	YES
Turbo Air Refrigerator	YES
Classic Hot Dog Warmer	YES
Deli Unit	YES
Masterbilt Freezer	NO
Aquafina Beverage Cooler	NO
Bunn Machine (2)	NO
Pepsi Dispenser	NO
Ice Cream Merchandise	NO
Gehls Cheese Dispenser (2)	NO
StarPro Max Panini Press	YES
Swan Ice Cream Shaver	YES
Pretzel Oven	NO
Pretzel Warmer	NO

VENUE: DAIRY STORE

ITEM	ZOO OWNED
Traulsen 3 Door Freezer	YES
Traulsen 3 Door Cooler	YES
Bunn Machine (2)	NO
Cecilware	NO
Hussmann (3)	NO
AHT	YES
Good Humor- Carawell	NO
Manitowoc	YES
TRUE	YES
Cadian Systems (2)	YES
IBM Computer	YES
Refrigerator System	YES
Radiant Systems	YES
Wisco Industries, INC (2)	YES

***ALL ICE CREAM DIPPING CABINETS ARE A PART OF THE ICE CREAM CONTRACT IN ALL VENUES**

VENUE: ICE CREAM PALACE

ITEM	ZOO OWNED
Bunn Machine (2)	NO
Ice Cream Merchandise	NO
Masterbilt Ice Cream Bunker (2)	NO
Masterbilt Double wide top door Freezer (2)	NO
Pepsi Soda Dispenser	NO
Two Door Deli Unit	YES
Habco Cooler	YES
Pretzel Warmer (2)	NO
Gehls Food Warmer (2)	NO
Badger Nacho Warmer	NO
Randell Reach in Fridge	YES
Creative Serving Foodwells	YES
Classic APW Wyott	NO
JJ Snack Digital Oven	NO
Soda Dispenser Carts	NO
Wisco Industries Pizza Oven	YES
Stainless Steel Tables 6'-8'	YES

VENUE: CONCESSIONS/MERCHANDISING REGISTERS

ITEM	ALL ZOO OWNED
B02-1	Lakeview Beverage - B02-1
B03-1	Woodland Beverage - B03-1
B04-1	Penguin Beverage - B04-1
B07-1	Concessions Bar - B07-1
B07-2	Concessions Bar - B07-2
B98-1	Macaque Carts - B98-1
C01-1	Flamingo Cafe - C01-1
C01-2	Flamingo Cafe - C01-2
C01-3	Flamingo Cafe - C01-3
C02-1	Lakeview - C02-1
C02-2	Lakeview - C02-2
C02-3	Lakeview - C02-3
C02-4	Lakeview - C02-4
C03-1	Woodland - C03-1
C03-2	Woodland - C03-2
C03-3	Woodland - C03-3
C04-1	Ice Cream Palace - C04-1
C04-2	Ice Cream Palace - C04-2
C05-1	Dairy - C05-1
C05-2	Dairy - C05-2
C05-3	Dairy Express
C06-1	Farmer's Market - C06-1
C07-1	Coffee Shop - C07-1
C08-1	Sea Lion Concession - C08-1
G01-1	Flamingo Gift Shop - G01-1
G01-2	Flamingo Gift Shop - G01-2
G02-1	Karibu Gift - G02-1
G02-2	Karibu Gift - G02-2
G02-3	Karibu Gift - G02-3
G02-4	Karibu Gift - G02-4
G03-1	Special Exhibit Gift - G03-1
G04-1	Monkey Gift - G04-1
G05-1	Hat Cart - G05-1
G06-1	Garden Tent G06-1
G08-1	Giraffe Gift - G08-1
G09-1	Sidewalk - G09-1
G10-1	Cartland North G10-1
G11-1	Cartland South G11-1
G15-1	Candy Emporium
G17-1	T-Shirt Tent
K01-1	Moose Kiosk
K03-1	Shaved Ice
K04-1	Lemonade Stand
P01-1	Flamingo Popcorn - P01-1
P02-1	Lakeview Popcorn - P02-1
P03-1	Woodland Popcorn - P03-1
P04-1	Train Popcorn - P04-1

Additional Ala Carte

G12-1 Ala Carte Table

5 to 10 Registers are used from concessions for admission gates during a la Carte

VENUE: MERCHANDISING PROPERTY

VENUE: MERCHANDISING PROPERTY

ITEM	ZOO OWNED
Merchandise Carts - 10' x 7' (11)	YES
Hat cart 10' x 7'	YES
Brown Storage Shipping Containers (3)	YES
Mining water tower and 30' of sluice.	YES
Tent - 10' x 20' (1)	YES
Tent - 10' x 10' (2)	YES
Tent - 10' x 20' (2)	YES
Tent - 10' x 30' (2)	YES

VENUE: BUILDING & PICNIC AREA INVENTORY

ITEM

ZOO OWNED

	Brown Bear	Australian	Little Oak	Oak Grove	Maple Cove	Zoo Terrace	Peck Welcome Center	Zoofari	Jungle Room
6 ft Banquet Tables	1	1	1	0	0	0	30	30	3
Folding Chair	1	0	0	1	0	3	0	0	0
Chairs	0	0	0	0	0	0	320	320	35
Cab Tables	0	0	0	0	0	0	8	2	0
60" Round Tables	0	0	0	0	0	0	40	40	3
True 2014 Keggerator	1	1	0	0	1	0	1	1	0
Keggerator	0	0		2	1	0	1	1	0
Ice Chest	1	1	1	0	1	1	1	1	0
Texas Coolers	0	0	0	0	2	0	0	0	0
Permanent Coolers	0	0	0	2	0	0	1	1	0
Permanent Freezer	0	0	0	1	0	0	0	0	0
Permanent dispensing units	0	0	0	0	0	2	0	0	0
Brown Cambro	1	1	1	2	2	1	4	2	0

VENUE: GROUP SALES LINEN INVENTORY

	Color	Quantity
LINEN		
90" Round	Black	39
90" Round	White	44
90" x 132"	Black	27
90" x 132"	White	28
136" Round	Black	11
136: Round	White	13
78" Round	Blue	25
120" Round	Black	11
120" Round	White	1
54" x 54"	Navy	15
54" x 54"	Navy Check	1
54" x 54"	Sage	12
132" Round	White	5
7" Skirt	White	1
14" Skirt	White	1
54" x 96"	White	4
70" x 70"	Navy	11
70" x 70"	Green	13
70" x 70"	Green Check	1
SASHES		
Zebra		10
White		10
Black		10
Blue		9
Burgundy		10
Green		10
RUNNER		
Green		2
Blue		2
Burgundy		1
Brown		2
NAPKIN		
Brown		9
Burgundy		5
Green		5
Orange		2
Blue		5
Red		6
White		3
Black		9

**EXHIBIT B.
SAMPLE CATERING EXCLUSION**

A LA CARTE

FOOD AND BEVERAGE LOCATIONS

Concessionaire a la Carte locations for food and beverage vending are determined by type of product, power needs and event aesthetics as set by the Milwaukee County Zoo in its sole discretion. In addition to daily food operations (food and beverage kiosks, Sea Lion Concessions, Farmer’s Market, Depot, Flamingo Coffee Shop, Dairy Store, Oasis etc.), SSA has the option to become a food vendor in these locations:

Zoofari Village: Food/Wine 20x20, Food 10x20, Food/Beverage 10x10
 Flamingo Village: Food 10x20
 Lakeview Village: Food/Corn 10x20

Food Tent Locations:

SSA Provides:	Zoo Provides:
Necessary licenses and/or permits	Tent with food screen
Cooking/prep equipment	Grease barrel
Serving supplies/utensils	Lighting
Propane (contracted through Amerigas)	1- 4’ banquet table with kwik cover 2- 6’ banquet table with kwik cover
Product	Grey water disposal
All other supplies to maintain location	6’ picket fence sections

BEER / BEVERAGE LOCATIONS

- Beer prices, selection and size shall be agreed upon with Zoo.

Concessionaire’s Responsibilities:

- Coordinate the following Beer/Beverage locations: Zoofari Beer, Zoofari Wine, Zoo Terrace, Flamingo Beer, Woody Beer, Caribou Beer, Caribou Wine, Lakeview Beer, Giraffe Beer, Giraffe Wine
- Coordinate logistics directly with Beer Capitol. Delivery, set-up and take down must be in compliance with Restaurant Delivery and Set-up Schedule. Reserve equipment: reefer, five picnic caddies (Woody Village and Terrace are perlicks only), Co2, tap handles, 14 oz. cups, legal age signs, etc.
- Coordinate logistics directly with Pepsi. Delivery, set-up and take down must be in compliance with Restaurant Delivery and Set-up Schedule. Reserve equipment from Pepsi: dispensing machines, bag in the boxes, cups, etc.

Beer Tents

SSA Provides:	Zoo Provides:
Necessary licenses and/or permits	10x20 tent, 20x20 at Caribou
Product	3 8-ft. Bar Counters
Perlicks	Electrical connections
Tap Handles- Beer Capitol	Lights
Cups- Beer Capitol	
Ice Bunker	
Picnic Caddy- Beer Capitol	
All other supplies to maintain location	

GIRAFFE AND CARIBOU VILLAGE WINE TENTS

Concessionaire Provides:	Zoo Provides:
Wine/Food Product	Tents
Serving Bars	Lighting
Wine Décor/centerpieces	Cabaret tables
Refrigeration/other equipment	White Wood Chairs
Table cloths	
Glasses, etc.	
Necessary licenses or permits	

AUTHORIZATION TO SELL PRODUCTS

Milwaukee County Zoo shall have complete discretion and control over all aspects of the event, including the conduct of vendor's business, design and layout of the premises. All sales of the products shall be at prices that are reasonable and customary in the Milwaukee marketing area, and shall not to exceed \$6.00 for any one item. Milwaukee County Zoo reserves the right to specify brand names, portion sizes, and prices of all menu items dispensed by Concessionaire. At its expense, Concessionaire shall obtain all licenses and permits that may be required by any public authority for the sale of any of the products.

MILWAUKEE A LA CARTE'S AUTHORITY

Milwaukee County Zoo shall have complete authority and control over all aspects of the event. It reserves the right in its sole discretion to oversee and make whatever arrangements it deems appropriate for security, ticket selling, crowd control, clean-up, publicity and any other matters affecting the operation. Milwaukee County Zoo makes no guarantees as to any specific level of attendance, or that Vendors will achieve any specified dollar amounts in sales. Milwaukee County Zoo shall not be responsible for lost or stolen food tickets. Milwaukee County Zoo reserves the right to choose vendor participants each year making no guarantees of a vendor's continued participation from year to year.

CONCESSIONAIRE'S RESPONSIBILITY

Concessionaire agrees to conduct its business in an orderly and lawful manner and to abide by all rules and regulations prescribed by Milwaukee County Zoo or any

applicable governing authority, including, without limitation, those relating to (i) the approval of the prices to be charged for the products and the menus and brands to be served; (ii) wearing of acceptable uniforms or other attire by all personnel employed on the premises; (iii) posting the names of all persons in charge of the premises, one of whom shall always be on the premises when the same are in operation; (iv) the hours of operation of the premises, which shall be as set forth in the attached schedule; (v) the preparation of the products and the disposal of refuse; (vi) the maintenance of the premises; (vii) all public health and sanitation ordinances; and (viii) compliance with Restaurant Delivery and Set Up Schedule.

FOOD TICKETS

Concessionaire shall only accept "Milwaukee a la Carte" food tickets issued by Milwaukee County Zoo in exchange for the products. NO cash shall be accepted in exchange for food vendor sale. All prices of the products shall include sales tax and shall be stated in terms of food tickets that shall be sold to the general public from several food ticket booths located on the Zoo grounds.

PAYMENT

In consideration of the rights extended by Milwaukee County Zoo, SSA agrees to pay Milwaukee County Zoo: twenty eight percent (28%) of gross sales.

Vendor shall deliver to the Zoofari Conference Center all food tickets, which shall have been bundled in an orderly fashion. Food tickets exchanged for products during the event by Concessionaire shall be refunded for their corresponding dollar value less the percent commission due to Milwaukee County Zoo, and any other charges incurred.

PORTION CHECKS

At the request of Milwaukee County Zoo, Vendor shall show a sample of their menu items for review of both quality and quantity.

SCHEDULE

Concessionaire will adhere to all necessary timelines for menu submission, set-up, take down and delivery time restrictions as determined on the Restaurant Delivery and Set-up Schedule. This includes removing/moving merchandise carts, vending machines, kiosks, and any other items on the grounds and in the Gathering Place that interfere with a la Carte tents, sponsors or vendors.

ELECTRICAL REQUIREMENTS

Concessionaire is responsible for providing equipment that is in good working condition with proper guarding and safety measures. The Milwaukee County Zoo electrician has the final word with regards to equipment and whether the equipment meets County standards. If the Zoo provides any electrical services or equipment, the Concessionaire shall be responsible for reimbursing the County for such services on a time and materials basis. The Zoo provides two 20-amp circuits; electrical fees beyond this are as follows:

1-120v duplex \$20

1-208v single phase up to 30a \$25
1-208v single phase 40 to 60a \$50
1-208v triple phase up to 30a \$37.50
1-208v triple phase 40 to 60a \$75

Labor charges for install:
1 hour regular time JW \$60
1/2 OT per line item \$45
1 hour OT JW \$90

SIGNAGE

Official Milwaukee a la Carte signage is the only signage that is allowed, including for daily food areas such as Lakeview Restaurant, popcorn wagons, etc. For signage requests, please direct them to the Zoo's Special Events Coordinator. Signage costs are extra and vary depending on logo, menu, changes, etc.

ICE

Provide bags of ice for vendors and entertainment staff. Ice tally shall be taken at each beer tent and submitted to Zoo Event Coordinator for billing immediately following the event.

MERCHANDISE

Concessionaire shall sell a la Carte merchandise, including t-shirts. Designs are coordinated through Zoo Event Coordinator with input from Concessionaire.

EXHIBIT C.
CONCESSIONAIRE'S PROPOSED CAPITAL IMPROVEMENT PROJECTS

All expenditures and capital improvement projects and contracts, including schedule and completion dates, are subject to the prior written approval of County.

Point of Service	Current Projected \$'s	Drive Per Cap	Increase Speed of Service	Perceived Value / Increased Quality	Explanation / Notes
Flamingo Café	\$200,000	x	x	x	Entry Vestibule / Expanded Seating / Speed Line Introduction
Karibu Gift	\$400,000	x	x	x	Expanded Foot Print / Facade Refresh / Fixtures
Ops. Vehicles	\$30,000				Stock, Operations, and Catering Transportation
Woodland Retreat	\$300,000	x	x	x	Dual Local Pizza and Ice Cream Concept
Oasis & Food Truck	\$225,000	x	x	x	Beer Garden / Seating Expansion / Food Truck
Catering	\$80,000		x		Production Kitchen Infrastructure / Equipment / Décor
Lakeview Expansion	\$300,000	x	x	x	New Locations in Lakeview Foot Print
Lakeview Place	\$25,000	x	x	x	Branding / Signage / Décor
Entry Kiosk	\$100,000	x		x	Replacement for Ice Cream Palace / Snack Depot
Sea Lion Food	\$25,000	x	x	x	Local Custard Program / Spill Out Fixtures
Retail Carts	\$50,000	x		x	Branding / Theming
Concessions Carts	\$25,000	x		x	Branding / Theming
Farmer's Market	\$20,000	x	x	x	Local Kids / Cheese Concept
Dairy Store	\$20,000	x	x	x	Refresh Interior / Exterior
Master Plan Funds	\$820,000	x	x	x	Future Projects
Startup & Inventory	\$380,000				SSA's startup costs and purchase of Zoo's retail & food service inventory estimate
	\$3,000,000				

**EXHIBIT D.
MILWAUKEE COUNTY
REQUEST FOR PROPOSAL
#6947**

EXHIBIT E.
CONCESSIONAIRE'S PROPOSAL