

ADVENTURE AFRICA PHASE 1 PROJECT AGREEMENT

This AGREEMENT is hereby entered into this ___ day of _____ 2016 by and between the Zoological Society of Milwaukee, a Wisconsin not-for-profit corporation (Society) and Milwaukee County, represented by its Director of the Milwaukee County Zoo (County).

- A In December, 2013, the Milwaukee County Zoo and Zoological Society of Milwaukee completed a master plan that would guide redevelopment and development of the Zoo for the next 20 years. Adventure Africa was listed as the initial priority for implementation. To meet elephant exhibit accreditation standards required by the Association of Zoos & Aquariums, the replacement of the elephant exhibit was established as Phase 1 of Adventure Africa. As part of the adopted County 2015 capital budget, the County, in association with the Society, agreed to begin design of Adventure Africa -Phase 1 (Project) which would incur a total cost of \$16,600,000, of which \$800,000 (shared 50/50 between the County and the Society) was to be expended in the County's 2015 fiscal year and the remainder was to be expended in the County's 2016, 2017 and 2018 fiscal years, respectively. The Society will contribute up to \$8,300,000 of the total cost of \$16,600,000 and will match the County's budgeted expenditures for the Project in 2016, 2017 and 2018.
- B. Per Section 6(a)(3) of the 2014 Memorandum of Understanding (MOU), "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 Committee on Parks, Energy and Environment for approval prior to bidding the project."
- C. Such a Project is subject to the approval of both the Society and County, and the following terms and conditions:

NOW THEREFORE, for good and valuable consideration, the parties agree that:

1. Design. The County in consultation with the Society will create the designs, plans and specifications for the Project on or before August 31, 2016, 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 or before July 1, 2018.

4. Source of Funds. Per Section 6(a)(4) of the 2014 MOU, 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. The total estimated cost for the Project is \$16,600,000, including an estimated \$1,500,000 cost of design. During each of the County's 2016, 2017, and 2018 fiscal years, the County shall appropriate and authorize expenditure of the total approved Project budget for that year. The County shall then provide an accounting of Project expenses and commitments to the Society in the fourth quarter of the calendar year. After confirming that the Project expenses and commitments for the year are consistent with Budget as previously approved, and except as set forth in Section 5 and Section 6 herein, the Society shall reimburse the County for fifty percent (50%) of the County's appropriations, up to a maximum aggregate reimbursement of \$8,300,000. The County shall pay \$8,300,000 of the total cost of the Project. 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. The Society shall provide to the County \$8,300,000 to be credited against the cost of the Project per the cash flow schedule noted in item "A" above.

5. 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 \$8,300,000 commitment to the Project.

For each year of project implementation the Society will provide its 50 percent of that year's incurred costs. The end result will be Society contributions and/or in-kind work that equals 50 percent of the total project costs.

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 Phillip Hung, Project Architect. The scope of services to be provided by the Project Manager are described in Exhibit A attached to this 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. Notwithstanding, each calendar quarter the County shall provide the Society with a summarized accounting of Project expenditures, which lists each item and/or service procured during the subject quarter together with its cost; remaining balance (if any); and identity of the relevant vendor and/or service provider (each a "Quarterly Report"). Each Quarterly Report shall be delivered to the Society within 30 days following the close of the subject quarter. 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. At the County's option, the County may request that the Society provide construction management services for the Project. The County will provide a defined scope of construction management services which must be mutually agreed upon by the County and Society. All costs incurred by the Society for the provision of construction management services shall be credited against the Society's \$8,300,000 contribution to the Project. The utilization of contingency funds allocated to the Project budget shall be mutually agreed upon by the Zoo and the Society.

7. Records. Per Section 8(b) of the 2014 MOU, "(t)he 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 County the validity of pledges made for this project.

8. Indemnification. The County and its contractors and agents hereby agree to indemnify and hold harmless the Society and its officers, directors and employees and their agents and assigns, from and against and with regard

to costs, liabilities, demands, claims or damages arising out of or relating to the Project, and its construction, operation or maintenance. The County and Society further agree to indemnify each of each other in accordance with the terms contained in Section 12 of the 2014 MOU. Nothing in this Agreement shall be construed to constitute a waiver of any otherwise applicable immunity, limited immunity or limitation on liability under Wisconsin law.

9. 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 the use of the Society 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 unreasonably 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 same by such name or names. The County will allow the Society at its own cost to erect and maintain suitable name plates or other identifying signage that may be reasonably requested by the Society to effectuate such naming designation. The County will execute such agreements as may be reasonably requested by the Society to confirm such naming rights.
10. Miscellaneous. This Agreement contains the entire understanding of the parties with regard to the subject matter described herein, and it may only be amended by a writing duly executed and approved by both parties.
11. 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.

IN WITNESS WHEREOF, the following officers and agents of the Society and County hereby affix their hand and seal effective as of the date above written.

ZOOLOGICAL SOCIETY OF
MILWAUKEE COUNTY,
Inc.

MILWAUKEE COUNTY

Jodi Gibson, President and CEO

Charles Wikenhauser, Director
Milwaukee County Zoo

Caroline Krider, Chairman
Board of Directors

Approved with regards to County Ordinance Chapter 42:

By: _____ Date: _____
Community Business Development Partners

Reviewed by:

Approved for execution:

By: _____ Date: _____
Risk Management

By: _____ Date: _____
Corporation Counsel

*Approved as to funds
available per sec.
59.255(2)(e), Stats.:*

Approved:

By: _____ Date _____
Comptroller

By: _____ Date: _____
County Executive

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

By: _____ Date:
Corporation Counsel

EXHIBIT A

Scope of Services to be provided by the Project Manager

Conduct Planning and Design Process

1. Meet with client department to establish scope/budget/schedule/program development
2. Feasibility study/Master plan/Development of alternatives, recommendations and conceptual cost estimates
3. Present worth cost analysis
4. Marketing study
5. Public hearings/Customer surveys
6. Environmental assessment
7. Consultant selection
8. Schematic design and cost estimate
9. Land survey data collection
10. Property/right-of-way acquisition
11. Developmental design and cost estimate
12. Contract documents and cost estimate

Conduct Formal Bid and Contract Award Process

1. Administration of competitive public bidding for all contracts over \$25,000 (formal bid w/ drawings, specs. & addenda)
2. Checking Bidder's Proof of Responsibility (maintenance of pre-qualification lists, distributions of bidding documents to pre-qualified contractors only)
3. Public Bidding (clerical, bid advertisement, printing of bidding drawings, specs. and addenda.)
4. Solicitation of Bids (Preparation of public advertisements, contracting possible bidders)
5. Bidding & Contract Documents (Review for compliance with project requirements)
6. Delivery of Bid & Contract Documents (Determining cost of bid sets, delivery of bid documents by mail, fax or in person)
7. Bid opening (Attendance at bid openings, checking for bid requirements compliance, return of non-responsive un-opened bids)
8. Bid Requirements, Disqualification & Rejection of bids (Checking bid bonds, performance, material and labor bonds bidder's certificate & lists of subcontractors)
9. Bid Rejection & Forfeiture (Verification with corporation counsel, preparation of rejection document, return of bid security)

10. Bid Withdrawal, Correction and Contract Award (Review of computation sheets, DBE participation certificates, preparation of award document, funding review.
11. Appeals (Review with corporation counsel, notices to involved parties, attendance at appeals hearings, administrative reviews.)
12. Corrections of errors in bids (return of incorrect bid unopened, review of computation sheets upon withdrawal)
13. Bidder's certificate/Subcontractors listing (checking subcontractor listing)

Administer Construction Contract

1. Settlement of dispute; defaults (determining compliance with the contract provisions regarding hours, wages, residence, classification of workers, etc.)
2. Estimates and release of funds (determination of value earned and appropriate retainage)
3. Prevailing wage enforcement (checking prevailing wage compliance/cancellation of contract for non-compliance/contracts with surety to complete cancelled contracts)
4. DBE Minority Participation (Establishing levels of participation in professional services & construction contracts, monitoring compliance.
5. Change Orders (Verification of funding available, solicitation of proposals, preparation & execution of change orders)
6. Escalator Clauses (Review of eligible material, equipment and labor increment on contracts lasting more than 6 months)
7. Partial Payment (Verify completion of work in question & value of same, check stored materials, determine value of incomplete work)
8. Penalties for late completion (Monitor causes for late completion of work, initiate claims when justified)
9. Transfer of Capital Improvement appropriations (Prepare transfer documents when appropriate)
10. Initiate contracts - issue NTP
11. Attend Pre-Construction Meeting
12. Review and approve contractors baseline schedule
13. Review and approve schedule of values
14. Review and approve submittal schedule, all submittals including Shop Dwg's., RFI's & CB's.
15. Construction problem solving
16. Coordinate with Designer
17. Specification interpretation

18. Attend periodic construction meetings and report
19. Review and approve Substantial Completion date and form
20. Complete and process Project evaluation form
21. Approve and process contractor Payment Applications
22. Evaluate activity completion
23. Monitor DBE compliance
24. Monitor Payroll Reports (2035)
25. Compose Change Orders and obtain required signatures
26. Solicit RFP's if needed
27. Evaluate submittals for both scope and cost
28. Review punch list
29. Monitor punch list for completion
30. Coordinate O&M training
31. Process Final Payment
32. Complete IPAC Form
33. Assemble files to Records Management
34. Ultimate contract management responsibility