

PROFESSIONAL SERVICE CONTRACT
ROBERT ZIGMAN MARKETING, INC.

This Contract between Milwaukee County Zoo, a Wisconsin municipal body corporate (hereinafter called the "County"), and Robert Zigman Marketing, Inc. (hereafter called "Contractor"), is entered into as of January 1, 2017. The County and the Contractor shall collectively be referred to herein as the "Parties."

1. SCOPE OF SERVICES.

The Contract consists of the following three (3) documents listed below, all of which are incorporated herein by reference, in the following order of precedence that will govern any inconsistencies between the terms of this Contract and the terms of any Exhibits, Schedules, or Attachments thereto:

- a) This Professional Service Contract
- b) Milwaukee County Request for Proposal #98160030
- c) Contractor's Proposal submitted November 29, 2016

Contractor shall compile a list of recommended entertainment acts and prices for review by the Zoo Marketing & Communications Director by thirty (30) days prior to the event. Contractor shall negotiate and contract with all local and national entertainment for the event. All technical coordination for contracted acts will be handled by Contractor including load-in, contract rider requirements, admission arrangements, stage management and security. Contractor shall be responsible for all staging, sound and lighting requirements at the best possible prices. Contractor shall be responsible for all technical requirements including stage hands, electrical power, security and hospitality. Contractor shall submit a finalized schedule of entertainment no later than one month prior to the first day of Milwaukee a la Carte.

2. STAFFING.

Contractor's employees and contractors listed below are to be assigned to the project:

<u>Name</u>	<u>Position</u>
Robert Zigman	President
Michael Hunter Short	MH Short & Associates
Gary Brunclick	A La Carte Production Team; Caribou Stage Front of House Sound Engineer Manager
Neil Hawes	Production Team Manager
Elliot Hill	Caribou Stage Manager
Kathie Forrer	A La Carte National Entertainment Hospitality and Travel Manager
Chad Sikkink	Sound and Lights Provider for A La Carte Account Executive, Clearwing Productions

Contractor shall not replace the employees listed above without the prior approval of the County. If the successor to any of those employees cannot be mutually agreed upon, the County shall have the right to terminate this Contract upon thirty (30) days' notice. Any replacement of listed personnel shall be by persons of equal qualifications, which shall be attested to by Contractor. The employees listed above shall be required to give this contractual obligation top priority.

Contractor represents that its employees and subcontractors possess the necessary skill, expertise, and capability, including sufficient personnel with the necessary qualifications, to perform the services required by this Contract. Contractor shall provide, at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be the employees of, or have any other contractual relationship with, the County.

3. DATES OF PERFORMANCE.

Contractor shall begin work upon execution of this Contract. This Contract shall terminate on December 31, 2018; provided, however, that the Parties may mutually agree to extend the term of the Contract for two (2) additional one (1)-year extension periods.

4. COMPENSATION.

Contractor shall be compensated by the County based upon Contractor's actual costs. Upon the execution of this Contract, Contractor shall receive an advance payment of Sixty Thousand Dollars (\$60,000.00) (the "Advance") which Contractor shall use to carry out its obligations under this Contract. Upon the conclusion of a la carte, Milwaukee County shall calculate twenty percent (20%) of all contracts processed through the Contractor's organization including entertainment, staging, sound and lights and other technical requirements. Milwaukee County shall subtract the Advance from the 20% calculation and shall pay the remainder to Contractor; provided, however, that the total compensation to Contractor for services performed under the Contract shall not exceed One Hundred Ninety Thousand Dollars (\$190,000.00) per calendar year unless agreed to by County in writing prior to Milwaukee a la Carte. Original receipts may be required as proof for all invoices. State Prompt Pay Law, Section 66.285, does not apply to this Contract. As a matter of practice, the County attempts to pay all invoices in 30 days.

5. BILLING.

Contractor shall provide County with monthly billings, which shall include, but not be limited to, the following:

- A. Name and address of contractor
Invoice date and number
- B. Dates and hours worked including description of services
Remittance name and address
- C. Name, title, and phone number of person to notify in event of defective invoice

Invoices should be sent to:

Milwaukee County Zoo
Attn: Laura Pedriani
10001 W. Bluemound Rd.
Milwaukee, WI 53226

The County reserves the right to use a purchasing card to pay invoices

7. OWNERSHIP OF DATA.

Upon completion of the work or upon termination of the Contract, it is understood that all completed or partially completed data, drawings, records, computations, survey information, and all other material that Contractor has collected or prepared in carrying out this Contract shall be provided to and become the exclusive property of the County. Therefore, any reports, information and data, given to or prepared or assembled by Contractor under this Contract shall not be made available to any individual or organization by Contractor without the prior written approval of County.

No reports or documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Contractor.

8. COUNTY RIGHTS OF ACCESS AND AUDIT.

The Contractor, its officers, directors, agents, partners and employees shall allow the County Audit Services Division and department contract administrators (collectively referred to as Designated Personnel) and any other party the Designated Personnel may name, with or without notice, to audit, examine and make copies of any and all records of the Contractor related to the performance of the Contract for a period of up to three years following the date of last payment. Any subcontractors or other parties performing work on this Contract will be bound by the same terms and responsibilities as the Contractor. All subcontracts or other agreements for work performed on this Contract will include written notice that the subcontractors or other parties understand and will comply with the terms and responsibilities. Any and all county contracts and solicitations for contracts shall include a statement that the contractor and any subcontractors understand and will abide by the requirements of this chapter.

9. CONTRACTS PERTAINING TO THE COUNTY.

The Contractor may not enter into any contracts pertaining to the County, including sponsorship agreements, promotional arrangements, performance agreements, or other arrangements with outside contractors, without the prior written consent of the Zoo Director or his/her designee.

10. AFFIRMATIVE ACTION.

The Contractor assures that it will undertake an affirmative action program as required by Milwaukee County Code of General Ordinances (MCCGO) 56.17(1d), to insure that no person shall, on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in MCCGO 56.17(1d). The Contractor assures that no person shall be excluded, on these grounds, from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Contractor assures that it will require that its covered organizations provide assurances to the Contractor that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by MCCGO 56.17(1d), to the same effect.

11. DISADVANTAGED BUSINESS ENTERPRISES.

A. Contractor shall comply with all provisions imposed by or pursuant to Milwaukee County Code of General Ordinances Chapter 42 when and where applicable, and as said Ordinance may be amended. The County shall notify Contractor in the event that new ordinances are issued.

- B. Contractor shall adhere to the approved DBE participation plan contained in this contract, which assures that seventeen percent (17%) of the Contract be attributed to a firm certified by the County or an entity whose certification is recognized by the County throughout the term of this Contract. Approval must be obtained from the County prior to making any change(s) to the approved DBE participation plan.
- C. If Contractor fails to achieve and maintain the level of DBE participation stated in this Contract, Contractor shall provide documentation to the County demonstrating that it made good faith efforts in its attempt to meet the stated level of participation. If Contractor fails to reflect a good faith effort to achieve and maintain the level of DBE participation stated herein throughout the term of this Contract, County may consider this as a material breach of the Contract and may terminate the Contract in accordance with Section 17 of this Contract.
- D. Contractor shall submit monthly reports online as required by the County for the purpose of demonstrating compliance with this Section.

12. NON-DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION PROGRAMS.

In the performance of work under this Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, sex, sexual orientation, gender identity and expression, age, ancestry or nationality, political or religious affiliation, creed, or disability, which shall include, but not be limited to, the following:

Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. Contractor will post in conspicuous places, available for employees and applicants for employment, notices to be provided by the County setting forth the provisions of this nondiscriminatory clause. A violation of this provision shall be sufficient cause for the County to terminate the contract without liability for the uncompleted portion or for any materials or services purchased or paid for by the Contractor for use in completing this Contract.

Contractor agrees to strive to implement the principles of equal employment opportunities through an effective Affirmative Action program, and has so indicated on the Equal Employment Opportunity Certificate attached hereto as and made a part of this Contract. The program shall have as its objective to increase the utilization of women, minorities and handicapped persons, and other protected groups, at all levels of employment, in all divisions of Contractor's workforce, where these groups may have been previously under-utilized and under-represented. Contractor also agrees that in the event of any dispute as to compliance with the aforestated requirements, it shall be its responsibility to show that it has met all such requirements.

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

If, after notice of a violation to Contractor, further violations of the section are committed during the term of the Contract, County may terminate the Contract without liability for the uncompleted

portion or any materials or services purchased or paid for by the Contractor for use in completing the Contract, or it may permit Contractor to complete the Contract, but, in either event, Contractor shall be ineligible to bid on any future contracts let by County.

13. INDEMNITY.

Contractor agrees, to the fullest extent permitted by law, to indemnify, defend and hold harmless, the County and its agents, officers and employees, from and against all loss or expenses including cost and attorney's fees by reason of liability for damages including suits at law or in equity, caused by any act or omission of Contractor, or its agents or guests, which may arise out of or are connected with the activities covered by the Contract.

Contractor will defend, indemnify and hold the County, its elected officials, officers, employees, and agents, harmless for, from and against any and all claims, causes of action, suits, judgments, assessments, costs (including reasonable attorneys' fees) and expenses ("Claim") arising from a third-party action, suit or proceeding to the extent such Claim is based upon an allegation that its services or any part thereof infringes an Intellectual Property Right. Contractor, at its own expense and option may: (i) procure for the County the right to continue use of the infringing portion of the services; or (ii) refund to the County a pro-rated portion of the applicable fees for the services based on a linear depreciation monthly over a four (4)-year useful life, in which case the County will return to the Contractor all merchandise making use of the services and cease all use of such services.

"Intellectual Property Rights" means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

14. INSURANCE.

Contractor must, at the time of the award evidence and maintain, during the term of the Contract, policies of insurance and proof of financial responsibility to cover costs as may arise from claims for damages to property of and/or claims which may arise out of or result from Contractor's activities, by whomever performed, in such coverage and amounts as required and approved by the County. Acceptable proof of such coverage shall be furnished to the County prior to commencement of activities pursuant to the award. A Certificate of Insurance shall be submitted for review for each successive period of coverage for the duration of this Contract, unless otherwise specified by the County, in the minimum amounts specified below.

Contractor shall provide evidence of the following coverages and minimum amounts and any other project-specific insurance as requested:

Type of Coverage	Minimum Limits
Wisconsin Workers Compensation	Statutory with waiver of subrogation
Employers Liability & Disease	\$500,000/\$500,000/\$500,000
General Liability	
Bodily Injury & Property Damage	\$2,000,000 Per Occurrence

To include Personal Injury, Fire,
Products and Completed Operations
Contractual Liability \$5,000,000 Aggregate

Automobile Liability

Bodily Injury & Property Damage \$1,000,000 Per Accident
All Autos-Owned, non-owned and/or hired
Uninsured & Underinsured Motorists Per Wisconsin Requirements

Milwaukee County shall be named as and Additional Insured on the general and automobile liability policies as its interests may appear in respect to the services provided in this Contract. A waiver of subrogation shall be afforded to Milwaukee County on the Workers' Compensation policy. A thirty (30) day written notice of cancellation or non-renewal shall be afforded to Milwaukee County.

The insurance specified above shall be placed with an A rated carrier or better per A.M. Best's Rating Guide approved to do business in the State of Wisconsin. Any deviations or waiver of required coverages or minimums shall be submitted in writing and approved by Milwaukee County's Director of Risk Management as a condition of this Contract.

A certificate of insurance shall be submitted for review to Milwaukee County for each successive period of coverage for the duration of this Contract.

15. PERMITS, TAXES, LICENSES.

Contractor is responsible for procuring, maintaining and paying for all necessary federal, state, and local permits, licenses, fees and taxes required to carry out the provisions of this Contract.

16. TERMINATION BY CONTRACTOR.

Contractor may, at its option, terminate this Contract upon the failure of the County to pay any amount that may become due hereunder for a period of sixty (60) days following submission of appropriate billing and supporting documentation. Upon said termination, Contractor shall be paid the compensation due for any entertainment actually booked by Contractor and performing at a la Carte.

17. TERMINATION BY COUNTY FOR VIOLATIONS BY CONTRACTOR.

If the Contractor fails to fulfill its obligations under this Contract in a timely or proper manner, or violates any of its provisions, the County shall there upon have the right to terminate it by giving thirty (30) days written notice of termination of contract, specifying the alleged violations, and effective date of termination. It shall not be terminated if, upon receipt of the notice, Contractor promptly cures the alleged violation prior to the end of the thirty (30) day period. In the event of termination, the County will only be liable for services rendered, i.e., any entertainment actually booked by Contractor and performing at a la Carte.

18. UNRESTRICTED RIGHT OF TERMINATION BY COUNTY.

The County further reserves the right to terminate the Contract at any time for any reason by giving Contractor thirty (30) days written notice of such termination. In the event of said

termination, the Contractor shall reduce its activities hereunder as mutually agreed to, upon receipt of said notice, and turn over all work product to the County. Upon said termination, Contractor shall be paid for all services rendered through the date of termination, i.e., any entertainment actually booked by Contractor and performing at a la Carte. This section also applies should the Milwaukee County Board of Supervisors fail to appropriate additional monies required for the completion of the Contract. Continuance of the contract beyond the limits of funds available shall be contingent upon appropriations of the necessary funds and the termination of this contract by lack of appropriations shall be without penalty.

19. INDEPENDENT CONTRACTOR.

Nothing contained in this Contract shall constitute or be construed to create a partnership or joint venture between County or its successors or assigns and Contractor or its successors or assigns. In entering into this Contract, and in acting in compliance herewith, Contractor is at all times acting and performing as an independent contractor, duly authorized to perform the acts required of it hereunder. Nothing contained in this Contract shall give Contractor any authority to supervise, manage, and/or direct County employees.

20. SUBCONTRACTS.

Assignment of any portion of the work by subcontract must have the prior written approval of County.

21. ASSIGNMENT LIMITATION.

This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns; provided, however, that neither party shall assign its obligations hereunder without the prior written consent of the other.

22. PROHIBITED PRACTICES.

- A. Contractor during the period of this contract shall not hire, retain or utilize for compensation any member, officer, or employee of County or any person who, to the knowledge of Contractor, has a conflict of interest.
- B. Contractor hereby attests that it is familiar with Milwaukee County's Code of Ethics which states, in part, "No person may offer to give to any County officer or employee or his immediate family, and no County officer or employee or his immediate family, may solicit or receive anything of value pursuant to an understanding that such officer's or employee's vote, official actions or judgment would be influenced thereby."

23. PUBLIC RECORDS.

Both parties understand that the County is bound by the public records law, and as such, all of the terms of this Contract are subject to and conditioned on the provisions of Wis. Stat. § 19.21, *et seq.* Contractor hereby agrees that it shall be obligated to assist the County in retaining and timely producing records that are subject to the Wisconsin Public Records Law upon any statutory request having been made, and that any failure to do so shall constitute a material breach of this Contract, whereupon the contractor shall then and in such event be obligated to indemnify, defend and hold the County harmless from liability under the Wisconsin Public Records Law occasioned

by such breach. Except as otherwise authorized by the County in writing, records that are subject to the Wisconsin Public Records Law shall be maintained for a period of three years after receipt of final payment under this Contract.

24. TAXES.

Milwaukee County is exempt from Federal Excise Taxes and Wisconsin State Sales Taxes. Any billing submitted by Contractor should be without such taxes.

25. NON-CONVICTION FOR BRIBERY.

Contractor hereby declares and affirms that, to the best of its knowledge, none of its officers, directors, or partners or employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or the federal government.

26. CONFIDENTIALITY.

Contractor agrees that all work product and oral reporting shall be provided only to or as directed by the individual who is signing this Contract on behalf of the County department, below, and not any other person or entity, including any other County employee or official. Contractor further agrees that, aside from obligations under the public records law as more fully described in Sec. 23 of this Contract and as determined in cooperation with the County, Contractor shall maintain all materials and communications developed under or relating to this Contract as confidential and shall disclose them only to or as directed by the individual who is signing this Contract on behalf of the County department, below. Contractor understands that breach of confidentiality, especially regarding information that is not subject to public records law disclosure, may harm or create liability for the County and may require Contractor to indemnify County as provided in this Contract.

27. NOTICES.

All notices with respect to this Contract shall be in writing. Except as otherwise expressly provided in this Contract, a notice shall be deemed duly given and received upon delivery, if delivered by hand, or three days after posting via US Mail, to the party addressed as follows:

To Contractor:

Robert Zigman Marketing, Inc.
Attn: Robert Zigman
3421 Canadian Parkway
Fort Collins, CO 80524

To County:

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

Either party may designate a new address for purposes of this Contract by written notice to the other party.

28. MISCELLANEOUS.

This Contract shall be interpreted and enforced under the laws and jurisdiction of the state courts in the State of Wisconsin. This Contract constitutes the entire understanding between the parties

and is not subject to amendment unless agreed upon in writing by both parties hereto. Contractor acknowledges and agrees that it will perform its obligations hereunder in compliance with all applicable state, local or federal law, rules and regulations and orders.

Signature page follows

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

Robert Zigman Marketing, Inc.

By: _____ Date: _____
Robert Zigman, President

Milwaukee County Zoo

By: _____ Date: _____
Charles Wikenhauser, Director

Approved with regards to County Ordinance Chapter 42:

By: _____ Date: _____
Community Business Development Partners

Reviewed by:

By: _____ Date: _____
Risk Management

Approved for execution:

By: _____ Date: _____
Corporation Counsel

Approved:

By: _____ Date: _____
Comptroller

Approved:

By: _____ Date: _____
County Executive

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

By: _____ Date: _____
Corporation Counsel