



COUNTY OF DANE

DEPARTMENT OF ADMINISTRATION

CONTROLLER DIVISION

210 Martin Luther King, Jr. Boulevard, Room 426

Madison, Wisconsin 53703

608/266-4109

CHARLES HICKLIN
Controller

TRAVIS MYREN
Director of Administration

MEMORANDUM

Date: June 27, 2013
To: County Executive Parisi
From: Chuck Hicklin

RE: Zoo Operating Agreement

This agreement is for five years from January 1, 2014 through December 31, 2018 between the County and the Friends of the Zoo. The agreement grants the Friends exclusive fundraising rights on the Zoo grounds and the rights to operate the concessions at the zoo. The agreement guarantees annual payments to the county based the greater of on a series of minimum annual payments or a percentage share of the net income from concessions operations at the zoo.

ARCHITECTURAL AND ENGINEERING DESIGN SERVICES FOR
ARCTIC ANIMAL EXHIBIT AND CONCESSIONS

The Department of Public Works, Highway & Transportation reports the receipt of proposals for professional architectural and engineering design services for the arctic animal exhibit and concessions at the Henry Vilas Zoo, 702 South Randall Avenue, Madison, Wisconsin, Proposal # 313047.

An Agreement has been negotiated with WDM Architects for \$536,000.00 for design of the Arctic Passage Exhibit and \$155,000 for design of the concession facility.

The Public Works staff finds the amount to be reasonable and recommends the proposal be awarded to WDM Architects.

As the costs of operating the zoo continue to increase and the planned increase in utility costs for the Arctic passage emerge in 2015, it is necessary to invest in expansion of the concession facilities that serve to generate revenue.

The most recent design of the Arctic Passage Exhibit includes an innovative approach that includes an expanded concession facility immediately adjacent to the Exhibit. The expanded facility would, for the first time, offer indoor seating for food sales. Projections indicate that the expansion could double the annual concession revenue to the Friends. This expansion of the concession facility and the partnership between the county and the Friends will offer a unique opportunity to expand funding for the zoo with non-GPR sources of revenue. The county and the Friends have agreed to a multi-year operating agreement whereby the county would receive up to 90% of the net revenue from all concessions operations.

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The proposed operating agreement will last from 2014 through 2018. It provides that the Friends continue to fund the 3.0 FTE positions at the zoo and to cover the projected increases in the cost of those positions. It also provides for a \$60,000 increase in operating funds in 2015 to accommodate the projected utility cost increases that will result from the opening of the Arctic Passage Exhibit and the expanded concession facility.

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In 2014, the county would receive a payment of \$688,000. Beginning in 2015, the agreement establishes an ongoing sharing for concessions revenue. In 2015 and 2016, the county would receive 80% of the net concession income with minimum payments of \$752,000 and \$756,000 respectively. In 2017, the revenue sharing increases to 85% of net income with a minimum payment of \$760,000 and in 2018, the revenue sharing increases to 90% of net income with a minimum payment of \$765,000.

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Due to the new design that combines the Arctic Passage Exhibit and the expanded concessions facility, and the updated cost estimates for the Arctic Passage Exhibit, it is necessary to amend the 2013 capital budget to include the concession facility rather than wait until the adoption of the 2014 budget. While the Arctic Passage will be jointly funded between the county and the Friends, the concession facility will be fully funded by the county.

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The cost of the design and construction of the Arctic Passage Exhibit project is estimated to be \$8.6 million and will be shared between the County and the Friends of the Zoo

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with the county paying \$4 million and the Friends of the Zoo paying the balance. The cost of the design and construction of the concession facility, estimated at \$2.2 million, will be paid by the County. ~~There are sufficient funds available for this project.~~ The proposed agreement calls for the county to pay 100% of the cost of the concession facility up to \$2.2 million, and 50% of the cost of the Exhibit up to \$4.0 million. The cost sharing arrangement is outlined in a capital development agreement between the county and the Friends of the Zoo.

The previous design of the Arctic Passage Exhibit was estimated to cost \$15 million which was included in prior capital budgets and carried forward to 2013. These amounts need to be adjusted to reflect the current estimated cost and new cost sharing agreement.

The term of the borrowing used to support this project will be twenty years.

NOW, THEREFORE, BE IT RESOLVED that an Agreement be awarded to WDM Architects in the amount of \$536691,000.00; and

BE IT FURTHER RESOLVED that the 2013 Capital Budget be amended to add the Zoo Concession Facility project CPZOO NEW in the amount of \$2,200,000 and borrowing proceeds be increased CPZOO 87974 in the amount of \$2,200,000, and

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BE IT FURTHER RESOLVED that the 2013 Capital Budget carryforward be amended based on the more current cost estimates as follows: reduced CPZOO 57048 "Arctic Passage Exhibit" by \$6,400,000, increase CPZOO 84372 "Arctic Passage-Zoo Society Contribution" by \$1,100,000 and reduce CPZOO 84974 "Borrowing Proceeds" by \$7,050,000, and

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BE IT FURTHER RESOLVED that the capital development agreement between the county and the Friends of the Henry Vilas Zoo is approved and the County Executive and County Clerk are authorized to execute the agreement and,

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BE IT FURTHER RESOVLED that the 2014-2018 operating agreement between the county and the Friends of the Zoo is approved and that the County Executive and County Clerk are authorized to execute the agreement, and

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BE IT FURTHER RESOLVED that the County Executive and the County Clerk be authorized to sign the Agreement between the county and WDM Architects; and

BE IT FINALLY RESOLVED that the Department of Public Works, Highway & Transportation be directed to ensure complete performance of the Agreement between the county and WDM Architects.

Submitted by Supervisors Schmidt, Pertl, Richmond, Veldran and Ripp, May 23, 2013.
Referred to PERSONNEL & FINANCE and PUBLIC WORKS & TRANSPORTATION..

Expiration 12.31.2018

Department: Henry Vilas Zoo

GENERAL USE AGREEMENT

THIS AGREEMENT, made and entered into, by and between the County of Dane (hereafter referred to as "COUNTY") and Henry Vilas Park Zoological Society, Inc. (hereafter, "SOCIETY"),

WITNESSETH:

WHEREAS COUNTY, whose address is c/o Director, Henry Vilas Zoo, 702 South Randall Avenue, Madison, Wisconsin 53715, operates the facility known as the Henry Vilas Zoo ("the Zoo"); and

WHEREAS SOCIETY, whose address is c/o Executive Director, Henry Vilas Park Zoological Society, 702 South Randall Avenue, Madison, Wisconsin 53715, is a private, non-profit corporation, organized under Chapter 181 of Wisconsin Statutes with tax exempt status under section 503(c) of the Internal Revenue Service Code, independent and separate from COUNTY, that exists to raise funds for the benefit of the Zoo; and

WHEREAS SOCIETY has for many years raised funds to benefit the Zoo, SOCIETY desiring to continue its relationship with the Zoo and COUNTY, and COUNTY being willing to continue its relationship with SOCIETY on the terms and conditions set forth herein; and

WHEREAS COUNTY AND SOCIETY wish to assure the continued success and prosperous growth of the Zoo, each acknowledging that continued operation, maintenance and improvement of the Zoo provides a valuable asset to the residents of COUNTY and public in general; and

WHEREAS COUNTY desires to continue receiving support of SOCIETY, its directors, members and employees, SOCIETY desiring to continue its support of the Zoo.

NOW, THEREFORE, in consideration of the above premises and the mutual covenants of the parties hereinafter set forth and for a valuable consideration, the receipt and sufficiency of which is acknowledged by each party for itself, COUNTY and SOCIETY do agree as follows:

1.1 The term of this Agreement shall commence as of the date by which all parties hereto have executed this Agreement and shall end as of the EXPIRATION DATE set forth on page 1 hereof, unless sooner agreed to by the parties.

1.2 COUNTY has the exclusive right and obligation to operate and maintain all aspects of the Zoo, through the Zoo Director, in accordance with the policies and directives established by the Dane County Board of Supervisors and the Dane County Executive. To discharge its duties in this regard, COUNTY may receive from SOCIETY support upon which parties agree.

50 **1.3** SOCIETY shall continue to function as a private, nonprofit corporation organized under
51 chapter 181 of Wisconsin Statutes with tax-exempt status under section 501(3)(c)
52 of the Internal Revenue Code, independent and separate from COUNTY. SOCIETY shall to the
53 best of its ability provide support to Zoo, upon which parties agree. SOCIETY shall direct all its
54 efforts toward support of Zoo consistent with its mission.

55
56 **2.1** Subject to the provisions of this Agreement, COUNTY grants to SOCIETY, for the term of
57 this Agreement, the right to solicit and raise funds for the general benefit of the Zoo.

58
59 **2.2** Capital projects at the Zoo require the approval of COUNTY, and SOCIETY may not
60 solicit funds for any such project without prior written approval.

61
62 **2.3** SOCIETY shall have the right to solicit and receive donations, gifts, grants, bequests and
63 other forms of revenue from any source pursuant to this Agreement, provided all such net income
64 received is used by SOCIETY to support Zoo.

65
66 **2.4** Notwithstanding paragraph 2.3 above and without the necessity of securing further
67 approval, SOCIETY is authorized to maintain specific funds and to solicit and manage funds for
68 the specific purposes indicated by the name of the fund which may include, but are not limited to,
69 Education Fund, Train/Carousel Fund, Donor Tube Fund and Animal Welfare Fund.

70
71 **2.5** By December 1 of each year of this Agreement, SOCIETY agrees to make a payment
72 toward annual operating costs of the Zoo. A portion of the annual amount is expressly provided
73 to support 3.0 FTE staff positions (the "Positions"): the Deputy Director, a Facilities and Animal
74 Life Support Technician, and a Zookeeper. To the extent that COUNTY experiences vacancies in
75 these three positions, the SOCIETY will receive a credit to reduce the annual payment by the
76 amount of personnel costs saved by COUNTY as a result of the vacancy.

77
78 During the term of this agreement, a new arctic passage exhibit and concession facility will be
79 constructed at the Zoo. As a result, the estimated annual utility costs to the Zoo will increase by
80 approximately \$60,000. The new concession facility is expected to increase revenue to the
81 SOCIETY when it opens in 2015. In addition, the costs of the three positions funded by the
82 SOCIETY will increase by approximately \$4,000 each year of this agreement.

83
84 The amount to be paid by SOCIETY for the calendar year 2014 will be \$688,000. The amount
85 paid to by the SOCIETY for 2015 shall be equal to the greater of 80% of the net income from the
86 Concessions Operations and Donor Tubes or \$692,000, plus the increased costs of utilities
87 incurred during 2015 as a result of the addition of the Arctic Passage Exhibit and the concession
88 facility. The amount paid by the SOCIETY for 2016 shall be equal to the greater of 80% of the
89 net income from the Concessions Operations and Donor Tubes or \$756,000. The amount paid
90 by the SOCIETY for 2017 shall be equal to the greater of 85% of the net income from the
91 Concessions Operations and Donor Tubes or \$760,000. The amount paid by the SOCIETY for
92 2018 shall be equal to the greater of 90% of the net income from the Concessions Operations
93 and Donor Tubes or \$765,000.

94
95 COUNTY will invoice SOCIETY annually for the above amounts less any credit for vacancy
96 savings.

97
98 The above amounts shall only be expended for the benefit of the Zoo.

99
100 **2.6** Beginning in calendar year 2015, SOCIETY agrees to appropriate \$40,000 each year to the
101 Animal Welfare Fund to be available for the specialized care, acquisition, transportation and other

102 specialized animal welfare expenses. Any amount not expended within each fiscal year will be
103 carried forward and be available in the following fiscal year. However, if the balance of the
104 current year appropriation combined with any carryforward of previous appropriations exceeds
105 \$120,000, SOCIETY may reduce the appropriation such that the combined total does not exceed
106 \$120,000.

107
108 **2.7** If in the event that the combined revenue from the SOCIETY the COUNTY and all other
109 sources exceed the operating expenditures of the Zoo, the COUNTY will carryforward any
110 surplus funds for use in the following fiscal year for the benefit of the ZOO.

111 112 113 **3.0 Concessions**

114
115 **3.1** COUNTY hereby grants to SOCIETY, for the term of this agreement, the exclusive
116 right to operate and fundraise for all concessions at the Zoo including a trackless train and
117 conservation carousel utilizing SOCIETY staff and volunteers, the concession rights so granted
118 hereinafter referred to as "Concession Operations". Subject to the continuing approval and
119 consent of the Zoo Director, SOCIETY may utilize the Zoo's concession-related equipment and
120 facilities for SOCIETY's concession operations. SOCIETY is authorized to offer its members
121 certain benefits and discounts related to Zoo events and concession sales.

122
123 **3.2** A steering committee composed of two members from the SOCIETY and two members
124 from the COUNTY will provide general oversight for the Concessions Operations with the final
125 responsibility residing with the SOCIETY.

126
127 **3.3** SOCIETY shall be responsible for repair and maintenance of the interiors and exteriors of
128 the concession stands and daily upkeep of the grounds surrounding the concession stands,
129 provided that COUNTY shall be responsible for the costs of any repair of damages not caused by
130 actions of SOCIETY or its officers, agents or employees or which are necessitated by events not
131 initiated, promoted, contributed to or participated in by SOCIETY. Notwithstanding any language
132 to the contrary herein, COUNTY may elect in its sole discretion not to reconstruct a damaged
133 concession stand and instead to discontinue concession operations at that location.

134
135 **3.4** Subject to the continuing authority of the Zoo Director, SOCIETY shall maintain operating
136 hours for the concession operations generally consistent with the hours the Zoo is open to the
137 public.

138
139 **3.5** SOCIETY shall conduct its concession operations in a manner consistent with the Zoo's
140 general environment. SOCIETY shall not allow trash or any type of waste to accumulate at any
141 time in or around any concession stand or Zoo grounds.

142
143 **3.6** SOCIETY shall purchase all supplies and products to be sold in the concession
144 operations; train, supervise and maintain its labor force; perform all accounting including
145 inventory, payroll, deposits, reconciliations, accounts payable/receivable and maintain any other
146 records or documents deemed necessary under generally accepted accounting practices for non-
147 profits; obtain at its sole expense any and all licenses as may be required by any governmental
148 entity; collect and pay over to the State of Wisconsin any required sales taxes; and provide and
149 maintain such other services as are necessary for the concession operations.

150
151 **3.7** SOCIETY shall designate in writing an individual who shall be responsible for
152 management of concession operations. This notice shall be provided to the Director not later
153 than 5 calendar days after the effective date of this Agreement. The party so designated shall be

empowered by SOCIETY to act as SOCIETY's liaison with the Director and to commit the resources of SOCIETY necessary to implement decisions regarding concession operations.

3.8 The SOCIETY shall consult with the Zoo Director regarding and substantial changes or modifications in concession services and operations. Substantial changes include but are not limited to: hours of operation of the concessions stands, nature and extent of concession services to be provided to the general public by SOCIETY, alterations or modifications related to SOCIETY's operations.

3.9 All concession transactions, financial records, books of account and other business records, including inventories, shall be kept separately from other records of SOCIETY and shall be maintained in accordance with generally accepted accounting practices for non-profit organizations. The COUNTY reserves the right to review expenses charged by SOCIETY against the concessions revenue to verify that expenses such as overhead or administration are appropriately allocated.

3.10 An effective system of internal control shall be used to reconcile sales and inventory transactions so as to account for all concession sales activity.

3.11 Documentation of sales and inventory must be maintained by SOCIETY according to record retention policies of the COUNTY and SOCIETY.

3.12 With the written approval of the Director, SOCIETY may subcontract any type of concession activity other than food and beverage operations. Any contract entered into with a subcontractor shall contain indemnity provisions protecting COUNTY, its boards, commissions, agencies, officers, employees and representatives against any and all liability, loss (including, but not limited to, property damage, bodily injury and loss of life), damages, costs or expenses which they or any of them may sustain, incur or be required to pay by reason of a subcontractor's activities. A subcontractor shall carry insurance as required by COUNTY. Any such subcontract shall contain a provision that the subcontractor's operations must be conducted in a manner acceptable to the Director and any such subcontract shall be terminated by SOCIETY upon a determination that the subcontractor's operations do not meet the Zoo's general standards or are otherwise unacceptable to the continued operation of the Zoo.

3.13 COUNTY hereby appoints the Henry Vilas Zoo Director ("the Director") as its liaison with SOCIETY and COUNTY empowers the Director on behalf of COUNTY to review and approve SOCIETY's use of the Zoo's concession-related equipment and facilities in its concession operations; to close down or relocate any particular concession stand; to consult with SOCIETY over the hours of concession operations and to adjust those hours consistent with the best interests of the Zoo; to impose regulations and rules designed to maintain a harmonious balance between the Zoo's conservation and educational mission and SOCIETY's concession operations; to review and approve or deny any request by SOCIETY to subcontract any type of concession; and to review and approve, modify or refuse to approve new practices or modifications of any existing concession operations practices proposed by SOCIETY from time to time.

3.14 Net income derived from concession operations shall only be expended for the benefit of the Zoo, for purposes and in the amounts agreed upon in writing by SOCIETY and COUNTY.

4.0 Zoo Grounds, Special Events, Visitor Center, Tents and Visitor Donation Collectors.

4.1 COUNTY hereby grants to SOCIETY, for the term of this agreement, the use of the Henry Vilas Zoo grounds. Uses where SOCIETY is one of two or more sponsors of an event at

206 the Zoo are not within the scope of this agreement and such uses shall be only by separate
207 contract as approved by COUNTY. SOCIETY shall have non-exclusive use of the Zoo as set
208 forth herein, for the purposes of holding special events such as; picnics, community events,
209 fundraisers and related activities. Such uses shall be during zoo hours, or, upon approval of the
210 Zoo Director, after hours, and be limited to the Visitor Center and such other zoo grounds as
211 approved by the Zoo Director. On such dates as the SOCIETY and Zoo Director may agree upon
212 COUNTY will close designated areas of the Zoo to the general public and thereafter admit only
213 persons invited by SOCIETY. COUNTY also grants to SOCIETY the right to administer and
214 oversee third party-sponsored events held at the Zoo, SOCIETY shall be entitled to charge an
215 admission fee to persons attending its events. In connection with such events, SOCIETY may
216 sell or provide free of charge; food and drink, subject to obtaining proper licenses, and enter into
217 agreements with third parties to provide on-site catering services. SOCIETY may utilize the
218 service of paid employees and unpaid volunteers to assist in conducting such events. SOCIETY
219 shall reimburse COUNTY for staffing and other costs incurred by COUNTY in providing support to
220 events sponsored by SOCIETY. COUNTY expressly reserves to itself the right to use Zoo
221 Facilities for community events, provided there are no previously scheduled events, and
222 SOCIETY shall have no right of objection thereto.
223

224 **4.2** COUNTY hereby grants to SOCIETY, for the term of this agreement, use of the
225 Visitor Center as follows: SOCIETY shall have exclusive use of the lower level of the Visitor
226 Center for the purpose of conducting SOCIETY'S day-to-day business, SOCIETY shall be entitled
227 to offer space on the main floor of the Visitor Center to the general public during or after regular
228 zoo hours for a fee, for the purposes of holding private meetings, parties and other gatherings.
229 Fees for such uses will be determined by SOCIETY and collected by SOCIETY. All net income
230 from such uses shall be used for support of Zoo. The main floor of the Visitor Center shall be
231 open to the general public during regular zoo hours when it is not in use as provided for in this
232 section, daily cleaning of the Visitor Center interior shall be the responsibility of the SOCIETY.
233 SOCIETY shall pay the costs of Visitor Center electric and natural gas utilities. Reasonable
234 repair and maintenance of the Visitor Center exterior and surrounding grounds shall be the
235 responsibility of COUNTY.
236

237 **4.3** SOCIETY shall be entitled to operate fund raising attractions, including a
238 conservation carousel and trackless train, on zoo grounds as licensed and permitted by the State
239 of Wisconsin, City of Madison and COUNTY and approved by the Zoo Director. SOCIETY shall
240 operate and maintain attractions in a safe and clean condition at all times, follow all operating and
241 safety protocols, and provide routine clean-up of the attractions on a daily basis. SOCIETY may
242 charge a fee to ride each attraction. SOCIETY shall maintain attractions in a safe and clean
243 condition at all times, with routine clean-up of the attractions performed by SOCIETY on a daily
244 basis.
245

246 **4.4** SOCIETY shall be entitled to erect as approved by the Director, a semi-permanent
247 tent and, temporary tents, as may be needed for special events, and rent same for a fee. Tents
248 shall be available to general public when not rented by SOCIETY. SOCIETY shall maintain tents
249 in safe and clean condition at all times. Clean up of the tents and surrounding area shall take
250 place immediately after each rental. Maintenance and routine clean up of tents shall be
251 completed by SOCIETY daily.
252

253 **4.5** COUNTY grants to SOCIETY the right to install and maintain visitor donation
254 collectors "Donor Tubes" for the use of members of the public who wish to donate funds for the
255 continued improvement of the Zoo. The type, location and security arrangements of and for such
256 collectors shall be subject to the Director's approval.
257

258 **4.6** Agreements entered into between SOCIETY and third parties under paragraph 4.1
259 shall be in a form approved by COUNTY. SOCIETY shall require indemnification provisions from
260 such third parties and shall also require such third parties to carry adequate insurance. Any such
261 contract shall also contain an expressly stated recognition by third parties of the nature of Zoo
262 operations and shall include an agreement by such third parties to conduct their operations
263 consistent with the nature of the Zoo.
264

265 **4.7** In order to assure adequate coordination and avoid duplication of effort, the SOCIETY and
266 COUNTY will keep each other fully informed of all fundraising and income generating initiatives
267 and activities.
268

269 **5.0** Financial arrangements between the parties are as set forth in paragraphs 5.1 through
270 7.7, inclusive.
271

272 **5.1** SOCIETY understands and agrees that its entire compensation for any and all services
273 rendered under this Agreement shall consist solely of direct, necessary and actual expenses
274 incurred in the production of revenues, including expenses of operation of the concession stands
275 and expenses related to fundraising. Such expenses shall be deductible solely from revenues
276 raised by SOCIETY and COUNTY will not make nor be obligated to make any payments to
277 SOCIETY for any services SOCIETY may render under or pursuant to this Agreement.
278

279 **5.2** It is the intent of the parties that SOCIETY's net income derived from operations
280 conducted pursuant to this Agreement shall be used by SOCIETY solely for the benefit of the Zoo
281 and not otherwise. As used in this agreement, "net income" means all money, whether received
282 or receivable by SOCIETY, from all sales, cash or credit, originating from concession operations
283 at the Zoo, together with all revenues from Visitor Donations and other donations, less
284 SOCIETY's operating expenses. Net income does not include sales taxes collections.
285 "Operating expenses" includes the cost of wages and salaries, inventory, utilities, promotion and
286 any other direct costs, to SOCIETY.
287

288 **5.3** SOCIETY shall maintain a segregated bank account to be used solely for deposit of
289 SOCIETY revenue.
290

291 **6.0** In the event this Agreement is terminated by either party or expires prior to disbursement
292 of all net income, all such remaining net income shall be deposited in a trust account requiring
293 written authorization from both SOCIETY and COUNTY for disbursement. Without regard to
294 termination or expiration of this contract, such unexpended net income shall be used solely for
295 outstanding obligations of the SOCIETY and for the benefit of the Zoo.
296

297 **7.1** SOCIETY agrees to make such reports as are required in paragraphs 7.2 through 7.4,
298 inclusive. With respect to such reports it is expressly understood that time is of the essence and
299 that the failure of SOCIETY to comply with the time limits set forth in paragraphs 7.2 through 7.4,
300 inclusive, may result in the termination of this Agreement by COUNTY. As used in paragraphs
301 7.2 through 7.4, inclusive, of this Agreement, "fiscal year" refers to SOCIETY's fiscal year.
302

303 **7.2** On or before the 28th of the first month following the end of each fiscal quarter during the
304 term of this Agreement, SOCIETY shall submit an interim quarterly financial report reflecting all
305 income and expense activity for the preceding fiscal quarter. Such statement shall be in such
306 form as to separately disclose receipts, expenditures and changes for the preceding fiscal quarter
307 in the various fund balances identified in paragraph 6.2.
308
309

310 **7.3** SOCIETY shall file unaudited fiscal year end financial statements no later than June 30th
311 following the end of the fiscal year. Such statement shall contain at a minimum a balance sheet
312 and a statement of receipts, expenditures and changes for the preceding fiscal year.
313

314 **7.4** SOCIETY shall file an audited annual report of the prior fiscal year's operations no later
315 than the following August 31st.
316

317 **7.5** Reports and statements required by paragraphs 7.2 through 7.5, inclusive, shall be filed
318 with the Director.
319

320 **7.6** SOCIETY shall arrange for an annual audit by an independent certified public accountant.
321 SOCIETY shall provide a copy of the complete audit report to COUNTY. The auditor shall
322 publish an audit report which expresses an opinion on the financial statements contained therein
323 and systems of internal control used by SOCIETY in its operation of the concession stands. All
324 books and records shall be made available for review by COUNTY at any reasonable time.
325

326 **7.7** The obligations of SOCIETY under paragraphs 7.2 through 7.7, inclusive, shall survive the
327 expiration or termination of this Agreement.
328

329 **8.0** COUNTY and SOCIETY recognize that the opportunity for a conflict of interest may arise in
330 the situation where an employee of one party is related to an employee of the other party. The
331 parties agree to provide for additional oversight and disclosure of transactions between related
332 employees.
333

334 **8.1** COUNTY employees may purchase a membership in SOCIETY but shall not serve as
335 employees, officer or directors of SOCIETY, except that the County Executive and Zoo Director
336 shall be *ex-officio* board members of SOCIETY.
337

338 **9.0** SOCIETY shall indemnify, hold harmless and defend COUNTY, its boards, commissions,
339 agencies, officers, employees and representatives against any and all liability, loss (including, but
340 not limited to, property damage, bodily injury and loss of life), damages, costs or expenses which
341 COUNTY, its officers, employees, agencies, boards, commissions and representatives may
342 sustain, incur or be required to pay by reason of SOCIETY furnishing the services or goods
343 required to be provided under this Agreement, provided, however, that the provisions of this
344 paragraph shall not apply to liabilities, losses, charges, costs, or expenses caused by or resulting
345 from the acts or omissions of COUNTY, its agencies, boards, commissions, officers, employees
346 or representatives. The obligations of SOCIETY under this paragraph shall survive the expiration
347 or termination of this Agreement.
348

349 **9.1** In order to protect itself and COUNTY, its officers, boards, commissions, agencies,
350 employees and representatives under the indemnity provisions of paragraph 9.1 above,
351 SOCIETY shall obtain and at all times during the term of this Agreement keep in full force and
352 effect comprehensive general liability and auto liability insurance policies issued by a company or
353 companies authorized to do business in the State of Wisconsin and licensed by the Wisconsin
354 Insurance Department, with liability coverage provided for therein in the amounts of at least
355 \$1,000,000.00 CSL (Combined Single Limits). Coverage afforded shall apply as primary.
356 COUNTY shall be given ten (10) days advance notice of cancellation or nonrenewal. Upon
357 execution of this Agreement, SOCIETY shall furnish COUNTY with a certificate of insurance
358 listing COUNTY as an additional insured and, upon request, certified copies of the required
359 insurance policies. If SOCIETY's insurance is underwritten on a Claims-Made basis, the
360 Retroactive Date shall be prior to or coincide with the date of this agreement, the Certificate of
361 Insurance shall state that coverage is Claims-Made and indicate the Retroactive Date, SOCIETY

362 shall maintain coverage for the duration of this agreement and for two years following the
363 completion of this agreement. SOCIETY shall furnish COUNTY, annually on the policy renewal
364 date, a Certificate of Insurance as evidence of coverage. It is further agreed that SOCIETY shall
365 furnish the COUNTY with a 30-day notice of aggregate erosion, in advance of the Retroactive
366 Date, cancellation, or renewal. It is also agreed that on Claims-Made policies, either SOCIETY or
367 COUNTY may invoke the tail option on behalf of the other party and that the Extended Reporting
368 Period premium shall be paid by SOCIETY. In the event any action, suit or other proceeding is
369 brought against COUNTY upon any matter herein indemnified against, COUNTY shall give
370 reasonable notice thereof to SOCIETY and shall cooperate with SOCIETY's attorneys in the
371 defense of the action, suit or other proceeding. SOCIETY shall furnish evidence of adequate
372 Worker's Compensation Insurance.

373
374 **9.2** In case of any sublet of work under this Agreement, SOCIETY shall furnish evidence that
375 each and every subcontractor has in force and effect insurance policies providing coverage
376 identical to that required of SOCIETY.

377
378 **9.3** The parties do hereby expressly agree that COUNTY, acting at its sole option and through
379 its Risk Manager, may waive any and all requirements contained in paragraphs 9.1, 9.2 or 9.3
380 above, such waiver to be in writing only. Such waiver may include or be limited to a reduction in
381 the amount of coverage required above. The extent of waiver shall be determined solely by
382 COUNTY's Risk Manager taking into account the nature of the work and other factors relevant to
383 COUNTY's exposure, if any, under this Agreement.

384
385 **10.0** During the term of this Agreement, SOCIETY agrees not to discriminate against any
386 person on the basis of age, race, ethnicity, religion, color, gender, disability, marital status, sexual
387 orientation, national origin, cultural differences, ancestry, physical appearance, arrest record or
388 conviction record, military participation or membership in the national guard, state defense force
389 or any other reserve component of the military forces of the United States, or political beliefs,
390 whether a recipient of services (actual or potential) or an employee or applicant for employment.
391 Such equal opportunity shall include but not be limited to the following: employment, upgrading,
392 demotion, transfer, recruitment, advertising, layoff, termination, training, rates of pay, and any
393 other form of compensation or level of service(s). SOCIETY agrees to post in conspicuous
394 places, available to all employees, service recipients and applicants for employment and
395 services, notices setting forth the provisions of this paragraph. The listing of prohibited bases for
396 discrimination shall not be construed to amend in any fashion state or federal law setting forth
397 additional bases, and exceptions shall be permitted only to the extent allowable in state or federal
398 law.

399
400 **10.1** SOCIETY is subject to this paragraph only if SOCIETY has 20 or more employees and
401 receives \$20,000 or more in annual contracts with COUNTY. SOCIETY shall file an Affirmative
402 Action Plan with the Dane County Contract Compliance Officer in accord with chapter 19 of the
403 Dane County Code of Ordinances. Such plan must be filed within fifteen (15) days of the
404 effective date of this Agreement and failure to do so by said date shall constitute grounds for
405 immediate termination of this Agreement by COUNTY. SOCIETY shall also, during the term of
406 this Agreement, provide copies of all announcements of employment opportunities to COUNTY's
407 Contract Compliance office, and shall report annually the number of persons, by race, ethnicity,
408 gender, and disability, status, who apply for employment and, similarly classified, the number
409 hired and the number rejected.

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411 **10.2** In all solicitations for employment placed on SOCIETY's behalf during the term of this
412 Agreement, SOCIETY shall include a statement to the effect that SOCIETY is an "Equal
413 Opportunity Employer."

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10.3 SOCIETY agrees to furnish all information and reports required by COUNTY's Contract Compliance Officer as the same relate to affirmative action and nondiscrimination, which may include any books, records, or accounts deemed appropriate to determine compliance with chapter 19, D. C. Ords., and the provisions of this Agreement.

11.0 SOCIETY shall commence, carry on and complete its obligations under this Agreement with all deliberate speed and in a sound, economical and efficient manner, in accordance with this Agreement and all applicable laws. In conducting concession operations under this Agreement, SOCIETY agrees to cooperate with the various departments, agencies, employees and officers of COUNTY.

11.1 SOCIETY agrees to secure at SOCIETY's own expense all personnel necessary to carry out SOCIETY's obligations under this Agreement. Such personnel shall not be deemed to be employees of COUNTY nor shall they or any of them have or be deemed to have any direct contractual relationship with COUNTY. In the performance of this Agreement both COUNTY and SOCIETY will be acting in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. Agents or employees of the one shall not be construed to be agents or employees of the other. COUNTY employees shall remain employees of COUNTY notwithstanding that they may assist SOCIETY from time to time.

11.2 Notices, bills, invoices and reports required by this Agreement shall be deemed delivered as of the date of postmark if deposited in a United States mailbox, first class postage attached, addressed to a party's address as set forth above. It shall be the duty of a party changing its address to notify the other party in writing within a reasonable time.

11.3 If, through any cause, SOCIETY shall fail to fulfill in timely and proper manner its obligations under this Agreement, or if SOCIETY shall violate any of the covenants or stipulations of this Agreement, COUNTY shall thereupon have the right to terminate this Agreement by giving a written notice to SOCIETY of such termination and specifying the effective date thereof. There shall be no other termination of this Agreement, during its term, without the prior written consent of both parties.

11.4 In the event COUNTY exercises its unilateral right to terminate this Agreement for cause in the manner provided for in paragraph 11.5 above, all finished and unfinished documents, services, papers, data, products, and the like prepared, produced or made by SOCIETY under this Agreement shall at the option of COUNTY become the property of COUNTY.

11.5 If during the term of this Agreement, the Dane County Board of Supervisors shall fail to appropriate sufficient funds to carry out COUNTY's obligations under this Agreement, this Agreement shall be automatically terminated as of the date funds are no longer available and without further notice of any kind to SOCIETY.

11.6 In no event shall the acceptance of any service or any payment under this Agreement constitute or be construed as a waiver by COUNTY of any breach of the covenants of this Agreement or a waiver of any default of SOCIETY and the acceptance of any such service or payment by COUNTY while any such default or breach shall exist shall in no way impair or prejudice the right of COUNTY with respect to recovery of damages or other remedy as a result of such breach or default.

11.7 SOCIETY warrants that it has complied with all necessary requirements to do business in the State of Wisconsin, that the persons executing this Agreement on its behalf are authorized to

466 do so, and, if a corporation, that the name and address of SOCIETY's registered agent is as set
467 forth opposite the heading REGISTERED AGENT on page 1 of this Agreement. SOCIETY shall
468 notify COUNTY immediately, in writing, of any change in its registered agent, his or her address,
469 and SOCIETY's legal status. For a partnership, the term 'registered agent' shall mean a general
470 partner.

471
472 **11.8** It is expressly understood and agreed to by the parties hereto that in the event of any
473 disagreement or controversy between the parties, Wisconsin law shall be controlling. Venue for
474 any legal proceedings shall be in the Dane County Circuit Court.

475
476 **11.9** This Agreement is intended to be an agreement solely between the parties hereto and for
477 their benefit only. No part of this Agreement shall be construed to add to, supplement, amend,
478 abridge or repeal existing duties, rights, benefits or privileges of any third party or parties,
479 including but not limited to employees of either of the parties.

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481 **11.10** SOCIETY shall not assign or transfer any interest or obligation in this Agreement, whether
482 by assignment or novation, without the prior written consent of COUNTY.

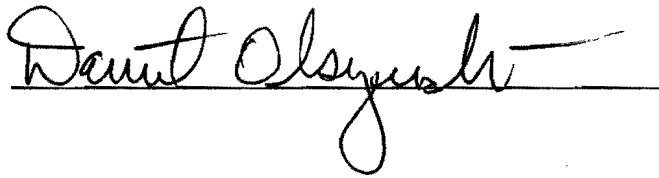
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484 **11.11** The entire agreement of the parties is contained herein and this Agreement supersedes
485 any and all oral agreements and negotiations between the parties relating to the subject matter
486 hereof. The parties expressly agree that this Agreement shall not be amended in any fashion
487 except in writing, executed by both parties.

488
489 **11.12** The parties may evidence their agreement to the foregoing upon one or several
490 counterparts of this instrument, which together shall constitute a single instrument.

491
492 **IN WITNESS WHEREOF**, COUNTY and SOCIETY, by their respective authorized agents,
493 have caused this Agreement to be executed, effective as of the date by which all parties hereto
494 have affixed their respective signatures, as indicated below.

495
496 **FOR SOCIETY:**

497
498
499 Date Signed: 6/27/13
500 Daniel Olszewski, President



501
502
503 **FOR COUNTY:**

504
505
506 Date Signed: 7-22-13
507 Joseph Parisi, County Executive



508
509 Date Signed: 7-22-13
510 Scott McDonell, County Clerk

