

1 basis, or on such schedule as agreed to by the AUTHORITY and the CORPORATION,
2 in such numbers and in such format as required by the AUTHORITY. The budget shall
3 show that no more than one-third of the projected tax revenue will be spent on
4 operations and maintenance of the Zoo.

5 B. The AUTHORITY Board may approve or disapprove the
6 CORPORATION's budget. If the AUTHORITY Board does not approve the budget, the
7 CORPORATION shall revise the budget to the satisfaction of the AUTHORITY Board.
8 The AUTHORITY Board shall approve the budget when the AUTHORITY Board is
9 satisfied with it. The AUTHORITY Board shall not unreasonably withhold approval of
10 the CORPORATION's budget.

11 C. The CORPORATION may submit a revised budget for operations and
12 maintenance to the AUTHORITY at any time, as the CORPORATION determines its
13 actual costs of operations and maintenance. The parties shall follow the same
14 procedures as outlined above.

15 D. Personal property items shall be included in the operations and
16 maintenance budget even if they are capitalized for accounting purposes.

17 **4. APPROVAL OF CAPITAL IMPROVEMENT PROJECTS PLANS AND**
18 **BUDGETS**

19 A. The CORPORATION shall submit to the AUTHORITY its preliminary plan
20 for capital improvement projects in the Zoo. The plan shall be submitted on an annual
21 basis, or on such schedule as agreed to by the AUTHORITY and the CORPORATION,
22 in such numbers and in such format as required by the AUTHORITY. The plan shall
23 show that a minimum of two-thirds of the projected net tax revenue will be spent on
24 capital improvement projects in the Zoo, but need not include a detailed budget for any

1 aspect of the plan. "Capital improvement projects" shall be limited to real property and
2 improvements, including repairs, restoration, and additions to structures and other
3 permanent facilities of the zoo, with an emphasis on animal habitats. Temporary
4 facilities may be included in a capital improvement projects plan if the temporary
5 facilities will have a useful life of five years or more.

6 B. The AUTHORITY Board may approve or disapprove the
7 CORPORATION's capital improvement projects plan. If the AUTHORITY Board does
8 not approve the plan, the CORPORATION shall revise the plan to the satisfaction of the
9 AUTHORITY Board. The AUTHORITY Board shall approve the plan when the
10 AUTHORITY Board is satisfied with it. The AUTHORITY Board shall not unreasonably
11 withhold approval of the CORPORATION's budget.

12 C. The CORPORATION may submit a revised capital improvement projects
13 plan to the AUTHORITY at any time, as the CORPORATION determines the need to
14 change the plan. The parties shall follow the same procedures as outlined above.

15 D. The CORPORATION shall submit a budget for each portion of the plan,
16 including the expenses for developing the plan, at such time as the CORPORATION
17 determines. The budget shall generally describe the categories of each item of the
18 budget.

19 E. The AUTHORITY Board may approve or disapprove the
20 CORPORATION's budget for that portion of the capital improvement projects plan. If
21 the AUTHORITY Board does not approve the budget, the CORPORATION shall revise
22 the budget to the satisfaction of the AUTHORITY Board. The AUTHORITY Board shall
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1 approve the budget when the AUTHORITY Board is satisfied with it. The AUTHORITY
2 Board shall not unreasonably withhold approval of the CORPORATION's budget.

3 F. The CORPORATION may submit a revised budget for that portion of the
4 capital improvement projects plan to the AUTHORITY at any time, as the
5 CORPORATION determines the actual costs of that portion of the plan. The parties
6 shall follow the same procedures as outlined above.

7 G. The AUTHORITY staff shall not be authorized to disburse funds to the
8 CORPORATION for capital improvement project expenses until a budget for that portion
9 of the expenses has been approved by the AUTHORITY Board.

10 **5. DISTRIBUTION OF FUNDS**

11 A. The CORPORATION shall provide to the AUTHORITY such written
12 documentation as the AUTHORITY may require to name specific persons representing
13 the CORPORATION who are authorized to sign claims for disbursements.

14 B. The CORPORATION shall be entitled to claim disbursements at any time.
15 However, disbursement shall only be made if: (1) the agreements between the City and
16 the CORPORATION remain in effect, and the CORPORATION has provided to the
17 AUTHORITY a copy of the current agreements as amended, certified by the City Clerk
18 as a true and correct copy of the agreements; (2) the date of the requested
19 disbursement is on or after the effective date of the agreements; (3) the insurance
20 certificates required by this Agreement have been provided to the AUTHORITY, and
21 remain in full force and effect, and (4) the AUTHORITY Board has approved a budget
22 applicable to the portion of the fund for which the disbursement is requested.

23 C. The CORPORATION shall follow such procedures as the AUTHORITY
24 may require to pick up checks or request electronic transfer of funds.

1 D. The CORPORATION may claim, and the AUTHORITY may provide, the
2 total sum approved by the AUTHORITY Board at any time. The CORPORATION may
3 claim, and the AUTHORITY may provide, less than the total from time to time, provided
4 the sum requested meets the minimum disbursement amount as determined by the
5 AUTHORITY. The AUTHORITY Board shall not unreasonably withhold approval of the
6 CORPORATION's claims.

7 **6. REPORTS TO AUTHORITY**

8 The CORPORATION shall provide monthly financial reports to the AUTHORITY
9 in such form and detail as the AUTHORITY may reasonably require regarding the
10 expenditure of the approved funds.

11 **7. OPEN MEETINGS**

12 The CORPORATION agrees that as a condition of receipt of tax revenue from
13 the AUTHORITY, its board of directors will, as a matter of sound public policy and not
14 as a legal necessity, meet certain open meeting requirements. Unless more stringent
15 requirements for public notice or public participation apply under the CORPORATION's
16 bylaws or the California Nonprofit Corporation Law (Corp. Code, § 5000 et seq.), the
17 Board of Directors of the CORPORATION shall comply with the open meetings law
18 applicable to California's local public agencies, known as the Ralph M. Brown Act (Gov.
19 Code, § 54950 et seq.).

20 **8. PUBLIC INSPECTION OF FINANCIAL RECORDS AND MINUTES**

21 Minutes of meetings of the Board of Directors of the CORPORATION shall be
22 open to inspection by members of the public, and, to the extent feasible, shall be posted
23 for a reasonable time on the CORPORATION's website. The CORPORATION's
24 financial records shall be open to inspection by members of the public upon reasonable

1 request at the CORPORATION'S principal place of business. The CORPORATION
2 shall permit members of the public to obtain copies of these records within a reasonable
3 period of time upon payment of a reasonable fee.

4 **9. TERMINATION**

5 A. Non-Receipt of Funds - The terms of this Agreement, and the funding to
6 be provided thereunder, are contingent on the receipt of funds by the AUTHORITY.
7 Should the funds received be insufficient to allow the AUTHORITY to transfer funding to
8 the CORPORATION under this Agreement, this Agreement may be modified or
9 terminated at any time by giving the CORPORATION thirty (30) days advance written
10 notice.

11 B. Breach of Contract - The AUTHORITY may immediately suspend or
12 terminate this Agreement in whole or in part, where in the determination of the
13 AUTHORITY there is:

- 14 1) An illegal or improper use of funds;
- 15 2) A failure to comply with any term of this Agreement;
- 16 3) A substantially incorrect or incomplete report submitted to the
17 AUTHORITY.

18 In no event shall any payment by the AUTHORITY constitute a waiver by
19 the AUTHORITY of any breach of this Agreement or any default which may then exist
20 on the part of the CORPORATION. Neither shall such payment impair or prejudice any
21 remedy available to the AUTHORITY with respect to the breach or default. The
22 AUTHORITY shall have the right to demand of the CORPORATION the repayment to
23 the AUTHORITY of any funds disbursed to the CORPORATION under this Agreement,
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1 which in the judgment of the AUTHORITY were not expended in accordance with the
2 terms of this Agreement. The CORPORATION shall promptly refund any such funds
3 upon demand.

4 **10. INDEPENDENT CONTRACTOR**

5 In performance of the work, duties and obligations assumed by the
6 CORPORATION under this Agreement, it is mutually understood and agreed that the
7 CORPORATION, including any and all of the CORPORATION's officers, agents, and
8 employees will at all times be acting and performing as an independent contractor, and
9 shall act in an independent capacity and not as an officer, agent, servant, employee,
10 joint venturer, partner, or associate of the AUTHORITY. Furthermore, the AUTHORITY
11 shall have no right to control or supervise or direct the manner or method by which the
12 CORPORATION shall perform its work and function. However, the AUTHORITY shall
13 retain the right to administer this Agreement so as to verify that the CORPORATION is
14 performing its obligations in accordance with the terms and conditions thereof.

15 The CORPORATION and the AUTHORITY shall comply with all applicable
16 provisions of law and the rules and regulations, if any, of governmental authorities
17 having jurisdiction over matters the subject thereof.

18 Because of its status as an independent contractor, the CORPORATION shall
19 have absolutely no right to employment rights and benefits available to AUTHORITY
20 employees. The CORPORATION shall be solely liable and responsible for providing to,
21 or on behalf of, its employees all legally-required employee benefits. In addition, the
22 CORPORATION shall be solely responsible and save the AUTHORITY harmless from
23 all matters relating to payment of the CORPORATION's employees, including
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1 compliance with Social Security withholding and all other regulations governing such
2 matters. It is acknowledged that during the term of this Agreement, the
3 CORPORATION may receive funds from others unrelated to the AUTHORITY or to this
4 Agreement

5 **11. MODIFICATION**

6 Any matters of this Agreement may be modified from time to time by the written
7 consent of the parties without, in any way, affecting the remainder.

8 **12. NON-ASSIGNMENT**

9 Neither party shall assign, transfer or subcontract this Agreement nor its rights or
10 duties under this Agreement without the prior written consent of the other party.

11 **13. HOLD HARMLESS**

12 The CORPORATION agrees to indemnify, save, hold harmless, and at the
13 AUTHORITY's request, defend the AUTHORITY, its officers, agents, and employees
14 from any and all costs and expenses, damages, liabilities, claims, and losses occurring
15 or resulting to the AUTHORITY in connection with the performance, or failure to
16 perform, by the CORPORATION, its officers, agents, or employees under this
17 Agreement, and from any and all costs and expenses, damages, liabilities, claims, and
18 losses occurring or resulting to any person, firm, or corporation who may be injured or
19 damaged by the performance, or failure to perform, of the CORPORATION, its officers,
20 agents, or employees under this Agreement.

21 The AUTHORITY agrees to indemnify, save, hold harmless, and at the
22 CORPORATION's request, defend the CORPORATION, its officers, agents, and
23 employees from any and all costs and expenses, damages, liabilities, claims, and
24 losses occurring or resulting to the CORPORATION in connection with the

1 performance, or failure to perform, by the AUTHORITY, its officers, agents, or
2 employees under this Agreement, and from any and all costs and expenses, damages,
3 liabilities, claims, and losses occurring or resulting to any person, firm, or corporation
4 who may be injured or damaged by the performance, or failure to perform, of the
5 AUTHORITY, its officers, agents, or employees under this Agreement.

6 **14. INSURANCE**

7 Without limiting the AUTHORITY'S right to obtain indemnification from the
8 CORPORATION or any third parties, the CORPORATION, at its sole expense, shall
9 maintain in full force and effect throughout the term of this Agreement:

10 A. Fiduciary/Errors and Omissions coverage for the Board of Directors, in the
11 minimum amount of Three Million Dollars (\$3,000,000). This may be accomplished
12 through either insurance or bonding, or a combination thereof.

13 B. Commercial General Liability Insurance with limits of not less than One
14 Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Two Million
15 Dollars (\$2,000,000). This policy shall be issued on a per occurrence basis. The
16 AUTHORITY may require specific coverages including completed operations, products
17 liability, contractual liability, Explosion-Collapse-Underground, fire legal liability or any
18 other liability insurance deemed necessary because of the nature of this contract.

19 C. Comprehensive Automobile Liability Insurance with limits for bodily injury
20 of not less than Two Hundred Fifty Thousand Dollars (\$250,000) per person, Five
21 Hundred Thousand Dollars (\$500,000) per accident and for property damages of not
22 less than Fifty Thousand Dollars (\$50,000), or such coverage with a combined single
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1 limit of Five Hundred Thousand Dollars (\$500,000). Coverage shall include owned and
2 non-owned vehicles used in connection with this Agreement.

3 D. Property Insurance coverage for all assets owned by the CORPORATION,
4 including vehicles, sufficient to ensure replacement of any/all lost or damaged property
5 assets. The AUTHORITY acknowledges that the underlying real property and some
6 improvements to real property at the zoo will remain the property of the City of Fresno,
7 and that the City will remain responsible for insuring, or self-insuring, those portions of
8 the zoo.

9 E. A policy of Workers' Compensation insurance as may be required by the
10 California Labor Code.

11 Such insurance policies, except the Workers' Compensation policy, shall name
12 the AUTHORITY, its officers, agents, and employees, individually and collectively, as
13 additional insureds, but only insofar as the operations under this contract are
14 concerned. Such coverage for additional insureds shall apply as primary insurance and
15 any other insurance, or self-insurance, maintained by the AUTHORITY, its officers,
16 agents, and employees, shall be excess only and not contributing with insurance
17 provided under the CORPORATION's policies herein. This insurance shall not be
18 cancelled or changed without a minimum of thirty (30) days advance, written notice
19 given to the AUTHORITY.

20 The CORPORATION shall provide certificates of insurance on the foregoing
21 policies to the AUTHORITY, prior to the effective date of the agreements with the City of
22 Fresno, as required herein, to the AUTHORITY, stating that such insurance coverages
23 have been obtained and are in full force; that the AUTHORITY, its officers, agents, and
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1 employees will not be responsible for any premiums on the policies; that such insurance
2 names the AUTHORITY, its officers, agents, and employees, individually and
3 collectively, as additional insureds (except Workers' Compensation insurance), but only
4 insofar as the operations under this contract are concerned; that such coverage for
5 additional insureds shall apply as primary insurance and any other insurance, or self-
6 insurance, maintained by the AUTHORITY, its officers, agents, and employees, shall be
7 excess only and not contributing with insurance provided under the CORPORATION's
8 policies herein; and that this insurance shall not be cancelled or changed without a
9 minimum of thirty (30) days advance, written notice given to the AUTHORITY.

10 In the event the CORPORATION fails to keep in effect insurance coverage as
11 herein provided, the AUTHORITY may, in addition to other remedies it may have,
12 suspend or terminate this Agreement upon the occurrence of such event.

13 **15. AUDITS AND INSPECTIONS**

14 The CORPORATION shall, upon request by the AUTHORITY, permit the
15 AUTHORITY to audit and inspect all of its records and data with respect to the matters
16 covered by this Agreement. The CORPORATION shall at all times during business
17 hours, and as often as the AUTHORITY may deem necessary, make available to the
18 AUTHORITY for examination all of such records and data necessary to ensure the
19 CORPORATION's compliance with the terms of this Agreement.

20 The AUTHORITY may also require the CORPORATION to provide
21 independently audited statements or other reports on an annual or other basis at the
22 CORPORATION's expense.

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1 If this Agreement exceeds ten thousand dollars (\$10,000), the CORPORATION
2 shall be subject to the examination and audit of the State Auditor for a period of three
3 (3) years after final payment under the contract (Gov. Code, § 8546.7).

4 **16. NOTICES**

5 The persons and their addresses having authority to give and receive notices
6 under this Agreement shall be the following:

7	<u>AUTHORITY</u>	<u>CORPORATION</u>
8	FRESNO COUNTY ZOO AUTHORITY c/o Zoo Authority Coordinator Department of Public Works and Planning County of Fresno 2220 Tulare Street, Sixth Floor Fresno, California 93721	FRESNO'S CHAFFEE ZOO CORPORATION c/o Chief Executive Officer Chaffee Zoological Gardens 894 W. Belmont Fresno, California 93728

12 Any and all notices between the AUTHORITY and the CORPORATION provided
13 for or permitted under this Agreement or by law shall be in writing and shall be deemed
14 duly served when personally delivered to one of the parties, or in lieu of such personal
15 service, when deposited in the United States Mail, postage prepaid, addressed to such
16 party.

17 **17. GOVERNING LAW**

18 The rights and obligations of the parties and all interpretation and performance of
19 this Agreement shall be governed in all respects by the laws of the State of California.

20 **18. ENTIRE AGREEMENT**

21 This Agreement constitutes the entire agreement between the CORPORATION
22 and the AUTHORITY with respect to the subject matter hereof and supersedes all
23 previous negotiations, proposals, commitments, writings, advertisements, publications,
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1 and understanding of any nature whatsoever unless expressly included in this
2 Agreement. No parol or other evidence outside this Agreement may be offered to
3 explain, construed, contradict, or clarify the terms of this Agreement. Counsel for both
4 parties have reviewed, or have had the opportunity to review, this Agreement, and,
5 accordingly, any rules of construction to the effect that ambiguities are to be resolved
6 against the drafting party shall not be employed in the interpretation of this Agreement.

7 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of
8 the day and year first hereinabove written.

9 FRESNO'S CHAFFEE ZOO
CORPORATION

10 By: [Signature]
11 Chair

FRESNO COUNTY ZOO AUTHORITY

By: [Signature]
Ron Gentzler, Chair

12 Shaei Rainwater
13 Type or print name

14 By: [Signature]
15 Chief Financial Officer

16 Shari Marshall - Councilor
17 Type or print name

TAXPAYER FEDERAL I.D. #:
18 _____

REVIEWED & RECOMMENDED FOR
APPROVAL

[Signature]
Bart Bohn, Authority Administrator

19 APPROVED AS TO LEGAL FORM

Lozano Smith

20 By: [Signature]
21 Thomas J. Riggs

APPROVED AS TO LEGAL FORM

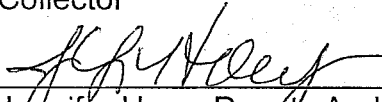
Dennis A. Marshall, County Counsel

22 By: [Signature]
23 Barbara Booth Grunwald, Deputy
24 County Counsel

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APPROVED AS TO ACCOUNTING FORM

Vicki Crow, Auditor-Controller/Treasurer-
Tax Collector

By: 
Jennifer Hoey, Deputy Auditor-
Controller

FOR ACCOUNTING USE ONLY:

Org No.:
Account No.:
Requisition No.: