

1 **Fresno County Zoo Authority**

2 **Retention Policy**

3 **Adopted September 30, 2015**

4 **Revised January 30, 2019**

5 **Purpose**

6 This Policy provides requirements for Agreements between the Fresno Chaffee  
7 Zoo Corporation (ZooCorp) and any party acting as a Construction Manager at Risk, or  
8 as Project Manager, in the event there is no Construction Manager at Risk, for  
9 construction of Measure Z funded capital projects, and the process for the disbursement  
10 of Measure Z funds and release of funds in escrow when there is an agreement for  
11 security deposits in lieu of retention.

12 **Definitions**

- 13 1. "Agreement" shall be defined herein as a valid\_executed contract.
- 14 2. "Construction Manager at Risk" shall be defined as an individual, partnership, joint  
15 venture, corporation, or other recognized legal entity, that is appropriately licensed  
16 in this state, including a contractor's license issued by the Contractors' State  
17 License Board, and that guarantees the cost of a project and furnishes construction  
18 management services, including but not limited to, preparation and coordination of  
19 bid packages, scheduling, cost control, value engineering, evaluation,  
20 preconstruction services, and construction administration.
- 21 3. "Project Manager" shall be defined as a qualified individual or firm authorized by  
22 contract with ZooCorp to be responsible for planning, organizing, and overseeing  
23 the various tasks of a construction project, including overseeing schedules,  
24 budgets, and communication between ZooCorp and contractors in order to ensure  
25 that a project can meet expected scope and performance requirements according  
26 to plans and specifications on budget and on schedule, and at acceptable risk,  
27 quality, safety and security levels.
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- 1 4. "Retention" shall be defined as the percentage of the Measure Z funds retained by  
2 the ZooCorp for security purposes relating to work to be performed on claims  
3 reimbursed for Capital Projects over \$30,000, and/or for which there is a  
4 Construction Manager at Risk, (or Project Manager, in the event there is no  
5 Construction Manager at Risk). Retention shall be no less than five percent (5%).  
6 If the Authority has approved a finding by the ZooCorp, on a project by project  
7 basis, during a properly noticed and normally scheduled public hearing and prior  
8 to bid, that a project is substantially complex and therefore requires a higher  
9 retention amount, Retention may be greater than five percent (5%), but not more  
10 than ten percent (10%).
- 11 5. "Escrow Account" shall mean an account established at a financial institution or  
12 bank by ZooCorp for purposes of depositing and holding Retention funds paid by  
13 the Authority to ZooCorp, pending disbursement, to the Construction Manager at  
14 Risk, (or Project Manager, in the event there is no Construction Manager at Risk).

15 **Requirements**

- 16 1. ZooCorp requests for funding for construction of Capital Projects over \$30,000  
17 and/or for which there is a Construction Manager at Risk, (or Project Manager, in  
18 the event there is no Construction Manager at Risk), shall be received for staff and  
19 Board member review at least 30 days before the Board meeting at which the  
20 funding request will be made, and shall include an Agreement with the construction  
21 firm or Project Manager stating the requirement for Retention and its terms.
- 22 2. Requests for funding for the design of Capital Projects over \$30,000 shall be  
23 received for staff and Board member review at least 30 days before the Board  
24 meeting at which the funding request will be made, and shall include an Agreement  
25 with the design firm stating the requirement for Retention and its terms.

26 **Procedures for Payment of Invoices by the Authority**

27 ZooCorp invoices are received, reviewed, and paid in accordance with the terms  
28 of the December 21, 2005 Agreement Regarding Procedures For Distribution Of Tax

1 Revenue To The Chaffee Zoo, as amended, and with the Authority's Procedures for  
2 Approving and Administering Measure Z Funds.

3 **ZooCorp's Deposit of Funds Received from Authority**

4 No later than two business days from its receipt of funds from the Authority for  
5 reimbursement of project invoices, ZooCorp shall deposit Retention funds in the  
6 appropriate Escrow Account. Within one business day of deposit of Retention funds in  
7 the Escrow Account, ZooCorp shall send proof of the deposit to the Authority.

8 **Certification to the Authority**

9 Prior to releasing any Retention funds from the Escrow Account, ZooCorp shall  
10 request the release at an Authority Board meeting, at the same time presenting written  
11 certification that all conditions of the Escrow Agreement have been met, that the  
12 construction project is final and complete in accordance with the construction contract,  
13 and that the release of funds in the Escrow Account is appropriate. Such written  
14 certification shall include certification from the project architect or lead engineer that the  
15 project has been completed in accordance with the plans and specifications.

16 **Disputes**

- 17 1. The ZooCorp shall advise the Authority in writing of any dispute between ZooCorp  
18 and the Construction Manager at Risk, (or Project Manager, in the event there is  
19 no Construction Manager at Risk), regarding retention funds within 30 days of such  
20 dispute coming to the attention of ZooCorp.
- 21 2. The construction contract shall require that any settlement agreement between the  
22 Construction Manager at Risk, (or Project Manager, in the event there is no  
23 Construction Manager at Risk), and ZooCorp involving retention funds be made  
24 public.
- 25 3. Any previously released retention funds that are recouped by ZooCorp as part of  
26 a settlement with the Construction Manager at Risk, (or Project Manager, in the  
27 event there is no Construction Manager at Risk), shall be returned by ZooCorp to  
28 the Measure Z Capital Fund.

1 **Authority Consent to Distribution of Escrow Funds**

2           Upon receipt of the required written certification from ZooCorp that the project is  
3 final and complete in accordance with the construction contract, the Authority will not  
4 unreasonably withhold its consent to the release of the funds held in escrow. If it  
5 withholds consent, the Authority will set forth in writing its objections, stating those items  
6 that are not final and complete according to the construction contract.

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