

GENERAL USE AGREEMENT

[DRAFT -- 12.11.18]

BY AND BETWEEN

HENRY VILAS PARK ZOOLOGICAL SOCIETY, INC

AND

COUNTY OF DANE, WISCONSIN

DATED: _____

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GENERAL USE AGREEMENT

THIS GENERAL USE AGREEMENT (this "Agreement") is made and entered into by and between the County of Dane (the "County") and Henry Vilas Park Zoological Society, Inc. (the "Society") effective as of the date of the last executed signature.

RECITALS:

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

WHEREAS, the SOCIETY, whose address is c/o President, Henry Vilas Park Zoological Society, 606 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 501(c)(3) of the Internal Revenue Service Code, independent and separate from the County, which exists to raise funds and provide support for the benefit of the Zoo; and

WHEREAS, the Society has for many years raised funds and provided support to benefit the Zoo and the Society desires to continue its partnership with and support of the Zoo; and

WHEREAS, the County values the Society's long-standing partnership with the Zoo and desires to continue receiving support from the Society; and

WHEREAS, the County and the Society recently collaborated on the preparation of the Henry Vilas Zoo 2018-2022 Strategic Plan (the "Strategic Plan"), which outlines the public-private partnership between the County and the Society and is intended to guide the continued growth and development of the Zoo and Society and

WHEREAS, the Strategic Plan acknowledges that clearly documenting the parties' respective roles and responsibilities is a critical factor in the successful implementation of the plan's goals and objectives; and

WHEREAS, one of the most important goals is to maintain the Zoo's accreditation by the Association of Zoos and Aquariums (the "AZA"); and

WHEREAS, the County and the Society strive to assure the continued success and prosperous growth of the Zoo, each acknowledging that continued guest experience, operation, maintenance and improvement of the Zoo as a public-private partnership provides a valuable asset to the residents of Dane County and the public in general; and

NOW, THEREFORE, in consideration of the forgoing recitals, the mutual covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and the Society agree as follows:

ARTICLE 1

Term

1.1 Term. The term of this Agreement (the "Term") shall be three (3) years, commencing January 1, 2019 and expiring December 31, 2021 (the "Expiration Date").

ARTICLE 2

General Roles and Responsibilities

2.1 Strategic Plan. The recently completed Strategic Plan provides a framework for all Zoo and Society functions and activities. As more fully discussed in the Strategic Plan, a copy of which is attached here to as Exhibit A, and subject to all of the terms and conditions of this Agreement, the County, Society and shared responsibilities are defined.

2.2 County. The County shall be responsible with respect to: (i) animal care and management, (ii) facility and grounds maintenance and oversight, (iii) facilities construction, and (iv) guest safety. The County hereby appoints the Executive Zoo Director as its liaison with the Society for the day-to-day performance of its obligations under this Agreement.

2.3 Society. The Society shall continue to function as a private, nonprofit corporation organized under chapter 181 of Wisconsin Statutes with tax-exempt status under section under section 501(3)(c) of the Internal Revenue Code, independent and separate from the County. The Society shall, to the best of its ability, provide support to Zoo as provided in this Agreement. As more fully discussed in the Strategic Plan, and subject to all of the terms and conditions of this Agreement, the Society shall be responsible with respect to: (i) business operations, (ii) fundraising, (iii) concessions, (iii) membership, (iv) attractions, (v) marketing, (vi) events, and (vii) volunteers. The Society hereby appoints the President of the Society (the "President") as its liaison with the County for the day-to-day performance of its obligations under this Agreement.

2.4 Shared. As more fully discussed in the Strategic Plan, and subject to all of the terms and conditions of this Agreement, the County and Society shall share responsibility with respect to: (i) conservation, (ii) guest experience, (iii) animal encounters, (iv) communications, and (v) education.

2.5 Discharge of Roles and Responsibilities.

a. Each party shall commence, carry on and complete its respective 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 and AZA standards and best practices.

b. In the performance of this Agreement, both the County and the 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 one shall not be construed to be agents or employees of the other. The Society agrees to secure, at the Society's own expense, all personnel necessary to carry out the Society's obligations under this Agreement. Such personnel shall not be deemed to be employees of the County nor shall they or any of them have or be deemed to have any direct contractual relationship with the County. The County employees shall remain employees of the County notwithstanding that they may assist the Society from time to time. The Society employees shall remain employees of the Society notwithstanding that they may assist the County from time to time.

c. Notwithstanding anything to the contrary set forth herein, the general description of the parties' respective roles and responsibilities set forth in Articles 2.2, 2.3 and 2.4 above is intended as a non-binding expression of the parties' current understanding, which is being memorialized in this Agreement to aid the parties in the efficient and effective discharge of their respective obligations under this Agreement.

ARTICLE 3

Financial Support; Fundraising

3.1 Annual Financial Support. To support the general mission and operation of the Zoo, the Society shall make an annual financial contribution to the County (the "Base Financial Support Payment") according to the following schedule:

Year 1:	\$1,073,000
Year 2:	\$1,151,000
Year 3:	\$1,229,000

The Society shall deliver the Base Financial Support Payment to the County no later than December 31 of each year during the Term. The Base Financial Support Payment shall only be expended by the County for the benefit of the Zoo.

3.2 Veterinary Care Funding. In addition to the Base Financial Support Payment, the Society has secured an annual in-kind contribution of veterinary services from the University of Wisconsin Veterinary School, valued at \$275,000 per year (the "In-kind Vet Care"). To support the In-kind Vet Care, the Society has secured a cash donation of \$35,000 per year from an individual donor (the "Veterinary Care Contribution"). The Society's receipt of the Veterinary Care Contribution from the donor is contingent upon the County's acceptance of the In-kind Vet Care. In the event the County elects to discontinue the In-kind Vet Care, going forward, the annual Base Financial Support Payment shall be reduced by \$35,000 per year, apportioned as of the date of discontinuation of the In-kind Vet Care.

3.3 Animal Welfare Support. In addition to the Base Financial Support Payment, the Society agrees to maintain support of up to \$40,000 during the Term for acquisition, transportation and other specialized animal welfare expenses undertaken by the Zoo, subject to the Society's approval, which shall not be unreasonably withheld.

3.4 Conservation Programming. In addition to the Base Financial Support Payment, the Society agrees to fund up to \$25,000 each year during the Term to support conservation activities undertaken by Zoo and Society staff, subject to the County and the Society's joint approval and shared responsibility as described in Article 6.3 below.

3.5 Education Programming. The Society agrees to partner with the County to ensure the operation of a robust educational program during the term of this Agreement to support efforts undertaken by Zoo and Society staff, subject to the County and the Society's joint approval and shared responsibility as described in Article 6.2 below.

3.6 Fundraising. The County grants to the Society, throughout the Term, the exclusive right to solicit and raise funds for the general benefit of the Zoo and Society, including, without limitation, the right to solicit and receive donations, gifts, grants, signage and bequests from any source whatsoever, provided all such donations, gifts, grants, signage and bequests are used by the Society in a manner that are consistent with the mission and purposes of the Society and the County.

3.7 Events. The County grants to the Society, throughout the Term, the exclusive right to administer and oversee all events held at the Zoo and the Society shall be entitled to charge an admission fee to persons attending such events. The Society's use of the Zoo grounds for such events is subject to all of the terms and conditions of this Agreement, including Article 5 below. In connection with such events, the Society may sell or provide free of charge, food and

drink, subject to obtaining proper licenses, and enter into agreements with third parties to provide on-site catering services. The Society may utilize the service of employees and volunteers to assist in conducting such events. The Society shall reimburse the County for staffing and other costs incurred by the County in providing support to events sponsored by the Society beyond the number of events described in Article 6.4.

ARTICLE 4

Concession Operations

4.1 Concessions. The County hereby grants to the Society, throughout the Term, the exclusive right to operate all concessions at the Zoo (the "Concession Operations"). The Concession Operations shall include, without limitation, (i) Glacier Grille and other food locations, (ii) the trackless train, (iii) the carousel, (iv) the gift shop and all other retail operations, located throughout the Zoo grounds. In conducting Concession Operations under this Agreement, the Society agrees to adhere to all local, county and state regulations.

4.2 Use of Concession Equipment. Throughout the Term, the Society shall have the exclusive right to utilize the Zoo's concession-related equipment and facilities for the Concession Operations.

4.3 Maintenance. The Society shall conduct its Concession Operations in a manner that is compatible with the Zoo's general environment. The Society shall not allow trash or any type of waste to accumulate at any time in or around any of its Concession Operations. The Society shall be responsible for repair and maintenance of the interiors provided that the County shall be responsible for the costs of any repair of damages not caused by actions of the Society or its officers, agents or employees or which are necessitated by events not initiated, promoted, contributed to or participated in by the Society.

4.4 Hours of Operation. The Society shall maintain operating hours for the Concession Operations generally consistent with the hours the Zoo is open to the public.

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

4.6 Management Representative. The Society shall designate an individual who shall be responsible for management of Concession Operations. The party so designated shall be empowered by the Society to act as the Society's liaison with the appropriate Zoo staff person and to commit the resources of the Society necessary to implement decisions regarding Concession Operations.

4.7 Modifications to Concession Operations. The Society shall have the right to modify Concession Operations, provided timely notice of any such modifications are given to the Executive Zoo Director.

4.8 Subcontracts. The Society may subcontract any type of Concession Operations activity. Any contract entered into with a subcontractor shall contain indemnity provisions

protecting the 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 the County. Any such subcontract shall contain a provision that the subcontractor's operations must be conducted in a manner consistent with County and Society policies and any such subcontract shall be terminated by the Society upon a determination that the subcontractor's operations do not meet the County and Society standards or are otherwise unacceptable to the continued operations of the County and Society.

ARTICLE 5

Operation and Use of Zoo Facilities and Grounds

5.1 Animal Care and Management. The County is responsible for animal care and welfare.

5.2 Zoo Facilities, Grounds and Safety. The County is responsible for operating and maintaining the facilities and grounds in a safe and clean condition at all times. In addition, the County shall be solely responsible for the safety and security of all guests, visitors, employees, volunteers, and other personnel upon the Zoo grounds. The Zoo shall be open to the public from 9:30 a.m. to 5:00 p.m., daily. Except as otherwise provided herein, the County hereby grants to the Society, throughout the Term, the right to use the Zoo grounds for purposes consistent with this Agreement. On such dates as the Society and Executive Zoo Director may agree upon, the County will close designated areas of the Zoo to the general public and thereafter admit only persons invited by the Society.

5.3 Evjue Foundation Visitor Center and Henry Vilas Zoological Society Offices. The County hereby grants to the Society, throughout the Term, use of the Visitor Center as follows: the Society shall have exclusive use of the Visitor Center for the purpose of serving as the welcome center for all Zoo guests and conducting the Society's day-to-day business operations. Daily cleaning of the Visitor Center interior shall be the responsibility of the Society. The Society shall pay the costs of Visitor Center electric and natural gas utilities.

5.4 Attractions. Throughout the Term, The Society shall be entitled to use and operate all attractions located on the Zoo grounds, including but not limited to the carousel and trackless trains and mining slew, as licensed and permitted by the State of Wisconsin, City of Madison and the County. The Society shall operate such attractions in a safe and clean condition at all times, follow all operating and safety protocols. The Society may charge a fee for each attraction. The County shall perform the maintenance on the carousel and trackless train.

5.5 Tents; Temporary Structures. Subject to approval by the Executive Zoo Director, the Society shall be entitled to erect a semi-permanent tent and, temporary tents, as may be needed for special events, and rent same for a fee. Tents shall be available to general public when not rented by the Society. The Society shall maintain such tents in a safe and clean condition at all times. Clean-up of the tents and surrounding area shall take place immediately after each rental. Maintenance and routine clean-up of tents shall be completed by the Society daily.

5.6 Restrooms. The Society shall be responsible, at its expense, for the daily cleaning of all public restroom facilities located on the Zoo grounds.

ARTICLE 6

Programming

6.1 Guest Experience and Daily Activities.

a. *Animals on Exhibit.* The parties acknowledge and agree that the parties' shared desire to enhance guest experience and the Society's ability to raise funds in support of the Zoo's mission is dependent, in part, on daily interactions between zoo animals and the public. Throughout the Term, the County shall commit to maintaining animal availability/visibility between the hours of 9:30 a.m. and 4:45 p.m., daily. The Society will utilize its website and social media to communicate hours of animal visibility each day. The Executive Zoo Director shall provide reasonable notice to the Society if an animal will not be on exhibit for an extended period of time in order to allow the Society to communicate to the public in an effort to provide the best possible guest experience. The County will use good faith efforts to develop a timeline to address vacant exhibits and provide the general public with transparency about plans for the Zoo's future.

b. *Public Animal Trainings.* The parties acknowledge that the Society's ability to raise funds in support of the Zoo's mission is dependent, in part, on daily interactions at the Zoo between animals, zoo keepers and the public. Throughout the Term, the County shall commit to maintaining a regular schedule of animal trainings and talks conducted by Zoo staff as follows:

Year 1:	3 public animal trainings per day
Year 2:	4 public animal trainings per day
Year 3:	5 public animal trainings per day

To allow the Society to adequately publicize trainings and enhance guest experience, the Executive Zoo Director or designated staff shall provide an updated schedule (with dates, times and other details) of animal trainings every two weeks. To assist in promoting these opportunities to the general public, the Executive Zoo Director or designated staff shall also provide the Society with photographs and video of zoo keepers training animals, etc. on a regular basis.

6.2 Education Programming. As discussed in Articles 2.4 and 3.5 above, the parties acknowledge that educational programming at the Zoo is a shared responsibility. Examples of such educational programming include, without limitation, the Spring, Summer and Winter camps hosted by the Society, along with occasional "sleepover" events held throughout the year and educational programming aimed at school field trips. With respect to such educational programming, the parties agree to use good faith efforts to collaborate with one another in the development and implementation of the goals and objectives set forth in the Strategic Plan. The parties agree to meet during the fourth quarter of each year to develop a mutually acceptable business plan, including a budget, and staffing plan for educational programs in the year ahead. The annual plan and budget for educational programs shall be completed by the parties no later than December 31st each year. For Year 1 of the contract, the plan and budget by the first quarter of 2019. The Society shall be responsible for promoting and generating all revenues and both parties shall jointly administer these educational programs. The Zoo will be responsible for providing access to animals for educational events. Periodic updates will be provided to the Henry Vilas Zoo Commission, County Executive staff and Henry Vilas Zoological Society Board of Directors.

6.3 Conservation Programming. As discussed in Article 2.4 and 3.4 above, the parties acknowledge that conservation programming is a shared responsibility. With respect to such conservation programming, the parties agree to use good faith efforts to collaborate with one another in the implementation of the goals and objectives set forth in the Strategic Plan. The

parties agree to meet during the fourth quarter of each year to develop a mutually acceptable business plan, including a budget, for any conservation activities to be undertaken in the year ahead. The plan should include a clear description of the activity, well-defined goals and outcomes, accurate estimation of costs, and a timeline for implementation. The business plan and budget for conservation activities shall be completed by the parties no later than December 31st each year. For Year 1 of the contract, the plan and budget shall be completed in the first quarter of 2019.

For each conservation project/initiative an agreement will be entered into by all impacted parties stating the project scope, budget, timeline, responsibilities and measurable outcomes. The Society will manage all revenue-generating conservation activities. The Executive Zoo Director will provide regular updates to the Society on conservation projects and what Zoo staff are doing to help animals in the wild in order to enable the Society to showcase and strategically utilize information to promote the Zoo and its conservation activities.

Periodic updates will be provided to the Henry Vilas Zoo Commission, County Executive staff and Henry Vilas Zoological Society Board of Directors.

6.4 Fundraising Programming.

a. *General Support.* As discussed in Article 2.4 above, the parties acknowledge that the Society is responsible for fundraising. Accordingly, the Society will manage all fundraising and development activities, including fundraising for education and conservation activities. To assist the Society's fundraising efforts, the Executive Zoo Director or designated staff will provide all animal-related materials and support reasonably necessary to execute the Society's annual development business plan, including but not limited to, by way of example, animal-related content for social media, donor materials, membership benefits which are animal-related, access to animals for photography, access to material for public relations and marketing content, and plans for animal additions to the Zoo on a timely basis.

b. *Behind the Scenes Access.* The Executive Zoo Director or designated staff will also assist the Society in coordinating "behind the scenes" engagement opportunities for donors and potential donors, including opportunities for donors to interact with animals. The Society will coordinate with the Executive Zoo Director or designated staff to schedule such opportunities with as much advance notice as possible.

c. *Evening Events.* Throughout the Term of this Agreement, the Executive Zoo Director will commit to facilitating animal access for a minimum number of evening fundraising events organized by the Society on Zoo grounds, as follows:

Year 1:	16 evening events per year
Year 2:	18 evening events per year
Year 3:	20 evening events per year

The Society will work with the Executive Zoo Director at least one month in advance when scheduling evening events. The Society shall be responsible for reimbursing the County for Zoo staff time for assistance with animal encounters at any evening events only when the number of evening events in any one calendar year exceed the number identified above. Evening events that do not feature animal encounters (e.g. Zoo Lights, Brew Lights, etc.) shall not count toward the number of events specified above.

6.5 Volunteers. As discussed in Article 2.3 above, the parties acknowledge that the Society is responsible for overseeing volunteers and that the contributions of volunteers are invaluable to the successful operation of the Zoo. The Society will develop and manage the volunteer program and will coordinate with appropriate Zoo staff to meet the needs of key programs as prioritized through the Strategic Plan.

ARTICLE 7 Special Projects

7.1 Capital Projects. The Society is committed to partnering with the County on updating the Master Plan. The Society will assist in all planning and development of those jointly approved major capital projects included in the Master Plan with respect to community support and fundraising and will also partner with the County from the design phase through construction.

ARTICLE 8 Accountability and Oversight

8.1 Henry Vilas Zoo Commission. Pursuant to Dane County Ord. § 15.45, the Henry Vilas Zoo Commission shall act as the policy-making and budgetary oversight body with respect to the operation of the Zoo. The Commission shall annually supervise the preparation of a budget for operation of the Zoo. The budget shall be submitted to the County Executive for approval. The Commission shall determine the hours the Zoo shall be open to the public, subject to the requirements that it be open at reasonable hours and that no charge be made for admission to the Zoo. The Chair of the Society's board of directors shall serve as a standing member of the Commission. The County and the Society will collaborate on providing periodic updates to the Commission on the Strategic Plan and its annual goals and metrics, guest experience, education, and conservation projects and initiatives.

8.2 Henry Vilas Zoological Society's Board of Directors. The Society is governed by its board of directors. As set forth in the Society's bylaws, the County shall appoint one non-voting, ex-officio member of the Society Board. An ex-officio member is a non-voting member of the board of directors without rights to attend executive sessions.

8.3 Strategic Plan Annual Goals and Metrics. As set forth in Article 2.1 above, the Strategic Plan provides a framework for Zoo and Society functions and activities. The County and the Society agree to collaborate with one another in the implementation of the goals and objectives set forth in the Strategic Plan. The parties agree to meet during the fourth quarter of each year to identify priorities for the coming year and to develop a mutually acceptable workplan, with identified goals and measurable results. For Year 1 of the Term, the workplan will be developed in the first quarter of 2019.

8.4 AZA Accreditation Plan. The Executive Zoo Director will develop a plan to ensure that the AZA accreditation is retained by the Henry Vilas Zoo. The Director will provide the plan, and progress reports to the Henry Vilas Zoo Commission and Society Board.

8.5 Information Sharing.

a. *From the Society.* At least quarterly, the Society shall prepare periodic updates on the Society's activities, to be shared with the Executive Zoo Director, the County Executive and the Henry Vilas Zoo Commission.

b. *From the County.* At least quarterly, the County shall prepare periodic updates on the activities of Zoo staff, updates on the number of animals in collection, the number of endangered species, and other relevant Zoo information to be shared with the Henry Vilas Zoo Commission, President of Henry Vilas Zoological Society and Society Board.

8.6 Annual Communication Plan. The parties agree to use good faith efforts to collaborate with one another in the implementation of a joint communications strategy, including social media. The parties agree to meet during the fourth quarter of each year to develop a communication plan for the coming year. For Year 1 of the Term, the communication plan will be developed in the first quarter of 2019.

8.7 Financial Controls; Records. All transactions, financial records, books of account and other business records, including inventories shall be maintained in accordance with generally accepted accounting practices for non-profit organizations. An effective system of internal controls shall be in place. Documentation of sales and inventory must be maintained by the Society according to record retention policies of the County and the Society.

8.8 Reporting Obligations.

a. *Quarterly Financial Statements.* Throughout the Term of this Agreement, the Society shall, in a timely manner, provide quarterly financial reports to the County, reflecting revenues and expenses for the preceding fiscal quarter.

b. *Audited Financial Statements.* The Society shall arrange for an annual audit of its financial statements by an independent certified public accountant. The auditor shall publish an audit report which expresses an opinion on the financial statements contained therein. The Society shall file with the County the audited annual report of the prior fiscal year's operations no later than the following June 30th.

c. *Books and Records.* All the Society's financial books and records shall be made available for review by the County at any reasonable time.

d. *Periodic Updates.* The Zoo and Society staff will provide periodic updates to the Commission, County Executive and appropriate staff regarding the Strategic Plan, conservation initiatives, and other matters.

ARTICLE 9
Conflicts of Interest

9.1 Conflicts of Interest. The County and the Society recognize that the opportunity for a conflict of interest may arise in the situation where an employee of one party is related to an employee of the other party. The parties agree to provide for additional oversight and disclosure of transactions between related employees. County employees may purchase a membership in the Society but shall not serve as employees, officer or directors of the Society, except as set forth in Article 8.2 above.

ARTICLE 10
Insurance; Indemnification

10.1 Society.

a. *Insurance.* The Society shall obtain and at all times during the Term of this Agreement keep in full force and effect comprehensive general liability and auto liability insurance policies issued by a company or companies authorized to do business in the State of Wisconsin, with liability coverage provided for therein in the amounts of at least \$1,000,000, combined single limit. Coverage afforded shall apply as primary. The County shall be given ten (10) days advance notice of cancellation or nonrenewal. Upon execution of this Agreement, the Society shall furnish the County with a certificate of insurance listing the County as an additional insured and, upon request, certified copies of the required insurance policies. If the Society's insurance is underwritten on a claims-made basis, the retroactive date shall be prior to or coincide with the date of this Agreement, the Certificate of Insurance shall state that coverage is claims-made and indicate the retroactive date, the Society shall maintain coverage for the duration of this agreement and for two years following the completion of this Agreement. The Society shall furnish the County, annually on the policy renewal date, a certificate of insurance as evidence of coverage. It is further agreed that the Society shall furnish the County with a 30-day notice of aggregate erosion, in advance of the retroactive date, cancellation, or renewal. It is also agreed that on claims-made policies, either the Society or the County may invoke the tail option on behalf of the other party and that the extended reporting period premium shall be paid by the Society. In the event any action, suit or other proceeding is brought against the County upon any matter herein indemnified against, the County shall give reasonable notice thereof to the Society and shall cooperate with the Society's attorneys in the defense of the action, suit or other proceeding. the Society shall furnish evidence of adequate Worker's Compensation Insurance. In case of any sublet of work under this Agreement, the Society shall furnish evidence that each and every subcontractor has in force and effect insurance policies providing coverage identical to that required of the Society.

b. *Indemnification.* The Society shall indemnify, hold harmless and defend the 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 the County, its officers, employees, agencies, boards, commissions and representatives may sustain, incur or be required to pay by reason of the Society furnishing the services or goods required to be provided under this Agreement, provided, however, that the provisions of this paragraph shall not apply to liabilities, losses, charges, costs, or expenses caused by or resulting from the acts or omissions of the County, its agencies, boards, commissions, officers, employees or representatives. The obligations of the Society under this paragraph shall survive the expiration or termination of this Agreement.

10.2 County.

a. *Insurance.* TBD

b. *Indemnification.* The County shall indemnify, hold harmless and defend the Society, its board, 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 that may be sustained or incurred by reason of the County failing to comply with any of its obligations under this Agreement, provided, however, that the provisions of this paragraph shall not apply to liabilities, losses, charges, costs, or expenses caused by or resulting solely from

the acts or omissions of the Society, its officers, employees and representatives. The obligations of the County under this paragraph shall survive the expiration or termination of this Agreement.

ARTICLE 11

Equal Opportunity

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

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

11.3 Equal Opportunity Employer. In all solicitations for employment placed on the Society's behalf during the term of this Agreement, the Society shall include a statement to the effect that the Society is an "Equal Opportunity Employer."

11.4 Compliance. The Society agrees to furnish all information and reports required by the 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.

ARTICLE 12

Dispute Resolution

12.1 Dispute Resolution Procedure. In the event of any dispute, controversy, claim among the parties arising out of or in connection with this Agreement (a "Dispute") the parties agree to resolve the dispute in accordance with the provisions of this Article 12.

12.2 Good Faith Negotiation. Either party may, at any time during the Term, give written notice to the other party that a Dispute has arisen. Promptly thereafter, the Parties shall meet to attempt, in good faith, to resolve the dispute by negotiation, either directly or through the assistance of such advisors as they may engage. If the parties are unable to resolve the Dispute

within thirty (30) days of the date of the initial notice of the Dispute, the parties shall proceed to mediation as set forth in Article 12.3 below.

12.3 Mediation. Subject to Article 12.2, the Parties shall mediate their dispute before a mediator mutually selected by the parties. If the parties fail to agree on a mediator within fifteen (15) days after the decision to proceed to mediation, each party shall name a mediator and the two mediators shall confer and select a third mediator to mediate the Dispute. Mediation of the Dispute shall commence within thirty (30) days following the mediator's selection. If the parties are unable to resolve the Dispute within thirty (30) days following the commencement of mediation, the parties may pursue any remedies available at law or in equity. During the pendency of the dispute-resolution procedures under this Article 12, all judicial proceedings regarding the same subject matter shall be stayed.

12.4 Expenses. Each party shall be responsible for its own legal fees when engaged in the dispute resolution procedures set forth in this Article 12. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the dispute resolution process, including the cost of the mediator shall be borne equally by the parties.

12.5 Time Periods. The parties may, with mutual consent, expand or abridge the time periods provided for in this Article 12.

ARTICLE 13

Expiration; Termination

13.1 Expiration. Except as otherwise set forth herein, this Agreement shall terminate on the Expiration Date and, thereafter, shall be of no further force or effect.

13.2 Termination by the County. If: (i) the Society is in default of its obligations under this Agreement beyond any applicable cure period; (b) the Dane County Board of Supervisors shall fail to appropriate sufficient funds to carry out the County's obligations under this Agreement, the County shall have the right to terminate this Agreement by giving written notice to the Society of such termination and specifying the effective date thereof; or (c) total annual revenues from the Society's Concession Operations and unrestricted adjusted contributions as reported in the Society's Statement of Activities increase by more than twenty-five percent as compared to the 2017 base amount of \$3,800,000; the County shall have the right to terminate this Agreement by giving written notice to the Society of such termination and specifying the effective date thereof.

13.3 Termination by the Society. If: (a) the County is in default of its obligations under this Agreement beyond any applicable cure period, (b) the Zoo loses its AZA accreditation, or (c) total annual revenues from the Society's Concession Operations and unrestricted adjusted contributions as reported in the Society's Statement of Activities decrease by more than twenty-five percent as compared to the 2017 base amount of \$3,800,000, the Society shall have the right to terminate this Agreement by giving written notice to the County of such termination and specifying the effective date thereof.

13.4 Revenue Test. For purposes of administering the revenue test contemplated in Articles 13.2 and 13.3, the term "unrestricted adjusted contributions" excludes service & goods revenues, estate gifts and capital campaign contributions. This revenue test will be performed annually by the Society's independent auditors. The Society's independent auditors will prepare a separate schedule detailing the revenue test.

ARTICLE 14

Notices

14.1 Delivery of Notices. All written notices required or permitted to be given under this Agreement shall be in writing and delivered to the parties at the addresses set forth in the Recitals above. Either party may change its address for notices by giving notice to the other party of such address change in accordance with this section. Notices shall be delivered by personal delivery, sent by United States Registered or Certified Mail (return receipt requested and postage prepaid), or sent by nationally-recognized overnight courier. Notices given in accordance with this section shall be deemed to have been delivered, given and received: on the date of delivery in the case of personal delivery, three (3) days after deposit in the case of Registered or Certified Mail, or one (1) day after deposit in the case of overnight courier.

ARTICLE 15

General Provisions

15.1 No Waiver. No action or inaction by the non-defaulting party shall constitute a waiver of the default or termination of this Agreement, and no waiver of a default or termination of this Agreement shall be effective unless it is in writing.

15.2 Authority. The Society warrants that it has complied with all necessary requirements to do business in the State of Wisconsin, that the person executing this Agreement on its behalf are authorized to do so. The Society shall notify the County immediately, in writing, of any change in its registered agent, his or her address, and the Society's legal status. For a partnership, the term 'registered agent' shall mean a general partner.

15.3 Governing Law; Venue. It is expressly understood and agreed to by the parties hereto that in the event of any disagreement or controversy between the parties, Wisconsin law shall be controlling. Venue for any legal proceedings shall be in the Dane County Circuit Court.

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

15.5 No Assignment. The Society shall not assign or transfer any interest or obligation in this Agreement, whether by assignment or novation without the prior written consent of the County.

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

15.7 Counterparts. The parties may evidence their agreement to the foregoing upon one or several counterparts of this instrument, which together shall constitute a single instrument.

[Signature page follows.]

IN WITNESS WHEREOF, the County and the Society, by their respective authorized agents, have caused this Agreement to be executed, effective as of the date by which all parties hereto have affixed their respective signatures, as indicated below.

[signatures]

EXHIBIT A

Henry Vilas Zoo Strategic Plan 2018-2022

[Attached]