

**AGREEMENT BETWEEN THE CITY OF SANTA ANA AND THE FRIENDS OF
SANTA ANA ZOO FOR THE BENEFIT AND SUPPORT OF THE SANTA ANA ZOO
AT PRENTICE PARK**

THIS AGREEMENT is made and entered into on this 2nd day of March, 2021, by and between the City of Santa Ana, a charter city and municipal corporation duly organized and existing under the constitution and laws of the state of California (“City”), and Friends of Santa Ana Zoo, a California non-profit public benefit corporation, organized for the purpose of supporting the operation, maintenance and expansion of the Santa Ana Zoo at Prentice Park through charitable fund-raising (“FOSAZ”).

RECITALS

- A. City owns and operates for the public benefit the Santa Ana Zoo at Prentice Park (“Zoo”), which is under management and control of the Parks, Recreation and Community Services Agency (“Agency”).
- B. Friends of the Children’s Zoo was incorporated in 1982 for the purpose of supporting and funding a children’s petting zoo, and entered into its first agreement with the City for installation of animal food dispensers at the children’s zoo.
- C. In 1987, Friends of the Children’s Zoo was changed to Friends of Santa Ana Zoo.
- D. For over thirty years, the City and FOSAZ (collectively, the “Parties”), have cooperated to develop the Zoo, new animal habitats, coordination of volunteer services, concession management, and fundraising.
- E. Cooperation and support by FOSAZ remains ongoing and the Parties now desire to enter into an agreement that builds upon the Parties’ historical relationship and reflects the present collaborative arrangements between them in support of the Zoo.

NOW THEREFORE, in consideration of the mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the Parties agree as follows:

1. SCOPE OF SERVICE

FOSAZ shall develop financial support, growth, and community awareness for the Santa Ana Zoo. The delineation of the duties, responsibilities, and activities of the Parties shall be fully detailed in the attached Exhibit A.

2. TERM

This Agreement shall commence March 1, 2021 and terminate on February 28, 2026, unless terminated earlier in accordance with Section 3, below. There shall be two (2) optional one-year extensions allowed pursuant to this Agreement and

exercisable by the City with the approval of the FOSAZ. Additionally, the Parties agree that certain specified sections of this Agreement, as detailed within the Agreement, will survive termination or expiration of the Agreement.

3. TERMINATION CLAUSE

This Agreement may be terminated by either party upon ninety (90) days written notice. In such event, the Parties shall satisfy all their respective obligations under this Agreement that may be due and owing through the effective date of termination.

4. INDEPENDENT CONTRACTOR

In the exercise of its obligations, during the entire term of this Agreement, FOSAZ shall act at all times as an independent contractor and not as an employee of the City. Nothing in this Agreement shall be construed to establish a partnership, joint venture, group, pool, syndicate, or agency between the Parties or to allow the City to exercise discretion or control over the professional manner in which FOSAZ performs the services which are the subject matter of this Agreement; however, the services to be provided by FOSAZ shall be provided in a manner consistent with all applicable standards and regulations governing such services. No provision contained herein shall be construed as authorizing or empowering either party to assume or create any obligation or responsibility, whatsoever, express or implied, on behalf, or in the name of, the other party in any manner, or to make any representation, warranty, or commitment on behalf of the other party. In no event shall either party be liable for a) any loss incurred by the other party in the course of its performance hereunder, or b) any debts, obligations, or liabilities of the other party, whether due or to become due. FOSAZ shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to its employees and shall be responsible for all applicable withholding taxes.

5. INSURANCE

Prior to undertaking performance of work under this Agreement, FOSAZ shall maintain and shall require its subcontractors, if any, to obtain and maintain insurance as described below:

5.1 Commercial General Liability Insurance. FOSAZ shall maintain commercial general liability insurance naming the City, its officers, employees, agents, volunteers and representatives as additional insured(s) and shall include, but not be limited to protection against claims arising from bodily and personal injury, including death resulting therefrom and damage to property, resulting from any act or occurrence arising out of FOSAZ's operations in the performance of this Agreement, including, without limitation, acts involving vehicles. There shall not be any exclusion for coverage of sexual molestation. The amounts of insurance shall

be not less than the following: single limit coverage applying to bodily and personal injury, including death resulting therefrom, and property damage, in the total amount of \$2,000,000 per occurrence, with \$2,000,000 in the aggregate. Such insurance shall (a) be primary with respect to insurance or self-insurance programs maintained by the City; and (b) contain standard separation of insureds provisions.

- 5.2 Business automobile liability insurance, or equivalent form, with a combined single limit of not less than \$ 1,000,000 per occurrence. Such insurance shall include coverage for owned, hired and non -owned automobiles.
- 5.3 Worker's Compensation Insurance. In accordance with the California Labor Code, FOSAZ, if FOSAZ has any employees, is required to be insured against liability for worker's compensation or to undertake self-insurance. Prior to commencing the performance of the work under this Agreement, FOSAZ agrees to obtain and maintain any employer's liability insurance with limits not less than \$ 1,000,000 per accident.
- 5.4 If FOSAZ is or employs a licensed professional such as an architect or engineer: Professional liability (errors and omissions) insurance, with a combined single limit of not less than \$ 1,000,000 per claim.
- 5.5 The following requirements apply to the insurance to be provided by FOSAZ pursuant to this section:
 - 5.5.1 FOSAZ shall maintain all insurance required above in full force and effect for the entire period covered by this Agreement.
 - 5.5.2 Certificates of insurance shall be furnished to the City upon execution of this Agreement and shall be approved by the City.
 - 5.5.3 Certificates and policies shall state that the policies shall not be cancelled or reduced in coverage or changed in any other material aspect, by FOSAZ, without thirty (30) days prior written notice to the City.
 - 5.5.4 FOSAZ shall supply City with a fully executed additional insured endorsement.
 - 5.5.5 To the extent that FOSAZ has insurance coverage in excess of that set forth in this Agreement, City shall be entitled to coverage to the full extent of FOSAZ's insurance coverage in place during the term of this Agreement.
 - 5.5.6 If FOSAZ fails or refuses to produce or maintain the insurance required by this section or fails or refuses to furnish the City with required proof that insurance has been procured and is in force and paid for, the City shall have the right, at the City's election, to forthwith terminate this Agreement. Such termination shall not affect FOSAZ's right to be paid for its time and materials expended prior to notification of termination. FOSAZ waives the right to receive

compensation and agrees to indemnify the City for any work performed prior to approval of insurance by the City.

6. INDEMNIFICATION

6.1 FOSAZ agrees to defend, and shall indemnify and hold harmless the City, its officers, agents, employees, providers, special counsel, and representatives from liability:

6.1.1 For personal injury, damages, just compensation, restitution, judicial or equitable relief arising out of claims for personal injury, including death, and claims for property damage, which may arise from the negligent operations of FOSAZ or its subcontractors, agents, employees, or other persons acting on their behalf which relates to the services described in section 1 of this Agreement; and

6.1.2 From any claim that personal injury, damages, just compensation, restitution, judicial or equitable relief is due to the terms of or effects arising from this Agreement. This indemnity and hold harmless agreement applies to all claims for damages, just compensation, restitution, judicial or equitable relief suffered, or alleged to have been suffered, by reason of the events referred to in this Section or by reason of the terms of, or effects, arising from this Agreement. FOSAZ further agrees to indemnify, hold harmless, and pay all costs for the defense of the City, including fees and costs for special counsel to be selected by the City, regarding any action by a third party challenging the validity of this Agreement, or asserting that personal injury, damages, just compensation, restitution, judicial or equitable relief due to personal or property rights arises by reason of the terms of, or effects arising from this Agreement. City may make all reasonable decisions with respect to its representation in any legal proceeding. This indemnification provision shall survive expiration or termination of this Agreement.

6.2 City agrees to indemnify and hold harmless, FOSAZ, its officers, employees, and agents from claims, actions, damages, or litigation resulting from the City's ownership of the Zoo and/or Zoo facilities (except those owned or operated by FOSAZ), and the City's exercise of its duties and responsibilities pursuant to this Agreement, unless such claims, actions, damages, or litigation result from the sole negligence or willful misconduct of FOSAZ, its officers, employees, or agents. This indemnification provision shall survive expiration or termination of this Agreement.

7. RECORDS

FOSAZ shall keep records and invoices in connection with the work to be performed under this Agreement. FOSAZ shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any services, expenditures, and disbursements charged to the City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment

to FOSAZ under this Agreement. All such records and invoices shall be clearly identifiable. FOSAZ shall allow a representative of the City to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement during regular business hours. FOSAZ shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement for a period of three (3) years from the date of final payment to FOSAZ under this Agreement. This records provision shall survive expiration or termination of this Agreement.

8. AUDIT OF BOOKS AND RECORDS

- 8.1 FOSAZ shall have its books and records audited or reviewed annually by an independent accounting firm at FOSAZ' expense. City shall receive annually from FOSAZ an audited or reviewed financial report, which shall include, but not be limited to, its statements of financial position and activities. This reviewed financial report shall be prepared by FOSAZ and accompanied by an independent auditor's report.
- 8.2 City, using its own staff or an independent accounting firm and generally accepted accounting principles, shall have the right, at its expense, to audit all FOSAZ books and records annually. Likewise, FOSAZ, using an independent accounting firm and generally accepted accounting principles, shall have the right, at its expense, to audit annually the City's books and records related to funds transmitted to the City by FOSAZ. City retains the right to audit FOSAZ administrative costs and other costs used to maintain the FOSAZ organization.

9. CONFIDENTIALITY

If FOSAZ receives from the City information which due to the nature of such information is reasonably understood to be confidential and/ or proprietary, FOSAZ agrees that it shall not use or disclose such information except in the performance of this Agreement, and further agrees to exercise the same degree of care it uses to protect its own information of like importance, but in no event less than reasonable care. "Confidential Information" shall include all nonpublic information. Confidential information includes not only written information, but also information transferred orally, visually, electronically, or by other means. Confidential information disclosed to either party by any subsidiary and/ or agent of the other party is covered by this Agreement. The foregoing obligations of non-use and nondisclosure shall not apply to any information that:

- Has been disclosed in publicly available sources;
- Is, through no fault of the FOSAZ disclosed in a publicly available source;
- Is in rightful possession of the FOSAZ without an obligation of confidentiality;

- Is required to be disclosed by operation of law; or
- Is independently developed by the FOSAZ without reference to information disclosed by the City.

This confidentiality provision shall survive expiration or termination of this Agreement.

10. CONFLICT OF INTEREST CLAUSE

FOSAZ covenants that it presently has no interest and shall not have interests, direct or indirect, which would conflict in any manner with performance of services specified under this Agreement.

11. GENERAL LICENSE

City hereby grants FOSAZ, its directors, officers, employees, contractors, subcontractors, and consultants a nonexclusive license to enter upon and use the Zoo facilities in connection with FOSAZ's execution of its responsibilities established by this Agreement, including, but not limited to, organizing small group meetings and large/group community meetings and events at the Zoo, such as fundraising events, programs, and tours of Zoo facilities in connection with this Agreement. Any use of the Zoo facilities by FOSAZ must be approved by the Zoo Director.

12. BACKGROUND AND HEALTH CHECK REQUIREMENTS

- 12.1 FOSAZ shall not assign any employee, agent, subcontractor or volunteer to provide services pursuant to this Agreement, if that employee, agent, subcontractor or volunteer is required to register as a sex offender under California Penal Code Section 290 et seq, has a conviction for any crime of moral turpitude, has a conviction for a violent felony as defined in California Penal Code Section 667.5(c), or has a conviction for a serious felony as defined in California Penal Code Section 1192.7(c). Disqualifying convictions include but are not limited to, violations of California Penal Code Sections 37, 128, 136. 1 with Section 186. 22, 187, 190- 190.4 and 192(a), 205, 206, 207- 209.5, 211, 212, 212. 5, 213, 214, 215, 218- 219, 220, 236.1(b) or 236.1(c), 243.4, 261, 261.5, 273.5, 262, 264.1, 266, 266c, 266h, 266i, 266j, 267, 269, 272, 273a, 273ab, 273d, 285, 286, 288, 288a, 288.2, 288.3, 288.4, 288.5, 288.7, 289, 290, 311.1, 311.2, 311.3, 311.4, 311, 314, 347(a), 368, 417(b), 451(a), 518 with 186. 22, 647.6, 653f(c), 664 and 187, 667.5(c), 18745, 18750, or 18755, 12022.53, 11418(b)(1) or (b)(2); Business and Professions Code Section 729. Failure to comply with this Section shall be grounds for immediate termination of this Agreement.
- 12.2 In accordance with health and safety procedures and policies required by the City for all Zoo staff and volunteers, a tuberculin (TB)

testing/surveillance program has been established for specified paid and unpaid City staff to assure the health of City staff, volunteers, and the animals. Any FOSAZ staff, volunteers, or other persons whom are deemed by Zoo or City personnel to require a TB test, as set forth in the aforementioned City policy, shall provide proof of such testing, with a negative TB test result, commiserate with City policy. Any FOSAZ employees, agents, volunteer or other designated persons whom do not partake in such City required TB testing shall be duly informed, in writing, to cease any activities that would place City staff and the Zoo animals at risk.

13. NOTICE

Any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by fax or other telegraphic communication in the manner provided in this Section, to the following persons:

To City: Clerk of the City Council
City of Santa Ana
20 Civic Center Plaza (M-30)
P. O. Box 1988
Santa Ana, CA 92702

With copy to: Executive Director
Parks, Recreation and Community Services Agency
City of Santa Ana
20 Civic Center Plaza (M- 23)
P. O. Box 1988
Santa Ana, CA 92702

To FOSAZ: Executive Director
Friends of Santa Ana Zoo
1801 East Chestnut Avenue
Santa Ana, CA 92701

A party may change its address by giving notice in writing to the other party. Thereafter, any communication shall be addressed and transmitted to the new address. If sent by mail, communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by fax, communication shall be effective or deemed to have been given twenty- four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of

calculating these timeframes, weekends, federal, state, County or City holidays shall be excluded.

14. EXCLUSIVITY AND AMENDMENT

This Agreement represents the complete and exclusive statement between the City and FOSAZ regarding the subject matter herein, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and by an authorized representative of FOSAZ. The parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, the terms and conditions hereof, shall not bind or obligate FOSAZ or the City. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein.

15. LICENSES

FOSAZ shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws and regulations of the United States, the State of California, the City of Santa Ana and all other governmental agencies. FOSAZ shall notify the City immediately and in writing of its inability to obtain or maintain such permits, licenses, approvals, waivers, and exemptions. Said inability shall be cause for termination of this Agreement.

16. SEVERABILITY

In the event that one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement, which shall be interpreted to carry out the intent of the parties hereunder.

17. EXHIBITS

All Exhibits referenced herein and/ or attached hereto shall be incorporated as if fully set forth in the body of this Agreement.

18. AUTHORITY

The person(s) executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by so executing this Agreement, the parties hereto are formally bound by the provisions of this Agreement.

19. COUNTERPARTS

This Agreement may be executed by the parties hereto in separate counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

20. ELECTRONIC SIGNATURES

This Agreement and counterparts of this Agreement may be executed and delivered by facsimile or other electronic means by any of the parties to this Agreement. The facsimile, email, or other electronically delivered signatures of the parties shall be deemed to constitute original signatures.

21. SPACE AND UTILITIES

City shall provide space within Prentice Park for FOSAZ to establish an office at no charge to FOSAZ. Additionally, City shall provide utilities to FOSAZ at no charge. City shall provide telephone and computer online connections, but FOSAZ shall be responsible for monthly telecommunication charges. Failure to pay such charges within thirty (30) days of receipt, shall be grounds for immediate termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

ATTEST:

CITY OF SANTA ANA

Daisy Gomez, CMC
Clerk of Council

Kristine Ridge
City Manager

[Signatures continue on the next page]

APPROVED AS TO FORM:

SONIA R. CARVALHO
City Attorney

FRIENDS OF SANTA ANA ZOO

By: Laura A. Rossini
Laura A. Rossini
Chief Assistant City Attorney

(Name)
(Title)

RECOMMENDED FOR APPROVAL:

Lisa Rudloff
Executive Director
Parks, Recreation, and Community Services Agency

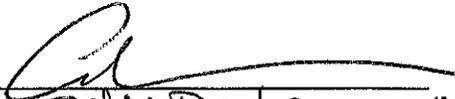
[Signatures continue on the next page]

APPROVED AS TO FORM:

SONIA R. CARVALHO
City Attorney

FRIENDS OF SANTA ANA ZOO

By: _____
Laura A. Rossini
Chief Assistant City Attorney



Cathi Decker (Name)
Executive Director (Title)

RECOMMENDED FOR APPROVAL:

Lisa Rudloff
Executive Director
Parks, Recreation, and Community Services Agency

EXHIBIT A

SCOPE OF SERVICES

DUTIES AND RESPONSIBILITIES OF CITY

A. Ownership and Operation of the Santa Ana Zoo

City owns the Zoo property and all exhibits, support facilities, infrastructure, and animals contained within Prentice Park, including exhibits, support facilities, infrastructure, and animals previously purchased by or funded at FOSAZ expense. FOSAZ retains ownership of FOSAZ office building, property and equipment contained within the office and storage buildings, the “Zoofari Express” train ride, “Conservation” carrousel ride, “50- Monkeys” Ferris wheel, and other subsequently acquired assets as may be agreed by the Parties. In the event of the dissolution of FOSAZ, any and all assets of FOSAZ shall be used to discharge any liabilities and debts of FOSAZ. The balance of such assets, if any, becomes the property of City to be used exclusively for the benefit of the Zoo. In the event that the Zoo ceases to exist, the balance of FOSAZ assets shall be distributed by a committee made up of the FOSAZ executive committee and an equal number of individuals from the City.

B. Administration of the Zoo

The City shall be exclusively responsible for the administration and management of the Zoo and direction of Zoo staff, within the policy guidelines set forth by the City Council, City Manager, and Executive Director of the Agency. This includes without limitation all matters related to animal care, maintenance, visitor services, and education, including outreach programs except as otherwise specified in this Agreement. Zoo shall provide that a representative of FOSAZ be permitted to attend regular Zoo management staff meetings.

C. Project Management

City shall have the responsibility for managing all capital and deferred maintenance projects at Zoo. Zoo staff shall oversee all capital and deferred maintenance projects at the Zoo and serve as the primary contact liaison between the City and consultants, architects, engineers, and contractors. Zoo staff shall be the primary contact and liaison between the Parties regarding all capital and deferred maintenance projects at the Zoo.

DUTIES AND RESPONSIBILITIES OF FOSAZ**A. Organizational Structure**

FOSAZ shall maintain a Board of Directors as may be provided by its articles of incorporation and by-laws. Unless otherwise provided by FOSAZ, the Board of Directors shall have the power to bind FOSAZ under this Agreement. FOSAZ shall provide a City non-voting advisor to the FOSAZ board, and shall receive notice of meetings in the same manner as a member of the board and shall be entitled to attend and fully participate in all meetings of the Board with the exception of voting.

FOSAZ may appoint an Executive Director who shall act as the primary liaison between the Parties, and shall maintain frequent communication with the City so that the Parties can coordinate FOSAZ fund-raising activities and Zoo activities. FOSAZ shall provide annually a calendar of special events for approval by the City along with specific staffing requirements.

B. Capital Fundraising

The primary mission of FOSAZ under this Agreement shall be to seek and provide financial support for Zoo capital improvements. The Parties (through a joint strategic planning committee) shall mutually develop annual FOSAZ fundraising goals and prioritize exhibits and/or projects to be funded with FOSAZ proceeds. City authorizes FOSAZ to solicit individual, corporate, and foundation funds and contributions for the benefit of the Zoo. Sources for fundraising shall include, but not be limited to, solicitations, gifts, bequests, charitable events, grants, and special programs. FOSAZ shall coordinate the timing and format of fund raising activities with the City, as set forth below.

C. Membership

FOSAZ is hereby recognized as the official support group for the Zoo, and is authorized to solicit membership in its organization based on such status. FOSAZ is authorized to include special privileges at the Zoo, including, but not limited to, complimentary admission, as may be approved from time to time by the City.

FOSAZ may organize and sponsor special events for its members, including after hour's access of Zoo grounds, for the purpose of fundraising for capital improvements, marketing and promotion, educational purposes, and benefit of membership, as approved by the City.

D. Volunteer Recruitment and Coordination

FOSAZ shall cooperate with the City for all volunteer recruitment, opportunities and reporting. Volunteers are considered representatives of the Zoo and City.

- i. FOSAZ Board and Committee Members are skilled professionals recruited for their knowledge and experience relevant to management of fundraising for the Zoo.
 - a. Requirements for serving on the Board or a Committee may be provided by its articles of incorporation and by-laws. Requirements for service shall include completion of the City of Santa Ana Volunteer Background check or equivalent as detailed in Section 11 of the Agreement.
 - b. Duties of Board and Committee members may include public meet-and-greets at special events, exhibit openings, and outreach; fundraising; special event set-up and take-down, storytelling, assisting City staff for supervision of special event volunteers, and additional public events and fundraising assistance.
- ii. Volunteers recruited for FOSAZ special events and working directly with FOSAZ staff shall be oriented, trained and supervised by FOSAZ. All such volunteers must complete a City of Santa Ana 1-Time Volunteer Waiver, to be given to City, on or before their first day of service. A report including the names of groups and number of individuals, or names of individuals, date and number of hours served shall be provided to City annually.
- iii. Volunteers may not be given staff responsibilities including the handling of money, handling of food concessions without specific permission of the City.
- iv. At no point will volunteers be utilized for the operation of vehicles or the ride concessions.
- v. Volunteers recruited for or interested in regular recurring opportunities (such as education programs, Ambassadors, animal services, research) shall be referred to City staff for participation in the City's volunteer program.

E. Community Outreach

FOSAZ may conduct community outreach programs with the approval of the City that serve to promote the Zoo and promulgate goodwill for the Zoo. The City must approve education and outreach activities and materials.

F. Marketing and Promotion

FOSAZ may engage in public relations as approved by the City to promote zoo fundraising. The City or their designee shall approve published and promotional materials, including but not limited to: advertisements, press releases, public service

announcements, videos, social media posts, and branded marketing items. Any promotional items should be made from and packaged with sustainable materials instead of single-use plastics, to advance the Zoo's goals for modeling conservation action in the community.

G. Use and Distribution of Fundraising Proceeds and Membership Fees

Funds received by FOSAZ, including the net proceeds of all FOSAZ fundraising activities, shall be used exclusively for and expended for the benefit of the Zoo in accordance with plans approved by the Parties. Any funds not remitted to the City for the benefit of Zoo shall be used for FOSAZ administration and operations. FOSAZ shall disclose in all solicitations and membership requests that it is raising funds for the Zoo, and that a portion of the funds shall be used for FOSAZ administrative costs.

FOSAZ CONCESSIONS

As part of its fundraising activities, FOSAZ shall have the non-exclusive right to operate the concessions at the Zoo listed below and other concessions that may be approved by City from time to time. All net operating proceeds from the concessions shall be used for Zoo purposes as approved by the City, or as specified herein. FOSAZ shall provide City with an annual accounting of all concessions proceeds, including operating costs.

A. Gift Shop

FOSAZ may operate a gift shop at the Zoo to sell gifts, souvenirs, and novelty items that support the Zoo's mission of empowering the community to save wildlife and wild spaces through fun, adventure, and learning. FOSAZ will endeavor to offer sustainably packaged and reusable products that reinforce the Zoo's conservation education mission. During the term of this agreement, the gift shop will work to phase out single-use plastics and other products in non-recyclable packaging. The gift shop will strive to offer food and beverage items in non-plastic containers, like aluminum, when possible.

FOSAZ shall be responsible for all expenses related to purchase and sale of items in the gift shop. City shall provide space in the concessions building for the gift shop and be responsible for maintenance and repair of the building structure and utilities. FOSAZ shall be responsible for store furnishings and interior improvements and renovations.

B. Ride Concessions

At its own expense, FOSAZ may operate the existing “Zoofari Express” train ride, “Conservation” carrousel, “50-Monkeys” Ferris wheel, and any other ride concessions that may be approved by City.

C. Animal Food and Encounters

FOSAZ shall have the right to sell animal food in locations approved by the City. City shall provide approved animal food. FOSAZ shall pay for and maintain approved animal food dispensers. When approved by the City, FOSAZ shall have the ability to assist City staff and volunteers monitoring patrons engaging in the goat encounter area, including following posted guidelines and safe entry/exit from the paddocks.

D. Other Concessions

City may from time to time approve other FOSAZ concessions. Nothing herein shall prohibit City from granting concessions to persons or entities other than FOSAZ.

E. Donation Receptacles

City agrees to permit FOSAZ to maintain upon the Zoo premises one or more secure locking receptacles for the purpose of receiving donations. Such receptacles shall display a statement of the nature and purpose of FOSAZ as a non-profit organization independent from the City. Funds shall be accounted for separately and be used for Zoo improvements as mutually agreed upon by the Parties.

F. Subcontracting

The Zoo concessions currently operated by FOSAZ may be subcontracted by FOSAZ pursuant to a Request for Proposals meeting all City requirements. City retains the right to approve the selected subcontractor. Any agreements between FOSAZ and subcontractors for Zoo concessions shall be expressly subject to termination in the event of termination of this Agreement.

G. Financial Contribution & Concession Revenue Sharing

- i. On or before December 31 of each year, FOSAZ shall remit the sum of sixty-thousand dollars (\$60,000) to the City to be used for veterinary expenses. These funds shall be deposited into a City revenue account with the City General Fund. The Parties agree to waive a portion of this contribution from FOSAZ, in the event that there is a closure of the Zoo due to COVID-19 health orders, mandate, or guidance from the State, County or City. The funds waived

- shall be proportionate to the amount of time the Zoo was closed. For example, if the Zoo is closed for three months, then 25% of the fee shall be waived.
- ii. On or before December 31 of each year, FOSAZ shall remit the sum of forty thousand dollars (\$40,000) to the City to be used towards the salary of a full-time educational position. These funds shall be deposited into a City revenue account with the City General Fund. The Parties agree to waive a portion of this contribution from FOSAZ, in the event that there is a closure of the Zoo due to COVID-19 health orders, mandate, or guidance from the State, County or City. The funds waived shall be proportionate to the amount of time the Zoo was closed. For example, if the Zoo is closed for three months, then 25% of the fee shall be waived.
 - iii. In addition to the funds provided in (i) and (ii) above (which shall not be deducted from gross revenues when calculating net revenue), on the 15th day of each quarter of the calendar year beginning on April 15, FOSAZ shall remit to the City ten percent (10%) of all net concession revenues from the Gift Shop, Ride Concessions, Facility Rental Areas (discussed in section 3.H. below), and any other approved FOSAZ concessions received (discussed in 3.D. above) in the preceding quarter.
 - iv. City shall deposit concession revenue into a City revenue account with the City General Fund to be used by the City for Zoo capital and operating expenses including, but not limited to, improvement projects, educational opportunities, staff development, and/or purchase of animals, as determined by the City.
 - v. Quarterly, FOSAZ shall remit ten percent (10%) of the net proceeds of all membership sales to City. These funds shall be deposited by City into a revenue account with the City General Fund to be used by the City exclusively for Zoo capital and operating expenses including, but not limited to, improvement projects, educational opportunities, staff development, and/or purchase of animals, as reasonably determined by the City.
 - vi. In the event that, the Santa Ana Zoo is closed during part of this Agreement due to COVID-19 health orders, mandate, or guidance from the State, County or City, the Parties waive the 10% payment of all net concessions for the time period that the Zoo is closed due to the order(s) or guidance. The City shall provide written notice of when said Closure began and ended to document and assess the waiving of the aforementioned payment(s) during any required time period for which the Zoo was closed pursuant to State, County, or City orders, mandate, or guidance.

H. Facility Rental Areas

- i. Subject to paragraphs (ii) through (vi) below, FOSAZ shall have the non-exclusive right to restrict access and charge rent to any or all portions of the Zoo for private events, which may include, but are not limited to, birthday parties, receptions, or corporate events.
- ii. FOSAZ shall obtain approval from the City prior to renting out any area of the Zoo. The City shall be permitted to deny any facility rental or to limit the scope of the rental at their sole and absolute discretion.
- iii. FOSAZ shall oversee the rental of equipment and facilities and shall be responsible for primary maintenance of such rentals.
- iv. FOSAZ shall have a designated staff member present at the Zoo during the entirety of the private event. FOSAZ shall ensure that designated staff be available to assist with rental management at any time during the rental, and to be present during rental set up and completion to ensure total compliance with rental agreement, and that all parties to the rental have exited the rental site and/or Zoo grounds by the agreed-upon time. FOSAZ shall be responsible for ensuring the designated staff member follows the opening, closing, and lock-up procedures established by the City and provided to FOSAZ by Zoo, and as may be amended.
- v. FOSAZ shall be responsible for cleaning up the rental location upon the conclusion of the private event.
- vi. City shall have the right to restrict access and rent any rentable areas without paying a rental fee to FOSAZ.

JOINT ACTIVITIES**A. Establishment of Fund-Raising Goals and Timetables**

Annually, as soon as practicable before adoption of the City's annual budget, the Zoo Manager shall provide FOSAZ with a plan of new exhibits, ancillary facilities, and other capital projects that the Zoo may wish to implement in the succeeding fiscal year. Within sixty (60) days of receipt of City's plan, FOSAZ shall propose to the City a plan and timetable for fund-raising plans and activities to complement the City's plan to construct capital improvements. Thereafter, the City and FOSAZ shall establish fund-raising goals and related timetables for the upcoming fiscal year.

B. Agreements for Construction Projects

City and FOSAZ may enter into separate agreements approved by the City Council and FOSAZ Board of Directors for capital improvements (including deferred maintenance projects) that shall be funded in whole or in part by FOSAZ. Such projects shall be carried out in accordance with all applicable City ordinances and procedures covering such matters as bid process, project administration requirements, and other legal requirements.

C. Ticketing Systems

The parties shall work together to select and implement a mutually acceptable ticketing and back office system to allow for the efficient processing of ticketing, membership, point of sale and other key features.

D. Zoo Website and Social Media

- i. The City will contract with a professional firm to redevelop the official Santa Ana Zoo website www.santaanazoo.org. City and FOSAZ staff will both have editing access to make updates to relevant sections of the website. The website will work with future online ticketing, program reservations, fundraising, and sales systems.
- ii. City and FOSAZ are recognized as joint content creators and publishers. Official social media accounts for the Zoo are a professional representation of the Zoo as a City entity for the purposes of promotion of the Zoo, programs, and events. Social media is also used for providing educational information about the animals and plants at the Zoo and a platform for engaging with the community. The City may contract with a professional marketing firm to assist with the Zoo's social media presence and to provide a consistent brand with the website.

E. Safety Trainings

FOSAZ, in coordination with City staff, shall be eligible to attend City sponsored safety training, including but not limited to CPR training. In the event of any injury that may take place on Zoo property, FOSAZ agrees to follow established Zoo and City safety and reporting policies.

REPORTS

A. City Reports to FOSAZ

Annually, and within sixty (60) days of approval of the Zoo's fiscal operating budget by the City Council, City shall present to FOSAZ a copy of the Zoo's operating budget. Upon request by FOSAZ, City shall provide FOSAZ with an annual income and expenditure statement.

B. FOSAZ Reports to City

Annually, and within sixty (60) days of approval by the FOSAZ Board of Directors, the FOSAZ Executive Director shall present a copy of the FOSAZ annual operating budget to the City. Upon request by the City, FOSAZ shall provide City with an annual income and expenditure statement.

C. Accounting Systems, Funds and Accounts

- i. The Parties shall work together to establish a system of funds and accounts so that the financial conditions and status of each is clearly comprehensible to both organizations.
- ii. The Parties shall establish process, procedures, and time lines whereby FOSAZ shall transfer money from FOSAZ accounts to the City on a periodic basis in accordance with membership and concession revenue sharing. The Parties shall establish process and procedures whereby FOSAZ deposit funds into escrow accounts for funding of capital improvements as provided by separate agreements.
- iii. The Parties shall establish process and procedures for transferring obligated City expenses to FOSAZ.