

CITY OF TOPEKA CONTRACT NO. _____
Amendment No. 1 to Contract No. 49243

**FIRST AMENDMENT TO
LICENSE AND MANAGEMENT AGREEMENT
by and between
THE CITY OF TOPEKA, KANSAS
and
THE FRIENDS OF THE TOPEKA ZOO
related to the
TOPEKA ZOO AND CONSERVATION CENTER**

This First Amendment to License and Management Agreement (“Amendment”) is made effective this ____ day of March, 2023, ("Effective Date"), by and between the City of Topeka, Kansas, ("the City"), a municipal corporation, and Friends of the Topeka Zoo, Inc. ("FOTZ"), a Kansas non-profit corporation.

RECITALS

WHEREAS, on or about February 9, 2021, the City and FOTZ entered into Contract No. 49243, the License and Management Agreement (“LMA”);

WHEREAS, in accordance with the Gage Park Improvement Authority Act, 2022 Session Laws Ch. 63, Sec. 20 – 27, and Shawnee County Resolution No. 2022-69, on or about November 8, 2022, a majority of voters of Shawnee County approved a ballot question authorizing the creation of the Gage Park Improvement Authority and imposition of the county-wide sales tax at the rate of 0.2% for the benefit of Gage Park including for the benefit of existing and future eligible recreation facilities of the Topeka Zoo and Conservation Center (“Gage Park sales tax”);

WHEREAS, the Department of Revenue chose not to implement the Gage Park sales tax until April 1, 2023;

WHEREAS, Section 7.5(c)(1) of the LMA contemplates a reduction in the annual License and Management Fee in the event of a voter approved tax which provides funding for the Topeka Zoo and Conservation Center;

WHEREAS, the City and FOTZ desire to enter into this Amendment to address the impact and timing of the implementation of the Gage Park sales tax on the annual License and Management Fee, including the reductions in the annual License and Management Fee contemplated by Sections 7.5(c)(2) and (3) of the LMA, and the City’s Capital Contributions under Section 8.1 of the LMA; and

WHEREAS, this Amendment is made pursuant to Section 18.11(b) of the LMA.

NOW THEREFORE, for and in consideration of the mutual promises and covenants set forth in this Amendment, the parties agree as follows:

1. As the implementation date of the Gage Park sales tax by the Department of Revenue is April 1, 2023, the City shall remit the 2023 first and second quarter installments of the annual License and Management Fee to FOTZ as contemplated by Section 7.5(b) of the LMA and such installments shall only be subject to the reductions contemplated by Sections 7.5(c)(2) and (3) of the LMA. The 2023 first and second quarter installments of the annual License and Management Fee shall not be subject to the reduction contemplated by Section 7.5(c)(1) of the LMA. In the event FOTZ receives revenue attributable to the first quarter of 2023 through the Legislature or a Special Claims against the State relating to the Department of Revenue's delay in implementing the Gage Park sales tax, then FOTZ and the City shall reconcile the difference for the year.
2. Section 7.5(b) of the LMA is amended to add "Following the April 1, 2023 implementation of the imposition of Gage Park sales tax and only during the period of time the Gage Park sales tax is in effect, FOTZ shall provide a report to the City of the actual Gage Park sales tax received by FOTZ for quarters ending December, March, June, and September within thirty (30) days of FOTZ receiving all sales tax for each such quarter. The City shall compare FOTZ's Gage Park sales tax receipts to the annual License and Management Fee obligation for that quarter according to the percentages below to determine if any liability exists after the reductions provided in Section 7.5(c).
 - a. If no liability is found, the City shall remit an invoice to FOTZ for actual employee and property insurance costs.
 - b. If a liability is found, then within fifteen (15) days of receiving the report from FOTZ, the City shall distribute the quarterly installment of the annual License and Management Fee to FOTZ in accordance with the percentages listed below minus the reductions in Section 7.5(c).
 - c. In the event the Gage Park sales tax ceases to be in effect, then the City shall revert to making quarterly payments of the License and Management Fee on or before the 1st business day of each January, April, July and October.
3. Section 7.5(c)(2) of the LMA is amended to add that: "For each quarter of each year that the annual License and Management Fee is reduced by Sections 7.5(c)(1), (2) and (3) to an amount less than the amount paid by the City to maintain property insurance on the Zoo Premises as described in Section 14.1(b), FOTZ shall remit to the City the amount paid by the City to maintain property insurance on the Zoo Premises less the

amount of the reduced annual License and Management Fee. FOTZ shall remit payment to the City within thirty (30) days of FOTZ's receipt of an invoice from the City."

4. Section 7.5(c)(3) of the LMA is amended to add that: "For each quarter of each year that the annual License and Management Fee is reduced by Sections 7.5(c)(1), (2) and (3) to an amount less than the dollar value of compensation and benefits attributable to City employees who are assigned to the Zoo as described in the attached Employee Services Agreement in Section 2(b), FOTZ shall remit to the City the dollar value of compensation and benefits attributable to City employees who are assigned to the Zoo less the amount of the reduced annual License and Management Fee. FOTZ shall remit payment to the City within thirty (30) days of FOTZ's receipt of an invoice from the City.
5. New Section 7.5(d) to be added to the LMA as follows: "Every January, the City and FOTZ shall reconcile the total amount of Gage Park sales tax received by FOTZ during the prior year in comparison to the total amount of License and Management Fee payments made by the City along with all reductions made pursuant to Section 7.5(c) and any payments made by FOTZ to the City for employee and property insurance costs. If there was any overpayment by the City, FOTZ shall refund the City in the amount of the overpayment by the last business day of February. If there was any underpayment, the City shall remit the difference to FOTZ by the last business day of February.
6. Section 8.1(b) of the LMA is amended and replaced in full as follows: "October 1, 2028 through Expiration Date. The City shall make Ninety-Eight Thousand Two Hundred Seventy-Five Dollars and Eighty-Six Cents (\$98,275.86) available to FOTZ in 2028 (in addition to the funds allocated pursuant to Section 8.1(a) above) and Three Hundred Ninety-Three Thousand One Hundred Three Dollars and Forty-Five Cents (\$393,103.45) available to FOTZ in each of the following seven years (2029 through 2035). If the Governing Body does not approve additional bond authority or specifically identify another funding source to cover this commitment for this period of time for the purpose of addressing Capital Projects on the Zoo Premises, then the amount of this commitment shall be added to and incorporated as part of the annual License and Management Fee payment earned by and distributed to FOTZ in accordance with Section 7.5(b); provided, however, that in the event the amount of the Capital Projects commitment identified in this Section 8.1(b) is added to and incorporated as part of the annual License and Management Fee payment earned by and distributed to FOTZ in accordance with Section 7.5(b), such amount shall not be subject to the reductions of Section 7.5(c)(1), (2) and (3)."

7. Article 3 of the LMA is amended to add that: “The funds raised or other contribution streams secured by FOTZ (replacement revenue) that materialized during the course of the Agreement shall not be construed to include the revenue from the Gage Park sales tax received by FOTZ.
8. All terms and provisions of the LMA not amended by this Amendment shall remain in full force and effect.

CITY OF TOPEKA, KANSAS

FRIENDS OF THE TOPEKA ZOO, INC.

Stephen Wade
City Manager

Fred Patton
President, Board of Directors

ATTEST:

ATTEST:

Brenda Younger
City Clerk

Jennifer LeClair
Secretary, Board of Directors